

ASSEMBLY BILL

No. 350

Introduced by Assembly Members Wieckowski and Bigelow

February 13, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

AB 350, as introduced, Wieckowski. Timber harvesting plans: exempt activities.

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 the Department of Forestry and Fire Protection. The act authorizes the State Board of Forestry and Fire Protection to exempt from those provisions of the act a person engaging in specified forest management activities, including, among other things, the harvesting of only trees less than 18 inches in stump diameter, measured at 8 inches above ground level. However, existing law permits the removal of trees less than 24 inches in stump diameter to achieve the goal of fuel reduction if the removal of any such tree is within 500 feet of a legally permitted structure, or in an area prioritized as a shaded fuel break in a community wildfire protection plan approved by a public fire agency, if the goal of fuel reduction cannot be achieved by removing only trees less than 18 inches in stump diameter.

This bill would, instead, exempt the removal of trees less than 28 inches in stump diameter, measured at 8 inches above ground level. However, the bill would permit the removal of trees less than 34 inches in stump diameter to achieve the goal of fuel reduction if the removal

of any such tree is within 500 feet of a legally permitted structure, in an area prioritized as a shaded fuel break in a community wildfire protection plan approved by a public fire agency, if the goal of fuel reduction cannot be achieved by removing only trees less than 28 inches in stump diameter.

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 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,"

1 for purposes of this subdivision, means an individual, partnership,
2 corporation, or other legal entity.

3 (2) (A) Notwithstanding Section 4554.5, the board shall adopt
4 regulations that do all of the following:

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

8 (ii) Authorize the department to inspect the sites approved in
9 conversion applications that have been approved on or after January
10 1, 2002, in order to determine that the conversion was completed
11 within the two-year period described in subparagraph (B) of
12 paragraph (2) of subdivision (a) of Section 1104.1 of Title 14 of
13 the California Code of Regulations.

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

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

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

33 (h) Easements granted by a right-of-way construction agreement
34 administered by the federal government if timber sales and
35 operations within or affecting these areas are reviewed and
36 conducted pursuant to the National Environmental Policy Act of
37 1969 (42 U.S.C. Sec. 4321 et seq.).

38 (i) (1) The cutting or removal of trees in compliance with
39 Sections 4290 and 4291 that eliminates the vertical continuity of
40 vegetative fuels and the horizontal continuity of tree crowns for

1 the purpose of reducing flammable materials and maintaining a
2 fuel break for a distance of not more than 150 feet on each side
3 from an approved and legally permitted structure that complies
4 with the California Building Standards Code, when that cutting or
5 removal is conducted in compliance with this subdivision. For
6 purposes of this subdivision, an “approved and legally permitted
7 structure” includes only structures that are designed for human
8 occupancy and garages, barns, stables, and structures used to
9 enclose fuel tanks.

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

16 (B) Trees shall not be cut or removed pursuant to this
17 subdivision by the clearcutting regeneration method, by the seed
18 tree removal step of the seed tree regeneration method, or by the
19 shelterwood removal step of the shelterwood regeneration method.

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

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

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

1 (4) All timber operations conducted pursuant to this subdivision
2 shall conform to applicable city or county general plans, city or
3 county implementing ordinances, and city or county zoning
4 ordinances. This paragraph does not authorize the cutting, removal,
5 or sale of timber or other solid wood forest products within an area
6 where timber harvesting is prohibited or otherwise restricted
7 pursuant to the rules or regulations adopted by the board.

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

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

19 (j) (1) The harvesting of trees, limited to those trees that
20 eliminate the vertical continuity of vegetative fuels and the
21 horizontal continuity of tree crowns, for the purpose of reducing
22 the rate of fire spread, duration and intensity, fuel ignitability, or
23 ignition of tree crowns.

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

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

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

37 (5) (A) The registered professional forester who submits the
38 notice of exemption shall include a description of the preharvest
39 stand structure and a statement of the postharvest stand stocking
40 levels.

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

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

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

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

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

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

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

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

1 (i) Paragraphs (2) and (7) to (11), inclusive, of subdivision (c)
2 of Section 929.1 of Title 14 of the California Code of Regulations,
3 and include site records if required pursuant to subdivision (g) of
4 that section or pursuant to Section 929.5 of Title 14 of the
5 California Code of Regulations.

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

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

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

25 (8) Only trees less than ~~18~~ 28 inches in stump diameter,
26 measured at eight inches above ground level, may be removed.
27 However, within 500 feet of a legally permitted structure, or in an
28 area prioritized as a shaded fuel break in a community wildfire
29 protection plan approved by a public fire agency, if the goal of
30 fuel reduction cannot be achieved by removing trees less than ~~18~~
31 28 inches in stump diameter, trees less than ~~24~~ 34 inches in stump
32 diameter may be removed if that removal complies with this section
33 and is necessary to achieve the goal of fuel reduction. A fuel
34 reduction effort shall not violate the canopy closure regulations
35 adopted by the board on June 10, 2004, and as those regulations
36 may be amended.

37 (9) (A) This subparagraph applies to areas within 500 feet of
38 a legally permitted structure and in areas prioritized as a shaded
39 fuel break in a community wildfire protection plan approved by a
40 public fire agency. The board shall adopt regulations for the

1 treatment of surface and ladder fuels in the harvest area, including
2 logging slash and debris, low brush, small trees, and deadwood,
3 that could promote the spread of wildfire. The regulations adopted
4 by the board shall be consistent with the standards in the board's
5 "General Guidelines for Creating Defensible Space" described in
6 Section 1299 of Title 14 of the California Code of Regulations.
7 Postharvest standards shall include vertical spacing between fuels,
8 horizontal spacing between fuels, maximum depth of dead ground
9 surface fuels, and treatment of standing dead fuels, as follows:

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

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

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

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

24 (B) This subparagraph applies to all areas not described in
25 subparagraph (A).

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

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

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

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

1 start of timber operations on that portion of the exemption area or
2 by April 1 of the year following surface fuel creation on that
3 portion of the exemption area if the surface fuels are burned.

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

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

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