

AMENDED IN SENATE JULY 1, 2014
AMENDED IN ASSEMBLY APRIL 22, 2014
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1867

Introduced by Assembly Member Patterson
(Coauthor: Assembly Member Harkey)
(Coauthors: Senators Cannella, Fuller, Huff, and Vidak)

February 19, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1867, as amended, Patterson. Timber harvest plans: exemption: reducing flammable materials.

The Z'berg-Nejedly Forest Practices Act of 1973 prohibits a person from conducting timber operations, as defined, 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 some or all of those provisions of the act a person engaging in specified forest management activities, including, the cutting or removal of trees in compliance with existing law relating to defensible space 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 no more than 150 feet on each side from an approved and legally permitted structure, as provided.

This bill would, *until January 1, 2018*, also authorize the board to exempt from some or all of those provisions of the act a person engaged in forest management whose activities are limited to the cutting or removal of trees *on the person's property* in compliance with existing law relating to defensible space 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 no more than 300 feet on each side from an approved and legally permitted habitable structure, as provided. *The bill would require the department to evaluate the effects of these provisions and to report its recommendations, no later than January 1, 2018, to the Legislature based on that evaluation.*

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

1 partnership has as a member, or if a corporation or other legal
2 entity has as an officer or employee, a person who has received
3 this exemption within the past five years, whether as an individual
4 or as a member of a partnership, or as an officer or employee of a
5 corporation or other legal entity, then that partnership, corporation,
6 or other legal entity is not eligible for this exemption. "Person,"
7 for purposes of this subdivision, means an individual, partnership,
8 corporation, or other legal entity.

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

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

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

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

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

31 (B) The application form for the exemption pursuant to
32 paragraph (1) shall prominently advise the public that a violation
33 of the conversion exemption, including a conversion applied for
34 in the name of someone other than the person or entity
35 implementing the conversion in bona fide good faith, is a violation
36 of this chapter and penalties may accrue up to ten thousand dollars
37 (\$10,000) for each violation pursuant to Article 8 (commencing
38 with Section 4601).

39 (h) Easements granted by a right-of-way construction agreement
40 administered by the federal government if timber sales and

1 operations within or affecting these areas are reviewed and
2 conducted pursuant to the National Environmental Policy Act of
3 1969 (42 U.S.C. Sec. 4321 et seq.).

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

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

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

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

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

36 (ii) The costs incurred by the department, city, or county, as the
37 case may be, to abate the nuisance upon a parcel of land subject
38 to the timber operations, including, but not limited to, investigation,
39 boundary determination, measurement, and other related costs,
40 may be recovered by special assessment and lien against the parcel

1 of land by the department, city, or county. The assessment may
2 be collected at the same time and in the same manner as ordinary
3 ad valorem taxes, and shall be subject to the same penalties and
4 the same procedure and sale in case of delinquency as is provided
5 for ad valorem taxes.

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

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

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

24 (6) (A) Notwithstanding paragraph (1), the board may exempt
25 from this chapter, or portions of this chapter, a person engaged in
26 forest management whose activities are limited to the cutting or
27 removal of trees *on the person's property* in compliance with
28 Sections 4290 and 4291 that eliminates the vertical continuity of
29 vegetative fuels and the horizontal continuity of tree crowns for
30 the purpose of reducing flammable materials and maintaining a
31 fuel break for a distance of not more than 300 feet on each side
32 from an approved and legally permitted habitable structure, when
33 that cutting or removal is conducted in compliance with this
34 subdivision and *all of* the following conditions are met:

35 (i) The notice of exemption is prepared, signed, and submitted
36 by a registered professional forester to the department.

37 (ii) For the areas between 150 and 300 feet from the habitable
38 structure, ~~the residual stocking standards are consistent with~~
39 ~~paragraph (5) of subdivision (i) of Section 1038 of Title 14 of the~~
40 ~~California Code of Regulations unless the registered professional~~

1 forester certifies that those residual stocking standards will not
2 eliminate the vertical continuity of vegetative fuels and the
3 horizontal continuity of tree crowns for the purpose of reducing
4 flammable materials and maintaining a fuel break, in which case
5 the residual stocking standards shall be consistent with paragraph
6 (2) of subdivision (b) of Section 912.7 of Title 14 of the California
7 Code of Regulations. operations meet all of the following
8 provisions:

9 (I) The residual stocking standards are consistent with Sections
10 913.2, 933.2, and 953.2 of Title 14 of the California Code of
11 Regulations, as appropriate.

12 (II) Activities within this area will increase the quadratic mean
13 diameter of the stand.

14 (III) The residual stand consists primarily of healthy and
15 vigorous dominant and codominant trees from the preharvest
16 stand, well distributed though the harvested area.

17 (IV) Postharvest slash treatment and stand conditions will lead
18 to more moderate fire behavior in the professional judgment of
19 the registered professional forester who submits the notice of
20 exemption.

21 (V) Any additional guidance for slash treatment and postharvest
22 stand conditions and any other issues deemed necessary that are
23 consistent with this section, as established by the board.

24 (B) For purposes of this paragraph, “habitable structure” means
25 a building that contains one or more dwelling units or that can be
26 occupied for residential use. Buildings occupied for residential
27 use include single family homes, multidwelling structures, mobile
28 and manufactured homes, and condominiums. For purposes of this
29 paragraph “habitable structure” does not include commercial,
30 industrial, or incidental buildings such as detached garages, barns,
31 outdoor sanitation facilities, and sheds.

32 (C) The department shall evaluate the effects of this paragraph
33 and shall report its recommendations, no later than January 1,
34 2018, to the Legislature based on that evaluation. The report shall
35 be submitted in compliance with Section 9795 of the Government
36 Code.

37 (D) This paragraph shall become inoperative on January 1,
38 2018.

39 (j) (1) The harvesting of trees, limited to those trees that
40 eliminate the vertical continuity of vegetative fuels and the

1 horizontal continuity of tree crowns, for the purpose of reducing
2 the rate of fire spread, duration and intensity, fuel ignitability, or
3 ignition of tree crowns.

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

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

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

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

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

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

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

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

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

1 minimum of 75 trees over four inches in diameter at breast height
2 shall be retained per acre for Site IV and V lands.

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

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

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

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

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

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

37 (B) The director shall submit a complete copy of the confidential
38 archaeological letter and two copies of all required archaeological
39 or historical site records to the appropriate Information Center of
40 the California Historical Resource Information System within 30

1 days from the date of notice submittal to the director. Before
2 submitting the notice to the director, the registered professional
3 forester shall send a copy of the notice to Native Americans, as
4 defined in Section 895.1 of Title 14 of the California Code of
5 Regulations.

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

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

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

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

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

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

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

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

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

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

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

25 (10) Timber operations shall comply with the requirements of
26 paragraphs (1) to (10), inclusive, of subdivision (b) of Section
27 1038 of Title 14 of the California Code of Regulations. Timber
28 operations in the Lake Tahoe region shall comply instead with the
29 requirements of paragraphs (1) to (16), inclusive, of subdivision
30 (f) of Section 1038 of Title 14 of the California Code of
31 Regulations.

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

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

37 (B) Only trees less than 24 inches in stump diameter, measured
38 at eight inches above ground level, may be removed. A fuel
39 reduction effort shall not violate the canopy closure regulations

1 adopted by the board on June 10, 2004, and as those regulations
2 may be amended.

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

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

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

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

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

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

33 (D) The activities conducted pursuant to this paragraph occur
34 in the Sierra Nevada Region as defined in subdivision (f) of Section
35 33302, in Modoc, Siskiyou, or Trinity Counties, or in any
36 combination of these areas.

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

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

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

8 (12) 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.