

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST SPECIAL SESSION-2005

Legislative Document

No. 1560

H.P. 1098

House of Representatives, April 7, 2005

**An Act To Transfer the Pest Control Compact from the Department
of Conservation to the Department of Agriculture, Food and Rural
Resources**

Submitted by the Department of Agriculture, Food and Rural Resources pursuant to Joint Rule 204.

Reference to the Committee on Agriculture, Conservation and Forestry suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative FLOOD of Winthrop.
Cosponsored by Representatives: CARR of Lincoln, PIOTTI of Unity, SHERMAN of
Hodgdon.

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

4 **Sec. 1. 7 MRSA c. 410** is enacted to read:

6 **CHAPTER 410**

8 **PEST CONTROL COMPACT**

10 **§2311. Pest Control Compact**

12 The Pest Control Compact is enacted into law and entered
14 into with all other jurisdictions legally joining the compact in
16 the form substantially as provided in this chapter.

18 **§2312. Findings -- Article I**

20 The party states find that in the absence of the higher
22 degree of cooperation among them possible under this compact, the
24 annual loss of approximately \$137,000,000,000 from the
26 depreations of pests is virtually certain to continue, if not to
28 increase.

30 Because of varying climatic, geographic and economic
32 factors, each state may be affected differently by particular
34 species of pests, but all states share the inability to protect
36 themselves fully against those pests that present serious dangers
38 to them.

40 The migratory character of pest infestations makes it
42 necessary for states, both adjacent to and distant from one
44 another, to complement each other's activities when faced with
46 conditions of infestation and reinfestation.

48 While every state is seriously affected by a substantial
50 number of pests and every state is susceptible to infestation by
many species of pests not now causing damage to its crop and
plant life and products, the fact that relatively few species of
pests present equal danger to or are of interest to all states
makes the establishment and operation of an insurance fund from
which individual states may obtain financial support for pest
control programs of benefit to them in other states and to which
they may contribute in accordance with their relative interests
the most equitable means of financing cooperative pest
eradication and control programs.

52 **§2313. Definitions -- Article II**

54 As used in this compact, unless the context otherwise
56 indicates, the following terms have the following meanings.

2 1. Executive committee. "Executive committee" means the
committee established pursuant to section 2316, subsection 5.

4 2. Governing board. "Governing board" means the
administrators of this compact representing all of the party
6 states when the administrators are acting as a body in pursuance
of authority vested in them by this compact.

8
10 3. Insurance fund. "Insurance fund" means the Pest Control
Insurance Fund established pursuant to this compact.

12 4. Pest. "Pest" means any invertebrate animal, pathogen,
parasitic plant or similar or allied organism that can cause
14 disease or damage in any crops, trees, shrubs, grasses or other
plants of substantial value.

16
18 5. Requesting state. "Requesting state" means a state that
invokes the procedures of the compact to secure the undertaking
20 or intensification of measures to control or eradicate one or
more pests within one or more other states.

22 6. Responding state. "Responding state" means a state
requested to undertake or intensify the measures referred to in
24 subsection 5.

26 7. State. "State" means a state, territory or possession of
the United States, the District of Columbia and the Commonwealth
28 of Puerto Rico.

30 **§2314. The insurance fund -- Article III**

32 The Pest Control Insurance Fund is established for the
purpose of financing other than normal pest control operations
34 that the states may be called upon to engage in pursuant to this
compact. The insurance fund contains money appropriated to it by
36 the party states and any donations and grants accepted by it. All
appropriations, except as conditioned by the rights and
38 obligations of party states expressly set forth in this compact,
are unconditional and may not be restricted by the appropriating
40 state to use in the control of any specified pest or pests.
Donations and grants may be conditional or unconditional, except
42 that the insurance fund may not accept any donation or grant
whose terms are inconsistent with any provision of this compact.

44
46 **§2315. The insurance fund; internal operations and management**
-- Article IV

48 1. Governing board. The insurance fund is administered by a
governing board and an executive committee as provided. The
50 actions of the governing board and the executive committee

2 pursuant to this compact are deemed the actions of the insurance
3 fund.

4 2. Votes. The members of the governing board are entitled
5 to one vote each on the board. Actions of the governing board are
6 not binding unless taken at a meeting at which a majority of the
7 total number of votes of the governing board are cast in favor
8 thereof. Action of the governing board may be taken only at a
9 meeting at which a majority of the members are present.

10 3. Seal. The insurance fund has a seal that may be employed
11 as an official symbol and that may be affixed to documents and
12 otherwise used as the governing board provides.

13 4. Officers. The governing board shall elect annually, from
14 among its members, a chair, a vice-chair, a secretary and a
15 treasurer. The chair may not hold successive terms. The governing
16 board may appoint an executive director and fix the executive
17 director's duties and compensation, if any. The executive
18 director serves at the pleasure of the governing board. The
19 governing board shall make provision for the bonding of the
20 officers and employees of the insurance fund as appropriate.

21 5. Personnel. Irrespective of the civil service, personnel
22 or other merit system laws of any of the party states, the
23 executive director or, if there is no executive director, the
24 chair, in accordance with such procedures as the bylaws may
25 provide, shall appoint, remove or discharge personnel as is
26 necessary for the performance of the functions of the insurance
27 fund and shall fix the duties and compensation of such personnel.
28 The governing board, in its bylaws, shall provide for the
29 personnel policies and programs of the insurance fund.

30 6. Other personnel. The governing board may borrow, accept
31 or contract for the services of personnel from any state, the
32 United States or any other governmental agency, or from any
33 person, firm, association or corporation.

34 7. Grants and donations. The governing board may accept,
35 for any of its purposes and functions under this compact, any and
36 all donations and grants of money, equipment, supplies, materials
37 and services, conditional or otherwise, from any state, the
38 United States or any other governmental agency, or from any
39 person, firm, association or corporation, and may receive,
40 utilize and dispose of the same. Any donation, gift or grant
41 accepted by the governing board pursuant to this subsection or
42 services borrowed pursuant to subsection 6 must be reported in
43 the annual report of the insurance fund. The annual report must
44 include the nature, amount and any conditions of the donation,
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46
47
48

2 gift, grant or services borrowed and the identity of the donor or
3 lender.

4 8. Bylaws. The governing board shall adopt bylaws for the
5 conduct of the business of the insurance fund and has the power
6 to amend and rescind those bylaws. The governing board shall
7 publish its bylaws in convenient form and shall file a copy
8 thereof and a copy of any amendment thereto with the appropriate
9 agency or officer in each of the party states.

10
11 9. Report. The governing board annually shall make to the
12 governor and legislature of each party state a report covering
13 the activities of the insurance fund for the preceding year. The
14 governing board may make additional reports it considers
15 desirable.

16
17 10. Other powers. In addition to the powers and duties
18 specifically authorized and imposed, the governing board may do
19 other things necessary and incidental to the conduct of its
20 affairs pursuant to this compact.

21 §2316. Compact and insurance fund administration -- Article V

22
23 1. Administration. In each party state there is a compact
24 administrator who is selected and serves in such a manner as the
25 laws of the administrator's state provide and who shall:

26
27 A. Assist in the coordination of activities pursuant to the
28 compact in the administrator's state; and

29
30 B. Represent the administrator's state on the governing
31 board of the insurance fund.

32
33 2. United States representatives. If the laws of the United
34 States specifically so provide, or if administrative provision is
35 made therefor within the Federal Government, the United States
36 may be represented on the governing board of the insurance fund
37 by up to 3 representatives. Any such representative or
38 representatives of the United States must be appointed and shall
39 serve in a manner provided by or pursuant to federal law, but no
40 such representative has a vote on the governing board or on the
41 executive committee.

42
43 3. Meetings. The governing board shall meet at least once
44 each year for the purpose of determining policies and procedures
45 in the administration of the insurance fund and, consistent with
46 the compact, supervising and giving direction to the expenditure
47 of money from the insurance fund. Additional meetings of the
48 governing board must be held on call of the chair, the executive
49 committee or a majority of the membership of the governing board.
50

2 4. Applications. When in session, the governing board shall
4 decide upon applications for assistance from the insurance fund
6 and authorize disbursements therefrom. When the governing board
8 is not in session, the executive committee shall act as agent of
10 the governing board with full authority to act for it in deciding
12 upon such applications.

14 5. Executive committee. The executive committee is composed
16 of the chairman of the governing board and 4 additional members
18 of the governing board chosen by the governing board so that
20 there is one member representing each of 4 geographic groupings
22 of party states. The governing board shall make those geographic
24 groupings. If there is representation of the United States on the
26 governing board, one representative may meet with the executive
28 committee. The chair of the governing board is chair of the
30 executive committee. An action of the executive committee is not
32 binding unless taken at a meeting at which at least 4 members of
34 the committee are present and vote in favor thereof. Necessary
36 expenses of each of the 5 members of the executive committee
38 incurred in attending meetings of the committee, when not held at
40 the same time and place as a meeting of the governing board, are
42 charges against the insurance fund.

44 §2317. Assistance and reimbursement -- Article VI

46 1. Efforts. Each party state pledges to each other party
48 state that it will employ its best efforts to eradicate or
50 control, within the strictest practicable limits, any and all
 pests. It is recognized that performance of this responsibility
 involves:

A. Maintaining pest control and eradication activities of
 interstate significance by a party state at a level that
 would be reasonable for its own protection in the absence of
 this compact; and

B. Meeting emergency outbreaks or infestations of
 interstate significance to no less an extent than would have
 been done in the absence of this compact.

2. Requests. Whenever a party state is threatened by a pest
 not present within its borders but present within another party
 state, or whenever a party state is undertaking or engaged in
 activities for the control or eradication of a pest or pests and
 finds that such activities are or would be impracticable or
 substantially more difficult because of the failure of another
 party state to cope with infestation or threatened infestation,
 that state may request the governing board to authorize
 expenditures from the insurance fund for eradication or

2 control measures to be taken by one or more of the other party
4 states at a level sufficient to prevent or to reduce, to the
6 greatest practicable extent, infestation or reinfestation of the
8 requesting state. Upon authorization of the expenditures, the
responding state or states shall take or increase eradication or
control measures as warranted. A responding state shall use money
made available from the insurance fund expeditiously and
efficiently to assist in affording the protection requested.

10 3. Application. In order to apply for expenditures from the
12 insurance fund, a requesting state must submit the following in
writing:

14 A. A detailed statement of the circumstances that occasion
16 the request for invoking the compact;

18 B. Evidence that the pest for which eradication or control
20 assistance is requested constitutes a danger to an
22 agricultural or forest crop, product, tree, shrub, grass or
other plant having a substantial value to the requesting
state;

24 C. A statement of the extent of the present and projected
26 program of the requesting state and its subdivisions,
28 including full information as to the legal authority for the
conduct of the program or programs and the expenditures
being made or budgeted therefor, in connection with the
eradication, control or prevention of introduction of the
pest concerned;

30 D. Proof that the expenditures being made or budgeted as
32 detailed in paragraph C do not constitute a reduction of the
34 effort for the control or eradication of the pest concerned
36 or, if there is a reduction, the reasons that the level of
the program detailed in paragraph C constitutes a normal
level of pest control activity;

38 E. A declaration as to whether, to the best of the
40 requesting state's knowledge and belief, the conditions that
42 in its view occasion the invoking of the compact in the
44 particular instance can be abated by a program undertaken
with the aid of money from the insurance fund in one year or
less, or whether the request is for an installment in a
program that is likely to continue for a longer period of
time; and

46 F. Any other information as the governing board requires
48 consistent with this compact.

2 4. Notice of meeting. The governing board or executive
committee shall give due notice of any meeting at which an
4 application for assistance from the insurance fund is to be
considered. The notice must be given to the compact administrator
6 of each party state and to any other officers and agencies
designated by the laws of the party states. The requesting state
8 and any other party state are entitled to be represented and to
present evidence and arguments at the meeting.

10 5. Support. Upon the submission required by subsection 3
and any other information it has or acquires, and upon
12 determining that an expenditure of funds is within the purposes
of this compact and justified thereby, the governing board or
14 executive committee shall authorize support of the program. The
governing board or the executive committee may meet at any time
16 or place for the purpose of receiving and considering an
application. All determinations of the governing board or
18 executive committee with respect to an application, together with
the reasons therefor, must be recorded and subscribed in such a
20 manner as to show and preserve the votes of the individual
members.

22 6. Review. A requesting state that is dissatisfied with a
24 determination of the executive committee, upon notice in writing
given within 20 days of the determination with which it is
26 dissatisfied, is entitled to receive a review at the next meeting
of the governing board. Determinations of the executive committee
28 are reviewable only by the governing board at one of its regular
meetings or at a special meeting held in such a manner as the
30 governing board may authorize.

32 7. Claims. Responding states required to undertake or
increase measures pursuant to this compact may receive money from
34 the insurance fund either at the time or times when the state
incurs expenditures on account of the measures or as
36 reimbursement for expenses incurred and chargeable to the
insurance fund. The governing board shall adopt and from time to
38 time may amend or revise procedures for submission of claims and
for payment thereof.

40 8. Federal Government assistance. Before authorizing the
42 expenditure of money from the insurance fund pursuant to an
application of a requesting state, the governing board shall
44 ascertain the extent and nature of any timely assistance or
participation that may be available from the Federal Government
46 and shall request assistance and participation from the
appropriate agency or agencies of the Federal Government.

48 9. Memorandum of understanding. The governing board may
50 negotiate and execute a memorandum of understanding or other

2 appropriate instrument defining the extent and degree of
3 assistance or participation between and among the insurance fund,
4 cooperating federal agencies, states and any other entities
5 concerned.

6 **§2318. Advisory and technical committees -- Article VII**

8 The governing board may establish advisory and technical
9 committees composed of state, local and federal officials and
10 private persons to advise it with respect to any one or more of
11 its functions. Any such advisory or technical committee or any
12 member or members thereof may meet with and participate in its
13 deliberations upon request of the governing board or executive
14 committee. An advisory or technical committee may furnish
15 information and recommendations with respect to any application
16 for assistance from the insurance fund being considered by the
17 governing board or executive committee and the board or committee
18 may receive and consider the same, provided that any participant
19 in a meeting of the governing board or executive committee held
20 pursuant to section 2317, subsection 4 is entitled to know the
21 substance of any such information and recommendations, at the
22 time of the meeting if furnished before or as part of the meeting
23 or, if furnished after the meeting, no later than the time at
24 which the governing board or executive committee makes its
25 disposition of the application.

26 **§2319. Relations with nonparty jurisdictions -- Article VIII**

28 **1. Application.** A party state may make application for
29 assistance from the insurance fund with respect to a pest in a
30 nonparty state. The application must be considered and decided on
31 by the governing board or executive committee in the same manner
32 as an application with respect to a pest within a party state,
33 except as provided in this section.

36 **2. Nonparty state.** At or in connection with any meeting of
37 the governing board or executive committee held pursuant to
38 section 2317, a nonparty state is entitled to appear, participate
39 and receive information only to the extent that the governing
40 board or executive committee provides. A nonparty state is not
41 entitled to a review of any determination made by the executive
42 committee.

44 **3. Expenditures.** The governing board or executive committee
45 shall authorize expenditures from the insurance fund to be made
46 in a nonparty state only after determining that the conditions in
47 the nonparty state and the value of the expenditures to the party
48 states, as a whole, justify them. The governing board or
49 executive committee may set any conditions that it considers
50 appropriate with respect to the expenditure of money from the
insurance fund in a nonparty state and may enter into an

2 agreement or agreements with nonparty states and other
3 jurisdictions or entities as it determines necessary or
4 appropriate to protect the interests of the insurance fund with
5 respect to expenditures and activities outside of party states.

6 **§2320. Finance -- Article IX**

8 **1. Budget.** The governing board shall submit to the
9 executive head or designated officer or officers of each party
10 state a budget for the insurance fund for such a period as may be
11 required by the laws of that party state for presentation to the
12 legislature thereof.

14 **2. Recommendations.** Each budget must contain specific
15 recommendations of the amount or amounts to be appropriated by
16 each party state. The requests for appropriations must be
17 appropriated among the party states as follows: one tenth of the
18 total budget in equal shares and the remainder in proportion to
19 the value of agricultural and forest crops and products,
20 excluding animals and animal products, produced in each party
21 state. In determining the value of the crops and products, the
22 insurance fund may employ any source or sources of information
23 that in its judgment presents the most equitable and accurate
24 comparison among the party states. Each budget and request for
25 appropriations must indicate the source or sources used in
26 obtaining information concerning the value of the products.

28 **3. Accounts.** The financial assets of the insurance fund
29 must be maintained in 2 accounts to be designated as the
30 "operating account" and the "claims account." The operating
31 account consists only of those assets necessary for the
32 administration of the insurance fund during the next ensuing
33 2-year period. The claims account contains all money not included
34 in the operating account and may not exceed the amount reasonably
35 estimated to be sufficient to pay all legitimate claims on the
36 insurance fund for a period of 3 years. When the claims account
37 has reached its maximum limit or would reach its maximum limit by
38 the addition of money requested for appropriation by the party
39 states, the governing board shall reduce its budget request on a
40 pro rata basis in such a manner as to keep the claims account
41 within the maximum limit. Any money in the claims account by
42 virtue of conditional donations, grants or gifts must be included
43 in calculations made pursuant to this subsection only to the
44 extent that such money is available to meet demands arising out
45 of claims.

46 **4. Pledge of credit.** The governing board may not pledge the
47 credit of any party state. The governing board may meet any of
48 its obligations in whole or in part with money available to it
49 under section 2315, subsection 7 if the governing board takes
50 under section 2315, subsection 7 if the governing board takes

2 specific action setting aside the money prior to incurring any
3 obligation to be met in whole or in part in such a manner. Except
4 when the insurance fund makes use of money available to it under
5 section 2315, subsection 7, the governing board may not incur any
6 obligation prior to the allotment of money by the party states
7 adequate to meet the obligation.

8 5. Records. The governing board shall keep accurate
9 accounts of all receipts and disbursements. The receipts and
10 disbursements of the insurance fund are subject to audit and
11 accounting procedures established under its bylaws. All receipts
12 and disbursements of funds handled by the insurance fund must be
13 audited yearly by a certified or licensed public accountant, and
14 a report of the audit must be included in and become part of the
15 annual report of the insurance fund.

16 6. Inspection of accounts. The accounts of the insurance
17 fund must be open at any reasonable time for inspection by duly
18 authorized officers of the party states and by any persons
19 authorized by the governing board.

22 **§2321. Entry into force and withdrawal -- Article X**

24 This compact enters into force when enacted into law by 5 or
25 more states. Thereafter, this compact becomes effective, as to
26 any other state, upon that state's enactment thereof.

28 Any party state may withdraw from this compact by enacting a
29 statute repealing the same, but no withdrawal may take effect
30 until 2 years after the executive head of the withdrawing state
31 has given notice in writing of the withdrawal to the executive
32 heads of all other party states. No withdrawal affects any
33 liability already incurred by or chargeable to a party state
34 prior to the time of the withdrawal.

36 **§2322. Construction and severability -- Article XI**

38 This compact must be liberally construed so as to effectuate
39 the purposes thereof. This compact is severable and if any
40 phrase, clause, sentence or provision of this compact is declared
41 to be contrary to the constitution of any state or of the United
42 States, or the applicability thereof to any government, agency,
43 person or circumstance is held invalid, the validity of the
44 remainder of this compact and the applicability thereof to any
45 government, agency, person or circumstance may not be affected
46 thereby. If this compact is held contrary to the constitution of
47 any state participating herein, the compact remains in full force
48 and effect as to the remaining party states and in full force and
49 effect as to the state affected as to all severable matters.

50

2
3 **§2323. Cooperation**

4 Consistent with law and within available appropriations, the
5 departments, agencies and officers of this State shall cooperate
6 with the governing board of the Pest Control Insurance Fund
7 established by the Pest Control Compact.

8 **§2324. Bylaws filed**

10 Pursuant to section 2315, subsection 8, copies of bylaws and
11 amendments thereto must be filed with the Commissioner of
12 Agriculture, Food and Rural Resources.

14 **§2325. Compact administrator**

16 The compact administrator for this State is the Commissioner
17 of Agriculture, Food and Rural Resources. The duties of the
18 compact administrator are deemed a regular part of the duties of
19 this office.

20 **§2326. Request**

22 Within the meaning of section 2317, subsection 2 or section
23 2319, subsection 1, a request or application for assistance from
24 the insurance fund may be made by the Governor whenever in the
25 Governor's judgment the conditions qualifying this State for
26 assistance exist and it would be in the best interest of this
27 State to make the request.

30 **§2327. Appropriations**

32 The department, agency or officer expending or becoming
33 liable for an expenditure on behalf of a control or eradication
34 program undertaken or intensified pursuant to the compact must
35 have credited to the appropriate account in the State Treasury
36 the amount or amounts of any payments made to this State to
37 defray the cost of that program or any part thereof, or as
38 reimbursement thereof.

40 **§2328. "Executive head" defined**

42 As used in the compact, with reference to this State, the
43 term "executive head" means the Governor.

44 **Sec. 2. 12 MRSA c. 803, sub-c. 5, as amended, is repealed.**

48 **SUMMARY**

50 **This bill repeals the Pest Control Compact currently
contained in the Maine Revised Statutes, Title 12 under the laws**

2 governing the Department of Conservation, Bureau of Forestry and enacts the compact instead in Title 7 under the laws governing the Department of Agriculture, Food and Rural Resources.