

AMENDED IN ASSEMBLY APRIL 22, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 350

Introduced by Assembly Members Wieckowski and Bigelow
*(Coauthors: Assembly Members Bocanegra, Dahle, Fox, Frazier,
Beth Gaines, Gordon, Roger Hernández, and Olsen)*
(Coauthors: Senators Berryhill, Fuller, Gaines, and Nielsen)

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 amended, 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~~ 28 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

1 or as a member of a partnership, or as an officer or employee of a
2 corporation or other legal entity, then that partnership, corporation,
3 or other legal entity is not eligible for this exemption. "Person,"
4 for purposes of this subdivision, means an individual, partnership,
5 corporation, or other legal entity.

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

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

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

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

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

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

36 (h) Easements granted by a right-of-way construction agreement
37 administered by the federal government if timber sales and
38 operations within or affecting these areas are reviewed and
39 conducted pursuant to the National Environmental Policy Act of
40 1969 (42 U.S.C. Sec. 4321 et seq.).

1 (i) (1) The cutting or removal of trees in compliance with
2 Sections 4290 and 4291 that eliminates the vertical continuity of
3 vegetative fuels and the horizontal continuity of tree crowns for
4 the purpose of reducing flammable materials and maintaining a
5 fuel break for a distance of not more than 150 feet on each side
6 from an approved and legally permitted structure that complies
7 with the California Building Standards Code, when that cutting or
8 removal is conducted in compliance with this subdivision. For
9 purposes of this subdivision, an “approved and legally permitted
10 structure” includes only structures that are designed for human
11 occupancy and garages, barns, stables, and structures used to
12 enclose fuel tanks.

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

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

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

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

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

1 the same procedure and sale in case of delinquency as is provided
2 for ad valorem taxes.

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

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

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

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

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

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

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

39 (5) (A) The registered professional forester who submits the
40 notice of exemption shall include a description of the preharvest

1 stand structure and a statement of the postharvest stand stocking
2 levels.

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

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

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

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

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

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

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

38 (7) (A) The registered professional forester submitting the
39 notice, upon submission of the notice, shall provide a confidential
40 archaeology letter that includes all the information required by

1 any of the following provisions that apply to the exemption at
2 issue:

3 (i) Paragraphs (2) and (7) to (11), inclusive, of subdivision (c)
4 of Section 929.1 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 929.5 of Title 14 of the
7 California Code of Regulations.

8 (ii) Paragraphs (2) and (7) to (11), inclusive, of subdivision (c)
9 of Section 949.1 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 949.5 of Title 14 of the
12 California Code of Regulations.

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

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

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

39 (9) (A) This subparagraph applies to areas within 500 feet of
40 a legally permitted structure and in areas prioritized as a shaded

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

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

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

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

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

26 (B) This subparagraph applies to all areas not described in
27 subparagraph (A).

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

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

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

37 (C) The standards required by subparagraphs (A) and (B) shall
38 be achieved on approximately 80 percent of the treated area. The
39 treatment shall include chipping, removing, or other methods
40 necessary to achieve the standards. Ladder and surface fuel

1 treatments, for any portion of the exemption area where timber
2 operations have occurred, shall be done within 120 days from the
3 start of timber operations on that portion of the exemption area or
4 by April 1 of the year following surface fuel creation on that
5 portion of the exemption area if the surface fuels are burned.

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

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

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