

AMENDED IN SENATE JUNE 14, 2012

AMENDED IN ASSEMBLY MAY 2, 2012

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2170

Introduced by Assembly Members Chesbro and Dickinson

February 23, 2012

An act to ~~amend Section 4593.8 of, and to add Section 4594.8 to,~~ add Article 7.7 (commencing with Section 4597) to Chapter 8 of Part 2 of Division 4 of the Public Resources Code, relating to forest resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 2170, as amended, Chesbro. ~~Forest resources: nonindustrial timber management plans. Forestry: working forest management plan.~~

(1) *The Z'berg-Nejedely Forest Practice Act of 1973 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 of Forestry and Fire Protection or the State Board of Forestry and Fire Protection. A violation of the act is a crime.*

This bill would authorize a working forest tree farmer, as defined, to file a working forest management plan prepared by a registered professional forester with the department and would require the director to review the submitted plan to determine if it is in compliance with the act, and rules and regulations of the board, and to return the plan if the director determines that it is not in compliance. The bill would require an amendment that is a substantial deviation from the approved

plan to be approved by the director or the board. The bill would require a working forest tree farmer to file a working forest harvest notice in any year in which there are plans to harvest timber on timberland covered by the working forest management plan. If it is determined that certain objectives are not being met or that there are persistent violations of an approved plan's requirements, the bill would require that the previously approved working forest management plan be canceled by the department and that any further timber operations under the plan be terminated. The bill would require the board, no later than December 31, 2015, to adopt regulations to implement these provisions. Because a violation of these provisions is a crime, this bill would imposed a state-mandated local program.

(2) 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.

~~Existing law authorizes a person who intends to become a nonindustrial tree farmer to file with the Department of Forestry and Fire Protection a nonindustrial timber management plan, in accordance with specified requirements. Existing law authorizes the nonindustrial tree farmer to submit a proposed amendment to an approved nonindustrial timber management plan, but prohibits the nonindustrial tree farmer from taking any action that substantially deviates, as defined, from the approved plan until the amendment is filed with the Director of Forestry and Fire Protection and the director has determined that the amendment is in compliance with specified rules, regulations, and statutes in effect at the time the nonindustrial timber management plan was approved, in accordance with specified procedures.~~

~~This bill would require the State Board of Forestry and Fire Protection to adopt regulations, no later than January 1, 2014, to provide for an appeal procedure in the event the department cancels a previously approved nonindustrial timber management plan.~~

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. Article 7.7 (commencing with Section 4597) is*
2 *added to Chapter 8 of Part 2 of Division 4 of the Public Resources*
3 *Code, to read:*

4
5 *Article 7.7. Working Forest Management Plan*
6

7 *4597. The Legislature finds and declares all of the following:*

8 *(a) The nonindustrial timber management plan established*
9 *pursuant to Article 7.5 (commencing with Section 4593) has been*
10 *successful in meeting the intent of this chapter by encouraging*
11 *prudent and responsible forest management and discouraging*
12 *accelerated timberland conversion by private nonindustrial forest*
13 *landowners.*

14 *(b) There have been 693 nonindustrial timber management*
15 *plans found to be in conformance by the department covering a*
16 *combined area of 283,000 acres.*

17 *(c) It is the policy of the state to build upon the model provided*
18 *by the nonindustrial timber management plan by encouraging*
19 *long-term planning, increased productivity of timberland, and the*
20 *conservation of open space on a greater number of nonindustrial*
21 *working forest ownerships and acreages.*

22 *(d) It is the policy of the state to encourage prudent and*
23 *responsible forest resource management of nonindustrial*
24 *timberlands by approving working forest management plans in*
25 *advance and withdrawing governmental discretion to disapprove*
26 *working forest timber harvest notices submitted pursuant to the*
27 *approved working forest management plans.*

28 *(e) To ensure long-term benefits such as added levels of*
29 *atmospheric carbon sequestration, local and regional employment*
30 *and economic activity, sustainable production of timber and other*
31 *forest products, and aesthetics and the maintenance of ecosystem*
32 *processes and services, the working forest management plan shall*
33 *comply with rigorous timber inventory standards that are subject*
34 *to periodic review and verification.*

35 *4597.1. Notwithstanding Section 4521, unless the context*
36 *otherwise requires, the following definitions govern construction*
37 *of this article:*

- 1 (a) “Long-term sustained yield” means the average annual
2 growth sustainable by the inventory predicted at the end of a
3 100-year planning horizon, or a shorter planning horizon if the
4 forest encompassed by the working forest management plan has
5 reached a balanced state.
- 6 (b) “Major stand type” means a stand that occupies an area
7 equal to or greater than 25 percent of a working forest
8 management plan.
- 9 (c) “Planning unit” means a geographically identifiable polygon
10 delineated for silviculture or management purposes that is
11 integrated into developing a harvest schedule for the planning
12 horizon. A planning unit may be as large as a stand or smaller
13 when necessary to address specific resource sensitivities or to
14 schedule future harvest activity across the planning horizon for
15 sustained yield.
- 16 (d) “Stand” means a geographically identifiable group of trees
17 sufficiently uniform in age-class distribution, composition, and
18 structure, and growing on a site of sufficiently uniform quality, to
19 be a distinguishable unit.
- 20 (e) “Stand type” means a class of stand defined for silvicultural
21 or management purposes, usually according to composition,
22 structure, and age.
- 23 (f) “Sustained yield” means the yield of commercial wood that
24 an area of commercial timberland can produce continuously at a
25 given intensity of management consistent with required
26 environmental protection and that is professionally planned to
27 achieve over time a balance between growth and removal.
28 Sustained yield management implies continuous production
29 planned so as to achieve, at the earliest practical time, a balance
30 between growth and harvest.
- 31 (g) “Uneven aged management” means the management of a
32 specific forest, with the goal of establishing a well-stocked stand
33 of various age classes, and that permits the periodic harvest of
34 individual or small groups of trees to realize the yield and
35 continually establish a new crop.
- 36 (h) “Working forest harvest notice” means notice of timber
37 harvest operations pursuant to an approved working forest
38 management plan and that meets the requirements of Section
39 4597.15.

1 (i) “Working forest management plan” means a management
2 plan for working forest timberlands with an objective of an uneven
3 aged managed timber stand and sustained yield for each parcel
4 or group of contiguous parcels and that meets the requirements
5 of Section 4597.2.

6 (j) “Working forest timberlands” means timberland owned by
7 a working forest tree farmer.

8 (k) “Working forest tree farmer” means an owner of timberland
9 with less than 15,000 acres who has an approved working forest
10 management plan and is not primarily engaged in the manufacture
11 of forest products.

12 4597.2. A working forest management plan may be filed with
13 the department, in writing, by a person who intends to become a
14 working forest tree farmer with the long-term objective of an
15 uneven aged timber stand and sustained yield through the
16 implementation of a working forest management plan. The
17 management plan shall be prepared by a registered professional
18 forester. It shall be a public record and shall include all of the
19 following information:

20 (a) The name and address of the timberland owner.

21 (b) A description of the land on which the plan is proposed to
22 be implemented, including a United States Geological Survey
23 quadrangle map or equivalent indicating the location of all
24 streams, the location of all proposed and existing logging truck
25 roads, and indicating boundaries of all site I classification
26 timberlands to be stocked in accordance with subdivision (b) of
27 Section 4561 and any other site classifications if the board
28 establishes specific minimum stocking standards for other site
29 classifications.

30 (c) A description of the silviculture methods to be applied and
31 the type of yarding equipment to be used.

32 (d) An outline of the methods to be used to avoid excessive
33 accelerated erosion from timber operations to be conducted within
34 the proximity of a stream.

35 (e) Special provisions, if any, to protect any unique area within
36 the boundaries of the proposed working forest management plan.

37 (f) A description of the existing stand, its current projected
38 growth, how long-term sustained yield will be achieved, alterations
39 required to achieve the management objectives, the projected

1 *timber volumes and tree sizes to be available for harvest, and*
2 *projected frequencies of harvest.*

3 *(g) A certification by the registered professional forester*
4 *preparing the plan that he or she or a designee has personally*
5 *inspected the plan area.*

6 *(h) Any other information the board provides by regulation to*
7 *meet its rules and the standards of this chapter.*

8 *(i) A delineation of stand types and planning units. In order to*
9 *develop an adequate estimate of current growth and potential*
10 *long-term growth based on the sustained yield policy, major stand*
11 *types shall have an inventory precision as measured by the*
12 *standard error that is no greater than 15 percent of their respective*
13 *inventory estimate. For other stand types that individually*
14 *represent 10 percent or more of the working forest management*
15 *plan, the inventory precision as measured by the standard error*
16 *shall be no greater than 25 percent of their respective inventory*
17 *estimate.*

18 *4597.3. The board shall adopt regulations regarding the notice*
19 *of receipt of the proposed working forest management plan. The*
20 *notice shall be given within two working days following submission*
21 *of the proposed management plan and shall be consistent with*
22 *Horn v. County of Ventura, 24 Cal. 3d 605, and all applicable*
23 *laws. In adopting the regulations, the board shall take account of*
24 *the extent of the administrative burden involved in giving the*
25 *notice. The method of notice shall include, but not be limited to,*
26 *mailed notice. The regulations may require the person submitting*
27 *the working forest management plan to provide to the department*
28 *a list of the names and addresses of persons to whom the notice*
29 *is to be mailed.*

30 *4597.4. The department shall provide notice of the filing of*
31 *working forest management plans to any person who requests, in*
32 *writing, that notification.*

33 *4597.5. Upon receipt of the working forest management plan,*
34 *the department shall place it, or a true copy thereof, in a file*
35 *available for public inspection in the county in which timber*
36 *operations are proposed under the plan, and, for the purpose of*
37 *interdisciplinary review, shall transmit a copy to the Department*
38 *of Fish and Game, the appropriate California regional water*
39 *quality control board, the county planning agency, and all other*
40 *agencies having jurisdiction by law over natural resources affected*

1 by the plan. The department shall invite, consider, and respond in
2 writing to comments received from public agencies to which the
3 plan has been transmitted and shall consult with those agencies
4 at their request.

5 4597.6. (a) The director has 45 days from the date the initial
6 inspection is completed as provided in Section 4604, or a longer
7 period mutually agreed upon by the director and the person
8 submitting the working forest management plan, to review the plan
9 to determine if the plan is in conformance with the rules and
10 regulations of the board and this chapter. If the director determines
11 that the plan is not in conformance with the rules and regulations
12 of the board or this chapter, the director shall return the plan,
13 stating his or her reasons and advising the person submitting the
14 plan of the person's right to a hearing before the board.

15 (b) If the director does not act within the time periods provided
16 in subdivision (a), a longer period shall be negotiated and mutually
17 agreed upon by the director and the person submitting the working
18 forest management plan. If a longer period cannot be mutually
19 agreed upon, the working forest management plan shall be deemed
20 denied and returned to the person submitting the plan.

21 (c) A person to whom a plan is returned may, within 10 days
22 from the receipt of the plan, request the board for a public hearing
23 before the board. The board shall schedule a public hearing to
24 review the plan to determine if the plan is in conformance with the
25 rules and regulations of the board and this chapter. Board action
26 shall take place within 30 days from the filing of the appeal, or a
27 longer period mutually agreed upon by the board and the person
28 filing the appeal. If the plan is not approved on appeal to the board,
29 the director, within 10 days of board action, may determine that
30 the plan is in conformance if the plan is revised to bring it into
31 full conformance with the rules and regulations of the board and
32 this chapter.

33 4597.7. The working forest tree farmer may submit a proposed
34 amendment to the approved plan and may not take any action that
35 substantially deviates, as defined by the board, from the approved
36 plan until the amendment has been filed with the director and the
37 director has determined that the amendment is in compliance with
38 the rules and regulations of the board and the provisions of this
39 chapter that were in effect at the time the working forest

1 management plan was approved, in accordance with the same
2 procedures specified in Section 4597.6.

3 4597.8. The working forest tree farmer may take actions that
4 do not substantially deviate from the approved plan without the
5 submittal of an amendment, but those actions shall be subsequently
6 reported to the department. The board shall specify, by regulation,
7 those nonsubstantial deviations that may be taken. The board shall
8 specify the requirements for reporting those deviations.

9 4597.9. In the event of a change of ownership of the land
10 described in the working forest management plan, the plan shall
11 expire 180 days from the date of change of ownership unless the
12 new timberland owner notifies the department in writing of the
13 change of ownership and his or her assumption of the plan.

14 4597.10. The working forest tree farmer may cancel the
15 working forest management plan by submitting a written notice
16 to the department. Once timber operations have commenced
17 pursuant to a working forest harvest notice, cancellation is not
18 effective on land covered by the notice until a report of satisfactory
19 completion has been issued pursuant to Sections 4585, 4586, and
20 4587.

21 4597.11. The board, by regulation, shall, no later than
22 December 31, 2015, provide for the department to undertake a
23 periodic review of the timber inventory data for each approved
24 working forest management plan, in order to verify compliance
25 with this article. This review shall be conducted no less than 10
26 years after the working forest management plan was first approved,
27 and no less than every 15 years thereafter.

28 4597.12. The board, by regulation, shall, no later than
29 December 31, 2015, provide for the department to lead a working
30 forest management plan field monitoring team that will undertake
31 a periodic review of every working forest management plan that
32 is in excess of 5,000 acres. The team will be comprised, at
33 minimum, of a representative of the department, the Department
34 of Fish and Game, and the appropriate California regional water
35 quality control board. The team purpose will be to conduct a
36 qualitative assessment of the plan to determine its compliance with
37 this chapter and article, the current rules of the board, water
38 quality standards, and all applicable protection measures for fish
39 and wildlife species listed under the California Endangered Species
40 Act (Chapter 1.5 (commencing with Section 1050) of Division 3

1 of the Fish and Game Code). This review shall be conducted no
2 less than 10 years after the plan was first approved, and no less
3 than every 15 years thereafter.

4 4597.15. The working forest tree farmer who owns, leases, or
5 otherwise controls or operates on all or any portion of any
6 timberland within the boundaries of an approved working forest
7 management plan, and who plans to harvest any of the timber on
8 that timberland during a given year, shall file a working forest
9 harvest notice with the department in writing. The notice shall be
10 filed prior to the harvesting of any timber and shall be effective
11 for a maximum of one year from the date of filing. If the person
12 who files the notice is not the owner of the timberland, the person
13 filing the notice shall notify the timberland owner by certified mail
14 that the notice has been submitted and shall certify that mailing
15 to the department. The notice shall be a public record and shall
16 include all of the following information:

- 17 (a) The name and address of the timber owner.
- 18 (b) The name and address of the timber operator.
- 19 (c) The name and address of the registered professional forester
20 preparing the working forest harvest notice.
- 21 (d) A description of the land on which the work is proposed to
22 be done.
- 23 (e) A statement that no archeological sites have been discovered
24 in the harvest area since the approval of the working forest
25 management plan.
- 26 (f) A statement that no rare, threatened, or endangered plant
27 or animal species has been discovered in the harvest area since
28 the approval of the working forest management plan.
- 29 (g) A statement that there have been no physical environmental
30 changes in the harvest area that are so significant as to require
31 any amendment of the working forest management plan.
- 32 (h) A certification by the registered professional forester that
33 the notice as carried out will implement best management practices
34 for protection of the beneficial uses of water, soil stability, forest
35 productivity, and wildlife as required by the current rules of the
36 board, or a certification that practices consistent with the original
37 plan will not result in any significant degradation to the beneficial
38 uses of water, soil stability, forest productivity, or wildlife.
- 39 (i) Special provisions, if any, to protect any unique area within
40 the area of timber operations.

1 (j) *The expected dates of commencement and completion of*
2 *timber operations during the year.*

3 (k) *A statement that the harvesting notice conforms to the*
4 *provisions of the approved management plan.*

5 (l) *Any other information the board requires by regulation to*
6 *meet its rules and the standards of this chapter.*

7 4597.16. *The registered professional forester who prepares*
8 *the working forest management plan or prepares the notice, or*
9 *any other registered professional forester who is employed by the*
10 *owner or operator, shall report to the owner or operator if there*
11 *are deviations from the plan that, in his or her judgment, threaten*
12 *the attainment of the resource conservation standards of the plan.*

13 4597.17. *If the board finds that a registered professional*
14 *forester has made any material misstatement in a working forest*
15 *harvest notice, working forest management plan, or report under*
16 *this chapter, the board shall take disciplinary action against him*
17 *or her as provided under Section 775.*

18 4597.18. *Notwithstanding any other provisions of this chapter,*
19 *if a registered professional forester certifies by written declaration,*
20 *on behalf of the timber owner or operator, that the working forest*
21 *harvest notice conforms to, and meets the requirements of, the*
22 *approved working forest management plan under which it is filed,*
23 *timber operations may commence immediately unless the notice*
24 *has been filed by mailing, in which case operations may commence*
25 *three days after the notice has been mailed.*

26 4597.19. *If it is determined that the objectives of uneven aged*
27 *management and sustained yield are not being met by a working*
28 *forest tree farmer, or there are other persistent violations detected*
29 *that are not being corrected, a previously approved working forest*
30 *management plan shall be canceled by the department and any*
31 *further timber operations under the plan shall be terminated. In*
32 *making a determination to cancel a plan, the department may cite*
33 *the findings of a review conducted pursuant to Section 4597.11 or*
34 *4597.12.*

35 SEC. 2. *No reimbursement is required by this act pursuant to*
36 *Section 6 of Article XIII B of the California Constitution because*
37 *the only costs that may be incurred by a local agency or school*
38 *district will be incurred because this act creates a new crime or*
39 *infraction, eliminates a crime or infraction, or changes the penalty*
40 *for a crime or infraction, within the meaning of Section 17556 of*

1 *the Government Code, or changes the definition of a crime within*
2 *the meaning of Section 6 of Article XIII B of the California*
3 *Constitution.*

4 ~~SECTION 1. The Legislature finds and declares that there have~~
5 ~~been 693 nonindustrial timber management plans found to be in~~
6 ~~conformance with state law by the Department of Forestry and~~
7 ~~Fire Protection, covering a combined area of 283,000 acres.~~

8 ~~SEC. 2. Section 4593.8 of the Public Resources Code is~~
9 ~~amended to read:~~

10 ~~4593.8. The nonindustrial tree farmer may submit a proposed~~
11 ~~amendment to the approved plan and may not take any action that~~
12 ~~substantially deviates, as defined by the board, from the approved~~
13 ~~plan until the amendment has been filed with the director and the~~
14 ~~director has determined that the amendment is in compliance with~~
15 ~~the rules and regulations of the board and the provisions of this~~
16 ~~chapter that were in effect at the time the nonindustrial timber~~
17 ~~management plan was approved, in accordance with the same~~
18 ~~procedures specified in Section 4593.7.~~

19 ~~SEC. 3. Section 4594.8 is added to the Public Resources Code,~~
20 ~~to read:~~

21 ~~4594.8. The board shall adopt regulations, no later than January~~
22 ~~1, 2014, to provide for an appeal procedure in the event that the~~
23 ~~department cancels a previously approved nonindustrial timber~~
24 ~~management plan.~~