

AMENDED IN ASSEMBLY MARCH 24, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2285

Introduced by Assembly Member La Malfa

February 21, 2008

An act to amend Section 4584 of the Public Resources Code, relating to forest resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 2285, as amended, La Malfa. Forest resources.

(1) The Z'Berg-Nejedly Forest Practice Act of 1973 generally prohibits a person from conducting timber operations unless the person has submitted a timber harvesting plan to the Department of Forestry and Fire Protection and received approval of the plan from the Director of Forestry and Fire Protection.

Existing law authorizes the State Board of Forestry and Fire Protection, until January 1, 2013, to exempt from certain requirements, if the exemption is consistent with the purposes of the act, the harvesting of trees that eliminate the vertical continuity of vegetative fuels and the horizontal continuity of tree crowns, for the purpose of reducing the rate of fire spread, fire duration and intensity, fuel ignitability, or ignition of tree crowns, if specified requirements are met. The Department of Forestry and Fire Protection, after timber operations are complete, is required to conduct an onsite inspection.

Existing law provides that a willful violation of the act or a regulation of the board is a crime.

This bill would authorize the forest management activities the board has exempted with regard to eliminating vertical continuity of vegetative fuels and the horizontal continuity of tree crowns to include the removal

~~of 10% of all trees 18 to 24 inches in diameter per acre, with restrictions, from the area covered by the exemption. If 10% of the total number of trees 24 inches in diameter in that acre is less than one, no trees would be permitted to be removed.~~

Because a willful violation of the exemption requirements would be a crime, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

1 SECTION 1. Section 4584 of the Public Resources Code is
2 amended to read:

3 4584. Upon determining that the exemption is consistent with
4 the purposes of this chapter, the board may exempt from this
5 chapter or portions thereof, a person engaged in forest management
6 whose activities are limited to any of the following:

7 (a) The cutting or removal of trees for the purpose of
8 constructing or maintaining a right-of-way for utility lines.

9 (b) The planting, growing, nurturing, shaping, shearing, removal,
10 or harvest of immature trees for Christmas trees or other ornamental
11 purposes or minor forest products, including fuelwood.

12 (c) The cutting or removal of dead, dying, or diseased trees of
13 any size.

14 (d) Site preparation.

15 (e) Maintenance of drainage facilities and soil stabilization
16 treatments.

17 (f) Timber operations on land managed by the Department of
18 Parks and Recreation.

19 (g) (1) The one-time conversion of less than three acres to a
20 nontimber use. A person, whether acting as an individual or as a
21 member of a partnership, or as an officer or employee of a
22 corporation or other legal entity, shall not obtain more than one
23 exemption pursuant to this subdivision in a five-year period. If a
24 partnership has as a member, or if a corporation or any other legal

1 entity has as an officer or employee, a person who has received
2 this exemption within the past five years, whether as an individual
3 or as a member of a partnership, or as an officer or employee of a
4 corporation or other legal entity, then that partnership, corporation,
5 or other legal entity is not eligible for this exemption. "Person,"
6 for purposes of this subdivision, means an individual, partnership,
7 corporation, or any other legal entity.

8 (2) (A) Notwithstanding Section 4554.5, the board shall adopt
9 regulations that become effective and operative on or before July
10 1, 2002, and do all of the following:

11 (i) Identify the required documentation of a bona fide intent to
12 complete the conversion that an applicant will need to submit in
13 order to be eligible for the exemption in paragraph (1).

14 (ii) Authorize the department to inspect the sites approved in
15 conversion applications that have been approved on or after January
16 1, 2002, in order to determine that the conversion was completed
17 within the two-year period described in subparagraph (B) of
18 paragraph (2) of subdivision (a) of Section 1104.1 of Title 14 of
19 the California Code of Regulations.

20 (iii) Require the exemption under this subdivision to expire if
21 there is a change in timberland ownership. The person who
22 originally submitted an application for an exemption under this
23 subdivision shall notify the department of a change in timberland
24 ownership on or before five calendar days after a change in
25 ownership.

26 (iv) The board may adopt regulations allowing a waiver of the
27 five-year limitation described in paragraph (1) upon finding that
28 the imposition of the five-year limitation would impose an undue
29 hardship on the applicant for the exemption. The board may adopt
30 a process for an appeal of a denial of a waiver.

31 (B) The application form for the exemption pursuant to
32 paragraph (1) shall prominently advise the public that a violation
33 of the conversion exemption, including a conversion applied for
34 in the name of someone other than the person or entity
35 implementing the conversion in bona fide good faith, is a violation
36 of this chapter and penalties may accrue up to ten thousand dollars
37 (\$10,000) for each violation pursuant to Article 8 (commencing
38 with Section 4601).

39 (h) Easements granted by a right-of-way construction agreement
40 administered by the federal government if any timber sales and

1 operations within or affecting these areas are reviewed and
2 conducted pursuant to the National Environmental Policy Act of
3 1969 (42 U.S.C. Sec. 4321 et seq.).

4 (i) The cutting, removal, or sale of timber or other solid wood
5 forest products from the species *Taxus brevifolia* (Pacific yew),
6 if the known locations of any stands of this species three inches
7 and larger in diameter at breast height are identified in the
8 exemption notice submitted to the department. Nothing in this
9 subdivision is intended to authorize the peeling of bark from, or
10 the cutting or removal of, *Taxus brevifolia* within a watercourse
11 and lake protection zone, special treatment area, buffer zone, or
12 other area where timber harvesting is prohibited or otherwise
13 restricted pursuant to board rules.

14 (j) (1) The cutting or removal of trees in compliance with
15 Sections 4290 and 4291, that eliminates the vertical continuity of
16 vegetative fuels and the horizontal continuity of tree crowns for
17 the purpose of reducing flammable materials and maintaining a
18 fuel break for a distance of not more than 150 feet on each side
19 from an approved and legally permitted structure that complies
20 with the California Building Code, when that cutting or removal
21 is conducted in compliance with this subdivision. For purposes of
22 this subdivision, an “approved and legally permitted structure”
23 includes only structures that are designed for human occupancy
24 and garages, barns, stables, and structures used to enclose fuel
25 tanks.

26 (2) (A) The cutting or removal of trees pursuant to this
27 subdivision is limited to cutting or removal that will result in a
28 reduction in the rate of fire spread, fire duration and intensity, fuel
29 ignitability, or ignition of the tree crowns and shall be in
30 accordance with any regulations adopted by the board pursuant to
31 this section.

32 (B) Trees shall not be cut or removed pursuant to this
33 subdivision by the clear cutting regeneration method, by the seed
34 tree removal step of the seed tree regeneration method, or by the
35 shelterwood removal step of the shelterwood regeneration method.

36 (3) (A) Surface fuels, including logging slash and debris, low
37 brush, and deadwood, that could promote the spread of wildfire
38 shall be chipped, burned, or otherwise removed from all areas of
39 timber operations within 45 days from the date of commencement
40 of timber operations pursuant to this subdivision.

1 (B) (i) All surface fuels that are not chipped, burned, or
2 otherwise removed from all areas of timber operations within 45
3 days from the date of commencement of timber operations may
4 be determined to be a nuisance and subject to abatement by the
5 department or the city or county having jurisdiction.

6 (ii) The costs incurred by the department, city, or county, as the
7 case may be, to abate the nuisance upon ~~any~~ a parcel of land subject
8 to the timber operations, including, but not limited to, investigation,
9 boundary determination, measurement, and other related costs,
10 may be recovered by special assessment and lien against the parcel
11 of land by the department, city, or county. The assessment may
12 be collected at the same time and in the same manner as ordinary
13 ad valorem taxes, and shall be subject to the same penalties and
14 the same procedure and sale in case of delinquency as is provided
15 for ad valorem taxes.

16 (4) All timber operations conducted pursuant to this subdivision
17 shall conform to applicable city or county general plans, city or
18 county implementing ordinances, and city or county zoning
19 ordinances. Nothing in this paragraph is intended to authorize the
20 cutting, removal, or sale of timber or other solid wood forest
21 products within an area where timber harvesting is prohibited or
22 otherwise restricted pursuant to the rules or regulations adopted
23 by the board.

24 (5) (A) The board shall adopt regulations, initially as emergency
25 regulations in accordance with subparagraph (B), that the board
26 considers necessary to implement and to obtain compliance with
27 this subdivision.

28 (B) The emergency regulations adopted pursuant to
29 subparagraph (A) shall be adopted in accordance with the
30 Administrative Procedure Act (Chapter 3.5 (commencing with
31 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
32 Code). The adoption of emergency regulations shall be deemed to
33 be an emergency and necessary for the immediate preservation of
34 the public peace, health, and safety, or general welfare.

35 (k) (1) Until January 1, 2013, the harvesting of trees, limited
36 to those trees that eliminate the vertical continuity of vegetative
37 fuels and the horizontal continuity of tree crowns, for the purpose
38 of reducing the rate of fire spread, duration and intensity, fuel
39 ignitability, or ignition of tree crowns.

1 (2) The board may authorize an exemption pursuant to paragraph
2 (1) only if the tree harvesting will decrease fuel continuity and
3 increase the quadratic mean diameter of the stand, and the tree
4 harvesting area will not exceed 300 acres.

5 (3) The notice of exemption, which shall be known as the Forest
6 Fire Prevention Exemption, may be authorized only if all of the
7 conditions specified in paragraphs (4) to (10), inclusive, are met.

8 (4) A registered professional forester shall prepare the notice
9 of exemption and submit it to the director, and include a map of
10 the area of timber operations that complies with the requirements
11 of paragraphs (1), (3), (4), and (7) to (12), inclusive, of subdivision
12 (x) of Section 1034 of Title 14 of the California Code of
13 Regulations.

14 (5) (A) The registered professional forester who submits the
15 notice of exemption shall include a description of the preharvest
16 stand structure and a statement of the postharvest stand stocking
17 levels.

18 (B) The level of residual stocking shall be consistent with
19 maximum sustained production of high-quality timber products.
20 The residual stand shall consist primarily of healthy and vigorous
21 dominant and codominant trees from the preharvest stand. Stocking
22 shall not be reduced below the standards required by any of the
23 following provisions that apply to the exemption at issue:

24 (i) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph
25 (1) of subdivision (a) of Section 913.3 of Title 14 of the California
26 Code of Regulations.

27 (ii) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph
28 (1) of subdivision (a) of Section 933.3 of Title 14 of the California
29 Code of Regulations.

30 (iii) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph
31 (1) of subdivision (a) of Section 953.3 of Title 14 of the California
32 Code of Regulations.

33 (C) If the preharvest dominant and codominant crown canopy
34 is occupied by trees less than 14 inches diameter at breast height,
35 a minimum of 100 trees over four inches diameter at breast height
36 shall be retained per acre for Site I, II, and III lands, and a minimum
37 of 75 trees over four inches diameter at breast height shall be
38 retained per acre for Site IV and V lands.

39 (6) (A) The registered professional forester who submits the
40 notice shall include selection criteria for the trees to be harvested

1 or the trees to be retained. In the development of fuel reduction
2 prescriptions, the registered professional forester should consider
3 retaining habitat elements, where feasible, including, but not
4 limited to, ground-level cover necessary for the long-term
5 management of local wildlife populations.

6 (B) All trees that are harvested or all trees that are retained shall
7 be marked or sample marked by or under the supervision of a
8 registered professional forester before felling operations begin.
9 The board shall adopt regulations for sample marking for this
10 section in Title 14 of the California Code of Regulations. Sample
11 marking shall be limited to homogenous forest stand conditions
12 typical of plantations.

13 (7) (A) The registered professional forester submitting the
14 notice, upon submission of the notice, shall provide a confidential
15 archaeology letter that includes all of the information required by
16 any of the following provisions that apply to the exemption at
17 issue:

18 (i) Paragraphs (2) and (7) to (11), inclusive, of subdivision (c)
19 of Section 929.1 of Title 14 of the California Code of Regulations,
20 and include site records if required pursuant to subdivision (g) of
21 that section or pursuant to Section 929.5 of Title 14 of the
22 California Code of Regulations.

23 (ii) Paragraphs (2) and (7) to (11), inclusive, of subdivision (c)
24 of Section 949.1 of Title 14 of the California Code of Regulations,
25 and include site records if required pursuant to subdivision (g) of
26 that section or pursuant to Section 949.5 of Title 14 of the
27 California Code of Regulations.

28 (iii) Paragraphs (2) and (7) to (11), inclusive, of subdivision (c)
29 of Section 969.1 of Title 14 of the California Code of Regulations,
30 and include site records if required pursuant to subdivision (g) of
31 that section or pursuant to Section 969.5 of Title 14 of the
32 California Code of Regulations.

33 (B) The director shall submit a complete copy of the confidential
34 archaeological letter and two copies of all required archaeological
35 or historical site records, to the appropriate Information Center of
36 the California Historical Resource Information System within 30
37 days from the date of notice submittal to the director. Before
38 submitting the notice to the director, the registered professional
39 forester shall send a copy of the notice to Native Americans, as

1 defined in Section 895.1 of Title 14 of the California Code of
2 Regulations.

3 (8) Only trees less than 18 inches stump diameter, measured at
4 eight inches above ground level, may be removed. However, within
5 500 feet of a legally permitted structure, or in an area prioritized
6 as a shaded fuel break in a community wildfire protection plan
7 approved by a public fire agency, if the goal of fuel reduction
8 cannot be achieved by removing trees less than 18 inches stump
9 diameter, trees less than 24 inches stump diameter may be removed
10 if that removal complies with this section and is necessary to
11 achieve the goal of fuel reduction. A fuel reduction effort shall not
12 violate the canopy closure regulations adopted by the board on
13 June 10, 2004, and as those regulations may be amended.

14 (9) (A) This subparagraph applies to areas within 500 feet of
15 a legally permitted structure and in areas prioritized as a shaded
16 fuel break in a community wildfire protection plan approved by a
17 public fire agency. The board shall adopt regulations for the
18 treatment of surface and ladder fuels in the harvest area, including
19 logging slash and debris, low brush, small trees, and deadwood,
20 that could promote the spread of wildfire. The regulations adopted
21 by the board shall be consistent with the standards in the board's
22 "General Guidelines for Creating Defensible Space" described in
23 Section 1299 of Title 14 of the California Code of Regulations.
24 Postharvest standards shall include vertical spacing between fuels,
25 horizontal spacing between fuels, maximum depth of dead ground
26 surface fuels, and treatment of standing dead fuels, as follows:

27 (i) Ladder and surface fuels shall be spaced to achieve a vertical
28 clearance distance of eight feet or three times the height of the
29 postharvest fuels, whichever is the greater distance, measured from
30 the base of the live crown of the postharvest dominant and
31 codominant trees to the top of the surface fuels.

32 (ii) Horizontal spacing shall achieve a minimum separation of
33 two to six times the height of the postharvest fuels, increasing
34 spacing with increasing slope, measured from the outside branch
35 edges of the fuels.

36 (iii) Dead surface fuel depth shall be less than nine inches.

37 (iv) Standing dead or dying trees and brush shall generally be
38 removed. That material, along with live vegetation associated with
39 the dead vegetation, may be retained for wildlife habitat when
40 isolated from other vegetation.

1 (B) This subparagraph applies to all areas not described in
2 subparagraph (A).

3 (i) The postharvest stand shall contain no more than 200 trees
4 over three inches in diameter per acre.

5 (ii) Vertical spacing shall be achieved by treating dead fuels to
6 a minimum clearance distance of eight feet measured from the
7 base of the live crown of the postharvest dominant and codominant
8 trees to the top of the dead surface fuels.

9 (iii) All logging slash created by the timber operations shall be
10 treated to achieve a maximum postharvest depth of nine inches
11 above the ground.

12 (C) The standards required by subparagraphs (A) and (B) shall
13 be achieved on approximately 80 percent of the treated area. The
14 treatment shall include chipping, removing, or other methods
15 necessary to achieve the standards. Ladder and surface fuel
16 treatments, for any portion of the exemption area where timber
17 operations have occurred, shall be done within 120 days from the
18 start of timber operations on that portion of the exemption area or
19 by April 1 of the year following surface fuel creation on that
20 portion of the exemption area if the surface fuels are burned.

21 (10) Timber operations shall comply with the requirements of
22 paragraphs (1) to (10), inclusive, of subdivision (b) of Section
23 1038 of Title 14 of the California Code of Regulations. Timber
24 operations in the Lake Tahoe Region shall comply instead with
25 the requirements of paragraphs (1) to (16), inclusive, of subdivision
26 (f) of Section 1038 of Title 14 of the California Code of
27 Regulations.

28 (11) ~~Ten~~ *Notwithstanding paragraph (8) of subdivision (k), 10*
29 *percent of all trees 18 to 24 inches in diameter may be removed*
30 *from one acre in an area covered by this subdivision. If 10 percent*
31 *of the total number of trees 24 inches in diameter in that acre is*
32 *less than one, trees shall not be removed. Only trees measuring*
33 *18 to 24 inches in stump diameter, measured at eight inches above*
34 *ground level, may be removed. A fuel reduction effort shall not*
35 *violate the canopy closure regulations adopted by the board on*
36 *June 10, 2004, and as those regulations may be amended.*

37 (12) After the timber operations are complete, the department
38 shall conduct an onsite inspection to determine compliance with
39 this subdivision and whether appropriate enforcement action should
40 be initiated.

1 SEC. 2. No reimbursement is required by this act pursuant to
 2 Section 6 of Article XIII B of the California Constitution because
 3 the only costs that may be incurred by a local agency or school
 4 district will be incurred because this act creates a new crime or
 5 infraction, eliminates a crime or infraction, or changes the penalty
 6 for a crime or infraction, within the meaning of Section 17556 of
 7 the Government Code, or changes the definition of a crime within
 8 the meaning of Section 6 of Article XIII B of the California
 9 Constitution.

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12 **CORRECTIONS:**

13 **Text—Pages 7 and 9.**

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