

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1635

Introduced by Assembly Member Logue

February 9, 2012

An act to amend Section ~~4581~~ 4584 of the Public Resources Code, relating to forest resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 1635, as amended, Logue. Forest resources: timber harvesting plans.

The Z'berg-Nejedly Forest Practices Act of 1973 prohibits a person from conducting timber harvesting operations unless a timber harvesting plan prepared by a professional forester has been submitted to, and approved by, the Department of Forestry and Fire Protection pursuant to the act. Existing law authorizes the State Board of Forestry and Fire Protection to exempt from all or some of the requirements of the act a person engaged in certain limited forest management activities, including, until January 1, 2013, 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, duration and intensity, fuel ignitability, or ignition of tree crowns.

This bill would extend that exemption until January 1, 2014.

~~The Z'berg-Nejedly Forest Practice Act of 1973 prohibits a person from conducting timber operations unless a timber harvesting plan prepared by a registered professional forester has been submitted to, and approved by, the Department of Forestry and Fire Protection.~~

~~This bill would make technical, nonsubstantive changes to that prohibition.~~

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

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 of this chapter, a person engaged in forest
6 management 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 other legal
25 entity has as an officer or employee, a person who has received
26 this exemption within the past five years, whether as an individual
27 or as a member of a partnership, or as an officer or employee of a
28 corporation or other legal entity, then that partnership, corporation,
29 or other legal entity is not eligible for this exemption. "Person,"
30 for purposes of this subdivision, means an individual, partnership,
31 corporation, or other legal entity.
32 (2) (A) Notwithstanding Section 4554.5, the board shall adopt
33 regulations that become effective and operative on or before July
34 1, 2002, and do all of the following:

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

4 (ii) Authorize the department to inspect the sites approved in
5 conversion applications that have been approved on or after January
6 1, 2002, in order to determine that the conversion was completed
7 within the two-year period described in subparagraph (B) of
8 paragraph (2) of subdivision (a) of Section 1104.1 of Title 14 of
9 the California Code of Regulations.

10 (iii) Require the exemption pursuant to this subdivision to expire
11 if there is a change in timberland ownership. The person who
12 originally submitted an application for an exemption pursuant to
13 this subdivision shall notify the department of a change in
14 timberland ownership on or before five calendar days after a change
15 in ownership.

16 (iv) The board may adopt regulations allowing a waiver of the
17 five-year limitation described in paragraph (1) upon finding that
18 the imposition of the five-year limitation would impose an undue
19 hardship on the applicant for the exemption. The board may adopt
20 a process for an appeal of a denial of a waiver.

21 (B) The application form for the exemption pursuant to
22 paragraph (1) shall prominently advise the public that a violation
23 of the conversion exemption, including a conversion applied for
24 in the name of someone other than the person or entity
25 implementing the conversion in bona fide good faith, is a violation
26 of this chapter and penalties may accrue up to ten thousand dollars
27 (\$10,000) for each violation pursuant to Article 8 (commencing
28 with Section 4601).

29 (h) Easements granted by a right-of-way construction agreement
30 administered by the federal government if timber sales and
31 operations within or affecting these areas are reviewed and
32 conducted pursuant to the National Environmental Policy Act of
33 1969 (42 U.S.C. Sec. 4321 et seq.).

34 (i) (1) The cutting or removal of trees in compliance with
35 Sections 4290 and 4291 that eliminates the vertical continuity of
36 vegetative fuels and the horizontal continuity of tree crowns for
37 the purpose of reducing flammable materials and maintaining a
38 fuel break for a distance of not more than 150 feet on each side
39 from an approved and legally permitted structure that complies
40 with the California Building Standards Code, when that cutting or

1 removal is conducted in compliance with this subdivision. For
2 purposes of this subdivision, an “approved and legally permitted
3 structure” includes only structures that are designed for human
4 occupancy and garages, barns, stables, and structures used to
5 enclose fuel tanks.

6 (2) (A) The cutting or removal of trees pursuant to this
7 subdivision is limited to cutting or removal that will result in a
8 reduction in the rate of fire spread, fire duration and intensity, fuel
9 ignitability, or ignition of the tree crowns and shall be in
10 accordance with any regulations adopted by the board pursuant to
11 this section.

12 (B) Trees shall not be cut or removed pursuant to this
13 subdivision by the clearcutting regeneration method, by the seed
14 tree removal step of the seed tree regeneration method, or by the
15 shelterwood removal step of the shelterwood regeneration method.

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

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

26 (ii) The costs incurred by the department, city, or county, as the
27 case may be, to abate the nuisance upon a parcel of land subject
28 to the timber operations, including, but not limited to, investigation,
29 boundary determination, measurement, and other related costs,
30 may be recovered by special assessment and lien against the parcel
31 of land by the department, city, or county. The assessment may
32 be collected at the same time and in the same manner as ordinary
33 ad valorem taxes, and shall be subject to the same penalties and
34 the same procedure and sale in case of delinquency as is provided
35 for ad valorem taxes.

36 (4) All timber operations conducted pursuant to this subdivision
37 shall conform to applicable city or county general plans, city or
38 county implementing ordinances, and city or county zoning
39 ordinances. This paragraph does not authorize the cutting, removal,
40 or sale of timber or other solid wood forest products within an area

1 where timber harvesting is prohibited or otherwise restricted
2 pursuant to the rules or regulations adopted by the board.

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

7 (B) The emergency regulations adopted pursuant to
8 subparagraph (A) shall be adopted in accordance with the
9 Administrative Procedure Act (Chapter 3.5 (commencing with
10 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
11 Code). The adoption of emergency regulations shall be deemed to
12 be an emergency and necessary for the immediate preservation of
13 the public peace, health, and safety, or general welfare.

14 (j) (1) Until January 1, ~~2013~~ 2014, the harvesting of trees,
15 limited to those trees that eliminate the vertical continuity of
16 vegetative fuels and the horizontal continuity of tree crowns, for
17 the purpose of reducing the rate of fire spread, duration and
18 intensity, fuel ignitability, or ignition of tree crowns.

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

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

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

32 (5) (A) The registered professional forester who submits the
33 notice of exemption shall include a description of the preharvest
34 stand structure and a statement of the postharvest stand stocking
35 levels.

36 (B) The level of residual stocking shall be consistent with
37 maximum sustained production of high-quality timber products.
38 The residual stand shall consist primarily of healthy and vigorous
39 dominant and codominant trees from the preharvest stand. Stocking

1 shall not be reduced below the standards required by any of the
2 following provisions that apply to the exemption at issue:

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

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

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

12 (C) If the preharvest dominant and codominant crown canopy
13 is occupied by trees less than 14 inches in diameter at breast height,
14 a minimum of 100 trees over four inches in diameter at breast
15 height shall be retained per acre for Site I, II, and III lands, and a
16 minimum of 75 trees over four inches in diameter at breast height
17 shall be retained per acre for Site IV and V lands.

18 (6) (A) The registered professional forester who submits the
19 notice shall include selection criteria for the trees to be harvested
20 or the trees to be retained. In the development of fuel reduction
21 prescriptions, the registered professional forester should consider
22 retaining habitat elements, where feasible, including, but not
23 limited to, ground level cover necessary for the long-term
24 management of local wildlife populations.

25 (B) All trees that are harvested or all trees that are retained shall
26 be marked or sample marked by or under the supervision of a
27 registered professional forester before felling operations begin.
28 The board shall adopt regulations for sample marking for this
29 section in Title 14 of the California Code of Regulations. Sample
30 marking shall be limited to homogenous forest stand conditions
31 typical of plantations.

32 (7) (A) The registered professional forester submitting the
33 notice, upon submission of the notice, shall provide a confidential
34 archaeology letter that includes all the information required by
35 any of the following provisions that apply to the exemption at
36 issue:

37 (i) Paragraphs (2) and (7) to (11), inclusive, of subdivision (c)
38 of Section 929.1 of Title 14 of the California Code of Regulations,
39 and include site records if required pursuant to subdivision (g) of

1 that section or pursuant to Section 929.5 of Title 14 of the
2 California Code of Regulations.

3 (ii) Paragraphs (2) and (7) to (11), inclusive, of subdivision (c)
4 of Section 949.1 of Title 14 of the California Code of Regulations,
5 and include site records if required pursuant to subdivision (g) of
6 that section or pursuant to Section 949.5 of Title 14 of the
7 California Code of Regulations.

8 (iii) Paragraphs (2) and (7) to (11), inclusive, of subdivision (c)
9 of Section 969.1 of Title 14 of the California Code of Regulations,
10 and include site records if required pursuant to subdivision (g) of
11 that section or pursuant to Section 969.5 of Title 14 of the
12 California Code of Regulations.

13 (B) The director shall submit a complete copy of the confidential
14 archaeological letter and two copies of all required archaeological
15 or historical site records to the appropriate Information Center of
16 the California Historical Resource Information System within 30
17 days from the date of notice submittal to the director. Before
18 submitting the notice to the director, the registered professional
19 forester shall send a copy of the notice to Native Americans, as
20 defined in Section 895.1 of Title 14 of the California Code of
21 Regulations.

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

34 (9) (A) This subparagraph applies to areas within 500 feet of
35 a legally permitted structure and in areas prioritized as a shaded
36 fuel break in a community wildfire protection plan approved by a
37 public fire agency. The board shall adopt regulations for the
38 treatment of surface and ladder fuels in the harvest area, including
39 logging slash and debris, low brush, small trees, and deadwood,
40 that could promote the spread of wildfire. The regulations adopted

1 by the board shall be consistent with the standards in the board's
2 "General Guidelines for Creating Defensible Space" described in
3 Section 1299 of Title 14 of the California Code of Regulations.
4 Postharvest standards shall include vertical spacing between fuels,
5 horizontal spacing between fuels, maximum depth of dead ground
6 surface fuels, and treatment of standing dead fuels, as follows:

7 (i) Ladder and surface fuels shall be spaced to achieve a vertical
8 clearance distance of eight feet or three times the height of the
9 postharvest fuels, whichever is the greater distance, measured from
10 the base of the live crown of the postharvest dominant and
11 codominant trees to the top of the surface fuels.

12 (ii) Horizontal spacing shall achieve a minimum separation of
13 two to six times the height of the postharvest fuels, increasing
14 spacing with increasing slope, measured from the outside branch
15 edges of the fuels.

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

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

21 (B) This subparagraph applies to all areas not described in
22 subparagraph (A).

23 (i) The postharvest stand shall not contain more than 200 trees
24 over three inches in diameter per acre.

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

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

32 (C) The standards required by subparagraphs (A) and (B) shall
33 be achieved on approximately 80 percent of the treated area. The
34 treatment shall include chipping, removing, or other methods
35 necessary to achieve the standards. Ladder and surface fuel
36 treatments, for any portion of the exemption area where timber
37 operations have occurred, shall be done within 120 days from the
38 start of timber operations on that portion of the exemption area or
39 by April 1 of the year following surface fuel creation on that
40 portion of the exemption area if the surface fuels are burned.

1 (10) Timber operations shall comply with the requirements of
2 paragraphs (1) to (10), inclusive, of subdivision (b) of Section
3 1038 of Title 14 of the California Code of Regulations. Timber
4 operations in the Lake Tahoe region shall comply instead with the
5 requirements of paragraphs (1) to (16), inclusive, of subdivision
6 (f) of Section 1038 of Title 14 of the California Code of
7 Regulations.

8 (11) After the timber operations are complete, the department
9 shall conduct an onsite inspection to determine compliance with
10 this subdivision and whether appropriate enforcement action should
11 be initiated.

12 ~~SECTION 1. Section 4581 of the Public Resources Code is~~
13 ~~amended to read:~~

14 ~~4581. A person shall not conduct timber operations unless a~~
15 ~~timber harvesting plan prepared by a registered professional~~
16 ~~forester has been submitted for the timber operations to the~~
17 ~~department pursuant to this article. The timber harvesting plan is~~
18 ~~required in addition to the license required in Section 4571.~~