

AMENDED IN SENATE APRIL 6, 1999

SENATE BILL

No. 621

Introduced by Senator Sher

February 24, 1999

An act to add ~~Section 4582.76~~ *Sections 4582.76, 4601.1, 4601.2, and 4601.3* to the Public Resources Code, relating to forest resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 621, as amended, Sher. Forest resources: timber harvesting plans.

(1) Existing law, the Z'berg-Nejedly Forest Practice Act of 1973, requires the Director of Forestry and Fire Protection to review timber harvesting plans to determine if the plans comply with the act and with regulations adopted by the State Board of Forestry.

This bill would require the director to *adopt emergency regulations governing the conduct of timber operations for the protection of watercourse and lake protection zones that are adjacent to streams supporting major runs of coho salmon.* ~~disapprove a proposed timber harvesting plan if the implementation of the plan would result in a take, as defined in federal law, of any species listed by the National Marine Fisheries Service pursuant to the federal Endangered Species Act of 1973, and would require the board to adopt emergency regulations that set forth guidelines for determining whether a proposed timber harvesting plan would result in a take of any of those species.~~

(2) *The act prohibits a person from conducting timber operations on timberland unless a timber harvesting plan has been prepared by a registered professional forester and has been submitted to the Department of Forestry and Fire Protection and approved by the director or by the state board.*

This bill would impose additional civil penalties for violations of the act, as prescribed, and would require the consideration of all relevant circumstances pertaining to a violation when determining the amount of that penalty, and corrective action, if any, required to be taken by the violator.

The bill would authorize any party who is aggrieved by a final order issued by the board pertaining to a violation to obtain a review of the order in the superior court in the county in which the violation occurred by filing a petition for a writ of mandate in the court within a specified time period. By imposing new duties on local governments with respect to the review of the imposition of a civil penalty by the superior court, the bill would impose a state-mandated local program.

(3) *The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~ yes.

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

1 SECTION 1. Section 4582.76 is added to the Public
 2 Resources Code, to read:
 3 4582.76. (a) The board shall adopt regulations,
 4 initially as emergency regulations in accordance with
 5 subdivision (b), ~~setting forth guidelines for determining~~
 6 ~~whether a proposed timber harvesting plan would result~~
 7 ~~in a take, as defined in paragraph (19) of Section 1532 of~~
 8 ~~Title 16 of the United States Code, a part of the federal~~
 9 ~~Endangered Species Act of 1973 (16 U.S.C.A. Sec. 1531 et~~
 10 ~~seq.), of any species listed by the National Marine~~
 11 ~~Fisheries Service pursuant to the federal Endangered~~



1 ~~Species Act of 1973 (16 U.S.C.A. Sec. 1531 et seq.). At a~~
2 ~~minimum, the regulations shall meet the standards~~
3 ~~adopted by the National Marine Fisheries Service~~
4 ~~governing the take of applicable species, including a take~~
5 ~~allowed pursuant to an incidental take permit issued~~
6 ~~under applicable provisions of the federal Endangered~~
7 ~~Species Act of 1973 (16 U.S.C.A. Sec. 1531 et seq.), and~~
8 ~~based on an approved habitat conservation plan (HCP).~~

9 (b) ~~The emergency regulations adopted pursuant to~~
10 ~~subdivision (a) shall be adopted in accordance with the~~
11 ~~rulemaking provisions of the Administrative Procedure~~
12 ~~Act (Chapter 3.5 (commencing with Section 11340) of~~
13 ~~Part 1 of Division 3 of Title 2 of the Government Code).~~
14 ~~The adoption of the emergency regulations shall be~~
15 ~~deemed to be an emergency and necessary and for the~~
16 ~~immediate preservation of the public peace, health, and~~
17 ~~safety, or general welfare.~~

18 (e) ~~The director shall disapprove a timber harvesting~~
19 ~~plan if implementation of the plan, as proposed, would~~
20 ~~result in a take, as defined in paragraph (19) of Section~~
21 ~~1532 of Title 16 of the United States Code, of any species~~
22 ~~listed by the National Marine Fisheries Service, that is~~
23 ~~prohibited by the federal Endangered Species Act of~~
24 ~~1973: governing the conduct of timber operations for the~~
25 ~~protection of watercourse and lake protection zones that~~
26 ~~are adjacent to streams supporting major runs of coho~~
27 ~~salmon (*oncorhynchus kisutch*).~~

28 (b) *The emergency regulations adopted pursuant to*
29 *subdivision (a) shall be adopted in accordance with the*
30 *rulemaking provisions of the Administrative Procedure*
31 *Act (Chapter 3.5 (commencing with Section 11340) of*
32 *Part 1 of Division 3 of Title 2 of the Government Code).*
33 *The adoption of the emergency regulations shall be*
34 *deemed to be an emergency and necessary for the*
35 *immediate preservation of the public peace, health, and*
36 *safety, or general welfare.*

37 *SEC. 2. Section 4601.1 is added to the Public*
38 *Resources Code, to read:*

39 *4601.1. (a) (1) In addition to any other penalty, any*
40 *timber owner or timber operator who is in violation of this*



1 chapter or of a rule or regulation adopted by the board
2 pursuant to this chapter is subject to a civil penalty in an
3 amount not to exceed fifty thousand dollars (\$50,000) for
4 each day that the violation continues.

5 (2) The Attorney General, upon his or her own motion
6 or upon request of the director, shall petition the superior
7 court to impose, assess, and recover a civil penalty
8 pursuant to this subdivision. In determining the
9 appropriate amount, the court shall consider all relevant
10 circumstances, including, but not limited to, the nature
11 and persistence of the violation, the length of the time
12 over which the violation has occurred, and the corrective
13 action, if any, taken by the violator.

14 (b) A civil penalty may also be administratively
15 imposed by the department in accordance with Section
16 4601.2 on any timber owner or timber operator for any
17 violation of this chapter or of a rule or regulation adopted
18 by the board pursuant to this chapter in an amount not
19 to exceed ten thousand dollars (\$10,000) for each
20 violation of a separate provision, or, for continuing
21 violations, for each day that the violation continues, but
22 the total penalty per day shall not exceed fifty thousand
23 dollars (\$50,000).

24 (c) No timber owner or timber operator is subject to
25 both a civil penalty imposed by the superior court under
26 subdivision (a) and a civil penalty administratively
27 imposed under subdivision (b) for the same act or failure
28 to act.

29 (d) Any money recovered by the department
30 pursuant to this section shall be deposited in the Forest
31 Resources Improvement Fund created pursuant to
32 Section 4799.13.

33 SEC. 3. Section 4601.2 is added to the Public
34 Resources Code, to read:

35 4601.2. (a) The director may issue a complaint and
36 proposed order to any timber owner or timber operator
37 on whom an administrative penalty may be imposed
38 pursuant to subdivision (b) of Section 4601.1. The
39 complaint and order shall allege the act or failure to act
40 that constitutes a violation, include a citation to the



1 *provisions authorizing the civil penalty to be imposed,*
2 *and include the proposed civil penalty.*

3 *(b) In determining the amount of any administrative*
4 *civil penalty, the department shall consider all relevant*
5 *circumstances, including, but not limited to, the extent of*
6 *harm caused by the violation, the nature and persistence*
7 *of the violation, the length of time over which the*
8 *violation occurred, and the corrective action, if any, taken*
9 *by the violator.*

10 *(c) The complaint shall be served by personal notice*
11 *or certified mail, and shall inform the party so served that*
12 *a hearing shall be conducted before the board within 180*
13 *days from the date that the party is served. The*
14 *chairperson of the board may delegate the conduct of the*
15 *hearing to a committee of the board, which shall be*
16 *composed of at least three members of the board, or elect*
17 *to utilize an administrative law judge assigned in*
18 *accordance with Section 11370.3 of the Government*
19 *Code. If the chairperson delegates the matter to a*
20 *committee of the board, a majority of the committee*
21 *members shall not have a financial interest in the forest*
22 *products or range industry. The committee may exercise*
23 *any power the board may exercise.*

24 *(d) The party charged with a violation may waive a*
25 *right to a hearing, in which case the board shall not*
26 *conduct a hearing, and the order of the director shall*
27 *become final.*

28 *(e) After a hearing, the board may adopt, with or*
29 *without revision, the proposed order of the director.*

30 *(f) An order setting an administrative civil penalty*
31 *shall become effective and final upon its issuance, and any*
32 *payment shall be made within 30 days from the date of*
33 *service of the order. Copies of the order shall be served*
34 *by personal service or by registered mail upon the party*
35 *served with the complaint and upon other persons who*
36 *appeared at the hearing and requested a copy.*

37 *SEC. 4. Section 4601.3 is added to the Public*
38 *Resources Code, to read:*

39 *4601.3. Any party who is aggrieved by a final order*
40 *issued by the board under Section 4601.2 may obtain*

1 review of the order in the superior court in the county in
2 which the violation occurred by filing a petition for a writ
3 of mandate with the court within 30 days from the date
4 of service of the order on the party. If the aggrieved party
5 does not petition for a writ of mandate within that 30-day
6 period, the order of the board is not thereafter subject to
7 review by any court.

8 SEC. 5. No reimbursement is required by this act
9 pursuant to Section 6 of Article XIII B of the California
10 Constitution because a local agency or school district has
11 the authority to levy service charges, fees, or assessments
12 sufficient to pay for the program or level of service
13 mandated by this act, within the meaning of Section 17556
14 of the Government Code.

