

AMENDED IN SENATE AUGUST 12, 2014

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~~, *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 *no later than* January 1, ~~2018~~, 2019, 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 board to adopt regulations to implement the above provisions no later than January 1, 2016.* The bill would require the department to evaluate the effects of these provisions and to report its recommendations, no later than January 1, ~~2018~~, 2019, 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

1 corporation or other legal entity, shall not obtain more than one
2 exemption pursuant to this subdivision in a five-year period. If a
3 partnership has as a member, or if a corporation or other legal
4 entity has as an officer or employee, a person who has received
5 this exemption within the past five years, whether as an individual
6 or as a member of a partnership, or as an officer or employee of a
7 corporation or other legal entity, then that partnership, corporation,
8 or other legal entity is not eligible for this exemption. "Person,"
9 for purposes of this subdivision, means an individual, partnership,
10 corporation, or other legal entity.

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

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

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

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

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

33 (B) The application form for the exemption pursuant to
34 paragraph (1) shall prominently advise the public that a violation
35 of the conversion exemption, including a conversion applied for
36 in the name of someone other than the person or entity
37 implementing the conversion in bona fide good faith, is a violation
38 of this chapter and penalties may accrue up to ten thousand dollars
39 (\$10,000) for each violation pursuant to Article 8 (commencing
40 with Section 4601).

1 (h) Easements granted by a right-of-way construction agreement
2 administered by the federal government if timber sales and
3 operations within or affecting these areas are reviewed and
4 conducted pursuant to the National Environmental Policy Act of
5 1969 (42 U.S.C. Sec. 4321 et seq.).

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

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

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

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

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

38 (ii) The costs incurred by the department, city, or county, as the
39 case may be, to abate the nuisance upon a parcel of land subject
40 to the timber operations, including, but not limited to, investigation,

1 boundary determination, measurement, and other related costs,
2 may be recovered by special assessment and lien against the parcel
3 of land by the department, city, or county. The assessment may
4 be collected at the same time and in the same manner as ordinary
5 ad valorem taxes, and shall be subject to the same penalties and
6 the same procedure and sale in case of delinquency as is provided
7 for ad valorem taxes.

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

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

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

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

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

39 (ii) For the areas between 150 and 300 feet from the habitable
40 structure, the operations meet all of the following provisions:

1 (I) The residual stocking standards are consistent with Sections
2 913.2, 933.2, and 953.2 of Title 14 of the California Code of
3 Regulations, as appropriate.

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

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

9 (IV) Postharvest slash treatment and stand conditions will lead
10 to more moderate fire behavior in the professional judgment of
11 the registered professional forester who submits the notice of
12 exemption.

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

16 (B) For purposes of this paragraph, “habitable structure” means
17 a building that contains one or more dwelling units or that can be
18 occupied for residential use. Buildings occupied for residential
19 use include single family homes, multidwelling structures, mobile
20 and manufactured homes, and condominiums. For purposes of this
21 paragraph “habitable structure” does not include commercial,
22 industrial, or incidental buildings such as detached garages, barns,
23 outdoor sanitation facilities, and sheds.

24 (C) The department shall evaluate the effects of this paragraph
25 and shall report its recommendations, ~~no later than January 1,~~
26 ~~2018; before the paragraph becomes inoperative,~~ to the Legislature
27 based on that evaluation. The report shall be submitted in
28 compliance with Section 9795 of the Government Code.

29 (D) *The board shall adopt regulations to implement this*
30 *paragraph no later than January 1, 2016.*

31 ~~(D)~~

32 (E) This paragraph shall become inoperative *three years after*
33 *the effective date of regulations adopted by the board pursuant to*
34 *subparagraph (D) but not later than ~~on~~ January 1, ~~2018~~ 2019.*

35 (j) (1) The harvesting of trees, limited to those trees that
36 eliminate the vertical continuity of vegetative fuels and the
37 horizontal continuity of tree crowns, for the purpose of reducing
38 the rate of fire spread, duration and intensity, fuel ignitability, or
39 ignition of tree crowns.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (B) The director shall submit a complete copy of the confidential
36 archaeological letter and two copies of all required archaeological
37 or historical site records to the appropriate Information Center of
38 the California Historical Resource Information System within 30
39 days from the date of notice submittal to the director. Before
40 submitting the notice to the director, the registered professional

1 forester shall send a copy of the notice to Native Americans, as
2 defined in Section 895.1 of Title 14 of the California Code of
3 Regulations.

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

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

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

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

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

39 (iv) Standing dead or dying trees and brush generally shall be
40 removed. That material, along with live vegetation associated with

1 the dead vegetation, may be retained for wildlife habitat when
2 isolated from other vegetation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (F) The department shall maintain records regarding the use of
40 the exemption granted in this paragraph in order to evaluate the

1 impact of the exemption on fuel reduction and natural resources
2 in areas where the exemption has been used.

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

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