

Assembly Bill No. 744

CHAPTER 647

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

[Approved by Governor October 8, 2013. Filed with
Secretary of State October 8, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

AB 744, 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 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.

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

SECTION 1. (a) It is the intent of the Legislature to establish a five-year pilot project to assess whether increasing the diameter of trees that may be removed pursuant to the existing Forest Fire Prevention Exemption in the Z'berg-Nejedly Forest Practice Act can reduce the risk of catastrophic fire that threatens many communities in the Sierra Nevada while improving the economic use of this exemption for landowners. It is further the intent of

the Legislature that the Department of Forestry and Fire Protection maintain adequate records to evaluate this pilot project. It is also the intent of the Legislature that those using this exemption consider the appropriate use of the California Conservation Corps, local conservation corps, and properly supervised inmate fire crews in implementing activities pursuant to this pilot project.

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

SEC. 2. Section 4584 of the Public Resources Code is amended to read: 4584. Upon determining that the exemption is consistent with the purposes of this chapter, the board may exempt from this chapter, or portions of this chapter, a person engaged in forest management whose activities are limited to any of the following:

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

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

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

(d) Site preparation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) (i) All surface fuels that are not chipped, burned, or otherwise removed from all areas of timber operations within 45 days from the date

of commencement of timber operations may be determined to be a nuisance and subject to abatement by the department or the city or county having jurisdiction.

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

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

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

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

(j) (1) 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.

(2) The board may authorize an exemption pursuant to paragraph (1) only 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) Only trees less than 18 inches in stump diameter, measured at eight inches above ground level, may be removed. However, 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 trees less than 18 inches in stump diameter, trees less than 24 inches in stump diameter may be removed if that removal complies with this section and is necessary to achieve the goal of fuel reduction. A fuel reduction effort shall not violate the canopy closure regulations adopted by the board on June 10, 2004, and as those regulations may be amended.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) The activities conducted pursuant to this paragraph occur in the Sierra Nevada Region as defined in subdivision (f) of Section 33302, in Modoc, Siskiyou, or Trinity Counties, or in any combination of these areas.

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

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

(G) This paragraph shall become inoperative three years after the effective date of regulations adopted by the board implementing this paragraph.

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