

AMENDED IN SENATE SEPTEMBER 12, 2013

AMENDED IN SENATE SEPTEMBER 11, 2013

AMENDED IN SENATE SEPTEMBER 6, 2013

AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 744**

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**Introduced by Assembly Members Dahle and Gordon**  
(Coauthors: Senators Gaines and Nielsen)

February 21, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

AB 744, as amended, Dahle. 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, the harvesting of trees, limited to those 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 if the tree harvesting will decrease fuel continuity and increase the quadratic mean diameter of the stand, and the tree harvesting area will not exceed

300 acres. Under existing law, the notice of exemption issued for this exemption, known as the Forest Fire Prevention Exemption, may be authorized only if certain conditions are met, including that only trees less than 18 inches in stump diameter, measured at 8 inches above ground level, may be removed, as provided.

This bill ~~would, until January 1, 2019,~~ *would* provide that an additional notice of exemption, known as the Forest Fire Prevention Pilot Project Exemption, may be authorized if certain conditions are met, including, among others, that only trees less than 24 inches in stump diameter, measured at 8 inches above ground level, may be removed, as provided. *The bill would provide that these provisions shall become inoperative 3 years after the effective date of regulations adopted by the board implementing these provisions.*

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. (a) It is the intent of the Legislature to establish  
 2 a five-year pilot project to assess whether increasing the diameter  
 3 of trees that may be removed pursuant to the existing Forest Fire  
 4 Prevention Exemption in the Z'berg-Nejedly Forest Practice Act  
 5 can reduce the risk of catastrophic fire that threatens many  
 6 communities in the Sierra Nevada while improving the economic  
 7 use of this exemption for landowners. It is further the intent of the  
 8 Legislature that the Department of Forestry and Fire Protection  
 9 maintain adequate records to evaluate this pilot project. It is also  
 10 the intent of the Legislature that those using this exemption  
 11 consider the appropriate use of the California Conservation Corps,  
 12 local conservation corps, and properly supervised inmate fire crews  
 13 in implementing activities pursuant to this pilot project.

14 (b) It is the intent of the Legislature that the Natural Resources  
 15 Agency develop a forest restoration and fuels reduction program  
 16 that utilizes an interagency process to develop regionally  
 17 appropriate and cost-effective forest restoration prescriptions and  
 18 permits.

19 SEC. 2. Section 4584 of the Public Resources Code is amended  
 20 to read:

21 4584. Upon determining that the exemption is consistent with  
 22 the purposes of this chapter, the board may exempt from this

1 chapter, or portions of this chapter, a person engaged in forest  
2 management whose activities are limited to any of the following:

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

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

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

10 (d) Site preparation.

11 (e) Maintenance of drainage facilities and soil stabilization  
12 treatments.

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

15 (g) (1) The one-time conversion of less than three acres to a  
16 nontimber use. A person, whether acting as an individual or as a  
17 member of a partnership, or as an officer or employee of a  
18 corporation or other legal entity, shall not obtain more than one  
19 exemption pursuant to this subdivision in a five-year period. If a  
20 partnership has as a member, or if a corporation or other legal  
21 entity has as an officer or employee, a person who has received  
22 this exemption within the past five years, whether as an individual  
23 or as a member of a partnership, or as an officer or employee of a  
24 corporation or other legal entity, then that partnership, corporation,  
25 or other legal entity is not eligible for this exemption. "Person,"  
26 for purposes of this subdivision, means an individual, partnership,  
27 corporation, or other legal entity.

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

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

33 (ii) Authorize the department to inspect the sites approved in  
34 conversion applications that have been approved on or after January  
35 1, 2002, in order to determine that the conversion was completed  
36 within the two-year period described in subparagraph (B) of  
37 paragraph (2) of subdivision (a) of Section 1104.1 of Title 14 of  
38 the California Code of Regulations.

39 (iii) Require the exemption pursuant to this subdivision to expire  
40 if there is a change in timberland ownership. The person who

1 originally submitted an application for an exemption pursuant to  
2 this subdivision shall notify the department of a change in  
3 timberland ownership on or before five calendar days after a change  
4 in ownership.

5 (iv) The board may adopt regulations allowing a waiver of the  
6 five-year limitation described in paragraph (1) upon finding that  
7 the imposition of the five-year limitation would impose an undue  
8 hardship on the applicant for the exemption. The board may adopt  
9 a process for an appeal of a denial of a waiver.

10 (B) The application form for the exemption pursuant to  
11 paragraph (1) shall prominently advise the public that a violation  
12 of the conversion exemption, including a conversion applied for  
13 in the name of someone other than the person or entity  
14 implementing the conversion in bona fide good faith, is a violation  
15 of this chapter and penalties may accrue up to ten thousand dollars  
16 (\$10,000) for each violation pursuant to Article 8 (commencing  
17 with Section 4601).

18 (h) Easements granted by a right-of-way construction agreement  
19 administered by the federal government if timber sales and  
20 operations within or affecting these areas are reviewed and  
21 conducted pursuant to the National Environmental Policy Act of  
22 1969 (42 U.S.C. Sec. 4321 et seq.).

23 (i) (1) The cutting or removal of trees in compliance with  
24 Sections 4290 and 4291 that eliminates the vertical continuity of  
25 vegetative fuels and the horizontal continuity of tree crowns for  
26 the purpose of reducing flammable materials and maintaining a  
27 fuel break for a distance of not more than 150 feet on each side  
28 from an approved and legally permitted structure that complies  
29 with the California Building Standards Code, when that cutting or  
30 removal is conducted in compliance with this subdivision. For  
31 purposes of this subdivision, an “approved and legally permitted  
32 structure” includes only structures that are designed for human  
33 occupancy and garages, barns, stables, and structures used to  
34 enclose fuel tanks.

35 (2) (A) The cutting or removal of trees pursuant to this  
36 subdivision is limited to cutting or removal that will result in a  
37 reduction in the rate of fire spread, fire duration and intensity, fuel  
38 ignitability, or ignition of the tree crowns and shall be in  
39 accordance with any regulations adopted by the board pursuant to  
40 this section.

1 (B) Trees shall not be cut or removed pursuant to this  
2 subdivision by the clearcutting regeneration method, by the seed  
3 tree removal step of the seed tree regeneration method, or by the  
4 shelterwood removal step of the shelterwood regeneration method.

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

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

15 (ii) The costs incurred by the department, city, or county, as the  
16 case may be, to abate the nuisance upon a parcel of land subject  
17 to the timber operations, including, but not limited to, investigation,  
18 boundary determination, measurement, and other related costs,  
19 may be recovered by special assessment and lien against the parcel  
20 of land by the department, city, or county. The assessment may  
21 be collected at the same time and in the same manner as ordinary  
22 ad valorem taxes, and shall be subject to the same penalties and  
23 the same procedure and sale in case of delinquency as is provided  
24 for ad valorem taxes.

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

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

36 (B) The emergency regulations adopted pursuant to  
37 subparagraph (A) shall be adopted in accordance with the  
38 Administrative Procedure Act (Chapter 3.5 (commencing with  
39 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
40 Code). The adoption of emergency regulations shall be deemed to

1 be an emergency and necessary for the immediate preservation of  
2 the public peace, health, and safety, or general welfare.

3 (j) (1) The harvesting of trees, limited to those trees that  
4 eliminate the vertical continuity of vegetative fuels and the  
5 horizontal continuity of tree crowns, for the purpose of reducing  
6 the rate of fire spread, duration and intensity, fuel ignitability, or  
7 ignition of tree crowns.

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

12 (3) Except as provided in paragraph (11), the notice of  
13 exemption, which shall be known as the Forest Fire Prevention  
14 Exemption, may be authorized only if all of the conditions specified  
15 in paragraphs (4) to (10), inclusive, are met.

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

22 (5) (A) The registered professional forester who submits the  
23 notice of exemption shall include a description of the preharvest  
24 stand structure and a statement of the postharvest stand stocking  
25 levels.

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

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

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

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

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

7 (6) (A) The registered professional forester who submits the  
8 notice shall include selection criteria for the trees to be harvested  
9 or the trees to be retained. In the development of fuel reduction  
10 prescriptions, the registered professional forester should consider  
11 retaining habitat elements, where feasible, including, but not  
12 limited to, ground level cover necessary for the long-term  
13 management of local wildlife populations.

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

21 (7) (A) The registered professional forester submitting the  
22 notice, upon submission of the notice, shall provide a confidential  
23 archaeology letter that includes all the information required by  
24 any of the following provisions that apply to the exemption at  
25 issue:

26 (i) Paragraphs (2) and (7) to (11), inclusive, of subdivision (c)  
27 of Section 929.1 of Title 14 of the California Code of Regulations,  
28 and include site records if required pursuant to subdivision (g) of  
29 that section or pursuant to Section 929.5 of Title 14 of the  
30 California Code of Regulations.

31 (ii) Paragraphs (2) and (7) to (11), inclusive, of subdivision (c)  
32 of Section 949.1 of Title 14 of the California Code of Regulations,  
33 and include site records if required pursuant to subdivision (g) of  
34 that section or pursuant to Section 949.5 of Title 14 of the  
35 California Code of Regulations.

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

1 (B) The director shall submit a complete copy of the confidential  
2 archaeological letter and two copies of all required archaeological  
3 or historical site records to the appropriate Information Center of  
4 the California Historical Resource Information System within 30  
5 days from the date of notice submittal to the director. Before  
6 submitting the notice to the director, the registered professional  
7 forester shall send a copy of the notice to Native Americans, as  
8 defined in Section 895.1 of Title 14 of the California Code of  
9 Regulations.

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

22 (9) (A) This subparagraph applies to areas within 500 feet of  
23 a legally permitted structure and in areas prioritized as a shaded  
24 fuel break in a community wildfire protection plan approved by a  
25 public fire agency. The board shall adopt regulations for the  
26 treatment of surface and ladder fuels in the harvest area, including  
27 logging slash and debris, low brush, small trees, and deadwood,  
28 that could promote the spread of wildfire. The regulations adopted  
29 by the board shall be consistent with the standards in the board's  
30 "General Guidelines for Creating Defensible Space" described in  
31 Section 1299.03 of Title 14 of the California Code of Regulations.  
32 Postharvest standards shall include vertical spacing between fuels,  
33 horizontal spacing between fuels, maximum depth of dead ground  
34 surface fuels, and treatment of standing dead fuels, as follows:

35 (i) Ladder and surface fuels shall be spaced to achieve a vertical  
36 clearance distance of eight feet or three times the height of the  
37 postharvest fuels, whichever is the greater distance, measured from  
38 the base of the live crown of the postharvest dominant and  
39 codominant trees to the top of the surface fuels.

1 (ii) Horizontal spacing shall achieve a minimum separation of  
2 two to six times the height of the postharvest fuels, increasing  
3 spacing with increasing slope, measured from the outside branch  
4 edges of the fuels.

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

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

10 (B) This subparagraph applies to all areas not described in  
11 subparagraph (A).

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

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

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

21 (C) The standards required by subparagraphs (A) and (B) shall  
22 be achieved on approximately 80 percent of the treated area. The  
23 treatment shall include chipping, removing, or other methods  
24 necessary to achieve the standards. Ladder and surface fuel  
25 treatments, for any portion of the exemption area where timber  
26 operations have occurred, shall be done within 120 days from the  
27 start of timber operations on that portion of the exemption area or  
28 by April 1 of the year following surface fuel creation on that  
29 portion of the exemption area if the surface fuels are burned.

30 (10) Timber operations shall comply with the requirements of  
31 paragraphs (1) to (10), inclusive, of subdivision (b) of Section  
32 1038 of Title 14 of the California Code of Regulations. Timber  
33 operations in the Lake Tahoe region shall comply instead with the  
34 requirements of paragraphs (1) to (16), inclusive, of subdivision  
35 (f) of Section 1038 of Title 14 of the California Code of  
36 Regulations.

37 (11) A notice of exemption, which shall be known as the Forest  
38 Fire Prevention Pilot Project Exemption, may be authorized if all  
39 of the following conditions are met:

1 (A) The conditions specified in paragraphs (2), (4), (6), (7), and  
2 (10) are met.

3 (B) Only trees less than 24 inches in stump diameter, measured  
4 at eight inches above ground level, may be removed. A fuel  
5 reduction effort shall not violate the canopy closure regulations  
6 adopted by the board on June 10, 2004, and as those regulations  
7 may be amended.

8 (C) (i) The registered professional forester who submits the  
9 notice of exemption shall include a description of the preharvest  
10 stand structure and a statement of the postharvest stand stocking  
11 levels.

12 (ii) The level of residual stocking shall be consistent with  
13 maximum sustained production of high-quality timber products.  
14 The residual stand shall consist primarily of healthy and vigorous  
15 dominant and codominant trees from the preharvest stand. Where  
16 present prior to operations, the overstory canopy closure for trees  
17 greater than 12 inches in diameter at breast height shall not be  
18 reduced below 50 percent. Stocking shall be met with the largest  
19 trees available prior to harvest and shall not be reduced below the  
20 standards required by any of the following provisions that apply  
21 to the exemption at issue:

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

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

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

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

38 (D) The activities conducted pursuant to this paragraph occur  
39 in the Sierra Nevada Region as defined in subdivision (f) of Section

1 33302, in Modoc, Siskiyou, or Trinity Counties, or in any  
2 combination of these areas.

3 (E) All activities conducted pursuant to this paragraph occur  
4 within the most recent version of the department's Fire Hazard  
5 Severity Zone Map in the *moderate, high, and very-high, and*  
6 ~~extreme high~~ fire threat zones.

7 (F) *The department shall maintain records regarding the use*  
8 *of the exemption granted in this paragraph in order to evaluate*  
9 *the impact of the exemption on fuel reduction and natural resources*  
10 *in areas where the exemption has been used.*

11 ~~(F)~~

12 (G) This paragraph shall become inoperative ~~on January 1, 2019.~~  
13 *three years after the effective date of regulations adopted by the*  
14 *board implementing this paragraph.*

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

O