Assembly Bill No. 2029

Passed the Assembly August 29, 2016

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Chief Clerk of the Assembly

Passed the Senate August 23, 2016

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Secretary of the Senate

This bill was received by the Governor this _____ day of _____, 2016, at _____ o'clock ___M.

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Private Secretary of the Governor

CHAPTER _____

An act to amend Section 4584 of, to add and repeal Section 4589 of, and to repeal Section 4584.1 of, the Public Resources Code, relating to timber harvesting.

LEGISLATIVE COUNSEL'S DIGEST

AB 2029, Dahle. Timber harvesting plans: exemptions.

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. In this regard, the act authorizes, until 3 years after the effective date of regulations adopted by the board, the Forest Fire Prevention Pilot Project Exemption if specified conditions are met, including that only trees less than 24 inches in stump diameter, measured at 8 inches above ground level, shall be removed and the activities shall be conducted in those portions of 21 counties designated as the Sierra Nevada Region, as defined, in any part of 7 other counties, or in any combination of these areas. Existing law authorizes a registered professional forester in an emergency to file, on behalf of a timber owner or operator, a specified emergency notice with the department that allows for the immediate commencement of timber operations.

This bill would require the department and the board to review and submit a report to the Legislature, on or before December 31, 2017, on the trends in the use of, compliance with, and effectiveness of, the above exemptions and emergency notice provisions and specified regulations. If the report is not submitted on or before that date, the bill would require specified legislative committees to hold a hearing to investigate why the report was not submitted. The bill would authorize the Forest Fire Prevention Pilot Project Exemption until January 1, 2021, and, on January 1,

2018, or upon the submission of the report, whichever occurs first, would expand the exemption to instead permit the removal of trees less than 26 inches in stump diameter, measured at 8 inches above ground level and apply to activities anywhere within those 28 counties, or in any combination of those areas, as prescribed.

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

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) On October 20, 2015, Governor Brown issued a proclamation declaring a state of emergency relative to the tree mortality epidemic in California, characterized by all of the following conditions:

(1) The lack of precipitation over the last four years has made many regions of the state susceptible to epidemic infestations of native bark beetles that cause vast tree mortality, with the United States Forest Service estimating that over 22 million trees are dead and tens of millions more are likely to die by the end of 2016.

(2) Recent scientific measurements suggest that the scale of this tree die-off is unprecedented in modern history, and the die-off is of such a scale that it worsens wildfire risk across large regions of the state, presents safety risks for forested communities, and worsens the threat of erosion across watersheds.

(3) Wildfires release thousands of tons of greenhouse gas emissions and other harmful pollutants into the atmosphere.

(b) The thinning of forests is widely known to provide all of the following benefits:

(1) Reduced threat of wildfires by removing fuel from the forests as well as a reduced risk of canopy fire.

(2) Increased water storage by reducing the need for water in forests.

(3) Conditions that favor healthier, better maintained forests.

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

4584. Upon determining that this 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, 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, 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) An easement granted by a right-of-way construction agreement administered by the federal government if timber sales and operations within or affecting the area 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, 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.

(6) (A) Notwithstanding paragraph (1), the board may exempt from this chapter, or portions of this chapter, 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 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 300 feet on each side from an approved and legally permitted habitable structure, when that cutting or removal is conducted in compliance with this subdivision and all of the following conditions are met:

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

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

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

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

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

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

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

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

(C) The department shall evaluate the effects of this paragraph and shall report its recommendations, before the paragraph becomes

inoperative, to the Legislature based on that evaluation. The report shall be submitted in compliance with Section 9795 of the Government Code.

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

(E) This paragraph shall become inoperative three years after the effective date of regulations adopted by the board pursuant to subparagraph (D) but no later than January 1, 2019.

(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 26 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 Alpine, Amador, Butte, Calaveras, Del Norte, El Dorado, Fresno, Humboldt, Inyo, Kern, Lassen, Madera, Mariposa, Mendocino, Modoc, Mono, Nevada, Placer, Plumas, Shasta, Sierra, Siskiyou, Sonoma, Tehama, Trinity, Tulare, Tuolumne, or Yuba 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) The amendments made to this paragraph by the act that added this subparagraph during the 2015–16 Regular Legislative Session shall become operative on January 1, 2018, or when the report described in Section 4589 is submitted to the Legislature, whichever occurs first.

(H) This paragraph shall become inoperative on January 1, 2021.

(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.

SEC. 3. Section 4584.1 of the Public Resources Code is repealed.

SEC. 4. Section 4589 is added to the Public Resources Code, to read:

4589. (a) On or before December 31, 2017, the department and board shall review and submit a report to the Legislature on the trends in the use of, compliance with, and effectiveness of, the exemptions and emergency notice provisions described in Sections 4584 and 4592 of this code and Sections 1038 and 1052 of Title 14 of the California Code of Regulations. The report shall also include recommendations to improve the use of those exemptions and emergency notice provisions.

(b) The Department of Fish and Wildlife, regional water quality control boards, and the public shall be provided opportunities to participate in the review and the development of the report.

(c) The report shall be submitted pursuant to Section 9795 of the Government Code.

(d) If the report is not submitted to the Legislature on or before December 31, 2017, either the Senate Budget Subcommittee on Resources or the Senate Committee on Natural Resources shall hold a hearing in January 2018 to investigate why the report was not submitted.

(e) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

Approved _____, 2016

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Governor