

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST SPECIAL SESSION-1997

Legislative Document

No. 1790

H.P. 1263

House of Representatives, April 15, 1997

An Act to Control Brown Tail Moths.

Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative MITCHELL of Portland.
Cosponsored by Senator AMERO of Cumberland and
Representatives: ROWE of Portland, USHER of Westbrook, Senators: ABROMSON of
Cumberland, KILKELLY of Lincoln.

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

4 **Sec. 1. 22 MRSA c. 257-A** is enacted to read:

6 **CHAPTER 257-A**

8 **CONTROL OF BROWN TAIL MOTHS**

10 **§1444. Control of brown tail moths**

12 **1. Declaration of public health nuisance.** The Director of
14 the Bureau of Health may declare that an infestation of brown
16 tail moths is a public health nuisance. The declaration may be
made on the director's own initiative or on petition to the
director by municipal officers in a municipality affected by the
infestation.

18 **2. Aerial spraying.** When the infestation causing a public
20 health nuisance may be controlled by the aerial spraying of
22 pesticides, the municipal officers in the affected municipality
may conduct aerial spraying subject to rules adopted by the Board
of Pesticides Control, pursuant to Title 22, section 1471-R,
subsection 3, paragraph C, except that:

24 **A.** The municipality rather than the applicator is
26 responsible for compliance with the notification and consent
regulations;

28 **B.** Landowners who are sent written notification by mail,
30 sent to the landowner's last known address as contained in
32 the municipal assessing records and who fail to respond to
the notice within 30 days are deemed to have consented to
aerial spraying;

34 **C.** A landowner's written consent to spray remains valid
36 unless the municipal officers are notified in writing at
least 90 days before spraying is to occur that:

38 **(1)** The landowner withdraws consent; or

40 **(2)** Ownership of the property has been transferred and
42 the notice contains the name and mailing address of the
new owner; and

44 **D.** Any such notice sent or consent received in calendar
46 year 1997 prior to the effective date of this chapter
48 constitutes adequate notice or consent under the law.

50 **3. Refusal to consent; cost of extermination.** After the
declaration of the Director of the Bureau of Health, and a
written declaration by the municipal officers of their intent to

2 conduct aerial spraying, any landowner or landowners who refuse
4 to consent to aerial spraying shall remove any brown tail moth
6 infestation from their own property at their own expense in a
8 time and manner satisfactory to the local health officer
10 following receipt of written notification by mail of the
12 municipal officers' declaration. Regardless of whether the
14 nonconsenting landowners' property has an infestation of moths,
16 the nonconsenting landowner or landowners also are jointly and
18 severally liable for the additional expenses actually incurred by
20 consenting landowners or the municipality when consenting
22 landowners or the municipality use a method of removal other than
24 aerial spraying due to lack of consent. In such cases,
26 consenting landowners shall also remove any brown tail moth
infestation from their own property at their own expense in a
time and manner satisfactory to the local health officer
following written notification by mail of the municipal officers'
declaration.

18
20 All additional expenses incurred by a municipality must be repaid
22 to the municipality within 30 days after written demand mailed to
24 the nonconsenting landowners by the municipal officers. If the
26 written demand is not met, a supplemental tax may be assessed by
the municipal tax assessor against the land of the nonconsenting
landowner or landowners for the amount of those expenses pursuant
to Title 36, section 713 and the tax must be collected in the
same manner as other supplemental municipal taxes are collected.

28 All additional expenses incurred by consenting landowners may be
30 collected by the municipality from nonconsenting landowners in
32 the same manner described in this subsection, following
34 certification in writing by the consenting landowners to the
municipal officers of the additional costs and the municipal
officers shall make suitable provisions to reimburse the
consenting landowners from the amounts collected.

SUMMARY

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40 This bill allows the Director of the Bureau of Health to
42 declare infestations of the brown tail moth in populated areas a
44 public health nuisance. Following notice to the landowners and
46 their consent, municipalities may conduct aerial spraying of
48 pesticides to control the moths, as long as the municipalities
complied with the notification and consent regulations of the
Board of Pesticides Control. If a landowner refuses to consent
to aerial spraying the landowner must remove any moth infestation
on that landowner's land and pay the additional costs of removal
incurred by consenting landowners or a municipality due to the
fact that aerial spraying was not used. If the additional costs

2 are not paid following a written demand, the municipality may collect them by assessing a supplemental tax pursuant to the Maine Revised Statutes, Title 36, section 713.