

# MAINE STATE LEGISLATURE

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(EMERGENCY)  
(New Title)  
New Draft of H. P. 1875, L. D. 2050  
FIRST SPECIAL SESSION

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ONE HUNDRED AND SEVENTH LEGISLATURE

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Legislative Document

No. 2348

H. P. 2310

House of Representatives, April 9, 1976

Reported by Mr. Smith from Committee on Appropriations and Financial  
Affairs and printed under Joint Rules No. 18.

EDWIN H. PERT, Clerk

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-SIX

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AN ACT Relating to the Suppression of the Spruce Budworm Epidemic.

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**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after enactment unless enacted as emergencies; and

Whereas, a severe outbreak of spruce budworm exists in the forests of Maine, threatening the destruction of one of Maine's outstanding natural and economic resources, its spruce-fir forest; and

Whereas, entomological data collected in Maine, Quebec and New Brunswick demonstrate that the spruce and fir acreage infested by budworm to a severe degree has expanded substantially in each of the last 5 years and is likely to continue to expand in each of the next 5 years, infesting more valuable land not presently infested; and

Whereas, presently more than 4,000,000 acres of spruce and fir are infested by spruce budworm in epidemic amounts, and scientists and foresters estimate that, without treatment, as much as 90% of the fir and 40% of the spruce within the infested area will die as a result of the infestation, and no less than 18,000 Maine workers depend directly on the spruce and fir products industry for employment and the State of Maine depends on the spruce and fir products industry and employment for no less than 16% of its total tax revenue; and the commercial forest lands of this State, as defined by the Tree Growth Tax Law, and the operations thereupon, provide the vast preponderance of the employment, product value and tax revenue attributable to the forests of Maine; and

Whereas, in order to protect and preserve the spruce-fir forest resources of the State of Maine from the ravages of the spruce budworm infestation, and thereby enhance the growth and maintenance of forests, promote the stability of forest-using industries and the employment and tax revenues associated therewith, reduce the substantial fire hazard created by dying and dead trees injured or killed by the budworm, conserve forest cover on watersheds and protect recreational, wildlife and other values of forests, it shall be the policy of the State of Maine to prevent, control and suppress epidemics of spruce budworm; and

Whereas, any aerial application of insecticides must take place in late May and early June in 1976 in order to be effective; and

Whereas, the following legislation is designed to achieve a long term program for controlling timber losses from infestation, salvaging infested timber and employing silvicultural measures to minimize as far as practicable the effects of future infestations; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1.** 12 MRSA § 520-B, last sentence, as enacted by PL 1971, c. 616, § 1, is amended to read:

Information contained in ~~said~~ such reports shall not be made public but shall be available for the use of the State Tax Assessor pursuant to Title 36, chapter 105, subchapter II-A and Title 12, chapter 213, subchapter II-A.

**Sec. 2.** 12 MRSA § 525 is enacted to read:

**§ 525. Inspection**

Any forester, deputy warden or forest ranger under the direction of the director may make such inspections and investigations in connection with applications or orders made pursuant to chapter 213, subchapter II-A, as the director may authorize.

**Sec. 3.** 12 MRSA c. 213, sub-c. II-A is enacted to read:

**SUBCHAPTER II-A**

**SPRUCE BUDWORM SUPPRESSION ACT**

**§ 1010. Short title**

This subchapter shall be known and may be cited as the "Maine Spruce Budworm Suppression Act."

**§ 1011. Legislative policy**

The Legislature declares that it shall be the policy of the State of Maine to undertake reasonable measures to control and suppress infestations of spruce

budworm insects in the spruce and fir forests of the State during the years 1976 - 1981, including such measures as the minimization and equitable distribution of the burden of losses attributable to budworm infestation, the maintenance of wood resources sufficient to permit the forest products industries of the State to operate as near to full production capacity as would be possible but for the existence of the budworm infestation, accomplishment of the maximum sustained yield harvest possible within a Maine forest comprised of the most valuable timber possible, the utilization of the most cost-effective methods of budworm protection and control, and the financing of the State share of suppression and control measures by the General Fund of the State to an extent commensurate with the public benefit accruing from a suppression and control program and by excise taxes on the privilege of owning and operating such forest land for the services of protection rendered to such forest lands to an extent commensurate with the benefits accruing to the owners of such lands from such a program.

#### § 1012. Definitions

For the purposes of this subchapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. Contiguous. "Contiguous" means in actual contact. Contiguous parcels of land are those which share a common boundary, whether acquired by one or more deeds. Roads, streams and natural features shall not be deemed to interrupt a boundary which would otherwise be common.

2. Forest land. "Forest land" means land in contiguous parcels which are subject to mandatory taxation pursuant to Title 36, chapter 105, subchapter II-A.

3. Hardwood. "Hardwood" means forest land on which maple, beach, birch, oak, elm, basswood, poplar and ash, singly or in combination, comprise 75% or more of the stocking.

4. Mixed wood. "Mixed wood" means forest land on which neither hardwood nor softwood comprise 75% of the stand, but are a combination of both.

5. New market. "New market" means a wood-processing plant which did not utilize budworm infested or damaged wood on or before January 1, 1976 or the physical expansion of an existing wood processing plant, which expansion did not utilize budworm infested or damaged wood on or before January 1, 1976. The volume of spruce and fir used by an expanded wood processing plant in any one year, shall have subtracted from such volume the average annual volume of spruce and fir utilized by that plant during the calendar years 1973 - 1975, to determine the volume which represents a new market.

6. Nonfederal share per acre. "Nonfederal share per acre" means the total amount of money raised from General Fund appropriations and excise tax revenues provided for the suppression and control of spruce budworm divided by the number of acres within the designated spray area.

7. Person. "Person" means any individual, partnership, joint venture, cor-

poration or other legal entity, except any government or any agency, bureau or commission thereof.

8. Rebate. "Rebate" means a payment by the State back to a person subject to taxation pursuant to this subchapter.

9. Rule. "Rule" means a duly adopted regulation of the Director of the Bureau of Forestry of general applicability. Such rules shall have the force and effect of law.

10. Sawlog. "Sawlog" means a log suitable in size and quality for producing one or more of the following products: veneer, sawn boards and sawn timber.

11. Softwood. "Softwood" means forest land on which pine, spruce, fir, hemlock, cedar and larch, singly or in combination, comprise 75% or more of the stocking.

12. Spray project. "Spray project" means all operations connected with the application of insecticides or other materials against spruce budworm or bud moths within a single year.

13. Spruce budworm. "Spruce budworm" means the insects of the species known as *choristoneura fumiferana*, Clem., at any stage of its biological development.

14. Wood classification. "Wood classification" means the typing of forest land into the categories of hardwood, mixed wood and softwood.

#### § 1013. Spruce Fir Forest Protection District

There is established a Spruce Fir Forest Protection District consisting of each of the municipalities and townships within the State in which the softwood forest cover is to a substantial extent composed of species of spruce and fir trees and wherein such spruce and fir is now, or may reasonably be expected to become, subject to infestation and destruction by spruce budworm insects. The district shall consist of the following municipalities and townships:

**Aroostook County.** All municipalities and townships;

**Franklin County.** All municipalities and townships north of a line formed by the southern and eastern boundaries of the following municipalities and townships: Kingfield, Salem Township, Phillips and Weld;

**Hancock County.** All municipalities and townships east of a line formed by the western boundaries of the following municipalities and townships: Tremont, Mount Desert, Bar Harbor, Trenton, Lamoine, Hancock, Township 8, S.D. and Mariaville;

**Oxford County.** All municipalities and townships north of a line formed by the southern and eastern boundaries of the following municipalities and townships: Roxbury, Andover, Newry and Township A, No. 1 (Riley);

**Penobscot County.** All municipalities and townships north of a line formed by the southern and western boundaries of the following municipalities: Clifton, Bradley, Old Town, Alton and Lagrange;

**Piscataquis County.** All municipalities and townships;

**Somerset County.** All municipalities and townships north of a line formed by the southern boundaries of the following municipalities and townships: Brighton Plantation, Bingham, Concord Township and Township 2, R.1, B.K.P., W.K.R. (Lexington); and

**Washington County.** All municipalities and townships.

#### § 1014. Funding

1. **Advance budget planning.** The Director of the Bureau of Forestry shall annually, prior to January 1st of each of the years 1977-1981, certify to the Bureau of Budget his estimate of the cost, if any, of the nonfederal share for the implementation of this Act for the calendar year following that legislative session. The Bureau of the Budget shall include this recommended amount in the Part I Budget, together with an estimate of the funds to be paid to the Budworm Suppression Fund pursuant to subsection 6. The Legislature shall annually, in its Part I Budget, determine the amount, if any, which shall be expended for this program and the manner in which such amount shall be funded. Such determination shall authorize the budworm suppression program provided for by this subchapter for such calendar year and shall supersede any requirements which may exist for the approval of this program by any other state agency. In the event that the director subsequently determines that the amount necessary to conduct the activities authorized by this subchapter in any calendar year exceeds the amount appropriated in the Part I Budget, he shall inform the Bureau of the Budget and it shall certify the additional amount necessary. Any such additional amount shall become a part of the Part II Budget, subject to increase, reduction or approval by the Legislature.

2. **General Fund.** On or before January 1, 1977, and on January 1st for the 4 years thereafter, the Commissioner of Conservation shall report in writing to the Legislature, recommendations of the department as to the percentage of the cost of the annual program for the control and suppression of spruce budworm which the Department of Conservation recommends to be paid out of the General Fund of the State and the percentage from excise or other tax funds during 1977 and 1978 in the first instance and thereafter for the calendar year following that Legislative Session, such percentage to be based upon the benefits to the State of Maine and to private landowners, respectively. Prior to making such recommendations, the commissioner shall hold a public hearing to provide opportunity for public comment on these matters. Money appropriated from the General Fund for such purposes shall be paid into the Budworm Suppression Fund hereinafter established.

3. **Excise tax funds.** Persons owning parcels of forest land, including persons claiming timber and grass rights in public reserved lands, which are classified as forest land pursuant to Title 36, chapter 105, subchapter II-A, of

more than 500 acres within the Spruce Fir Forest Protection District, shall be subject to an excise tax on the privilege of owning and operating such parcels of forest land in 1976 and the 5 years thereafter, except as provided hereinafter or in the event the Legislature establishes an alternative method of taxation after 1976. In cases of divided ownership of such forest land, the persons owning or claiming timber rights shall be subject to such tax. The Legislature hereby finds that it would not be administratively feasible to apply this tax to smaller parcels of such forest land.

4. **Budworm Suppression Fund.** To accomplish the purposes of this subchapter, there is established a Budworm Suppression Fund. All income received by the State from the Government of the United States for spruce budworm programs shall be recorded on the books of the State in a separate account and shall be deposited with the Treasurer of State, to be credited to the Budworm Suppression Fund. All moneys credited to such fund shall be used by the Bureau of Forestry for research, control and suppression programs related to the spruce budworm in accordance with the provisions of this subchapter. So much of the money in this fund as may be necessary to pay the claims, accounts and lawful demands arising under this subchapter may be used to pay the same, and the Director of the Bureau of Forestry shall authorize the State Controller to draw his warrant therefor at any time. Any balance remaining shall continue from year to year as a fund available for the purposes set out in this subchapter and for no other purpose.

5. **Disposition of funds.** On December 31, 1981, or upon declaration of termination of the infestation as hereinafter provided, whichever occurs earlier, the Treasurer of State shall distribute any surplus remaining in the fund on the following basis and in the following order of priorities:

A. Payment of all debts and accounts outstanding;

B. Payment to the Government of the United States of all sums deposited in the fund and due thereto;

C. Payment to the General Fund of the State of Maine of a part of the remaining surplus on the basis that the proportion contributed out of the General Fund in 1981, or in the year immediately preceding the year of termination, as declared pursuant to section 1021, subsection 5, bears to the amount contributed pursuant to subsection 2 in the same year; and

D. Payment to each person subject to taxation pursuant to subsection 3 of a part of the remaining surplus on the basis that the proportion he has actually paid in 1981, or in the year immediately preceding the year of termination, bears to the total amount actually paid in pursuant to subsection 3 in the same year; provided, the treasurer shall pay amounts thus due which are less than \$25 only upon the written application of such persons prior to January 1, 1982.

6. **State property tax contribution.** An amount equal to 1.5 mills multiplied by the state valuation of forest land, subject to taxation pursuant to Title 36, chapter 105, subchapter II-A, in the unorganized territory, shall be paid, on or before October 31st of the respective year, by the Treasurer of State to the Budworm Suppression Fund established by subsection 4.

## § 1015. Taxation

1. Method of calculation. The excise tax rate shall be calculated so as to provide revenues sufficient to pay the percentage of the total costs of spruce budworm suppression activities and spray projects for each year in which the Legislature has determined that a portion of the costs shall accrue from excise taxes on softwood and mixed wood within the Spruce Fir Forest Protection District. Each acre of forest land shall be subject to such tax, provided that each acre classified as mixed wood shall be taxed at half the rate for acres of softwood and that no acre classified as hardwood shall be subject to taxation under this subchapter.

2. Tax rate. The excise tax on parcels of softwood forest land shall be 56¢ per acre for the year 1976. The excise tax on parcels of mixed wood forest land shall be 28¢ per acre for the year 1976.

3. Municipal assessors certification to the State Tax Assessor. The assessors of each municipality within the Spruce Fir Forest Protection District shall, on or before the first day of September, 1976, and on the anniversary date thereof in each of the 5 years thereafter for which an excise tax is in effect, certify to the State Tax Assessor the name and address of each owner of forest land within that town, based on its April 1, 1976, status for the tax year 1976, and its April 1st status in each of the 5 years thereafter, classified as forest land pursuant to Title 36, chapter 105, subchapter II-A, section 573, subsection 3 and the hardwood, mixed wood and softwood land acreage of each such parcel.

4. Determination of tax; notice to owners. The State Tax Assessor, on or before the first day of June, 1976, and on the anniversary date thereof in each of the 5 years thereafter for which an excise tax is in effect, with respect to the unorganized territory, and the first day of November, 1976, and on the anniversary date thereof in each of the 5 years thereafter for which an excise tax is in effect, with respect to municipalities within the Spruce Fir Forest Protection District, shall determine the amount of excise tax on the owner or owners of each parcel subject to taxation, based on the wood classification of the land on April 1st, 1976, for the tax year 1976, and on April 1st in each of the 5 years thereafter for the purpose of determining the amount of such tax for such tax year, and shall give notice thereof to the owner or owners upon whom the tax is levied or to their authorized agents by a mailing to the owner at the address shown on the tax records. Notice hereunder shall be presumed complete upon mailing.

5. Due date; payment to State Tax Assessor. The tax determined pursuant to subsection 4 shall be payable on or before the 31st day of July, 1976, and on the anniversary date thereof in each of the 5 years thereafter for which an excise tax is in effect, with respect to the unorganized territory, and on the 31st day of December, 1976, and on the anniversary date thereof in each of the 5 years thereafter for which an excise tax is in effect, with respect to municipalities, to the State Tax Assessor.

6. Interest and penalty. Any such tax which is not paid when due shall accrue interest at the rate of 8% per year on the unpaid balance from time



to time until paid and the person or persons subject to such tax, if not paid within 30 days of the due date, shall be liable for a penalty of \$25 or 10% of the unpaid tax, whichever is greater, in addition to the tax and interest due thereon.

7. Lien. There shall be a tax lien on all forest land owned by the person subject to this excise tax to secure the payment of all sums due hereunder, and it shall be enforced in the manner provided by Title 36, sections 1282 and 1283.

8. Collection by Attorney General. Whenever any owner or owners of such forest land shall fail to pay any tax, interest and penalty due under this subchapter within the time provided, the Attorney General shall enforce payment by civil action against the owner or owners for the amount of such tax, the interest and penalties thereon, and costs in either the Superior or District Courts in Kennebec County or the judicial division in which such owner has a residence or established place of business.

#### § 1016. Designated spray areas

1. Designation. The State Entomologist shall, not later than April 1, 1976, and not later than October 15, 1976, and on the anniversary date thereof in each of the 4 years thereafter, designate the areas of the State upon which it is in his judgment necessary to apply chemical, biological or other material in order to suppress and control spruce budworm infestations. The designations made by the State Entomologist shall be on the basis of data compiled for the Bureau of Forestry, including but not limited to egg mass counts, evidence of defoliation, tree vigor, timber cruises, photography and similar information. The State Entomologist shall provide forest land owners in the Spruce Fir Forest Protection District with an opportunity to submit their recommendations and any information in support thereof with respect to what areas should be designated. The State Entomologist shall annually prepare maps showing the areas designated for spraying by him in the following year by the dates first stated above and shall report in writing the number of acres in each township designated for spraying.

2. Notice. Within 10 days of the preparation of the maps and reports required by subsection 1, the State Entomologist shall cause to be published in the state paper and such other newspapers as he deems appropriate, notice of the designation of the spray areas pursuant to this section. The notice shall state that the designation is complete, shall indicate locations where area maps will be available for inspection and where further information may be obtained, and shall provide information concerning withdrawal procedures pursuant to sections 1017 to 1019.

#### § 1017. Automatic withdrawals

1. Conditions. Any person owning, or claiming rights in timber on land designated for spraying pursuant to section 1016 may, by April 20, 1976, for the 1976 spray project, and within 30 days after publication of notice as provided for by section 1016, subsection 2 in each of the years thereafter, apply in writing to the State Entomologist for the withdrawal from the

designated spray area of not less than 500 acres nor more than 1,000 acres. Each owner or claimant shall be entitled to but one withdrawal pursuant to this section and all acres so withdrawn must be contiguous.

2. Consent. Applications made pursuant to subsection 1 shall be granted by the State Entomologist when he is satisfied that the information contained in the application is complete, truthful and accurate. In the event that he is not so satisfied within 30 days after submission of an application, it shall be deemed denied, and the State Entomologist shall state his reason for denial in writing to the the applicant. Upon the granting of an application, the State Entomologist shall notify the State Tax Assessor.

3. Tax exemption. Lands withdrawn pursuant to this section shall not be subject to taxation under this subchapter for the years in which such withdrawal is accepted. The State Entomologist shall certify on or before May 1, 1976, and on or before December 31, 1976, and on the anniversary date thereof in each of the years thereafter, to the State Tax Assessor the acreages and owners exempt from taxation under this section.

#### § 1018. Silvicultural treatment designation

1. Conditions. Any person owning or claiming rights in timber on land within the Spruce Fir Forest Protection District and subject to taxation hereunder may, by April 20, 1976, and not later than September 15, 1976, and on the anniversary date thereof in each of the years thereafter, apply in writing to the Director of the Bureau of Forestry for designation of contiguous parcels of land of not less than 500 acres as silvicultural treatment areas. Designation as a silvicultural treatment area shall be granted only upon the submission and approval of a plan for the area which provides for the adoption of silvicultural practices designed to minimize susceptibility and vulnerability to future spruce budworm infestations as those practices are defined by the rules.

2. Consent. Applications made pursuant to subsection 1 may be granted, or granted conditionally, by the director when he is satisfied that the information contained in the application is complete, truthful and accurate and that the plan submitted conforms with the rules relating to such designation. In the event that the director is not so satisfied within 60 days after the submission of the application, it shall be deemed denied and the director shall state his reasons for the denial in writing to the applicant.

3. Tax exemption. Lands designated by the director pursuant to this section shall be exempt from taxation under this subchapter so long as they retain such designation. For applications for designation made by April 20, 1976, if acceptance occurs after the tax imposed by this subchapter has been paid, the Treasurer of State shall rebate such tax payments out of the Budworm Suppression Fund. Such parcels shall be exempt from taxation pursuant to this subchapter so long as they retain the designation. In the event that the director finds that the owner or claimant is in noncompliance with the terms upon which the application was granted, then an amount equal to the tax, interest and penalty as provided for in section 1015, subsection 6, for each year the parcel was designated as a silvicultural treat-

ment area shall immediately become due and payable and his land shall be subject to a lien as provided for in section 1015, subsection 7.

§ 1019. New market withdrawal

1. Conditions. Any person owning or claiming rights in timber on land designated for spraying pursuant to section 1016 may by November 15, 1976, for the 1977 spray project and within 30 days after publication of the notice as provided for by section 1016, subsection 2, in each of the years thereafter, apply in writing to the Director of the Bureau of Forestry for withdrawal from the designated spray area of contiguous parcels of land of not less than 1,000 acres as a new market withdrawal. Each such application shall contain a plan for harvesting the parcel. No application shall be approved unless the harvesting plan complies with the standards for designation as a silvicultural treatment area and the volume of spruce and fir wood harvested, which is other than sawlogs, is sold directly or indirectly to a new market.

2. Consent. Applications made pursuant to subsection 1 may be granted, or granted conditionally, by the director when he is satisfied that the information contained in the application is complete, truthful and accurate and that the plan submitted conforms with the rules relating to new market withdrawals. In the event that the director is not so satisfied within 30 days after the submission of the application it shall be deemed denied and the director shall state his reasons for the denial in writing to the applicant.

3. Escrow account.

A. Account established. There is established a separate account within the Budworm Suppression Fund to be known as the New Market Escrow Account. Upon the granting of an application under this section, an amount equal to the rebate provided hereunder for completion and acceptance of the operation which is the subject of such application, shall be transferred from the Budworm Suppression Fund established by 1014, subsection 4, to the New Market Escrow Account. All tax revenues received pursuant to this subchapter attributable to parcels of land which have been designated as new market areas shall be deposited in the New Market Escrow Account. Within 6 months of completion of the harvest operation incorporated in the plan which is part of an application granted, the applicant shall notify the director in writing of its completion. As soon thereafter as may be practicable, the director or his designee shall enter and inspect the area of operations. In the event that the director finds that the area has been harvested in accordance with the terms upon which the application had been granted and the rules hereunder, then he shall authorize the Treasurer of the State to rebate to the applicant an amount equal to the nonfederal share per acre for the year in which the application was made, and an amount equal to the excise tax paid in for each subsequent year prior to completion and acceptance for each of the years thereafter up to and including the year of the acceptance by the director of the completed harvesting operations, for each acre in the parcel which was the subject of the application plus interest as earned on the amounts rebated. For the years following completion and acceptance of the operation, the parcel

shall be exempt from taxation under this subchapter. In the event that the committee finds that the area has not been harvested on or before April 1, 1981, in accordance with the application or its rules, then the parcel of land which is the subject of the application shall be deemed to have failed to comply with the rules and to be ineligible for a rebate. In the event of termination pursuant to section 1021, subsection 5, all moneys paid into this account will be rebated to each applicant in the amount which would have been paid if the operation had been completed and accepted by the director on the date of termination. On April 2, 1981, all funds remaining in the escrow account shall be merged into the Budworm Suppression Fund.

B. Federal cooperation. For any year during which the Government of the United States certifies in writing by its Chief, United States Forest Service, that it will assist in providing rebates pursuant to this section, the rebate provided for by subsection 3, paragraph A, shall have added thereto an amount equal to the per designated spray area acre contribution to the Budworm Suppression Fund made by the Government of the United States for the year in which the application was made.

§ 1020. General conditions for withdrawals

1. Forms. All applications for withdrawals and designations pursuant to sections 1017-1019 shall be made on forms prepared under the supervision of the director and shall contain the following informations:

- A. The number of acres which are the subject of the application;
- B. The timber types thereon;
- C. Their location on maps of the same size and scale as those accepted by the State Tax Assessor in the administration of the Tree Growth Tax Law;
- D. Statement of ownership rights therein;
- E. Written authorization from each owner of, or claimant to, an interest therein, other than owners of utility rights of way and mortgagees;
- F. Such other information relating to the suitability of the parcel for withdrawal or designation as the director may require, including, but not limited to the age of the stands within the acreage, the timber volumes to be removed, the budworm hazard classes of the stand therein, management plans therefor and the basis for the application for withdrawal or designation; and
- G. In the case of applications for parcels of land within townships or portions of townships which are held in common and undivided ownership, the owners of a controlling interest in the parcel shall have the power to make applications authorized under this subchapter and the decisions of the director shall be binding on all owners of interests therein.

2. Limitations. The director shall not accept nor shall he consider any application for withdrawal or designation pursuant to sections 1017-1019 for

any acre of land for which withdrawal or designation pursuant to any other of the aforementioned sections already has been granted.

3. Prohibition. No parcel of land for which withdrawal or designation has been granted pursuant to sections 1017-1019 shall be sprayed with insecticides by the Bureau of Forestry for the purpose of suppressing spruce budworm populations at any time following the grant, except following a finding by the director that the land has not been operated in accordance with an application or its rules, or as provided in subsection 4 or in section 1023, subsection 4.

4. Petition. A landowner who determines that, notwithstanding the implementation of a plan accepted by the director, there exists a need for the application of insecticides, may petition the director for inclusion in future spray projects. In the event that the director accepts the petition, the applicant shall be assessed for excise taxes due for the year in which the application for exemption was made and each year thereafter. The director shall reject any petition made for the purpose of evading penalties for which the applicant might otherwise be liable for failure to comply with a plan submitted pursuant to sections 1018 and 1019 or the rules pertaining thereto.

#### § 1021. Duties and authority of the Director of the Bureau of Forestry

1. General. He shall coordinate the activities of the State Entomologist, the Forest Insect Manager and the Entomology/Service Foresters. He shall render all assistance practicable to the foregoing persons and the Committee on Spruce Fir Silviculture.

2. Rules. From time to time he shall adopt and amend rules for the implementation of this subchapter consistent with section 1023. He shall hold public hearings, with reasonable notice to the public, upon proposed rules or amendments thereto, and shall issue orders setting out such rules. He shall give public notice by certifying a copy of such orders to the Secretary of State and in such other manner as may be reasonable.

3. Applications. He shall consider applications made pursuant to sections 1018 and 1019 and grant, conditionally, or deny such applications.

4. Reduction. In the event that the director determines that the total number of acres remaining within the spruce fir forest type after applications have been made is not sufficient to provide the amount of wood necessary to meet the reasonably foreseeable future need for spruce and fir in the State of Maine, then he may reduce the acreage included in each otherwise acceptable application made pursuant to sections 1018 and 1019 in equal portions so that the total number of acres withdrawn does not exceed the number he deems necessary to supply such wood.

5. Declaration of termination of infestation. Upon receipt of satisfactory information to the effect that the severity of the infestation of spruce budworm has declined to the extent that no spray program will be beneficial or cost effective in all of the years remaining during which this Act is in effect, he shall report the same to the Commissioner of Conservation and the Governor, and shall recommend to the Legislature that it declare a termination of infestation.

6. **Markets and utilization.** He shall have the authority to conduct and contract for research relating to the marketing and utilization of wood resources which are or may be affected by spruce budworm infestation.

7. **Entry and inspection.** The director or his duly authorized representatives may enter, upon reasonable advance notice to the land owner, at any reasonable time in a reasonable manner, any tract of land for which application pursuant to sections 1017-1019 has been made or granted in order to inspect the same free of any charge or cost imposed by the owner or his agents, to assure compliance with the rules and orders of the director.

8. **Inspection.** The director or his duly authorized representatives may likewise inspect the books and records of any applicant with respect to any information set forth in an application or verification thereof. He also may require periodic progress reports from applicants in connection with his verification procedures.

#### § 1022. Committee on Spruce Fir Silviculture

1. **Committee created.** To perform the duties specified in this subchapter, there is established a Committee on Spruce Fir Silviculture.

2. **Membership.** The committee shall consist of 5 citizens of the State of Maine, at least 3 of whom shall be foresters who are knowledgeable as to commercial forest land management. They shall be appointed for a term of 2 years each by the Commissioner of Conservation with the advice and consent of the Governor. Each member shall be entitled to his actual expenses and \$50 per diem to be drawn from the Budworm Suppression Fund. They shall be subject to removal for cause by the commissioner with the approval of the Governor.

3. **Duties.** The committee shall carry out the following duties:

A. **Chairman.** Elect one of its members to serve as chairman for the year in which the election is conducted;

B. **Rules.** Approve the rules to be issued pursuant to sections 1021 and 1023;

C. **Appeals.** Determine appeals as provided in section 1028, subsection 2; and

D. **Advise.** Provide advice and consultation to the Director of the Bureau of Forestry with respect to the subject matter of this subchapter.

#### § 1023. Rules relating to silviculture

1. **Purpose.** The director shall adopt, and may from time to time amend and repeal, subject to the approval of the Committee on Spruce Fir Silviculture, rules to carry out the purposes of this subchapter, including, but not limited to, rules relating to the qualifications of parcels of forest land for silvicultural treatment designation and new market withdrawal consistent with the provisions of sections 1018 and 1019. The purpose and scope of such rules shall be to reduce the vulnerability and susceptibility of the Maine spruce fir forest to spruce budworm depredations, to reduce the economic losses to

the State of Maine from such depredations as do occur, and to assure future supplies of spruce and fir. Such rules shall establish standards for forest management, including, but not limited to, timber stand improvement and harvesting, in accordance with sound silvicultural principles. Economic considerations as well as all other relevant considerations shall be taken into account in determining such rules. The director shall promulgate only those rules directly related to the foregoing purposes. In particular, it is not the intent of this subchapter to regulate operational techniques including, but not limited to, road layout and construction, equipment use and erosion control.

2. Silvicultural designation rules. The directors shall adopt rules relating to the eligibility of parcels of land for designation as silvicultural treatment areas to fulfill the objectives of subsection 1, including, as appropriate:

A. Standards for cutting by selection, shelterwood, clearcutting and such other methods as the director may allow, including, but not limited to, the number of cuts, diameters, and volumes under reasonable classifications of site conditions;

B. Minimum standards for seed tree retention, including the number and location per acre under reasonable classifications of cutting methods and site conditions; and

C. Silvicultural practices reasonably related to the alteration of stand composition and the thrift and vigor of the resulting stand.

3. New market withdrawal rules. The committee shall adopt rules relating to the eligibility of parcels of land for new market withdrawal, including:

A. Minimum standards for volumes per acre which shall be removed over a period not to exceed 5 years; and

B. Standards as provided for by subsection 2.

4. Spraying rules. The director may make rules requiring the mandatory inclusion of parcels within the designated spray area when in his judgment such action is necessary because of the intensity of the infestation, or because it would be excessively costly or logistically difficult to avoid applying insecticides and for like reasons.

5. Verification. The director also may make rules for verification of compliance with the rules promulgated hereunder.

#### § 1024. Forest Insect Manager

1. Position created. There is established within the Bureau of Forestry the position of Forest Insect Manager. Such position shall not be subject to the Personnel Laws and shall terminate upon the expiration date hereinafter provided for by this Act. The manager shall be appointed by the Director of the Bureau of Forestry with the approval of the Commissioner of Conservation and may be removed by the director with the approval of the commissioner. He shall be directly responsible for the development, coordination and implementation of policies and programs of the State of Maine as they relate to the control and suppression of the spruce budworm epidemic.

2. Contractual authority. He shall have the authority to enter into and administer contracts for the acquisition of chemicals, aircraft, personnel services and other goods and services necessary to carry out spruce budworm suppression operations, subject to the provisions of Title 5, chapters 145 and 155.

3. Spraying services. He shall have the authority to enter into and administer contracts to spray with insecticides or similar materials parcels of spruce-fir forest land outside the designated spray area upon application for the provision of such services by the owner of such parcel, provided that:

A. Such application is submitted by April 20, 1976 for inclusion in the 1976 spray project and within 30 days of the notice provided for by section 1016, subsection 2, for inclusion in spray projects in subsequent years;

B. He is satisfied that the area for which the application is made can benefit from such spraying and that spraying is practical;

C. Such parcel is not subject to the excise tax provided for by section 1014, subsection 3; and

D. The applicant enters into a contract with the Bureau of Forestry to pay the actual per acre cost to the bureau to spray such land, less any amount which may be provided by the Government of the United States.

Forest land under such contracts shall be included in Maine's spruce budworm suppression program.

4. Executive Director.

A. He shall serve as Executive Director of the Committee on Spruce Fir Silviculture and carry out such duties as the committee may assign to him.

B. He shall certify to the State Tax Assessor on December 31, 1976, and on the anniversary date thereof in each of the 4 years thereafter, the specific acreages, their locations, and owners exempted by the director from liability for excise taxes pursuant to sections 1017-1019.

C. He shall certify any parcels which the director has found to be in non-compliance with an accepted application or its rules and, therefore, liable to taxation and penalties, and any parcels which are liable to taxation pursuant to section 1020, subsection 4.

5. Cooperation. He shall consult with and cooperate with the United States Forest Service, the federal government of Canada, the governments of the Provinces of Quebec and New Brunswick and public and private land owners in Maine in developing joint research and operations projects to control and suppress spruce budworm infestations and on related matters.

#### § 1025. Service Foresters

1. Positions created. There are established within the Bureau of Forestry 2 positions to be known as Entomology/Service Foresters. They shall be appointed by the Director of the Bureau of Forestry subject to the Personnel Law.

2. Duties. Entomology/Service Foresters shall serve under the direction of the director. Their primary duty shall be to render advice and assistance



to the land owners within the spruce fir forest area of the State with respect to forest management, including salvage, silviculture, utilization, marketing and related matters as they pertain to the spruce budworm infestation. They shall also conduct such inspections and make such reports to the Forest Insect Manager as the director may authorize and carry out other duties assigned to Service Foresters.

§ 1026. Other state and municipal agencies

1. Withdrawal. The chief executive officer of any state agency, authority, commission or that of any county or municipality, may withdraw any land within the ownership or control of such agency from the designated spray area upon application to the director in the form provided for by section 1020, subsection 1, on or before April 1, 1976, and within 30 days after notice pursuant to section 1016, subsection 2 thereafter.

2. Research on public lands. The commissioner or director of any agency of the State of Maine with jurisdiction over public land may make the land available on such terms and conditions as he deems reasonable to any public or private nonprofit entity engaged in spruce budworm control research and related silvicultural research. The Forest Insect Manager shall likewise encourage private land owners within the State to make their lands available for the same purposes.

§ 1027. Research

The Department of Conservation may make grants of up to \$100,000 a year, in the aggregate, upon such terms and conditions as the commissioner deems reasonable out of funds available pursuant to section 1014, subsection 4, for the following purposes:

1. Forest management. The development of forest management strategies, consistent with sustained yield, which limit opportunities for increases in spruce budworm populations;

2. Insecticides. The development of new and safer biological and chemical control methods which reduce or eliminate budworm populations as well as tree mortality;

3. Combinations. The combination of the purposes provided for by subsections 1 and 2 into an effective long term spruce and fir regional forest and insect management system to realize the forest potential, including timber, water, wildlife and recreation of the region at a minimum cost; and

4. Marketing and utilization. The development of uses and markets for spruce and fir timber.

§ 1028. Appeals

1. Abatement. Any owner or claimant aggrieved by the action of the State Tax Assessor in determining the tax on owners of such forest lands, through error or mistake in calculating the same, may apply for abatement of any such excessive tax within 60 days of the notice of such tax, and if upon reexamination, the tax appears to be excessive through such error or mistake, the State Tax Assessor may thereupon abate such excess.

2. **Appeal.** Any person aggrieved by any final action of the director or the State Entomologist under this subchapter may take an appeal therefrom within 30 days of the date of such action to the Committee on Spruce Fir Silviculture and the committee may amend or reaffirm such action in accordance with this subchapter and may order such remedial action as is appropriate, including a refund in whole or in part of any taxes, interests or penalties which have been erroneously or unjustly paid. If the committee fails to give written notice of its decision within 90 days of the filing of such appeal, the appeal shall be deemed to have been denied, and the appellant may appeal as provided unless the appellant shall in writing have consented to further delay. The appeal to the committee shall be filed with the Director of the Bureau of Forestry. The committee may adopt reasonable rules relating to the conduct of proceedings under this subsection.

3. **Appeal to Superior Court.** Any party may appeal from the decision of the Committee on Spruce Fir Silviculture to the Superior Court in accordance with the Maine Rules of Civil Procedure, Rule 80B.

**Sec. 4. Appropriation.** There is hereby appropriated from the General Fund the sum of \$3,559,000 to be credited to the Budworm Suppression Fund and to be expended by the Bureau of Forestry for spruce budworm suppression and control. Any unexpended balance of this appropriation and funds previously appropriated by private and special law 1973, chapter 194 or public law 1975, chapter 162 shall not lapse, but shall remain a continuing carrying account for these purposes. The breakdown shall be as follows:

FORESTRY, BUREAU OF

	1975-76	1976-77
Personal Services	\$ 15,000	\$ —
All Other	2,803,400	690,600
Capital Expenditures	50,000	—
	\$2,868,400	\$690,600

**Sec. 5. Appropriation.** There is appropriated from the General Fund to the Bureau of Forestry the sum of \$138,000 to be credited to the Budworm Suppression Fund to be expended by the Bureau of Forestry to provide for a Forest Insect Manager, the expenses and allowances of the Committee on Spruce Fir Silviculture and research grants pursuant to section 1026. The breakdown shall be as follows:

FORESTRY, BUREAU OF

	1975-76	1976-77
Personal Services	\$ 4,000	\$28,000
All Other	101,000	5,000
Capital Expenditures	—	—
	\$105,000	\$33,000

**Sec. 6. Appropriation.** There is appropriated from the General Fund to the Bureau of Taxation the sum of \$18,400 to administer the excise tax. The breakdown shall be as follows:

## TAXATION, BUREAU OF

	1975-76	1976-77
Personal Services	(1) \$ 2,400	(1) \$10,500
All Other	2,500	3,000
	<hr/>	<hr/>
	\$ 4,900	\$13,500

**Sec. 7. Exclusive authorization.** It is the intent of this emergency legislation authorization that the budworm suppression program proceed as promptly as possible and that any requirements which may exist for the approval of this program by any other State agency are hereby superseded, except for the requirements imposed by Title 22, section 1454, which are not superseded.

**Sec. 8. Transitional provisions.** This Act shall take effect in accordance with its emergency clause, except that section 1019 shall take effect on July 1, 1976 and section 1014, subsection 6, shall take effect on August 1, 1977. Parcels of land for which applications are made pursuant to section 1018 prior to April 20, 1976, will be neither approved nor denied by the director until October, 1976. However, no area for which application has been made pursuant to section 1018 prior to April 20, 1976 shall be sprayed with insecticides by the Bureau of Forestry in 1976. The Commissioner of Conservation shall nominate 5 citizens for membership on the Committee on Spruce Fir Silviculture no later than April 20, 1976, and the Director of the Bureau of Forestry shall have adopted and the committee shall have approved an initial set of rules relating to the subject matter of section 1023 no later than August 1, 1976.

**Emergency clause.** In view of the emergency cited in the preamble, this Act shall take effect when approved. It shall expire on December 21, 1981.

## FISCAL NOTE

The appropriation totalling \$3,715,400 set forth in sections 6, 7 and 8 will be offset by \$3,715,400 in proceeds from the excise tax established by Title 12, section 1014, subsection 3. Therefore, there will be no effect on the General Fund in 1976-77.

## STATEMENT OF FACT

This Bill has 3 purposes: To finance the budworm suppression program in a manner that equitably reflects the relative benefits to the various classes of users of spruce and fir forests, to assure the consistent and efficient administration of spruce budworm suppression operations, and to encourage the implementation of methods of suppression other than aerial spraying with insecticides.

Section 1010, 1011 and 1012 set state policy and provide definitions for operative terms.

Section 1013 establishes a district within which the tax will be levied. This district comprises the area of the State in which commercially grown spruce and fir are already affected by, or likely to become affected by, spruce budworm deprecations.

Section 1014, subsection 1 provides for advance budget planning so that the Legislature can plan and fund this program one year in advance so as to economize on the contracts for chemicals and airplanes.

Section 1014, subsection 2 authorizes the Department of Conservation to make annual recommendations to the Legislature on how the cost of the program should be shared between the General Fund and excise or other tax funds. It provides for the commissioner to hold a public hearing on this subject. While the 1976 program relies upon an excise tax, the question of what the tax program should be for future years is left open to future legislative determination.

Section 1014, subsection 3 authorizes an excise tax on the use of spruce and fir forests for commercial purposes to finance a share of the cost of their protection.

Section 1014, subsection 4 establishes a fund to handle income and expenditures arising out of budworm suppression taxes and operations.

Section 1014, subsection 5 provides a method of reimbursement of surplus funds at the end of the program.

Section 1014, subsection 6 provides that 1.5 mills multiplied by the state valuation of forest land in the unorganized territory be credited to the Budworm Suppression Fund commencing in the next biennium.

Section 1015 establishes the tax rate for 1976 and identifies the source of **the income** — the commercial spruce and fir forests subject to budworm deprecations. It also establishes the administrative machinery necessary for **collecting tax revenues**.

Section 1016 authorizes the State Entomologist to establish an official spray area based on budworm hazard.

Section 1017 allows for automatic withdrawals from the spray area by landowners for parcels of 500 to 1,000 acres. There are many reasons that spraying may be inappropriate, such as stands of nonsusceptible species, young stands, over-mature stands, etc. Rather than consume time and expense with administrative decision-making on the individual biologically insignificant **tracts**, an automatic withdrawal is provided. The 500-acre minimum allows for the fact that it becomes logistically difficult and expensive to delete parcels of less than 500 acres from the designated spray area.

Section 1018 allows a landowner to present a plan for the silvicultural treatment of spruce-fir forest land as an alternative to spraying. The long term benefits for suppressing budworm by changes in stand composition and the savings from not having to spray such areas justify tax exemptions for qualified areas.

Section 1019 authorizes withdrawal of tracts from the spray area for harvesting for use in new markets. This section is intended to encourage increased utilization of budworm damaged wood in lieu of healthy wood so as to save the cost of spraying and minimize wood losses. Tax credits are justified to make the cost of this approach to removing budworm hazards no greater than the cost of spraying in terms of tax burden.

Section 1020 provides an administrative structure for authorizing withdrawals.

Section 1021 states the duties and authority of the Director of the Bureau of Forestry with respect to this program.

Section 1022 establishes a committee of citizens to approve rules, determine appeals and consult with the Director of the Bureau of Forestry.

Section 1023 establishes the substantive rule-making power of the director.

Section 1024 establishes a single executive in Forestry to direct all facets of the budworm program except biological and academic research and to provide for management of a highly complex program and accountability in its operations.

Section 1025 provides 2 specialized service foresters to assist small landowners with budworm related problems. Both will be funded by utilizing funds currently available from unfilled positions in the Bureau of Forestry.

Section 1026 authorizes state, county and local government agencies to participate in the spray program at their option.

Section 1027 authorizes research grants to study budworm related problems, including both suppression and utilization.

Section 1028 assures any taxpayer an appeals procedure from adverse decisions.

Section 1 of the bill authorizes the Bureau of Taxation to examine stumpage reports in connection with this Act.

Section 2 of the bill authorizes the Bureau of Forestry personnel to conduct investigations and inspections in connection with this Act.

Sections 4, 5 and 6 of the bill provide appropriations for the support of the 1976 budworm suppression program.

Section 7 of the bill provides that this Act supersedes any requirements which may exist for the approval of this program by any other state agency.

Section 8 of the bill makes provisions for phasing in this Act.