Staff Overview: AB 2276 Bill Revision for 14 CCR 1038.3 – Forest Fire Prevention Exemption to Forest Resilience Exemption

# Overview

Assembly Bill 2276 (Wood, Chapter 388) amends § 4584 of the Public Resources Code, which establishes the authority of the Board to exempt certain activities from all or parts of the Forest Practice Act. The bill makes three changes to these activities that require further Board action to implement:

1. repeals the Small Landowner Exemption;
2. renames and revises the criteria for the Forest Fire Prevention Exemption; and
3. revises the California black or Oregon white oak woodlands and associated grasslands exemption (colloquially, the “Oak Woodland Exemption”).

Pursuant to the California Constitution, Article IV, Section 9(c), these changes do not go into effect until January 1, 2025. Beginning on that date, the authority for the Forest Fire Prevention Exemption found in 14 CCR 1038.3 expires, and the Forest Resilience Exemption is effective in its place. Due to regulatory timelines required under the Administrative Procedures Act, any regulations the Board approves to implement the Forest Resilience Exemption will not take effect until several weeks, or more, after January 1, creating a gap in this regulatory program. However, AB 2276 authorizes the Board to adopt emergency regulations to effectuate this chapter, which should help minimize this regulatory gap.

AB 2276 largely makes prescriptive changes to the statute, meaning the Board does not have the discretion to adopt different requirements than the Legislature provided for. However, the Legislature gave the Board discretion in implementing the Forest Resilience Exemption requirements for the removal of “dead and dying trees in amounts less than 10 percent of the average volume per acre for trees up to 36-inches [dbh].”

1. **Potential Board Actions**

Board staff has prepared two proposals for the Joint Committee to consider.

1. Non-discretionary proposal: This proposal contains changes to the regulations that address the statutory requirements in AB 2276, however, it does not include any additional discretionary changes the Board is authorized to adopt.
2. Discretionary proposal: This proposal also contains the changes to the regulations that address the statutory requirements in AB 2276, and also attempts to address the additional discretionary changes the Board is authorized to adopt.

If the Board approves one of these proposals at the December 12 meeting, Staff can begin the emergency rulemaking process as soon as January 1, 2025, and regulations may be effective 3-4 weeks afterwards. The longer the Board waits to approve changes to the regulations, the longer the Forest Resilience Exemption is unavailable to landowners.

# Summary of Revisions

The following represents a summary of significant organizational and substantive revisions made to the rule text.

Non-discretionary proposal:

* Revisions are based on statutory language changes within AB 2276.
* Page 1, Lines 8, 9, 19 – changes to wording to be consistent with Bill wording.
* Page 2, Line 7 – changed allowable acres for harvest areas from 300 to 500 acres per bill language.
* Page 2 Line 16-23 – Bill added language addressing slash and woody debris within 50 feet of public road or critical infrastructure. Line 18 provides a definition for critical infrastructure. The California Emergency Services Act defines critical infrastructure in Gov C 8592.30(a). Board staff used this definition in part with infrastructure elements identified in the Forest Practice Act to create the definition.
* Page 5, Lines 1, 15, 17 - changes to wording to be consistent with Bill wording.
* Page 6 Lines 6-8 – included bill language indicating how many trees per acre shall be retained within the northern and southern district.
* Page 6, Lines 9-18 – Included bill language requirements of leaving the six largest trees per acre, no oak trees greater than 22 inches dbh to be harvested, and post harvest composition.
* Page 6, Line 19 – Canopy standards approved by the Board during the 2024 calendar year are included in the rule plea. AB 2276 gives the Board the Authority to develop canopy retention standards.
* Page 6, Line 22 through page 7, line 12 – Language was removed, or modified to address bill language. Language in Lines 8-12 was retained per committee request and placed in 1038(d) to be consistent with the slash and woody debris requirements.
* Page 9, Line 12-23 – added language per the Bill addressing stocking standards as commercial thinning selection.
* Page 11, Line 15 – changed the name of the mapping requirements under 1038.4.

Discretionary proposal:

* Changes noted above in the non-discretionary proposal are included here.
* Page 6, Line 9-17 – AB 2276 gives the Board the authority to decide if they wanted to include language to allow for the removal of dead and dying trees in amounts less than ten (10) percent of the average volume per acre for trees up to 36-inches dbh. The Board is not required to include this language but has the authority to consider this as an option.
  + Language has been provided for consideration should the Board determine this option is needed. The language currently used in the plead is statutory language approved in the Bill.