

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND TENTH LEGISLATURE
4

5 **Legislative Document**

No. 1968

6
7 H. P. 1992 House of Representatives, February 11, 1982
Approved for introduction by the Legislative Council pursuant to
Joint Rule 26.

Referred to the Committee on Appropriations and Financial Af-
fairs. Sent up for concurrence and ordered printed.

8 EDWIN H. PERT, Clerk
Presented by Representative Tuttle of Sanford.

Cosponsors: Senator Hichens of York, Representative Mitchell of
Vassalboro and Representative Lund of Augusta.

9
10 STATE OF MAINE
11

12 IN THE YEAR OF OUR LORD
13 NINETEEN HUNDRED AND EIGHTY-TWO
14

15 AN ACT to Provide for Matching Funds
16 for Gypsy Moth Control.
17

18 Be it enacted by the People of the State of Maine as follows:

19 12 MRSA, c. 803, sub-c.III-A is enacted to read:

20 SUBCHAPTER III-A

21 FOREST INSECT AND DISEASE SUPPRESSION PROGRAM

22 §8311. Short title

23 This subchapter may be cited as the "Maine Forest
24 Insect and Disease Suppression Program Act."

25 §8312. Legislative policy

26 The Legislature declares that it is the policy of the
27 State to undertake a forest insect and disease suppression

1 program to minimize the short-term and long-term impacts of
2 forest insect infestations and disease upon the state's for-
3 ests in accordance with the following policy objectives:

4 1. Supply of wood. The protection of an adequate
5 present and future supply of wood to support the long-term
6 economic needs of the State and of its forest products
7 industries;

8 2. Development of program. The development and util-
9 ization in both the public and private sectors of forest
10 protection and management programs which are cost effective,
11 biologically sound and responsive to the environmental and
12 health concerns of the public;

13 3. Reduction in use of insecticides. The reduction in
14 reliance upon the use of chemical insecticides in forest
15 insect suppression programs;

16 4. Private efforts; pest management. The encourage-
17 ment of private efforts to undertake a variety of integrated
18 pest management and disease prevention techniques which
19 result in a long-term reduction in the susceptibility of the
20 state's forests to forest insect infestation, disease and
21 loss;

22 5. Regulatory review. The provision for adequate
23 regulatory review of insecticide spray projects by an inde-
24 pendent state agency; and

25 6. Education and technical programs. The provision of
26 educational, management and utilization assistance programs
27 for municipalities and property owners designed to minimize
28 impacts of forest insect infestation, disease and loss.

29 §8313. Definitions

30 As used in this subchapter, unless the context indi-
31 cates otherwise, the following terms have the following
32 meanings.

33 1. Commissioner. "Commissioner" means the Commis-
34 sioner of Conservation.

35 2. Director. "Director" means the Director of the
36 Bureau of Forestry.

37 3. Forest insects and diseases. "Forest insects and
38 diseases" means those forest insects and diseases declared
39 to be public nuisances under section 8303.

1 4. Person. "Person" means any individual, partner-
2 ship, joint venture, corporation or other legal entity or
3 any group of persons which acts as a tenancy in common or
4 joint tenancy for ownership purposes and includes any gov-
5 ernment or any agency, bureau or commission thereof.

6 5. Rebate. "Rebate" means a payment by the State back
7 to a municipality or landowner participating in a suppres-
8 sion program under this subchapter.

9 6. Rule "Rule" means a duly-adopted regulation of
10 general applicability promulgated by the Bureau of Forestry.
11 These rules shall have the force and effect of law.

12 7. Suppression program. "Suppression program" means
13 all activities undertaken by the Bureau of Forestry in con-
14 nection with the short-term and long-term suppression, con-
15 trol and prevention of forest insect infestations and dis-
16 eases, including, without limitation, any activities under-
17 taken in connection with spray projects, forest insect and
18 disease survey and detection activities, silvicultural,
19 marketing and integrated pest management programs, research
20 and related activities.

21 §8314. Program planning

22 1. General authority. In accordance with the provi-
23 sions of this subchapter, the Bureau of Forestry, acting
24 under the supervision of the director, may plan for and
25 undertake activities related to suppression programs on
26 behalf of the State.

27 2. Application for forest insect and disease suppres-
28 sion assistance. Municipalities may apply to the director
29 prior to December 1st of any year to be eligible to partici-
30 pate in the suppression programs for the following 5 years.
31 The application shall show:

32 A. The name of the municipality and the name and ad-
33 dress of the person applying on behalf of the municipi-
34 pality;

35 B. The number and location on maps prescribed by the
36 director of the acres of land for which application is
37 being made;

38 C. The location on maps, prescribed by the director,
39 of the tree types, tree ages and proportions of each
40 tree type within the land for which application is
41 being made;

1 D. The location on maps of private and public road ac-
2 cess to, and all residences within, that land;

3 E. A 5-year plan for that land showing plans for
4 timber cutting, road construction and other planned
5 land utilizations to the extent that information is
6 available;

7 F. The location of any lands within the municipality
8 that are to be excluded from the suppression program;
9 and

10 G. Any other information pertinent to the description,
11 utilization and management of that land as the director
12 may require for purposes of suppression program plan-
13 ning.

14 The date for submission of the information required
15 under paragraph C may be extended by the director upon
16 a showing that such information is not then available.

17 Cutting plans accompanying the application may be util-
18 ized by the Bureau of Forestry for planning purposes,
19 and may be shared with other government agencies, but
20 shall not constitute records available for public
21 inspection or disclosure pursuant to Title 1, section
22 408.

23 3. Effect of application. The director shall accept,
24 not later than December 1st of each year, any application
25 which to his satisfaction meets the requirements of this
26 section and any additional criteria which the director may
27 impose by regulation in furtherance of the legislative poli-
28 cies of this subchapter. Upon the director's acceptance of
29 an application, the municipality involved shall, for a
30 period of 5 years, be and remain eligible for inclusion
31 within the suppression program. The areas treated under the
32 suppression program shall be determined on an annual basis,
33 pursuant to subsection 4. Any municipality accepted for
34 inclusion in a suppression program that has added land to,
35 or withdrawn land from, the land area identified in its most
36 recent application to the director pursuant to subsection 2
37 shall notify the director of those changes prior to December
38 1st of the year preceding the year in which the suppression
39 program is to occur. At the expiration of the 5-year
40 period, application must be renewed by the municipality and
41 accepted by the director in accordance with this section in
42 order to enable continued eligibility for participation in
43 subsequent suppression programs.

1 4. Suppression program designation. Suppression pro-
2 grams shall be designated in the following manner.

3 A. The director, acting in accordance with this sub-
4 chapter, shall determine, and from time to time modify,
5 the location, type and manner of any suppression pro-
6 gram within each municipality participating in the pro-
7 gram, subject to such regulatory review and approval by
8 other state and federal agencies as is provided by law.
9 The director shall make these determinations based upon
10 evidence of the extent of forest insect and disease
11 hazard to lands within the suppression program area,
12 forest stand composition, wood supply needs, buffer
13 policies, opportunities for silvicultural and other
14 management alternatives, the cost effectiveness and
15 biological soundness of spray treatment for particular
16 lands, the recommendations of the municipalities and
17 the public, environmental and public health concerns
18 and such other factors as the director deems to be in
19 furtherance of the legislative policies of this sub-
20 chapter.

21 B. The director shall, not later than December 15th,
22 make a preliminary determination of the lands within
23 the suppression program area to which he tentatively
24 deems it necessary and appropriate to apply chemical or
25 biological spray treatment. Within 15 days following
26 such preliminary determination, the director shall fur-
27 nish and make available to the municipalities and to
28 the public maps showing the lands preliminarily so des-
29 ignated. Notice of the preliminary designation shall
30 be published in the state paper and such other news-
31 papers as the director deems appropriate. The notice
32 shall indicate where spray area maps will be available
33 for inspection and where further information may be
34 obtained, and shall provide information concerning
35 withdrawal procedures.

36 §8315. Educational and technical assistance program

37 The Bureau of Forestry shall undertake the following
38 activities to assist municipalities and other persons,
39 within the limits of available funds and personnel, to
40 effectuate the purposes of this subchapter:

41 1. Education material. Develop or acquire clear and
42 understandable printed and audio-visual educational
43 material, current and relevant to the forest insect and
44 disease problems facing Maine forests, for distribution

1 to citizens in areas adversely affected or likely to be
2 adversely affected by forest insects and disease;

3 2. Prepare maps. Prepare yearly maps and other simi-
4 lar material illustrating the current extent and sever-
5 ity of forest insects and diseases affecting this State
6 and identifying those areas or municipalities in immi-
7 nent danger of being adversely affected by the spread
8 of those insects or diseases;

9 3. Hold workshops. Hold educational workshops, in
10 those municipalities requesting them, to educate citi-
11 zens of the dangers of forest insects and diseases and
12 actions that can be taken to mitigate the problems; and

13 4. Technical assistance. Provide such other technical
14 and management assistance, related to the eradication
15 and prevention of forest insects and diseases, as
16 municipalities and other persons may request.

17 §8316. Environmental health monitoring

18 The Bureau of Forestry shall cause to be conducted by
19 an agency other than the Department of Conservation an envi-
20 ronmental health monitoring program each year in which a
21 spray project is conducted. The bureau shall prepare and
22 submit an annual report to the Legislature dealing with all
23 aspects of the environmental health monitoring conducted
24 during the previous calendar year.

25 §8317. Regulatory jurisdiction

26 1. General rule. The Bureau of Forestry, in under-
27 taking any spray project, shall apply for and obtain any
28 permits and approvals of the Board of Pesticides Control and
29 the Department of Agriculture, Food and Rural Resources as
30 required by the laws administered by those agencies. Except
31 as provided in this section, spray projects may be conducted
32 without adherence to the laws administered by other state
33 agencies or by any municipal, county or other local govern-
34 ment body.

35 2. Municipal action. Any municipality may prohibit
36 the execution of spray projects within specified areas
37 within its borders. Any such prohibition, or the repeal
38 thereof, may be enacted in accordance with the procedures
39 for enactment of municipal ordinances; provided that any
40 such prohibition shall be enacted before February 1st of any
41 calendar year in which it shall apply and that the munic-

1 pality shall send a certified copy of its enactment to the
2 director within 10 days following the adoption of the pro-
3 hibition. Lands that have been removed from the suppression
4 program pursuant to this subsection shall thereupon be
5 removed by the director from the suppression program area.

6 §8318. Funding

7 1. Generally. The annual cost of any suppression pro-
8 gram shall be borne by the Bureau of Forestry and those
9 municipalities accepted into the program according to the
10 formulas provided in this section. The bureau may apply for
11 and accept funds from the United States Department of Agri-
12 culture Forest Service and any other sources to help defray
13 the cost of any suppression program.

14 The director shall, at the same time he makes a pre-
15 liminary determination of the lands to be included within a
16 suppression program pursuant to section 8314, subsection 4,
17 paragraph B, make a preliminary determination of the cost of
18 the program to each participating municipality.

19 2. Distribution of costs. Except as provided in sub-
20 section 4, the costs for any suppression program shall be
21 apportioned as follows.

22 A. Municipalities shall pay to the bureau no more than
23 50% of the cost of the suppression program on any lands
24 included in the suppression program within its borders.

25 B. The bureau shall match the funds paid by any munic-
26 ipalities, pursuant to paragraph A, and shall pay 100%
27 of the cost of the suppression program on any state-
28 owned lands or lands within the unorganized territories
29 included in the suppression program area.

30 3. Recommendation of the director. On or before Janu-
31 ary 15th of each year, the director shall report in writing
32 to the Bureau of the Budget and to the Legislature his esti-
33 mate of the total costs to the Bureau of Forestry of imple-
34 mentation of any suppression program proposed for that cal-
35 endar year. The report shall specify the number of munic-
36 ipalities participating in the suppression program, the
37 amount of contribution expected from each, and the total of
38 all funds to be collected from all participating municipali-
39 ties.

40 4. Authorization by Legislature. Following the recom-
41 mendation made in accordance with subsection 3, the Legis-

1 lature shall determine, not later than February 15th, the
2 amount, if any, authorized for expenditure for any suppres-
3 sion program in that calendar year by the bureau. If the
4 amount authorized by the Legislature is less than the share
5 required to be paid by the bureau pursuant to subsection 2,
6 paragraph B, the director shall contact each municipality to
7 determine if:

8 A. It wants to pursue the suppression program within
9 its borders at the original municipal funding level; or

10 B. It wants to reduce the level of municipal spending
11 so that it spends no more than the level specified in
12 subsection 2, paragraph A.

13 5. Suppression program special accounts. Special ac-
14 counts shall be established in the following manner.

15 A. The Treasurer of State shall establish 2 dedicated
16 revenue accounts for the bureau as follows.

17 (1) Into one account shall be deposited any reve-
18 nuces received by the State from the Federal Gov-
19 ernment or other source for any suppression pro-
20 gram.

21 (2) Into the other account shall be deposited
22 revenues received by the State from the municipal-
23 ities accepted into the program pursuant to this
24 subchapter.

25 B. The moneys credited to such accounts, combined with
26 amounts authorized by the Legislature, shall be used by
27 the Bureau of Forestry to pay any expenses, debts, ac-
28 counts and lawful demands incurred in connection with
29 spray projects authorized under this subchapter, and
30 the director shall authorize the State Controller to
31 draw his warrant therefor at any time. Any remaining
32 balance in these accounts shall continue from year to
33 year as a fund available for the purposes set out in
34 this subchapter and for no other purpose.

35 6. Borrowing from General Fund. To accomplish the
36 purpose of this subchapter, the director, subject to the
37 approval of the Governor, may borrow moneys from the General
38 Fund for up to 120 days, at no interest, in order to enable
39 the bureau to pay expenses, debts, accounts and lawful
40 demands for any suppression program authorized under subsec-
41 tion 4; provided that the aggregate amount of such borrowing

1 may at no time exceed the combined amount of authorized
2 state and municipal contributions for that suppression pro-
3 gram.

4 7. Due date for municipal contributions. Municipalities
5 shall pay to the State the amount of funds declared to be
6 owing pursuant to subsections 2 and 4 no later than April
7 30th of the year in which the suppression program is to
8 occur.

9 8. Municipal funds' collection. Municipalities shall
10 adopt appropriate procedures, in accordance with the proce-
11 dures for enactment of municipal ordinances, for the collec-
12 tion of any additional assessments deemed necessary to meet
13 the municipalitys' financial shares for participating in a
14 suppression program.

15 9. Interest. Any municipality that fails to pay its
16 share of the cost of the suppression program, within the
17 time period specified in subsection 6, shall be assessed
18 interest at the rate of 1.5% for each month, or fraction
19 thereof, on any unpaid portion.

20 10. Rebates. Any funds received, for the purposes
21 specified in subsection 1, by the bureau from sources other
22 than the State and the municipalities participating in the
23 program shall be applied to the costs of the program in the
24 following order of priority:

25 A. In accordance with the express terms controlling
26 the use of those funds;

27 B. To reduce the level of payment to 50% of any munic-
28 ipality that chose to spend more than its 50% share due
29 to a reduction in state funding; and

30 C. To reimburse the General Fund.

31 §8319. Duties and authority of the Director of the Bureau
32 of Forestry

33 1. General. The director shall supervise and coordi-
34 nate the activities of bureau personnel in connection with
35 all suppression programs.

36 2. Rules. From time to time, the director may adopt
37 and amend rules for the implementation of this subchapter.
38 The rules shall be adopted in accordance with the Maine
39 Administrative Procedure Act, Title 5, chapter 375.

1 3. Applications. The director shall consider applica-
2 tions and requests made pursuant to section 8314, and shall
3 grant conditionally or deny any such applications or
4 requests.

5 4. Entry and inspection of lands. The director or his
6 representatives may enter, upon reasonable advance notice to
7 the landowner, at any reasonable time and in a reasonable
8 manner, any tract of land in a municipality for which appli-
9 cation pursuant to section 8314, subsection 2, has been made
10 in order to inspect the land free of any charge or cost
11 imposed by the owner or his agents.

12 5. Contractual authority. The director, with the
13 approval of the commissioner, may enter into contracts for
14 the acquisition of insecticides, aircraft, personnel and
15 other goods and services necessary or appropriate for man-
16 agement programs and for other purposes related to this sub-
17 chapter.

18 6. Reimbursement to state agencies. Out of funds
19 available for any suppression program, the director, subject
20 to the approval of the Governor, may reimburse other state
21 agencies for costs incurred by them in connection with a
22 suppression program. Those costs may include, but are not
23 be limited to, costs incurred for environmental and health
24 monitoring and regulation. Any department or agency of
25 State Government may accept funds which may be available for
26 carrying out the purposes of this subchapter.

27 §8320. Research

28 1. Authority. The Bureau of Forestry, acting through
29 its director, with the approval of the commissioner, may
30 make grants of funds and enter into contracts for purposes
31 of research related to forest management strategies,
32 insecticide and spray application technologies, integrated
33 pest management techniques, forest product marketing and
34 utilization and other issues pertinent to the purposes of
35 this subchapter. This research may be funded with any funds
36 available, provided that the cost of environmental and
37 health monitoring of spray projects shall be part of annual
38 spray project costs and not paid out of General Fund moneys.

39 2. Research on public lands. The commissioner, direc-
40 tor or other chief executive officer of any state agency
41 having jurisdiction over any public land may make that land
42 available, on such terms and conditions as he deems reason-
43 able, to any public or private nonprofit entity engaged in

1 forest insect and disease control research and related
2 silvicultural control research. The Forest Insect Manager
3 shall likewise encourage private landowners within the State
4 to make their lands available for the same purposes.

5

STATEMENT OF FACT

6 The purpose of this bill is twofold. First, this bill
7 seeks to establish a comprehensive approach for dealing with
8 forest insect infestations and diseases that are severe
9 enough to be declared public nuisances under Title 12,
10 section 8303. The approach taken is a cooperative one
11 between municipal officials and the Director of the Bureau
12 of Forestry, with the bureau's responsibilities including an
13 aggressive educational and assistance program to municipali-
14 ties and landowners.

15 Second, this bill establishes a 50% state subsidy to
16 municipalities accepted into a forest insect or disease sup-
17 pression program. The subsidy would apply to all lands in
18 the municipality included in the suppression program. If
19 municipalities spent more than their 50% share because of
20 reduced legislative funding, they will be compensated by the
21 State from any moneys obtained by the State from federal or
22 other sources. Any funds remaining after those expenditures
23 will go to the General Fund to reimburse the State for its
24 expenditures in the program.