

AMENDED IN SENATE AUGUST 19, 2014

AMENDED IN SENATE JUNE 17, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2142

Introduced by Assembly Member Chesbro

February 20, 2014

An act to ~~amend~~ *add* Section ~~4584~~ of *4584.1* to the Public Resources Code, relating to ~~forestry~~ *forestry*, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2142, as amended, Chesbro. Timber harvesting plans: exemptions.

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. Existing law, for a specified 3-year period, authorizes an exemption, known as the Forest Fire Prevention Pilot Project Exemption, if certain conditions are met, including, among others, that the activities conducted pursuant to the exemption occur in the Sierra Nevada Region, as defined, in the County of Modoc, Siskiyou, or Trinity, or in any combination of these areas.

This bill would expand the Forest Fire Prevention Pilot Project Exemption to include activities conducted within the County of Del Norte, Humboldt, Mendocino, or Sonoma.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. 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 4584.1 is added to the Public Resources*
2 *Code, to read:*

3 *4584.1. (a) In addition to the areas listed in subparagraph*
4 *(D) of paragraph (11) of subdivision (j) of Section 4584, the Forest*
5 *Fire Prevention Pilot Project Exemption may be authorized for*
6 *activities conducted in the County of Del Norte, Humboldt,*
7 *Mendocino, or Sonoma, or in any combination of these areas or*
8 *the areas listed in subparagraph (D) of paragraph (11) of*
9 *subdivision (j) of Section 4584, if all other conditions for a Forest*
10 *Fire Prevention Pilot Project Exemption are met.*

11 *(b) The board may adopt emergency regulations in accordance*
12 *with Chapter 3.5 (commencing with Section 11340) of Part 1 of*
13 *Division 3 of Title 2 of the Government Code for the purposes of*
14 *implementing this section.*

15 *SEC. 2. This act is an urgency statute necessary for the*
16 *immediate preservation of the public peace, health, or safety within*
17 *the meaning of Article IV of the Constitution and shall go into*
18 *immediate effect. The facts constituting the necessity are:*

19 *To ensure that forest management activities in the Counties of*
20 *Del Norte, Humboldt, Mendocino, and Sonoma can benefit from*
21 *participation in the Forest Fire Prevention Pilot Project Exemption*
22 *at the earliest possible time, it is necessary for this act to take*
23 *effect immediately.*

24 ~~*SECTION 1. Section 4584 of the Public Resources Code is*~~
25 ~~*amended to read:*~~

26 ~~*4584. Upon determining that the exemption is consistent with*~~
27 ~~*the purposes of this chapter, the board may exempt from this*~~
28 ~~*chapter, or portions of this chapter, a person engaged in forest*~~
29 ~~*management whose activities are limited to any of the following:*~~

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

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

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

6 ~~(d) Site preparation.~~

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

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

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

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

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

29 ~~(ii) Authorize the department to inspect the sites approved in~~
30 ~~conversion applications that have been approved on or after January~~
31 ~~1, 2002, in order to determine that the conversion was completed~~
32 ~~within the two-year period described in subparagraph (B) of~~
33 ~~paragraph (2) of subdivision (a) of Section 1104.1 of Title 14 of~~
34 ~~the California Code of Regulations.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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 (e)~~
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 (e)~~
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 (e)~~
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 before 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 before 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 before harvest.

33 (D) The activities conducted pursuant to this paragraph occur
34 in any of the following areas, or any combination of these areas:

35 (i) The Sierra Nevada Region as defined in subdivision (f) of
36 Section 33302.

37 (ii) The County of Del Norte, Humboldt, Mendocino, Modoc,
38 Siskiyou, Sonoma, or Trinity.

39 (E) All activities conducted pursuant to this paragraph occur
40 within the most recent version of the department's Fire Hazard

1 Severity Zone Map in the moderate, high, and very high fire threat
2 zones.

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

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

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

O