

AMENDED IN SENATE JUNE 16, 2015

AMENDED IN SENATE JUNE 2, 2015

AMENDED IN ASSEMBLY APRIL 15, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 665

Introduced by Assembly Member Frazier
(Coauthor: Senator Berryhill)

February 24, 2015

An act to amend Sections 200 and 203.1 of, and to add Sections 200.5 and 200.6 to, the Fish and Game Code, relating to fish and wildlife.

LEGISLATIVE COUNSEL’S DIGEST

AB 665, as amended, Frazier. Hunting or fishing: local regulation.

(1) The California Constitution provides for the delegation to the Fish and Game Commission of powers relating to the protection and propagation of fish and game. Existing statutory law delegates to the commission the power to regulate the taking or possession of birds, mammals, fish, amphibia, and reptiles in accordance with prescribed laws. Under existing law, the Department of Fish and Wildlife exercises various functions with regard to the taking of fish and game. Under existing law, a city or county has no authority to regulate fish and game except that a city or county may adopt an ordinance that incidentally affects fishing and hunting for the protection of public health and safety.

This bill would provide that the state fully occupies the field of the taking and possession of fish and game. The bill would provide that unless otherwise authorized by the Fish and Game Code, other state law, or federal law, the commission and the department are the only

entities that may adopt or promulgate regulations regarding the taking or possession of fish and game on any lands or waters within the state.

(2) Existing law requires the commission, when adopting certain regulations relating to the taking or possession of resident game birds, game mammals, and fur-bearing mammals, to consider populations, habitat, food supplies, the welfare of individual animals, and other pertinent facts and testimony.

This bill would require the commission to consider these factors when adopting certain regulations relating to the taking or possession of fish, amphibians, and reptiles. The bill would also require the commission to consider public health and safety when adopting these regulations.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 200 of the Fish and Game Code is
2 amended to read:

3 200. (a) There is hereby delegated to the commission the power
4 to regulate the taking or possession of birds, mammals, fish,
5 amphibia, and reptiles for purposes that include, but are not limited
6 to, public health and safety, to the extent and in the manner
7 prescribed in this article.

8 (b) No power is delegated to the commission by this article to
9 regulate the taking, possessing, processing, or use of fish, amphibia,
10 kelp, or other aquatic plants for commercial purposes, and no
11 provision of this code relating or applying thereto, nor any
12 regulation of the commission made pursuant to these provisions,
13 shall be affected by this article or any regulation made under this
14 article.

15 SEC. 2. Section 200.5 is added to the Fish and Game Code, to
16 read:

17 200.5. (a) The Legislature finds and declares all of the
18 following:

19 (1) The California Supreme Court in *In re Makings* (1927) 200
20 Cal. 474, determined that Section 25 ½ of Article IV of the
21 California Constitution, as currently set forth in Section 20 of
22 Article IV, prohibits local governmental entities from regulating,
23 or interfering with, fish and game matters in any manner and places
24 this responsibility with the Legislature in order to conserve

1 California's fish and wildlife and permit the greatest use of fish
2 and game resources compatible with the reasonable protection
3 thereof.

4 (2) The commission was established in 1870 to assist in the
5 scientific, evidence-based management of California's fish and
6 wildlife resources. The California Constitution permits the
7 Legislature to delegate to the commission certain powers relating
8 to the management of fish and game, and the Legislature has
9 delegated to the commission regulatory powers over the taking
10 and possession of fish and game, as set forth in this code.

11 (3) Hunting and fishing are statistically among the safest outdoor
12 recreational activities, and are already well regulated by the state
13 through means that include, but are not limited to, mandatory safety
14 and education requirements, weapons discharge laws, and
15 regulations adopted by the commission. Additional local regulation
16 would be unnecessary, would impede the proper administration
17 of state fish and game laws, and would create significant
18 enforcement issues. Hunting and fishing activities are also
19 compatible with other recreational uses on many public lands and
20 waters throughout the state.

21 (b) In enacting this section and Section 200.6, it is the intent of
22 the Legislature to affirm, subject to applicable federal law, the
23 exclusive legal authority granted to the commission and the
24 department with regard to the taking and possession of fish and
25 game and thereby ensure necessary statewide control by the
26 commission and the department over fish and game matters for
27 wildlife conservation purposes, the protection of, and access to,
28 hunting and fishing opportunities for the public, and for public
29 health and safety purposes.

30 SEC. 3. Section 200.6 is added to the Fish and Game Code, to
31 read:

32 200.6. (a) The state fully occupies the field of the taking and
33 possession of fish and game pursuant to this code, regulations
34 adopted by the commission pursuant to this code, and Section 20
35 of Article IV of the California Constitution, and all local ordinances
36 and regulations are subject to this section and Section 200.5.

37 (b) The commission, the department, or any other governmental
38 entity legally authorized to affect hunting and fishing on navigable
39 waters held in public trust shall ensure that the fishing and hunting
40 rights of the public guaranteed under Section 25 of Article I and

1 Section 4 of Article X of the California Constitution are protected
2 in a manner consistent with those provisions.

3 (c) (1) Unless expressly authorized by this code, other state
4 law, or federal law, the commission and the department are the
5 only entities in the state that may adopt or promulgate regulations
6 regarding the taking or possession of fish and game on any lands
7 or waters within the state.

8 (2) Nothing in this section or Section 200.5 prohibits a public
9 or private landowner, or the landowner's designee, from controlling
10 public access or public use, including hunting or fishing, on
11 property that the landowner owns in fee, leases, holds an easement
12 upon, or is otherwise expressly authorized to control for those
13 purposes in a manner consistent with state law. *However, nothing*
14 *in this section abridges the public's rights of navigation, fishing,*
15 *hunting, or other recreation on waters of the state (see Bohn v.*
16 *Albertson (1951) 107 Cal.App.2d 738; People ex rel. Baker v.*
17 *Mack (1971) 19 Cal.App.3d 1040; and 68 Ops.Cal.Atty.Gen. 268*
18 *(1985)).*

19 (3) This section applies only to activities for which a hunting
20 or fishing license or a depredation permit is required by this code
21 or regulations adopted by the commission, and to activities carried
22 out by an employee or agent of the department as part of his or
23 her official duties. Nothing in this section shall be construed to
24 diminish or affect existing legal protections for fish and
25 game-related management, recreation, or other activities not
26 specifically mentioned in this section.

27 SEC. 4. Section 203.1 of the Fish and Game Code is amended
28 to read:

29 203.1. When adopting regulations pursuant to Section 203 or
30 205, the commission shall consider populations, habitat, food
31 supplies, the welfare of individual animals, public health and safety,
32 and other pertinent facts and testimony.