

# MAINE STATE LEGISLATURE

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(After Deadline)  
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1334

S.P. 439 In Senate, April 23, 1987  
Approved for Introduction by a Majority of the Legislative  
Council pursuant to Joint Rule 27.

Reference to the Committee on Transportation suggested and  
ordered printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator DOW of Kennebec.

Cosponsored by Representative MOHOLLAND of Princeton,  
Representative MCPHERSON of Eliot.

STATE OF MAINE

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 AN ACT to Improve Fire Prevention Activity of  
2 Railroads.  
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4 Be it enacted by the People of the State of Maine as  
5 follows:

6 12 MRSA §9405, as enacted by PL 1979, c. 545, §3,  
7 is repealed and the following enacted in its place:

8 §9405. Right-of-way clearance

9 1. Right-of-way clearance plan. Every railroad  
10 company with a road passing through waste or forest  
11 land shall submit, prior to November 1st of each  
12 year, a right-of-way clearance plan to the bureau,  
13 subject to approval by the director, setting forth  
14 the company's plans for clearance of its right-of-way

1 during the following calendar year. That plan shall  
2 set forth action to be taken by the company to con-  
3 trol, reduce or eliminate the hazard of fire on its  
4 right-of-way due to railroad operations. The plan  
5 shall include the following:

6 A. A description of action to be taken;

7 B. A timetable of operations;

8 C. The location of operations, identified by  
9 mile-post number where available;

10 D. If chemicals are to be used, a complete de-  
11 scription including the identity of the manufac-  
12 turer and the method of application;

13 E. The location of areas which may remain a  
14 fire-hazardous area, such as areas where growth  
15 must be maintained for erosion control or other  
16 sufficient reasons which prevent right-of-way  
17 clearance; and

18 F. Such other information as the director, by  
19 rule requires.

20 2. Action by the director. In addition to any  
21 other action authorized by law, the director shall:

22 A. Receive and review right-of-way clearance  
23 plans as filed pursuant to this section. He may  
24 suggest, following the review, alterations or  
25 amendments to any plan prior to approval and re-  
26 quest a refileing of the plan. If the plan, or  
27 refiled plan, contains the information required  
28 by this section and the director otherwise deter-  
29 mines that execution of the plan will control,  
30 reduce or eliminate the hazard of fire on the  
31 railroad right-of-way due to railroad operations,  
32 he shall notify the company that its plan has  
33 been approved;

34 B. Inspect annually, or more frequently, as he  
35 determines, those portions of a company's right-  
36 of-way passing through waste or forest land;

37 C. Monitor plan compliance; and

1           D. Suspend the execution of any plan and order  
2           the refiling of an amended plan within 14 days of  
3           any determination by the director that conditions  
4           giving rise to a fire hazard have so changed from  
5           the date of plan approval as to require a plan  
6           amendment.

7           3. Filing fee. There shall be an annual filing  
8           fee of \$1,000 payable upon submission of the plan.  
9           Refiled or amended plans shall be exempt from any  
10           such fee.

11           4. Rules. The director shall have general su-  
12           per vision over compliance with this section. Subject  
13           to any applicable requirement of the Maine Adminis-  
14           trative Procedure Act, Title 5, chapter 375, the di-  
15           rector shall make rules, prescribe forms and make  
16           suitable orders as to procedures adopted to assure  
17           compliance with this section.

18           5. Penalties. If the director determines that  
19           there has been noncompliance with the terms of any  
20           approved right-of-way clearance plan for reasons oth-  
21           er than those beyond the control of any railroad com-  
22           pany, he shall promptly notify the railroad company  
23           and the Attorney General.

24           A. If the company fails to bring itself into  
25           compliance with the plan within 10 days from the  
26           notice, the Attorney General may apply to the Su-  
27           perior Court in Kennebec County for an affirma-  
28           tive injunction against the company requiring  
29           compliance with the plan.

30           B. A willful failure to comply with any approved  
31           plan constitutes a civil violation for which a  
32           forfeiture not to exceed \$1,000 may be adjudged.

33           C. Sections 9701 and 9706 shall not apply to  
34           this section.

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STATEMENT OF FACT

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A recent Law Court decision reiterates the fact that a railroad company must clear its right-of-way of flammable materials once during each calendar year.

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First enacted in 1891, such a requirement is not only impossible to comply with, but can foster unsafe practices. For example, a railroad could burn its right-of-way in the spring and by fall, the grass and brush will be right back and just as flammable, yet the railroad would have complied with the law. The current law disregards the fact that right-of-way fire prevention activities by railroads should be ongoing, year-round activities under the supervision of the Department of Conservation, the Bureau of Forestry.

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Railroads will continue to be liable for damage caused by fires set by their engines or employees. The purpose of this bill is to provide the basis for a thoroughly coordinated fire prevention program.

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