

MAINE STATE LEGISLATURE

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MAINE FOREST FIRE CONTROL
STUDY COMMISSION
REPORT TO THE 111th LEGISLATURE
January 14, 1983

Staff: Julie S. Jones
Office of Legislative Assistants

Members:

Fred Holt, Chairman
Robert Cope, Vice-Chairman
Ernest Daye
Edward Gagnon
John Hede
Jane Hinson
Allen Johnson
Richard LeComte
John Martin
James McBreairty
Bonnie Post
Normand Rodrigue
Blair VanCamp



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Summary

The Maine Forest Fire Control Study Commission was created by the 110th Maine Legislature to study state forest fire control services and funding and make recommendations to the 111th Legislature. The Commission was considered necessary because of the increasing number of municipalities requesting to withdraw from the Maine Forestry District and because of questions raised regarding the constitutionality of the forestry district tax. The members of the Commission were chosen to represent various constituencies interested in forest fire control.

The Commission met monthly from May 1982 through December 1982. It heard presentations from staff, from numerous employees of the Maine Forest Service and from a representative of the United States Forest Service. Commission members contributed valuable information as did members of the general public, municipal officials and representatives of industry.

The Commission generally agreed that while there might be some areas for improvement, the forest fire control services provided by the State of Maine were appropriate, well organized and cost-effective. On the other hand, the Commission generally agreed that the current method of funding state services and state reimbursement for municipal services was confusing and inappropriate. The Maine Forestry District Tax was considered an unfair tax on landowners within the district for services which landowners outside the district receive without having to pay a special tax. In addition the tax burden falls on owners of homes and other higher valued property to a greater degree than owners of forest land.

The Commission considered many alternatives for funding forest fire control and made the following recommendations:

1. The Commission recommends that statewide forest fire protection services remain the statutory responsibility of the Maine Forest Service.
2. The Commission recommends that the Maine Forestry District, as now constituted, be abolished.
3. The Commission recommends that the state continue to be responsible for the prevention, control and extinguishment of forest fires in the unorganized territory.
4. The Commission recommends that statewide forest fire protection services for education, detection, operation and suppression costs above the local obligation be funded from the General Fund.
5. The Commission recommends that an equipment carrying account be established for major forest fire equipment. The Commission further recommends that the proceeds from the sale of equipment be credited to this account.
6. The Commission recommends that a \$1,000,000 non-lapsing suppression account be established and refunded to \$1,000,000 each year to pay the costs of suppressing forest fires.
7. The Commission recommends that municipal liability for forest fire suppression costs be reduced to half of the current limit and that the same level of liability apply to the unorganized territory.
8. The Commission recommends that an accelerated program of training municipal fire departments to fight forest fires and an aggressive and constant search for surplus property sources be instituted.
9. The Commission recommends that guidelines be established for Maine

forest service involvement in suppressing forest fires in municipalities.

I. The Commission

The Maine Forest Fire Control Study Commission was created by the 110th Maine Legislature to

- Review the organization, administration, funding and delivery of state forest fire control services, including present local capabilities for forest fire control;
- Review alternatives to forest fire prevention and suppression, including techniques used in other states;
- Identify the most modern, effective and cost efficient method for providing forest fire control services within the state utilizing and coordinating local resources; and
- Make any other studies and evaluations necessary to fully assess existing laws and information relating to forest fire control.

The Commission consists of thirteen members who were chosen from groups specified by its enabling legislation to represent various constituencies interested in forest fire control. The members of the Commission are

Senate	James A. McBreairty
House	John L. Martin Bonnie Post
Department of Conservation	Normand Rodrigue
Municipal Officials	Edward Gagnon, Winslow Allen Johnson, Rangeley Plt. Richard LeComte, Upton
Maine Forest Products Council	Fred Holt, Chairman
Paper Industry Information Office	Robert Cope, Vice-Chairman
Maine Fire Chiefs Assoc.	Ernest Daye, Rockland

Public members

John Hede
Jane Hinson
Blair VanCamp

The Commission is required to submit its report, together with any suggested legislation to the 111th Legislature by January 14th, 1983.

II. Background of this study

The Maine Forestry District (MFD) is a legislatively created district comprised of the unorganized territory and 45 specified municipalities. In recent years several municipalities have requested to withdraw from the district. Some have been granted permission by the Legislature to do so.

A. State forest fire control services

State involvement in forest fire control services originated with the enactment of the Maine Forestry District in 1909 following several years of serious forest fires. Originally, state services were provided only within the MFD; however, in 1947 after a series of devastating fires in the southern counties, the state was given the authority to provide services in support of municipal activities statewide. In 1975 MFD and non-MFD services were administratively combined, so that there is no longer any segregation of costs for the MFD vs. costs for other areas.

State forest fire control services are now essentially the same statewide. The one area of distinction between the MFD and non-MFD areas is in the area of suppression. Within the MFD, the state maintains the sole responsibility for fighting forest fires. Outside the MFD, municipalities have an obligation of first response to a fire. Municipalities vary widely in their ability to meet this obligation. Other forest fire protection services such as prevention, education, administration, and maintenance of equipment and personnel are provided statewide by the Maine Forest Service.

In addition to forest fire activities, state personnel occasionally respond to non-forest fires to prevent the spread of fire to field or forest.

B. Financing of state forest fire control services.

The MFD tax was originally a legislatively established mill rate tax assessed against property within the district. Since 1979, the tax has been determined by a complicated procedure. Each year the Department of Conservation must estimate the cost of providing services to the MFD. This amount, when approved by the Legislature, comprises the MFD tax. Because the Department no longer accounts for MFD expenses separately from others, it estimates that two-thirds of its expenses for forest fire control are attributable to the MFD. The remaining one-third is attributed to costs in the remainder of the state and paid from the General Fund. This apportionment is based mainly upon acreage with some adjustment due to increased costs within the MFD.

The total cost of providing services in the MFD is divided annually by the number of taxable acres within the MFD and further apportioned to the unorganized territory and to municipalities within the district on the basis of their taxable acreage. The tax is then added to the property tax commitment for the municipality and to the Unorganized Territory Education and Services Tax and collected as part of the property tax. Municipalities within the MFD are entitled to reimbursement up to 50% of their annual MFD tax for expenditures for non-forest fire equipment and activities. Taxpayers outside the MFD pay nothing through property tax for state forest fire protection unless they have a forest fire. In that event, the municipality pays up to 1% of its state valuation for the cost of suppression and is entitled to state reimbursement for one-half of its

expenses. The state pays everything in excess of 1%. In addition, the state does not charge municipalities for state provided services.

The law has provided for many years that the MFD tax should be recorded on the books of the State in a separate account and be used for no other purpose than forest fire protection within the district. In practice, the tax when received from municipalities within the MFD is deposited into the General Fund. Money collected as part of the Unorganized Territory Education and Services Tax is deposited from that Fund into the General Fund at the end of the fiscal year. The forest fire control division receives a General Fund appropriation each year in the same manner as other state agencies.

III. Activities of the Commission

The Commission held its first meeting in May of 1982 and has held monthly meetings through December 1982.

The Commission initially concerned itself with investigating the nature of forest fire control services provided by the State and the way in which those services are funded. Presentations were made by Commission staff, by Kenneth Stratton, Director of the Maine Forest Service and members of his staff and by William Herbolsheimer, Staff Director for Fire Protection of the Northeastern Area of the United States Forest Service. Various members of the Commission presented information relating to the functioning and funding of forest fire control. Several members of the public attended meetings and expressed concerns. A proposal by the National Conference of State Legislatures to provide information to the Commission relating to forest fire control services in other states was rejected because it would not provide information specific to Maine and because it would require too much of the Commission's funds. Most members of the Commission visited Maine Forest Service local facilities and

observed aerial detection activities.

The Commission's main area of concern was the funding of forest fire control activities. Several opinions and staff review of the Maine Forestry District Tax indicated the possible unconstitutionality of the tax. An Attorney General's opinion was sought on this matter. The request for an opinion and the Attorney General's response are attached to this report.

The Commission was also concerned about several aspects of current MFD tax which contribute to its inequity. Although public lands, state parks and other types of tax exempt land should be state responsibility, the costs of providing services to these areas is paid by taxpayers within the MFD. In addition, many thousands of acres within the district have been restrictively zoned for environmental and recreational purposes. Based upon state policies of protecting these areas, the Commission believes that the State as a whole should bear a greater financial responsibility for the protection of these lands.

Recommendations of the Commission were made in October and a draft report finalized in November. Public hearings on the draft report were held December 6, 7, and 8, 1982 in Presque Isle, Bangor and Portland.

Approximately 75 persons attended the hearing in Presque Isle. There were many questions about the recommendations of the Commission. Most comments were favorable. In Bangor, approximately 100 attended. Comments were mixed. There was support for lowering the level of municipal liability. Two people mentioned that communications should be improved. There was some concern for whether the General Fund would be able to bear increased costs. In Portland, nearly 200 people attended. There was concern that the Commission did not include representatives of the southern

part of the state. There was criticism of departmental plans to address budget cuts due to income tax indexing by reducing personnel in the southern region. Many persons criticized a recommendation proposed by the Commission that the Maine Forest Service review various aspects of its operations, especially the need for fire towers in the southern part of the state. Because of misunderstanding of that recommendation and because the Commission believed that the recommended evaluations are part of a regular review by the Maine Forest Service, the recommendation was dropped in the final report.

IV. Funding options considered by the Commission.

The Commission considered numerous options for funding state forest fire control services.

The current method of funding was rejected as unfair and probably unconstitutional because it unequally taxes landowners within the MFD for services received by landowners outside the district who are not required to pay a special tax.

The Commission considered compensating the General Fund for loss of MFD tax revenues through an ad valorem property tax. To the extent that the burden of a property tax falls on property owners with highly valued property, the property tax did not seem to be an equitable vehicle for complete funding of services provided to property which generally falls on the lower end of the property value scale both because of the comparatively lower value of undeveloped land and because of artificial reductions in value resulting from the Tree Growth Tax Law. Statewide cents per acre taxes were also considered both on forest land or on all land within the community. The Commission considered both the possibility of State administration of such a tax or granting municipal or county authority to

collect a per acre tax. These options were rejected because of the difficulties of identifying and updating lists of owners, separate billing and collecting small amounts of tax from owners of small parcels of land.

The Commission considered the possibility of funding forest fire control services wholly or partially from a special tax on those who primarily benefit from state services. Severance taxes, a special industry tax or increased fees for certain uses were considered. Many groups were identified as receiving benefits from state forest fire control activities. These groups included owners of commercially valuable forest land, other forest land owners, owners of land adjacent to forest land who benefit from fire not spreading to their property, the recreation and tourist industry, and employees in forest products and recreation industries. The public in general benefit from increased economic activity and the opportunity to experience a wilderness environment. However, benefits of forest fire control are not solely monetary, and a special tax was rejected because the Commission experienced difficulty in determining which groups benefited more than others.

The option finally preferred by a majority of the Committee was General Fund funding for forest fire control services which are provided statewide. Municipalities and the unorganized territory would pay one-half of suppression costs with maximum local liability being reduced to one-quarter of one percent of state valuation.

V. Recommendations

1. THE COMMISSION RECOMMENDS THAT STATEWIDE FOREST FIRE PROTECTION SERVICES REMAIN THE STATUTORY RESPONSIBILITY OF THE MAINE FOREST SERVICE.

The need for statewide responsibility for forest fires, as presently contained in the Maine Statutes, has been proved whenever a large fire has occurred in the State. There can be no doubt that it is necessary for

efficient surveillance and coordinated management of forest fires.

2. THE COMMISSION RECOMMENDS THAT THE MAINE FORESTRY DISTRICT, AS NOW CONSTITUTED, BE ABOLISHED.

The Commission believes the Maine Forestry District is an artificial boundary which originally served to distinguish between areas where different state services were required. Today, some municipalities within the district are as capable of providing forest fire protection as municipalities outside the district. The Commission believes that a special tax based on an artificial boundary treats taxpayers within the district unfairly because they are paying through the MFD tax primarily for the kind of services which taxpayers outside the district receive without having to pay a special tax.

3. THE COMMISSION RECOMMENDS THAT THE STATE CONTINUE TO BE RESPONSIBLE FOR THE PREVENTION, CONTROL AND EXTINGUISHMENT OF FOREST FIRES IN THE UNORGANIZED TERRITORY.

The unorganized territory has no municipal government capable of supplying forest fire protection. Therefore the state should continue to be fully responsible for forest fires in that region. The state's role is necessary in order to ensure the protection of one of the state's most valuable resources.

4. THE COMMISSION RECOMMENDS THAT STATEWIDE FOREST FIRE PROTECTION SERVICES FOR EDUCATION, DETECTION, OPERATION AND SUPPRESSION COSTS ABOVE THE LOCAL OBLIGATION BE FUNDED FROM THE GENERAL FUND.

The Commission investigated many other forms of funding and was unable to agree on any other which was both equitable and easily administrable. The Commission believes that General Fund financing of statewide services is the most equitable because the benefits of such services accrue to the public as a whole. General Fund financing provides the broadest base for

funding.

5. THE COMMISSION RECOMMENDS THAT AN EQUIPMENT CARRYING ACCOUNT BE ESTABLISHED FOR MAJOR FOREST FIRE EQUIPMENT. THE COMMISSION FURTHER RECOMMENDS THAT THE PROCEEDS FROM THE SALE OF EQUIPMENT BE CREDITED TO THIS ACCOUNT.

The Commission believes that purchase of additional and replacement of out-dated equipment is necessary in order to maintain an effective forest fire fighting capability. In times when budgets are being cut, capital equipment is often the first item to be dropped. An equipment carrying account would guarantee that sufficient funds be available to replace obsolete items.

6. THE COMMISSION RECOMMENDS THAT A \$1,000,000 NON-LAPSING SUPPRESSION ACCOUNT BE ESTABLISHED AND REFUNDED TO \$1,000,000 EACH YEAR TO PAY THE COSTS OF SUPPRESSING FOREST FIRES.

The state currently estimates an average amount for suppression costs as part of its regular budget. If suppression costs for a year exceed those estimates, funds must be taken from other categories in the budget. In the event of an extremely expensive fire year the Department must request emergency funding from the Governor's office. A non-lapsing account would ensure that sufficient funds were available for suppression in a heavy fire year without depriving other necessary activities of funding and creating an emergency funding situation.

7. THE COMMISSION RECOMMENDS THAT MUNICIPAL LIABILITY FOR FOREST FIRE SUPPRESSION BE REDUCED TO HALF OF THE CURRENT LIMIT AND THAT THE SAME LEVEL OF LIABILITY APPLY TO THE UNORGANIZED TERRITORY.

The cost of forest fire suppression in municipalities is currently shared between the state and the municipality where the fire occurred. The maximum that a municipality may be required to pay is 1/2 of 1% of its state valuation. The limitation was established many years ago when state valuations were considerably below market value. Since that time state valuations have risen to more closely approximate 100% fair market value.

The intent of the Legislature in establishing the original limit was to protect the municipality from the devastating expenses of suppressing a large fire. This intent would be carried out more accurately by reducing the municipality's limit of liability to 1/4 of 1% of state valuation to more nearly equal the original limit.

In order to treat all areas of the state equally, the Commission recommends that the municipal level of liability for suppression costs also apply to the unorganized territory. The state would charge to the unorganized territory through the municipal cost component the share of suppression costs which the unorganized territory would bear if it were a municipality.

8. THE COMMISSION RECOMMENDS THAT AN ACCELERATED PROGRAM OF TRAINING MUNICIPAL FIRE DEPARTMENTS TO FIGHT FOREST FIRES AND AN AGGRESSIVE AND CONSTANT SEARCH FOR SURPLUS PROPERTY SOURCES BE INSTITUTED.

Municipalities being released from the MFD and undertaking local responsibilities for forest fire control will need encouragement and material help. The state agency has an excellent training capability which should support these and other municipal efforts. Surplus property from the Federal government has been used to great advantage to encourage and maintain interest in volunteer and municipally funded fire organizations. State efforts here can be most effective in reducing municipal and state forest fire costs.

9. THE COMMISSION RECOMMENDS THAT GUIDELINES BE ESTABLISHED FOR MAINE FOREST SERVICE INVOLVEMENT IN SUPPRESSING FOREST FIRES IN MUNICIPALITIES.

The Commission believes that the Maine Forest Service should establish guidelines pursuant to the Administrative Procedures Act for determining the conditions and circumstances for assuming control of forest fires. These guidelines should especially define the state's role both in

situations where municipalities have established a first attack capability and in situations where no municipal capability exists. A particular concern here is the need for municipal and state personnel to maintain effective and cooperative working relationships.

Guidelines should spell out that Maine Forest Service personnel will encourage and support local leadership. Imposition of state authority should be retained for coordination where a fire involves more than a single municipality and in those cases where local leadership is obviously ineffective in controlling the fire.

MINORITY REPORT OF NORMAN RODRIGUE, BONNIE POST, RICHARD LECOMTE AND BLAIR VANCAMP

This Minority Report of the Maine Forest Fire Control Study Commission is submitted by Commission Members who disagree philosophically with the Majority Report recommendation as it relates to the proposed method of funding statewide forest fire control services.

We agree with the Majority Report that the present method of funding forest fire control services is inequitable and possibly unconstitutional. The Majority Report proposes to rectify this inequity by abolishing the Maine Forestry District (MFD) Tax and funding statewide forest fire control services entirely from the State's General Fund, i.e., sales, income, and corporate taxes, etc.

This recommendation is far reaching in both its philosophical and practical implications. On a philosophical level, it argues for a major shift in the tax burden supporting forest fire services from those whose property is being protected (forest landowners) to those with no direct association with the protected property (city dwellers and businesses, etc).

The State's General Fund revenues are derived largely from sales, income, and corporate profit taxes occurring primarily in the southern, more populated and developed sectors of the State. To fund the entire cost of a service (forest fire protection) benefitting a specific group of individuals (forest landowners) from general tax dollars, we believe is inappropriate.

We argue that general taxpayers should not be asked to support the cost of a special service that will benefit only a few. We argue further that to the extent the cost of a special service can be charged directly to the individual(s) or organization(s) receiving that service(s), it should

be so charged. Certainly, there are numerous examples of such user specific taxes and fees, i.e., gasoline taxes, hunting and fishing licenses, etc. Finally, with respect to the specific protection of life and property from fire, we point out that there is ample precedence for property owners to support local fire protection services through property taxes. Simply because their property is forest land, we should expect no less from forest landowners who have need to protect their property.

As stated above, there is also a practical implication to the Majority Report's funding recommendation, and that is the elimination of the MFD tax. This will result in the loss of some \$3,000,000 in revenues to the State from which to fund forest fire control services. Given the State's fiscal problems, we do not feel it is sensible to propose further revenue reductions without making some realistic recommendations to replace such reductions.

As an alternative recommendation to funding statewide forest fire control services, this report proposes the following:

- Establish a new statewide Maine Forest Fire Suppression Tax to be assessed on all protected acres located in the State of Maine. Procedurally the Commissioner of Conservation would, by November 1, annually, submit to the State Tax Assessor a written estimate of the total projected costs for forest fire suppression for the next fiscal year. By January 5, annually, the Commissioner of Conservation would submit to the legislature a written estimate of the total projected costs of forest fire suppression for the next fiscal year along with a full and complete accounting of all costs and expenses incurred by the Department of Conservation in conducting its forest fire suppression program, including

reimbursements made to municipalities for their forest fire suppression efforts. By April 1, annually, the legislature would determine the amount of the tax to be raised for forest fire suppression for the next fiscal year.

- The amount of tax for forest fire suppression would be determined by multiplying the per acre Forest Fire Suppression Tax established by the legislature by the total number of "protected acres" belonging to each landowner. "Protected acres" would be defined to include forest land, whether or not it is used primarily for the growth of trees and forest products, and other wild lands such as blueberry barrens, etc. We recommend that small parcels (10, 100 or 500 acres or less) be excluded from the tax to avoid undue administrative expense. Public lands would be specifically excluded from the definition of protected acres for purposes of this taxing formula, since no tax would be assessed against the public lands. Any forest fire suppression services provided to the public lands would be paid for initially out of a forest fire suppression fund and the fund would be reimbursed by the Bureau of Public Lands for these costs.
- The State Tax Assessor would be responsible for determining the total number of protected acres located within the unorganized territory. The State Tax Assessor would also determine the total number of protected acres located in each municipality by requiring all municipalities to report parcels of protected acres and their ownership.
- The Forest Fire Suppression Tax would be assessed to each covered landowner not later than July 15, annually, by the Bureau of

Taxation for the fiscal year ending June 30 of the following calendar year. The tax would be due October 1, annually.

- Legislation would establish a separate and distinct Maine forest fire suppression fund to be used by the Department of Conservation, Bureau of Forestry, as a nonlapsing, revolving fund, for forest fire suppression. The State Treasurer would deposit in the fund all revenues received by the State from the Forest Fire Suppression Tax. In addition to these tax revenues, one million (\$1,000,000) dollars would be appropriated from the General Fund and credited to the forest fire suppression fund in order to ensure the availability of sufficient funds for forest fire suppression costs which exceed the annual costs projected by the Commissioner of Conservation and collected as Forest Fire Suppression Taxes. These increased costs would be due primarily to the occurrence of a major forest fire. Annually, if necessary, the legislature would appropriate from the General Fund an additional amount necessary to maintain a minimum one million (\$1,000,000) dollar balance in the fund in addition to the Forest Fire Suppression Tax revenues deposited therein. The money deposited in the fund would be invested by the State Treasurer and the income generated from such investments would be credited to the fund to help in maintaining its \$1,000,000 level.
- The fund would be used by the Bureau of Forestry only to pay expenses, debts, accounts and lawful demands incurred in forest fire suppression and to reimburse municipalities for their reasonable and necessary costs incurred in forest fire suppression. The fund could also be used for the purpose of

suppressing non-forest fires within the unorganized territory; however, any such expenditures made from the fund would be reimbursed to the fund through the unorganized territory's municipal cost component. For the purposes of this proposed legislation, forest fire suppression costs would include not only the costs of labor and supplies, but also would recognize the cost of equipment acquisition and maintenance.

- Municipalities would continue to have first line responsibility for forest fire suppression within their boundaries. However, all reasonable and necessary costs incurred by municipalities for forest fire suppression would be reimbursed out of the forest fire suppression fund. All costs for which such reimbursement is sought would be subject to review and approval by the Director of Forestry who would have the authority to promulgate rules setting forth those costs for which reimbursement would be allowed including labor, equipment, and supplies. The rules would set forth amortization schedules for equipment and would require municipalities to obtain the approval of the Director prior to acquiring equipment for which reimbursement is sought.
- The Bureau of Forestry would continue to have statewide responsibility for other services such as prevention, education, and administration and these items would be funded out of the General Fund.

We believe that the above proposal specifically locates the cost of forest fire protection on those who most directly benefit--forest landowners. Our proposal is fair and equitable and as a practical matter will not burden an already overburdened General Fund.

MAJORITY REPORT LEGISLATION

AN ACT TO AMEND THE FOREST FIRE CONTROL LAWS AND REPEAL THE MAINE FORESTRY DISTRICT

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

Sec. 1. 5 MRSA § 243, sub-§5 is repealed.

Sec. 2. 12 MRSA §679 is repealed.

Sec. 3. 12 MRSA §901, 1st ¶ is amended by striking the next to the last sentence.

Sec. 4. 12 MRSA c. 215, sub-c. II is repealed.

Sec. 5. 12 MRSA c. 215, sub-c. X is repealed.

Sec. 6. 12 MRSA @8902, first sentence is amended to read:

The director shall appoint a forest fire warden in each organized municipality within the State outside the limits of the Maine Forestry District for the control of forest fires.

Sec. 7. 12 MRSA @8906, sub-@2, last sentence is amended to read:

Within the Maine Forestry District unorganized territory the director may, in addition to this subsection, construct and maintain roads and trails.

Sec. 8. 12 MRSA @9201, first sentence is amended to read:

Responsibility for the control of forest fires in municipalities outside the Maine Forestry District lies in the first instance with the town forest wardens appointed for such municipalities by the director.

Sec. 9. 12 MRSA @9202, first sentence is amended to read:

Within municipalities not members of the Maine Forestry

~~District~~, forest rangers and town forest fire wardens may employ any person considered necessary to assist in fighting forest fires.

Sec 10. 12 MRSA @9204 is amended to read:

Municipalities, ~~outside the limits of the Maine Forestry District~~, shall pay for controlling and extinguishing forest fires up to 1/2 of 1% of their state valuation and the State shall reimburse them 1/2 these costs incurred by the forest fire warden in charge therein. Reimbursement will not be allowed for use or loss of municipally-owned equipment within the town in which the fire occurred. A ~~town~~ municipality going to the aid of another, even to protect itself, when requested by the state forest ranger in charge, shall, if it requests payment, be paid by the ~~town~~municipality aided if the total suppression cost of the ~~town~~ municipality is not over 1/2 of 1% of its state valuation.

Sec. 11. 12 MRSA @9205, first sentence is amended to read:

All forest fire suppression costs in municipalities ~~outside the limits of the Maine Forest District~~ in an amount greater than 1/2 of 1% of the state valuation of the municipality in which the fire occurred shall be paid by the State.

Sec. 12. 12 MRSA §9205-A is enacted to read:

§9205-A. Payment of costs in the unorganized territory

The unorganized territory shall pay for controlling and extinguishing forest fires within its boundaries 1/2 of the costs which do not exceed 1/2 of 1% of its state valuation. The bureau shall submit a bill to the Unorganized Territory Education and

Services Fund when suppression costs are incurred for which the unorganized territory is liable. All other costs of forest fire suppression in the unorganized territory shall be paid by the State.

Sec. 13. 12 MRSA @9322, sub-@1, first sentence is amended to read:

No person shall kindle or use an outdoor fire in the Maine Forestry District unorganized territory unless a permit has been obtained from the director.

Sec. 14. 12 MRSA @9322, sub-@ 4, is amended to read:

4. Saco River Corridor. For the purpose of issuing permits under this section, the lands within Oxford County within the Saco River Corridor, so designated by private and special laws of 1973, chapter 150, as amended, shall be considered a part of the Maine Forestry District subject to the same requirements and procedures as lands within the unorganized territory.

Sec. 15. 12 MRSA @9334, first sentence, is amended to read:

Whoever, as stumpage owner, operator, landowner, or agent, cuts, causes or permits to be cut any forest growth on land which borders land of another outside the limits of the Maine Forestry District unorganized territory or within the Maine Forestry District unorganized territory which borders property outside shall dispose of the slash in the manner described: All slash resulting from such cutting of forest growth shall not remain on the ground within 25 feet of the property line, provided that the director on his own initiative or upon written complaint of another declares that the situation constitutes a fire hazard.

Sec. 16. 36 MRSA §1603, sub. §-1, ¶B is amended as follows:

B. The cost of services the state funds in the unorganized territory that are funded locally by a municipality; the cost of forest fire protection to be included in the cost component shall be determined in accordance with Title 12, section ~~1601~~ 9205-A; and

Sec. 17. 36 MRSA §1605, sub. §2 is repealed and the following is enacted in its place:

2. Disbursements. The treasurer shall withdraw from the fund all sums necessary to pay the expenses attributable to the municipal cost component, including the amount charged to the fund under Title 12, section 9205-A.

STATEMENT OF FACT

This bill contains the recommendations of the majority report of the Maine Forest Fire Control Study Commission established by the 110th Legislature. It eliminates the Maine Forestry District and the Maine Forestry District Tax. Municipalities formerly within the district will become subject to the same rights and obligations regarding forest fires as all other municipalities. The State will continue to maintain sole responsibility for forest fires in the unorganized territory, and that district will pay through its property tax for forest fire suppression costs to the same extent as does a municipality. This bill also reduces the municipal limit of liability for forest fire suppression costs to one-half of its current level.

MINORITY REPORT LEGISLATION

AN ACT to Amend the Forest Fire Control Laws and Change the Method of Funding Forest Fire Control Services.

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

Sec. 1. 5 MRSA §243, sub-§5 is repealed.

Sec. 2. 12 MRSA §679 is repealed.

Sec. 3. 12 MRSA §901, 1st ¶ is amended by striking the next to the last sentence.

Sec. 4. 12 MRSA c. 215, sub-c. II is repealed.

Sec. 5. 12 MRSA c. 215, sub-c. X is repealed.

Sec. 6. 12 MRSA §8902, first sentence is amended to read:

The director shall appoint a forest fire warden in each organized municipality ~~within the State outside the limits of the Maine Forestry District for the control of forest fires.~~

Sec. 7. 12 MRSA §8906, last sentence is amended to read:

Within the ~~Maine Forestry District~~ unorganized territory the director may, in addition to this subsection, construct and maintain roads and trails.

Sec. 8. 12 MRSA c. 807, sub-c. II-A is enacted to read:

SUBCHAPTER II-A

FOREST FIRE SUPPRESSION TAX

§9101. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Protected land. "Protected land" means forest land, whether used primarily for the growth of trees and forest products, and other wildlands such as blueberry barrens, swamps, bogs or brush-land. It does not include public lands or other state owned land.

2. Suppression costs. "Suppression costs" means the costs of suppressing forest fires including the costs of labor and supplies, the acquisition and maintenance of equipment which is used

primarily for the suppression of forest fires and reimbursement to municipalities for reasonable and necessary costs incurred in forest fire suppression. It does not include services such as prevention, education or administration.

§9102. Forest Fire Suppression Fund

1. Fund established. The Legislature hereby creates the Forest Fire Suppression Fund. The State Tax Assessor shall deposit in the fund all Forest Fire Suppression Tax moneys assessed and collected pursuant to Title 12, section 9103.

2. Expenditure of moneys. The moneys in the fund shall be used to pay expenses, debts, accounts and lawful demands incurred in forest fire suppression and to reimburse municipalities for their reasonable and necessary costs incurred in suppression of fires that threaten protected land. All costs for which municipal reimbursement is sought shall be approved by the Director of the Bureau of Forestry. The Bureau shall promulgate rules identifying reimbursable municipal costs.

3. Appropriation. In addition to the taxes collected under this chapter, there is appropriated to the fund the sum of \$1,000,000 as a contingency account to be used for the costs of suppression of fires on protected lands when those costs exceed the amount collected in taxes for that fiscal year. Whenever the contents of the contingency account are reduced to less than \$1,000,000, the Legislature shall make an appropriation to the fund to return it to that level.

4. Balance carried forward. Any unexpended balance shall not lapse but shall be carried forward to the same fund for the next fiscal year and shall be available for the purposes authorized by this subchapter.

5. Public lands or state parks. The Bureau of Public Lands

shall reimburse the fund for the costs of suppression of forest fires on Public Lands. The Bureau of Parks and Recreation shall reimburse the fund for the costs of suppression of forest fires in state parks.

6. Non-forest fires. If the state assists in the suppression of fires other than those that threaten protected lands, the fund shall be reimbursed by the local unit assisted, whether municipality or unorganized territory.

§9103. Forest Fire Suppression Tax

1. Annual tax. Owners of 100 or more acres of protected land shall pay an annual tax for state forest fire suppression.

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2. Computation of tax. The Commissioner of Conservation shall, by November 1, annually, submit to the State Tax Assessor a written estimate of the total projected costs for forest fire suppression for the next fiscal year. By January 5, annually, the Commissioner of Conservation shall submit to the Legislature a written estimate of the total projected costs of forest fire suppression for the next fiscal year and a complete accounting of all costs and expenses incurred by the Department of Conservation in conducting its forest fire suppression program, including reimbursements to municipalities for forest fire suppression efforts. The Governor shall submit a bill to the Legislature to establish the amount of the Forest Fire Suppression Tax. By April 1, annually, the Legislature shall determine the amount of the tax to be raised for forest fire suppression for the next fiscal year. The State Tax Assessor shall divide the amount determined by the Legislature by the total number of protected acres. The resulting per acre tax shall be multiplied by the total number of protected acres owned by each taxpayer and assessed not later than July 15, annually, by the Bureau of Tax-

ation. The tax shall be paid on or before the first day of October, annually.

3. Identification of protected acres. The State Tax Assessor shall determine the total number of acres of protected land belonging to each taxpayer and subject to taxation under this subchapter. The State Tax Assessor may require municipalities to report parcels of protected acres and their ownership.

Sec. 9. 12 MRSA §9201, first sentence is amended to read:

Responsibility for the control of forest fires in municipalities ~~outside-the-Maine-Forestry-District~~ lies in the first instance with the town forest wardens appointed for such municipalities by the director.

Sec. 10. 12 MRSA §9202, first sentence is amended to read:

~~Within-municipalities-not-members-of-the-Maine-Forestry~~

~~District,~~ Forest rangers and town forest fire wardens may employ any person considered necessary to assist in fighting forest fires.

Sec. 11. 12 MRSA §§9204 and 9205 are repealed.

Sec. 12. 12 MRSA §9204-A is enacted to read:

Municipalities shall be entitled to state reimbursement for suppression costs as provided in section 9102.

Sec. 13. 12 MRSA §9322, sub-§1, first sentence is amended to read:

No person shall kindle or use an outdoor fire in the ~~Maine Forestry-District~~ unorganized territory unless a permit has been obtained from the director.

Sec. 14. 12 MRSA §9322, sub-§4, is amended to read:

4. Saco River Corridor. For the purpose of issuing permits under this section, the lands within Oxford County within the Saco River Corridor, so designated by private and special laws of 1973, chapter 150, as amended, shall be ~~considered-a-part-of-the~~ Maine-Forestry-District subject to the same requirements and

procedures as lands within the unorganized territory.

Sec. 14. 12 MRSA §9334, first sentence, is amended to read:

Whoever, as stumpage owner, operator, landowner, or agent, cuts, causes or permits to be cut any forest growth on land which borders land of another outside the limits of the ~~Maine-Forestry District~~ unorganized territory or within the ~~Maine-Forestry District~~ unorganized territory which borders property outside shall dispose of the slash in the manner described: All slash resulting from such cutting of forest growth shall not remain on the ground within 25 feet of the property line, provided that the director on his own initiative or upon written complaint of another declares that the situation constitutes a fire hazard.

Sec. 16. 36 MRSA §1603, sub-§1, ¶B is amended as follows:

B.. The cost of services the state funds in the unorganized territory that are funded locally by a municipality; the cost of forest fire protection to be included in the cost component shall be determined in accordance with Title 12, section ~~1601~~ 9103; and

Sec. 17. 36 MRSA §1605, sub-§2 is repealed and the following is enacted in its place:

2. Disbursements. The treasurer shall withdraw from the fund all sums necessary to pay the expenses attributable to the municipal cost component.

STATEMENT OF FACT

This bill contains the recommendations of the minority report of the Maine Forest Fire Control Study Commission. The bill repeals the Maine Forestry District and the MFD Tax. It establishes a forest fire suppression tax to be assessed against all protected acres statewide to pay for the costs of forest fire suppression, including reimbursement to municipalities.



State of Maine
Senate Chamber

Augusta, Maine 04333

September 16, 1982

James E. Tierney
Attorney General
State House
Augusta, ME 04333

Dear Mr. Tierney:

The Maine Forest Fire Control Study Commission was created by the Legislature to study the operation and funding of forest fire control in Maine. In the course of our considerations, it has been suggested that the Maine Forestry District (MFD) Tax violates the Constitution of the State of Maine.

The MFD tax originally was a dedicated tax which paid for state forest fire control services which, at that time, were provided only within the MFD. The tax was held Constitutional by the Maine Supreme Judicial Court on the basis that a special district could be taxed unequally if it were receiving a special service that was not being received by areas not subject to the tax. Sandy River Plantation v. Lewis and Maxcey, 109 Me. 475 (1912). The tax is no longer dedicated, but is paid into the General Fund.

Since 1912, state forest fire control activities have expanded and are now essentially the same throughout the state. The only distinction is in the area of suppression of forest fires. Within the MFD, the state maintains the sole responsibility for the suppression of forest fires. Outside the MFD, municipalities have the obligation to make the first response to a forest fire. In practice, there is little difference because there is no definition of this first response obligation. If a town outside the MFD does not fight a forest fire within its boundaries, the state will fight the entire fire. On the other hand, some local areas within the MFD maintain the capacity to fight and do fight forest fires. Suppression costs are only a small percentage of the total budget for forest fire control. Other services such as prevention, education, administration, and maintenance of equipment and personnel are provided statewide.

The MFD tax was originally a mill rate tax assessed against the property within the district. The tax is now a hybrid which combines several different procedures for determining how much a property owner must pay. Currently, under a formula developed

by the Department of Conservation, one-third of the cost of forest fire control comes from the General Fund, and two-thirds is apportioned to the MFD. This apportionment is based mainly upon acreage with some adjustment due to increased costs within the MFD. The two-thirds apportioned to the district is then divided by the number of acres in the district to obtain a cents per acre tax and then further apportioned to the unorganized territory and municipalities within the district on the basis of acreage. The tax is then added to the property tax commitment for the municipality and the Unorganized Territory Education and Services Tax and collected as part of the property tax. Therefore, taxpayers outside the MFD pay nothing through property tax for state forest fire protection unless they have a forest fire. In that event, the municipality pays up to 1% of its state valuation for the cost of suppression and is entitled to state reimbursement for one-half of its expenses. The state pays everything in excess of 1%.

In order to consider the appropriateness of the present MFD tax and possible alternatives, it is necessary for the Commission to have your opinion whether the tax violates Article IX, Section 8 or any other section of the Maine Constitution. The Commission must make its report to the Legislature by January 14, 1983, but we hope to have recommendations finalized by this November. Please feel free to consult Julie Jones of the Office of Legislative Assistants who is staff to the Commission and who has done some research on this question.

Thank you for your consideration.

Sincerely,

Fred Holt
Chairman

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JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

December 8, 1982

Fred E. Holt, Chairman
Maine Forest Fire Control Study Commission
c/o Julie Jones
Office of Legislative Assistants
Station #13, Room #101
State House
Augusta, Maine 04333

Dear Chairman Holt:

You have inquired whether the Maine Forestry District ("MFD") tax violates the Maine Constitution. In particular, you ask whether that tax violates Article IX, Section 8 of the Maine Constitution, which requires generally that all property taxes be assessed equally. Our response is that, while it is possible that the tax might be found to violate Article IX, Section 8, we are unable to answer conclusively, since to do so would require the resolution of a number of factual questions, which are beyond the scope of your inquiry.

The Maine Forestry District is an administrative district whose boundaries are established by statute and are generally coextensive with the unorganized territory of the State. 12 M.R.S.A. § 1201.^{1/} It is established for the purposes of the "prevention, control and extinguishment of forest fires"

^{1/} Portions of the unorganized territory not included within the MFD may be added thereto by the State Tax Assessor, with the approval of the Director of the Bureau of Forestry and the Attorney General. Municipalities adjoining any part of the MFD may, by town vote, become a part of the MFD. 12 M.R.S.A. §§ 1201, 1202.

within its borders, and the responsibility for such is vested in the Director of the Bureau of Forestry ("the Director"). 12 M.R.S.A. § 1203. In order to raise revenues to meet the total costs of the MFD, the Department of Conservation is directed by the Legislature to make annual estimates thereof, and the Legislature then imposes a tax (the "MFD tax") on all taxable land in the MFD for the years in question. 12 M.R.S.A. § 1601. The revenues from the MFD tax are to be "used to protect from fire the forests situated in the [MFD], and to pay expenses incidental thereto, . . . and for no other purpose." 12 M.R.S.A. § 1607.

Article IX, Section 8 of the Maine Constitution provides that:

"All taxes upon real. . . estate, assessed by authority of this State, shall be apportioned and assessed equally. . ."

However, the Supreme Judicial Court of Maine has held that this provision does not prevent the Maine Legislature from creating special taxing districts for special public benefits to be conferred thereon. Inhabitants of Town of Stonington v. Inhabitants of Town of Deer Isle, 403 A.2d 1181, 1184 (Me. 1979). However, taxation for special purposes by assessment on the property benefitted must be in proportion to the benefits conferred. When the benefits and burdens are not reasonably proportional, the tax is unconstitutional, id.; Smyth v. Titcomb, 31 Me. 272 (1850), although it is not required that the tax "be exactly proportionate to benefits." Crabtree v. Ayer, 122 Me. 18, 22 (1922). Thus for the MFD tax to be constitutional, the taxpayers of the District must receive a special benefit and the amount of tax must not be disproportionate to the value of that benefit.

In 1912, the Supreme Judicial Court passed upon the constitutionality of the original MFD tax. The Court found that:

"Land within the [Maine forest] district had special benefits that no other forest lands in the State had, and it ought to bear the burdens caused by the receipt of those special benefits." Inhabitants of Sandy River Plantation v. Lewis, 109 Me. 472, 477 (1912).

Thus, in Sandy River the special tax was held to be constitutional. Since 1912, however, the forest fire protection system of the State has changed both statutorily and in its administration.

The major change in the State's forest fire protection system is that now the Maine Forest Service, supported by the general fund, provides substantial services both outside and inside of the MFD. Within the MFD, the Director remains solely responsible for "prevention, control and extinguishment of forest fires," 12 M.R.S.A. § 1203, and any shortfall in the payment of those costs from the MFD fund may be made up from the general fund. 12 M.R.S.A. § 1607. But outside the district, although town forest wardens are responsible "in the first instance" for control of forest fires, the Forest Service is now ultimately responsible for their control. 12 M.R.S.A. § 9201. The question is thus raised as to whether the provision of basic forest fire protection within the MFD retains its character as a special benefit.

In our opinion, it does not. Since forest fire protection is now provided from the general fund outside of the MFD, and would be available inside the MFD if the MFD did not exist, it can no longer be considered a special benefit.^{2/} See Op. Me. Att'y Gen. No. 81-50 (Unorganized Territory Educational and Services Tax cannot be used to fund services that are available outside of the unorganized territory). Nonetheless, it may still be possible that the tax would survive constitutional scrutiny if other special benefits can be found whose value is proportionate to the amount of the tax.

Without professing to be exclusive, and without offering any opinion as to their respective values, we would call your Commission's attention to the following benefits which appear to be available to MFD taxpayers:

1. "First instance" response and initial costs. As indicated above, towns outside the MFD are responsible for responding to forest fires "in the first instance." 12 M.R.S.A. § 9201. Within the MFD, the Forest Service provides such response. Moreover, outside the MFD, towns are authorized to absorb the initial annual cost of forest fire protection, up to one-half percent of their state valuation. 12 M.R.S.A. § 9204. Inside the MFD, there is no such requirement. Thus, a special benefit of some value is conferred on MFD taxpayers with regard to the initial costs of forest fire protection.

^{2/} According to the Maine Forest Service, two-thirds of the forest fire protection costs are paid by the MFD tax and one-third is paid from the general fund. In addition, it has been represented to this Office that these monies are put in a single account from which all forest fire costs and reimbursements are withdrawn. It should be noted that this appears to be a clear violation of the statutory mandate that the MFD tax shall be kept in a separate account as a fund to be used to protect from fire the forests within the MFD.

2. Equipment. Non-MFD towns are responsible by statute to maintain their own forest fire fighting equipment, and the loss thereof is not reimbursable from the general fund. 12 M.R.S.A. § 9204. Such losses within the MFD are reimbursable from the MFD fund. 12 M.R.S.A. § 1607.

3. Costs of non-forest fire control. Inside the MFD, a member municipality is made eligible for annual reimbursement, up to 50% of its contribution to the MFD for that year, for "fire protection," which is not limited to forest fires. 12 M.R.S.A. § 1601-A. Such reimbursement may not be had outside of the MFD. Thus, the MFD tax provides an additional special benefit to taxpayers of its member municipalities not available outside of its borders.

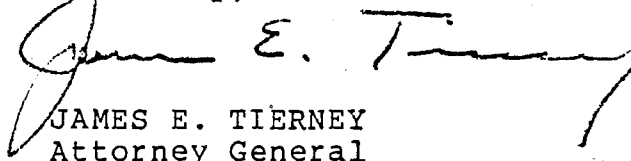
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In summary, then, a determination of the constitutionality of the Maine Forest District tax turns on the resolution of the factual questions. In the absence of a complete factual record, however, we cannot respond in any way other than to enumerate the factors which a court would consider in scrutinizing the tax. We hope, however, that the foregoing is of some assistance.

Sincerely,



JAMES E. TIERNEY
Attorney General

JET/d