

# MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2121

H.P. 1557 House of Representatives, January 22, 1988  
Reported by Representative TARDY from the Committee on  
Agriculture pursuant to Resolves 1987, Chapter 50.  
Reference to the Committee on Agriculture suggested and  
printing ordered under Joint Rule 18.

EDWIN H. PERT, Clerk

STATE OF MAINE

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

AN ACT to Improve the Regulation of  
Pesticides.

1  
2  
3

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

6 Sec. 1. 7 MRSA §625 is enacted to read:

7 §625. Right-of-way spraying; no-spray agreements

1     Any public utility or the Department of  
2     Transportation which maintains a right-of-way through  
3     a municipality shall offer an optional no-spray  
4     agreement to the municipality for all or any part of  
5     that right-of-way within the municipality. As part of  
6     the no-spray agreement, the municipality shall either  
7     maintain the right-of-way to normal standards or  
8     reimburse the public utility or the Department of  
9     Transportation for any maintenance cost as a result of  
10    the agreement. If the municipality does not perform  
11    the agreed-upon maintenance, on schedule, the public  
12    utility or the Department of Transportation at its own  
13    option may spray the right-of-way or cut the brush and  
14    bill the municipality for the added cost.

15         Sec. 2. 22 MRSA §1471-B, sub-§1, as amended by  
16     PL 1985, c. 779, §60, is further amended to read:

17         1. Board established. The Board of Pesticides  
18     Control is established by Title 5, section 12004,  
19     subsection 5, within the Department of Agriculture,  
20     Food and Rural Resources. The Except as provided  
21     in this chapter, the board shall be composed of 7  
22     members, appointed by the Governor, subject to  
23     approval by the joint standing committee of the  
24     legislature having jurisdiction over the subject of  
25     agriculture and confirmation by the Legislature. To  
26     provide the knowledge and experience necessary for  
27     carrying out the duties of the board, one person shall  
28     be appointed who has practical experience and  
29     knowledge in chemical use in the field of agriculture,  
30     one who has practical experience and knowledge in  
31     chemical use in the field of forest management, a  
32     commercial applicator, a person from the medical  
33     community, a scientist from the University of Maine  
34     System specializing in agronomy or entomology having  
35     practical experience and knowledge of integrated pest  
36     management and 2 persons appointed to represent the  
37     public. The public members 2 members appointed to  
38     represent the public shall be selected to represent  
39     different economic or geographic areas of the  
40     State. The term shall be for 4 years, except that of  
41     the initial appointees, 2 shall serve 4-year terms, 2  
42     shall serve 3-year terms, 2 shall serve 2-year terms

1 and one shall serve a one-year term. Any vacancy  
2 shall be filled by an appointment for the remainder of  
3 the unexpired term.

4 Sec. 3. 22 MRSA §1471-M, sub-§2, ¶A, as amended  
5 by PL 1977, c. 694, §344, is repealed.

6 Sec. 4. 22 MRSA §1471-M, sub-§2, ¶C, as amended  
7 by PL 1981, c. 470, Pt. A, §69, is further amended to  
8 read:

9 C. On its own or in cooperation with other  
10 agencies or persons, publish such information as  
11 it deems appropriate, including information  
12 concerning injury which might result from improper  
13 application or handling of pesticides, and methods  
14 and precautions designed to prevent the injury; and

15 Sec. 5. 22 MRSA §1471-M, sub-§3, as enacted by  
16 PL 1983, c. 568, §2, is amended to read:

17 3. Chemical substance identification. To the  
18 extent permitted under federal law, the board shall  
19 have primary enforcement responsibility for inspection  
20 of any workplace subject to the provisions of Title  
21 26, chapter 22, solely because of the presence of a  
22 pesticide. The board shall have primary enforcement  
23 responsibility for training programs to be provided by  
24 employers under Title 26, chapter 22, in those  
25 instances where the employer is subject to the  
26 provisions of that law solely because of the  
27 presence or use of a pesticide.

28 The board shall provide education and training for  
29 applicators and dealers to assist them in complying  
30 with the requirements for hazard communication under  
31 federal law or chemical substance identification under  
32 state law. This program shall be coordinated with  
33 worker safety training assistance provided by the  
34 Department of Labor.

35 Sec. 6. 22 MRSA §1471-M, sub-§4 is enacted to  
36 read:

37 4. Designation of critical areas. The board may

1 designate critical areas which shall include, but not  
2 be limited to, areas where pesticide use would  
3 jeopardize endangered species or critical wildlife  
4 habitat, present an unreasonable threat to quality of  
5 the water supply, be contrary to a master plan for the  
6 area where such area is held or managed by an agency  
7 of the State or Federal Government, or would otherwise  
8 result in unreasonable adverse effects on the public  
9 health, welfare or the environment of the area. The  
10 designation of a critical area may prohibit pesticide  
11 use or may include such limitations on such use as the  
12 board deems appropriate. The proceedings to designate  
13 a critical area under this section shall conform to  
14 Title 5, chapter 375, subchapter II;

15 The board, by rule, shall establish criteria for  
16 designation of critical areas by March 1, 1989.

17 In addition to the provisions of the Maine  
18 Administrative Procedure Act, Title 5, section 8001,  
19 any municipality and, for the purpose of representing  
20 unorganized territory, any county may petition the  
21 board for establishment of a critical area within  
22 their boundaries. If the board designates a critical  
23 area, the board shall develop criteria for pesticide  
24 management for that area after receiving comments  
25 from the municipality or, for unorganized territory,  
26 the county; the volunteer medical advisory panel as  
27 established through the board; local applicators; and  
28 other interested parties and agencies.

29 Sec. 7. 22 MRSA §§1471-U and 1471-V are enacted  
30 to read:

31 §1471-U Municipal ordinances

32 1. Centralized listing. The Board of Pesticides  
33 Control shall maintain for informational purposes, for  
34 the entire State, a centralized listing of municipal  
35 ordinances that may affect pesticide storage,  
36 distribution or use.

37 2. Existing ordinances. The clerk of any  
38 municipality which, on the effective date of this  
39 section, has an ordinance in operation that could

1 affect pesticide storage, distribution or use shall  
2 file a copy of that ordinance with the board by  
3 December 31, 1988.

4 3. New ordinances. The clerk of the municipality  
5 shall provide the board with notice and a copy of any  
6 ordinance that may affect pesticide storage,  
7 distribution or use at least 7 days prior to the  
8 meeting of the legislative body or the public hearing  
9 at which adoption of the ordinance will be considered.  
10 The clerk shall notify the board within 30 days after  
11 adoption of the ordinance.

12 4. Intent. It is the intent of this section to  
13 provide information on municipal ordinances. This  
14 section is not intended to affect municipal authority  
15 to enact ordinances.

16 5. Failure to file. Any ordinance which is not  
17 filed with the board, with notice given to the board  
18 in accordance with this section, shall be considered  
19 void and of no effect after the deadline for filing  
20 and notice until the ordinance is properly noticed and  
21 filed with the board.

22 §1471-V. Local participation

23 For purposes of consideration of designation under  
24 section 1471-M of a critical area within any  
25 municipality, the municipal officers may designate a  
26 resident of that municipality as an additional member  
27 of the board, with full powers and privileges,  
28 including voting privileges. If all or part of the  
29 proposed critical area is in unorganized territory,  
30 the county commissioners may designate an additional  
31 member to the board for consideration of that portion  
32 of the proposed critical area. The additional member  
33 shall be a resident of the county from the same  
34 general area as the proposed critical area. For  
35 purposes of this section, if a proposed critical area  
36 covers more than one municipality, the board shall  
37 take separate action on the portion in each  
38 municipality.

39 Sec. 8. Pesticide storage. By July 1, 1989,

1 the Board of Pesticides Control shall adopt rules  
2 governing the storage of pesticides for longer than 60  
3 days, pursuant to the Maine Revised Statutes, Title  
4 22, section 1471-O, and Title 7, section 610,  
5 subsection 2, paragraph B. Those rules shall provide  
6 for minimum state criteria for the siting, design and  
7 operation of pesticide storage areas.

8 STATEMENT OF FACT

9 This bill is a result of a study of pesticide  
10 regulation by the Joint Standing Committee on  
11 Agriculture.

12 Section 1 requires public utilities and the  
13 Department of Transportation to offer no-spray  
14 agreements to municipalities. This is now done on a  
15 voluntary basis. The bill requires the municipality  
16 to do the maintenance or pay the added cost for any  
17 no-spray portion not required by the State.

18 Sections 2 and 7 provide for adding a local member  
19 to the Board of Pesticides Control for purposes of  
20 designation of a critical area within the municipality.

21 Sections 3, 4 and 6 revise the authority of the  
22 Board of Pesticides Control to designate critical  
23 areas to emphasize the opportunity for local input.

24 Section 5 requires the board to provide education  
25 and training for pesticide applicators and dealers in  
26 complying with the new federal requirements for hazard  
27 communications under OSHA and community right-to-know  
28 under the Environmental Protection Agency. A  
29 companion bill provides funding for this activity.

30 Section 7 requires municipalities to file existing  
31 and new ordinances that may affect pesticide storage,  
32 distribution or use with the Board of Pesticides  
33 Control. The board would maintain a central file of  
34 them. This section is not intended to increase or  
35 decrease existing municipal authority, a matter which  
36 has been the subject of several recent court cases.  
37 This section also supplies details on the local board  
38 member for designating critical areas.

39 Section 8 requires the Board of Pesticides Control  
40 to adopt rules by July 1, 1989, governing pesticide  
41 storage. The board has this authority, but has not  
42 exercised it.