

The Commonwealth of Massachusetts

SPECIAL REPORT OF THE DEPARTMENT OF
CONSERVATION RELATIVE TO REFORESTA-
TION AND THE CONTROL OF THE GYPSY
MOTH IN THE COMMONWEALTH.

[Conservation.]

DEPARTMENT OF CONSERVATION,
DIVISION OF FORESTRY,
15 ASHBURTON PLACE, BOSTON, December 5, 1945.

To the General Court of Massachusetts.

Throughout the state as a whole we have experienced five bad areas of infestation in the past three years. Worcester County in particular has annually been the worst afflicted. During the war period no new equipment was procurable, repairs to present equipment were unobtainable, and labor was unavailable. Though we will make slow return this year toward normal, it will still be possible to show some gain in another season, providing that suggested revisions of existing moth laws are approved and requested funds made available.

Cape Cod has been subject to continuous land abuse since the date of the first settlers. Winds have shifted surface soils and deposited instead a fine sand of high saline content.

The present growth of so-called "scrub oak" having existed in the area for hundreds of years can certainly be termed "native" growth, and is indicative of the growth that can be supported. In all these years nature

has not improved the situation, no new species have even made a trial start, and the very few attempts by private parties to improve woodland conditions have not been successful nor have they indicated a basis for any further attempts.

Through the years forest fires have contributed largely to frustrate any improvement that might have been started by either nature or man. Fires deplete the humus in ground cover. The resultant soil of Cape Cod, especially Barnstable, Plymouth, Norfolk and Dukes counties, is a near sterile product which is incapable of nurturing growth other than scrub oak, and this scrub oak presents a most advantageous condition for the continued presence of gypsy moth.

Only in small, low areas are there any evidences of even a fair grade of coniferous growth. These low pockets are evidently catch basins of what little loam is left, and these small stands have managed to exist. Elsewhere any new growth lasts but a few years, and even the red pine, which has probably shown the best results of any plantings in the area, rarely exceeds a height of 25 to 30 feet. At this point the food supply is apparently exhausted, as further growth ceases and the entire tops disintegrate immediately.

The hurricanes of the last decade have added threefold handicaps to any attempted improvement: (1) stubs of broken branches and splits have decreased the possible sale of the standing growth; (2) the ensuing débris has greatly increased the ever-present fire hazard; and (3) handling of débris has scattered still farther the egg clusters of the gypsy moth that were not already distributed by the storms themselves.

To remove, by any method, all of the present scrub growth would cost thousands of dollars in labor and equipment. As is usual with any undesirable item, this scrub growth will develop unbelievable quantities of sucker growth which will involve additional expense annually for removal for several years. Permits and easements will require still further sums. After the

expenditure of these amounts we cannot give the property owner any assurance of a future stand of timber. The improved appearance of the land is no inducement. The owner wants a stand of timber for future income. Present knowledge is insufficient to enable us to offer much more than an intelligent guess. Until a reliable program is ready, no landowner can be expected to devote any effort or expense to the subject.

The Department of Conservation has requested the Northeastern Forestry Experiment Station of the United States Forest Service to make studies of the Cape situation, with special emphasis on the reforestation angle. They have replied that they will be glad to co-operate with us on an investigation to determine the most economical means of improving the Cape Cod area. The survey will be undertaken in the near future when crews are available. Upon completion of the survey, this Department will make a detailed report of the recommendations, but until we are able to present you with a proven program we request further time to complete the necessary survey.

In the meantime, we believe that with full co-operation of the Cape towns and the proper authority to proceed, under the revised gypsy moth laws, this Department can improve the present pest conditions in that area. It cannot be done over night, even with new methods or materials, but we can assure a vast improvement within two seasons.

Considering conditions of the past two seasons, we are positive that Cape residents will appreciate our efforts toward making their homes habitable and free from crawling caterpillars now, with the reforestation work to follow as soon as possible.

Respectfully submitted,

A. K. SLOPER,
Commissioner of Conservation.

JUSTIFICATION FOR RECOMMENDED CHANGES IN GYPSY MOTH LAWS.

Chapter 132 of the Massachusetts General Laws, outlining the conduct and supervision of gypsy moth work, was made effective over forty years ago. In 1909 the work was placed in the forestry group which had just been formed, and in 1937 the addition of three words throughout the chapter made the tent caterpillar a public nuisance, together with the gypsy moth and the brown tail moth. Basically, no other changes have been made to this chapter.

During a forty-year period many changes take place that affect all phases of our daily lives, and in this respect the gypsy moth work has also changed, each change bringing new problems. Admittedly, at the time they were promulgated the moth laws were both efficient and sufficient. Transportation was slow and of short distance — only a small area of some 400 square miles being involved, and the general public was vitally interested and therefore co-operation was nearly complete.

With the passing of time, transportation speeds and distances increased, and shortly the gypsy moth problem was not just a local one for a small area around Boston, but one of state-wide importance. The work methods have had to change, and it has been apparent for some time that a regulation satisfactory for the city of Malden in 1910 does not work as well for the little town of Brookfield in 1945. Equipment, materials and methods have changed, and with the advent of DDT still further changes will be included.

Having mentioned the new insecticide, DDT, we wish to report here that the Department has been in close contact with all agencies who have been testing this material for the past two years. We are very fortunate

in having at our disposal complete co-operation from Dr. Annand, Chief of Insect and Quarantine Bureau at Washington; Messrs. Sheals and Crossman of the Greenfield Office of the Entomology and Quarantine Bureau; Dr. Baker, President of Amherst College; Mr. Potts, Associate Entomologist of the United States Department of Agriculture laboratory at New Haven; Dr. Spurr of Harvard Forest; and many others of equally high standing in this field. Through the use of their equipment, and with the results of all their tests and experiments, we have received, at no cost to the State, information worth thousands of dollars. This insecticide has a definite place in our work, and we cannot afford to overlook its use.

The gypsy moth is a particular and specific problem to this State. By law the problem has been assigned to this Department, and we intend to combat that problem in the most economical manner, for the benefit of the entire State and not for any favored area.

Very few changes or alterations in the present law are necessary to make them applicable to the present day, but they are vital and needed if we are to perform our work effectively. Hampering the effective and economical completion of our task are several factors, to wit:

1. It must be emphasized that the Moth Division is undermanned. We have only six men in the field, each trying to give efficient supervision to fifty or more cities and towns. We should have at least eight field men at present, and this need will be more emphatic in January when we assume supervision of thirty-two more cities and towns. The present system is not conducive to efficiency or high morale — no man can be expected to be in two places at once and do justice to any job.

2. One of our greatest handicaps is the expenditure of a town appropriation in the early part of the season. The work stops and the laborers are dismissed, although several months of workable time still remains. We firmly believe that this Division should have a permanent crew of ten or twelve men, intended as a "mobile" or "roving" crew, transferable at short notice from one area to another

as infestation requires. This would enable us to complete an area at the right time rather than leave a town still infested. With our own crew we could —

(a) Effect an annual saving of at least \$35,000 to \$40,000.

(b) Remain at one area until the work was completed and then move without delay to the next infestation, arriving with an experienced group and no loss of training time.

(c) The crew would be available previous to, and during, the spraying season, and all our equipment could be used instead of just one machine, as at present.

(d) These men could be used during an emergency in the forest fire period.

3. Regardless of the valuation of any city or town the assistance given by the Commonwealth should be based on the *size* of the *wooded area* and the *degree of infestation*. A small residential town of wooded proportions surrounded by a heavy infestation needs our help. The larger city with no woods can take care of its street trees without financial help from the State.

4. Many towns have their own equipment which could be used to much better advantage if we had enough field men to contact them daily in the spraying season. This is now impossible, and while we are planning to put more exertion into this phase the coming season, the six field men cannot be everywhere at once. Our own equipment, and other machines in for repair, should be stored at our repair center at Stow, where the work could be done at convenience in the off season. The present system of sending a mechanic to any point in the State, many times for a minor adjustment, is far from economical. The construction of a storage shed would pay for itself in no time.

5. As a means of extending our educational, or publicity, program we have already inaugurated group meetings of local moth superintendents, town officials and interested citizens. These are being arranged under the leadership of the local superintendents in groups of

eight or ten adjacent towns, and the subjects for discussion are being confined to local interests. This idea of localizing the groups and discussions has met with much approval, and this will enable us to secure more interest in our recommendations as to appropriations, methods or equipment for their particular area. Based on the foregoing, with one idea in mind, — the best results for the benefit of the most people at the least cost, — the following changes and alterations are therefore offered for your careful consideration.

LAWS RELATING TO GYPSY AND BROWN TAIL MOTHS AND TENT CATERPILLARS.

GENERAL LAWS, CHAPTER 132.

SECTION 1.¹ *Duties of State Forester.*— The state forester, in this chapter called the forester, shall act for the commonwealth in suppressing the gypsy and brown tail moths and tent caterpillars; shall promote the perpetuation, extension and proper management of the public and private forest lands of the commonwealth; shall give such a course of instruction to the students of the Massachusetts state college on the art and science of forestry as may be arranged by the trustees of the college and the forester; and shall perform such other duties as may be imposed upon him by the governor and council.

SECTION 4. *Annual Report.*— The commissioner shall make an annual report of the acts of the forester. The report shall separate so far as practicable the expenditures on work against the gypsy moth from those on work against the brown tail moth in each town. It shall include the account of all money invested in each state forest and of the annual income and expense thereof, and the report of the state fire warden required by section twenty-eight of chapter forty-eight.

SECTION 8. *Agents destroying Gypsy Moths may enter on Any Land.*— The clerks, assistants and agents employed by the forester may, for the purpose of carrying out the provisions of this chapter relative to the suppression of gypsy and brown tail moths, enter upon any land; and any local superintendent appointed as provided in section thirteen or any agent or employee of such superintendent may enter upon any land within the said town for the purpose of determining if such land is infested with said moths or the extent to which such land is so infested.

SECTION 11.¹ *Gypsy and Brown Tail Moths and Tent Caterpillars declared Public Nuisances. Regulations for their Suppression.*— The forester may, subject to the approval of the governor, make rules and regulations governing all operations by towns or persons for the purpose of suppressing the gypsy

¹ As amended by chapter 415, Acts of 1937.

and brown tail moths, their pupae, nests, eggs and caterpillars, and tent caterpillars, which are hereby declared public nuisances. He may make contracts on behalf of the commonwealth; may act in co-operation with any person, any other state, the United States, or any foreign government; may conduct investigations and gather and distribute information concerning said moths and tent caterpillars; may use and require the use of all other lawful means of suppressing said moths and tent caterpillars; may lease real estate when he deems it necessary, and, with the approval of the authority in charge, may use any real or personal property of the commonwealth; may at all times enter upon any land, and may use all reasonable means in suppressing said moths and tent caterpillars; and, in the undertakings aforesaid, may, in accordance with this chapter, expend the funds appropriated or donated therefor; but no expenditure shall be made or liability incurred in excess of such appropriations and donations. No owner or occupant of an estate infested by the aforesaid nuisances shall by reason thereof be civilly or criminally liable except to the extent and in the manner and form set forth in this chapter.

SECTION 12.¹ *Penalty for interfering with Moth Work.* — Whoever wilfully resists or obstructs the forester or any officer of a town, or a servant or agent duly employed by said forester or by any of said officers while engaged in suppressing the gypsy and brown tail moths, tent caterpillars, elm leaf beetle, or any other tree or shrub destroying pest, or knowingly fails to comply with any of the rules and regulations issued by the forester, shall be punished by a fine of not more than twenty-five dollars.

SECTION 13.² *Local Gypsy Moth Superintendents.* — The mayor in cities and the selectmen in towns shall annually appoint a local superintendent for the suppression of gypsy and brown tail moths and tent caterpillars. In cities such appointment shall be made in January, and, in towns, within ten days after the organization of the board of selectmen. Said superintendent shall, under the advice and general direction of the forester, destroy the eggs, caterpillars, pupae and nests of the gypsy and brown tail moths and tent caterpillars within their respective jurisdictions, except in parks and other property under the control of the commonwealth, and except in private

¹ As amended by chapter 415, Acts of 1937.

² As amended by chapter 87, Acts of 1935, and chapter 415, Acts of 1937.

property, save as otherwise provided herein. The appointment of a local superintendent shall not take effect unless approved by the forester; and when so approved notice of the appointment shall be given by the mayor or the selectmen to the person so appointed.

SECTION 14.¹ *Reimbursement of Cities and Towns.* — When any city or town in which one twenty-fifth of one per cent of the valuation is more than five thousand dollars shall have expended within its limits city or town funds to an amount in excess of five thousand dollars in any one year ending November thirtieth in suppressing gypsy or brown tail moths and tent caterpillars, the commonwealth shall reimburse such city or town to the extent of fifty per cent of such excess above said five thousand dollars.

Cities or towns in which one twenty-fifth of one per cent of the valuation is less than five thousand dollars, and in which such valuation is greater than six million dollars, shall be reimbursed by the commonwealth to the extent of eighty per cent of the amount expended by such cities or towns of city or town funds in suppressing said moths and tent caterpillars in any one such year, in excess of said twenty-fifth of one per cent.

In towns in which the valuation is less than six million dollars, after they have expended in any one such year town funds to an amount equal to one twenty-fifth of one per cent of their valuation, the commonwealth shall expend within the limits thereof for the suppression of said moths and tent caterpillars such an amount in addition as the forester, with the advice and consent of the governor, shall determine. The commonwealth shall reimburse cities and towns every sixty days.

No city or town shall be entitled to any reimbursement from the commonwealth until it has submitted to the comptroller itemized accounts and vouchers showing the definite amount expended by it for the purpose of suppressing said moths and tent caterpillars, nor shall any money be paid out of the state treasury to cities or towns until said vouchers and accounts have been approved by the forester and the comptroller, nor unless said expenditures shall have been authorized and approved by the forester.

For the purposes of this section and section sixteen, the valuation of a city or town shall mean the valuation of such city or town, as determined by the last preceding valuation

¹ As amended by chapter 415, Acts of 1937.

made for the purpose of apportioning the state tax. Nothing in this section shall be construed to entitle a city or town to reimbursement for the suppression of tent caterpillars until a specific appropriation therefor has been made by the general court.

SECTION 15. *Deduction for Private Work.* — Every city or town in rendering the account required by the preceding section shall deduct from such amount as it has expended the total amount it has assessed for work performed under section eighteen during the term covered by the account, if such work was performed under such conditions as require reimbursement in whole or in part by the commonwealth.

SECTION 16. *Delinquent Cities and Towns.* — When, in the opinion of the forester, any city or town is not expending a sufficient amount for the abatement of said nuisance or is not conducting the necessary work in a proper manner, the forester shall, with the advice and consent of the governor, order such city or town to expend such an amount as the forester shall deem necessary, and in accordance with such methods as the forester, with the consent of the governor, shall prescribe; provided, that no city or town where the valuation exceeds six million dollars shall be required to expend, exclusive of any reimbursement received from the commonwealth, during any one full year more than one fifteenth of one per cent of such valuation, and that no town where the valuation is less than six million dollars shall be required to expend, exclusive of any reimbursement received from the commonwealth, during any one full year more than one twenty-fifth of one per cent of such valuation.

SECTION 17.¹ *Emergency Work.* — Any city or town failing to comply with the directions of the forester in the performance of said work within the date specified by him shall pay a fine of one hundred dollars a day for failure so to do, said fine to be collected by information brought by the attorney general in the supreme judicial court for Suffolk county.

In case of emergency, or where there is great or immediate danger of the increase or spread of moths and tent caterpillars due to the neglect of any city or town to comply with the provisions of this chapter relating to the suppression of gypsy and brown tail moths and tent caterpillars, the forester, with the consent of the governor, may initiate or continue the work of

¹ As amended by chapter 415, Acts of 1937.

suppression within such city or town for such a period as he may deem necessary. The cost of such work, including that done on private estates, less any sum due from the commonwealth by way of reimbursements on account of said work, shall be certified by the forester to the state treasurer, and be collected by him as an additional state tax upon the city or town so failing to comply with the requirements of the law. The forester may also in case of emergency, subject to the approval of the governor, carry on wholly or in part such operations as may be necessary to check the spreading of the gypsy or brown tail moth and tent caterpillars in parks not under the control of the commonwealth, and in cemeteries, woodlands and other places of public resort. The amount to be so expended in any one year shall not exceed ten per cent of the appropriations made for the year by the commonwealth for the purpose of suppressing said moths and tent caterpillars. The forester may also take complete control of the work of suppressing the gypsy and brown tail moths and tent caterpillars in such cities and towns as may through the proper officials request it. The cost of such work shall be certified by the forester to the state treasurer, and shall be collected by him as an additional state tax upon the city or town wherein such work is performed; provided, that no city or town shall be required to pay more for such work than would have been its liability as defined by section sixteen.

SECTION 18.¹ *Notice to Land Owners. Assessment of Cost of Work.* — The mayor of every city and the selectmen of every town shall, on or before November first in each year, and at such other times as he or they shall see fit or as the forester may order, cause a notice to be sent to the owner, so far as can be ascertained, of every parcel of land therein which is infested with said moths and tent caterpillars; or, if such notification appears to be impracticable, by posting such notice on said parcels of land, requiring that the eggs, caterpillars, pupae and nests of said moths and tent caterpillars shall be destroyed within a time specified therein. The publication of the notice in newspapers published or circulated in the city or town at least three times during the month of October shall be deemed a compliance with the law, if in the opinion of the mayor or selectmen such publication will be a sufficient notice.

¹ As amended by chapter 415, Acts of 1937.

When, in the opinion of the mayor or selectmen the cost of destroying such eggs, caterpillars, pupae or nests and tent caterpillars on land contiguous and held under one ownership in a city or town shall exceed one half of one per cent of the assessed value thereof, a part of said premises on which said eggs, caterpillars, pupae or nests and tent caterpillars shall be destroyed may be designated in such notice, and such requirements shall not apply to the remainder of said premises. The mayor or selectmen may designate the manner in which such work shall be done, but all work done under this section shall be subject to the approval of the forester.

If the owner shall fail to destroy such eggs, caterpillars, pupae or nests and tent caterpillars as required by said notice, the city or town, acting by the local superintendent appointed under section thirteen, shall, subject to the approval of the said forester, destroy the same, and the amount actually expended thereon, not exceeding one half of one per cent of the assessed valuation of said lands, as heretofore specified in this section, shall be assessed upon the said lands; and such an amount in addition as shall be required shall be apportioned between the city or town and the commonwealth in accordance with section fourteen. The amounts to be assessed upon private estates as herein provided shall be assessed and collected, and shall be a lien on said estates, in the same manner and with the same effect as in the case of assessments for street watering.

SECTION 19. *Assessment of Special Benefits.* — If, in the opinion of the assessors of a city or town, any land therein has received, by reason of the abatement of said nuisances thereon by said forester or by said city or town, a special benefit beyond the general advantage to all land in the city or town, then the said assessors shall determine the value of such special benefit and shall assess the amount thereof upon said land; provided; that no such assessment on lands contiguous and held under one ownership shall exceed one-half of one per cent of the assessed valuation of said lands; and provided, that the owner or owners shall have deducted from such assessment the amount paid and expended by them during the twelve months last preceding the date of such assessment toward abating the said nuisances on said lands, if, in the opinion of the assessors, such amount has been expended in good faith. Such assessment shall be a lien upon the land for three years from the first day of January next after the assessment has been made, and shall be

collected under a warrant of the assessors to the collector of taxes of such city or town, in the manner and upon the terms and conditions and in the exercise of the powers and duties, so far as they may be applicable, prescribed by chapter sixty, and real estate sold under such warrant shall be subject to the provisions of said chapter relative to land sold for taxes.

SECTION 20. *Appeal.* — A person aggrieved by such assessment may appeal to the superior court for the county where the land lies, by entering a complaint in said court within thirty days after he has had actual notice of the assessment, which complaint shall be determined as other causes by the court, without a jury. The complaint shall be heard at the first sitting of said court for trials without a jury after its entry; but the court may allow further time, or may advance the case for speedy trial, or may appoint an auditor as in other cases. The court may revise the assessment, may allow the recovery of an amount wrongfully assessed which has been paid, may set aside, in a suit begun within three years from the date thereof, a collectors' sale made under an erroneous assessment, may award costs to either party, and may render such judgment as justice and equity require.

SECTION 21. *Abatement of Assessment.* — If, in the opinion of the assessors, the owner of an estate upon which an assessment has been made is, by reason of age, infirmity or poverty, unable to pay the assessment, they may upon application abate the same.

SECTION 22.¹ *Application for Abatement.* — A person aggrieved by the taxes assessed upon him for the suppression of gypsy and brown tail moths or tent caterpillars, pursuant to section eighteen or nineteen, may, within six months after the date of the first tax bill issued on account of the taxes complained of, apply to the assessors for the abatement thereof, who may make such abatement as they deem reasonable.

SECTION 23. *Abatement.* — The assessors shall not abate a tax under the preceding section except upon the written recommendation of the local superintendent who certified the assessment in question to the assessors or provided them with the information as to the work performed, upon which such tax was assessed, unless the error or excess complained of originated in the work of the assessors who laid the tax.

¹ As amended by chapter 415, Acts of 1937.

SECTION 24. *Record of Abatement.* — The assessors shall keep a record of all such taxes abated and shall preserve for three years all written recommendations received under the preceding section. They shall furnish the collector of taxes with a certificate of each abatement, which shall relieve him from the collection of the sum abated.

SECTION 25.¹ *Tent Caterpillar, Leopard Moth and Elm Beetle.* — The city forester, superintendent or other person having charge of the suppression of gypsy and brown tail moths and tent caterpillars in each city and town in the commonwealth, or, where there is no such person, the tree warden may destroy within the limits of his city or town the leopard moth and the elm beetle or any other tree or shrub destroying pest, if authorized so to do by the mayor and city council or by the selectmen in towns.

SECTION 26.¹ *Entry on Land. Assessment for Cost of Work.* — The city forester or other officer designated in the preceding section may enter upon private land, and the owners of private land may be taxed for work done under said section as provided by sections eighteen and nineteen; provided, however, that nothing contained in this section shall require the commonwealth to pay any part of any expense other than for the suppression of the gypsy and brown tail moths and tent caterpillars, that no land shall be assessed hereunder which has been assessed the maximum amount provided by said sections eighteen and nineteen for the suppression of the gypsy and brown tail moths and tent caterpillars, and that the aggregate assessment on any parcel of private land for the suppression of the tent caterpillar, leopard moth, elm beetle and gypsy and brown tail moths shall not exceed the maximum provided by said sections.

SECTION 27.¹ *Arsenate of Lead furnished at Cost.* — To assist in exterminating gypsy and brown tail moths and tent caterpillars, the local moth superintendent in any city or town may furnish, at cost, to any owner of real estate situated within such city or town arsenate of lead. It shall be used only for the suppression of gypsy and brown tail moths and tent caterpillars and only upon land of the purchaser.

SECTION 28.¹ *Method of Payment for Lead.* — The amounts due for material furnished under the preceding section shall be charged by the local moth superintendent to the owners of

¹ As amended by chapter 415, Acts of 1937.

private estates, and shall be collected in the same way as amounts assessed for private work, and shall be a lien on said estates in the same manner as said assessments. The amounts thus charged shall be deducted from the total amount expended in each city or town in the suppression of the gypsy and brown tail moths and tent caterpillars as provided in section fifteen.

SECTION 29. *Forester to furnish Arsenate of Lead.* — To assist in exterminating insect pests the city forester, local moth superintendent or tree warden in any city or town may obtain from the forester, at cost, arsenate of lead. It shall be used only for the suppression of gypsy and brown tail moths, the tent caterpillar, leopard moth and elm beetle, and only upon lands owned or controlled by the city or town. The cost of said material shall be certified by the forester to the state treasurer, and shall be collected by him as an additional state tax upon the city or town making such purchase.

GENERAL LAWS, CHAPTER 266.

SECTION 119. *Transportation of Injurious Insects.* — Whoever knowingly brings the insects which are known as *ocneria dispar* or gypsy moth or as the brown-tail moth, or their nests or eggs, into the commonwealth, or whoever knowingly transports said insects or their eggs or nests from one town to another in the commonwealth, except when engaged in, and for the purpose of, destroying them shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than two months, or both.

GENERAL LAWS, CHAPTER 40.

SECTION 5. *Town Appropriations for Gypsy Moths, etc.* — A town may at any town meeting appropriate money for the following purposes; (23) For destroying and suppressing gypsy, brown-tail and leopard moths, tent caterpillars and elm beetles, under chapter one hundred and thirty-two.

PROPOSED LEGISLATION.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Forty-Six.

AN ACT ESTABLISHING THE POWERS AND DUTIES OF THE
CHIEF MOTH SUPERINTENDENT IN THE DEPARTMENT OF
CONSERVATION.

1 *Whereas*, The deferred operation of this act would
2 in part defeat its purpose which is to make immedi-
3 ately effective the powers and duties of the chief moth
4 superintendent in the department of conservation, as
5 outlined therein, therefor it is hereby declared to be
6 an emergency law, necessary for the immediate
7 preservation of the public convenience.

*Be it enacted by the Senate and House of Representatives
in General Court assembled, and by the authority of the
same, as follows:*

1 SECTION 1. Chapter twenty-one of the General
2 Laws is hereby amended by adding at the end the
3 following section: —

4 *Section 13.* The commissioner may appoint and
5 remove a chief moth superintendent, who shall serve
6 in the department but neither he nor his employees
7 shall be subject to the director of the division of
8 forestry therein. Said superintendent shall perform
9 such duties as the commissioner may require, and
10 shall be allowed necessary traveling expenses for

11 himself and his employees in the discharge of their
12 duties. Said superintendent shall be qualified by
13 training and experience to perform the duties of his
14 office.

1 SECTION 2. Section one of chapter one hundred
2 and thirty-two of the General Laws, as most recently
3 amended by section thirty-six of chapter four hundred
4 and ninety of the acts of nineteen hundred and forty-
5 one, is hereby further amended by striking out, in the
6 third to the fifth lines, inclusive, the words: — “act
7 for the commonwealth in suppressing the gypsy and
8 brown tail moths and tent caterpillars; shall”, — so
9 as to read as follows: — *Section 1.* The director of the
10 division of forestry in the department of conservation,
11 in this chapter called the forester, shall promote the
12 perpetuation, extension and proper management of the
13 public and private forest lands of the commonwealth;
14 shall give such a course of instruction to the students
15 of the Massachusetts state college on the art and
16 science of forestry as may be arranged by the trustees
17 of the college and the forester; and shall perform
18 such other duties as may be imposed upon him by the
19 governor and council.

1 SECTION 3. Said chapter one hundred and thirty-
2 two is hereby further amended by inserting after
3 section one, as amended, the following section: —
4 *Section 1A.* The chief moth superintendent, in
5 this chapter called the chief superintendent, shall act
6 for the commonwealth in suppressing the pests de-
7 clared in section eleven to be public nuisances, and
8 shall perform such other duties as may be imposed
9 upon him by the commissioner. He shall keep a

10 record of all expenditures and prepare an annual
11 report for the commissioner; and, subject to the
12 approval of the governor and the commissioner, may
13 make such rules and regulations and establish such
14 quarantines governing suppression operations by
15 cities, towns and persons as may be necessary.

1 SECTION 4. Said chapter one hundred and thirty-
2 two is hereby further amended by striking out section
3 four, as appearing in the Tercentenary Edition, and
4 inserting in place thereof the following section:—
5 *Section 4.* The commissioner shall make an annual
6 report of the acts of the forester and also an annual
7 report of the acts of the chief superintendent. Said
8 report of the chief superintendent shall include a
9 statement of the total expenditures, from funds of the
10 commonwealth, given to the several cities and towns
11 in suppressing heavily infested areas. Said report
12 of the commissioner shall include the account of all
13 money invested in each state forest and of the annual
14 income and expense thereof, and the report of the
15 state fire warden required by section twenty-eight of
16 chapter forty-eight.

1 SECTION 5. Said chapter one hundred and thirty-
2 two is hereby further amended by striking out section
3 eight, as so appearing, and inserting in place thereof
4 the following section:—
5 *Section 8.* The chief superintendent, and the
6 clerks, agents and other employees employed by the
7 chief superintendent may, while engaged in and for
8 the purpose of carrying out the provisions of this
9 chapter relative to any duty of the chief superin-
10 tendent, enter upon any land; and any local moth

11 superintendent, hereafter referred to in this chapter
12 as local superintendent, appointed and approved as
13 provided in section thirteen, or any agent or employee
14 of any such local superintendent, may enter upon any
15 land within his town; in each instance for the purpose
16 of determining if such land is infested with the pests
17 referred to in section eleven as public nuisances or the
18 extent to which such land is so infested.

1 SECTION 6. Said chapter one hundred and thirty-
2 two is hereby further amended by striking out section
3 eleven, as amended by section three of chapter four
4 hundred and fifteen of the acts of nineteen hundred
5 and thirty-seven, and inserting in place thereof the
6 following section: —

7 *Section 11.* The chief superintendent may, subject
8 to the approval of the commissioner and the governor,
9 make rules and regulations governing all operations
10 by cities and towns or persons for the purpose of
11 suppressing the gypsy and brown tail moths, their
12 pupae, nests, eggs and caterpillars, and tent cater-
13 pillars, canker worms and elm leaf beetles, which
14 destroy forest and shade tree foliage and are hereby
15 declared public nuisances.

16 He may make contracts on behalf of the common-
17 wealth; shall study and promote improved methods
18 of suppressing such public nuisances; may act in co-
19 operation with any person, any other state, the United
20 States, or any foreign government; may conduct
21 investigations and gather and distribute information
22 concerning such public nuisances; may advise, make
23 use of, and require the use of all lawful means of
24 suppressing such public nuisances; may lease real
25 estate when he deems it necessary, and, with the

26 approval of the authority in charge, may use any real
27 or personal property of the commonwealth; may at all
28 times enter upon any land; shall prepare for students
29 or the public such lectures, exhibits or information
30 relative to such public nuisances as may be required;
31 shall personally, and by his employees, supervise such
32 suppression work performed by the cities and towns
33 and the expenditure of funds therefore; for any and
34 all of such purposes may employ such assistants and
35 agents, including expert advisers, as he deems neces-
36 sary; and, in the undertakings aforesaid, may, in
37 accordance with this chapter, expend the sums appro-
38 priated or donated therefore; but no expenditure shall
39 be made or liability incurred in excess of such appro-
40 priations and donations. He shall annually in January
41 notify each city and town of its financial liability for
42 such suppression work for the then current year. No
43 owner or occupant of an estate infested by the afore-
44 said public nuisances shall by reason thereof be
45 civilly or criminally liable except to the extent and in
46 the manner and form set forth in this chapter.

1 SECTION 7. Said chapter one hundred and thirty-
2 two is hereby further amended by striking out section
3 twelve, as amended by section four of said chapter
4 four hundred and fifteen, and inserting in place thereof
5 the following section:—

6 *Section 12.* Whoever wilfully resists or obstructs
7 the chief superintendent, any local superintendent, or
8 any officer of the town, or a servant or agent duly
9 employed by any of said officers, while such person is
10 engaged in suppressing any public nuisance referred
11 to in section eleven, or knowingly fails to comply with
12 the rules, regulations, or quarantines issued by the

13 chief superintendent, or issued by the local super-
14 intendent and approved in writing by the chief super-
15 intendent, shall be punished by a fine of not more
16 than twenty-five dollars.

1 SECTION 8. Said chapter one hundred and thirty-
2 two is hereby further amended by striking out section
3 thirteen, as most recently amended by section five
4 of said chapter four hundred and fifteen, and inserting
5 in place thereof the following section:—

6 *Section 13.* The mayor in cities and the selectmen
7 in towns shall annually appoint a local moth super-
8 intendent for the suppression of public nuisances
9 referred to in section eleven. In cities, such appoint-
10 ments shall be made in January; and in towns, within
11 ten days after the organization of the board of select-
12 men. Said local superintendents shall, under the
13 advice and general direction of the chief superin-
14 tendent, destroy the eggs, caterpillars, larvae, pupae,
15 and nests of such public nuisances, within his jurisdic-
16 tion except in parks and other property under control
17 of the commonwealth, and except in private property,
18 as otherwise provided herein. No appointment of a
19 local superintendent shall take effect unless and until
20 approved in writing by the chief superintendent; and
21 when so approved notice of the appointment and
22 approval shall be given by the mayor or selectmen
23 to the local superintendent.

1 SECTION 9. Said chapter one hundred and thirty-
2 two is hereby further amended by striking out section
3 fourteen, as amended by section six of said chapter
4 four hundred and fifteen, and inserting in place
5 thereof the following section:—

6 *Section 14.* When any city or town, the valuation
7 of which does not exceed six million dollars, shall have
8 expended within its limits city or town funds to an
9 amount in excess of one twenty-fifth of one per cent
10 of its valuation in any one year ending November
11 thirtieth in suppressing public nuisances referred to
12 in section eleven, the commonwealth shall spend
13 within the limits of said city or town for the purpose
14 of suppressing the remaining infestation of such public
15 nuisances such funds, and shall furnish such supplies
16 and services, as the chief superintendent, after inspec-
17 tion, may find necessary.

18 When any city or town, the valuation of which is
19 greater than six million dollars and in which one
20 twenty-fifth of one per cent of such valuation is less
21 than five thousand dollars, shall have expended within
22 its limits city or town funds to an amount exceeding
23 such one twenty-fifth of one per cent in any one year
24 ending November thirtieth in suppressing public
25 nuisances referred to in section eleven, and an area of
26 serious infestation by such public nuisances still re-
27 mains in such city or town, the commonwealth shall
28 expend within the limits of the city or town for the
29 purpose of suppressing the remaining infestation of
30 such public nuisances, a sum, or shall furnish such
31 services and supplies to an amount, not exceeding
32 fifty per cent of such excess over said one twenty-fifth
33 of one per cent.

34 In determining the amount of assistance to be
35 rendered to any city or town under this section, the
36 chief superintendent shall take into consideration, as a
37 basis for the need of further expenditures, the area
38 involved, the possible spread menace and the degree
39 of infestation.

40 No city or town shall be entitled to any assistance
41 from the commonwealth under this section until it
42 has submitted to the chief superintendent, for sub-
43 mission to the comptroller, itemized accounts and
44 vouchers showing the definite amount expended by
45 it for the purpose of suppressing said public nuisances,
46 nor shall any money be paid out of the state treasury
47 to cities or towns until said vouchers and accounts
48 have been approved by the chief superintendent and
49 the comptroller, nor unless said expenditures shall
50 have been duly authorized and approved by the chief
51 superintendent and the performance of said work
52 meets with his approval.

53 For the purposes of this section and of section
54 sixteen, the valuation of a city or town shall mean
55 the valuation of such city or town as determined by the
56 last preceding valuation made for the purpose of
57 apportioning the state tax.

58 Nothing in this section shall be construed to entitle
59 a city or town to reimbursement for the suppression
60 of such public nuisances until a specific appropriation
61 therefore has been made available by the general
62 court.

1 SECTION 10. Said chapter one hundred and thirty-
2 two is hereby further amended by striking out section
3 fifteen, as appearing in the Tercentenary Edition,
4 and inserting in place thereof the following section:—
5 *Section 15.* Every city or town in rendering the
6 account required by section fourteen shall deduct
7 from such amount as it has expended the total amount
8 expended, whether or not assessed and collected, for
9 private work or work performed under section eighteen
10 during the term covered by the account, if such work

11 was performed under the conditions of section eighteen.
12 In addition, the local superintendent shall annually
13 in December furnish the chief superintendent with an
14 itemized voucher showing the total amount of private
15 work performed in his city or town. In the absence
16 of such record or voucher, the chief superintendent
17 shall use in lieu thereof, for the purposes of appor-
18 tioning reimbursement, a sum equal to four thirds
19 of the town liability.

1 SECTION 10A. Said chapter one hundred and
2 thirty-two is hereby further amended by inserting after
3 section fourteen, as amended, the following section:—

4 *Section 14A.* For the purposes of this chapter
5 relative to the suppression of public nuisances referred
6 to in section eleven, reimbursement to a city or a town
7 may, in the discretion of the chief superintendent,
8 consist in whole or in part of supplies, labor, services,
9 or loan of equipment.

1 SECTION 11. Said chapter one hundred and thirty-
2 two is hereby further amended by striking out section
3 sixteen, as appearing in the Tercentenary Edition, and
4 inserting in place thereof the following section:—

5 *Section 16.* When, in the opinion of the chief
6 superintendent, any city or town is not expending a
7 sufficient amount for the suppression of the public
8 nuisances referred to in section six, or is not conduct-
9 ing the necessary work in a proper manner, the chief
10 superintendent shall, with the advice and consent of
11 the commissioner and the governor, order such city
12 or town to expend such an amount as the chief super-
13 intendent shall deem necessary, and in accordance
14 with such methods as the chief superintendent, with

15 the consent of the commissioner and the governor,
16 shall prescribe; provided, that no city or town where
17 the valuation exceeds six million dollars shall be
18 required to expend, exclusive of any reimbursement
19 received from the commonwealth, during any one full
20 year more than one fifteenth of one per cent of such
21 valuation, and that no town where the valuation is
22 less than six million dollars shall be required to expend,
23 exclusive of any reimbursement received from the
24 commonwealth, during any one full year more than
25 one twenty-fifth of one per cent of such valuation.

1 SECTION 12. Said chapter one hundred and thirty-
2 two is hereby further amended by striking out section
3 seventeen, as amended by section six A of said chapter
4 four hundred and fifteen, and inserting in place thereof
5 the following section:—

6 *Section 17.* Any city or town failing to comply
7 with directions of the chief superintendent in the
8 performance of said work within the date specified
9 by him shall pay a fine of one hundred dollars a day
10 for failure to do so, said fine to be collected by in-
11 formation brought by the attorney general in the
12 supreme judicial court for Suffolk county.

13 In case of emergency, or where there is great or
14 immediate danger of the increase or spread of such
15 public nuisances due to the neglect of any city or
16 town to comply with the provisions of this chapter
17 relating to the suppression of such public nuisances,
18 the chief superintendent, with the consent of the com-
19 missioner and the governor, may initiate or continue
20 the work of suppression within such city or town for
21 such a period as he may deem necessary. The cost
22 of such work, including that done on private estates,
23 less any sum due from the commonwealth by way of

24 reimbursements on account of said work, shall be
25 certified by the chief superintendent to the state
26 treasurer, and be collected by him as an additional
27 state tax upon the city or town so failing to comply
28 with the requirements of the law. The chief super-
29 intendent may also in case of emergency, subject to
30 the approval of the commissioner and the governor,
31 carry on wholly or in part such operation as may be
32 necessary to check the spreading of such public
33 nuisances in parks not under the control of the com-
34 monwealth, and in cemeteries, woodlands, and other
35 places of public resort. The amount to be so expended
36 in any one year shall not exceed ten per cent of the
37 appropriations made for the year by the common-
38 wealth for the purpose of suppressing said public
39 nuisances. The chief superintendent may also take
40 complete control of the work of suppressing such
41 public nuisances in such cities and towns as may
42 through the proper officials request it. The cost of
43 such work shall be certified by the chief superin-
44 tendent to the state treasurer, and shall be collected
45 by him as an additional state tax upon the city or
46 town wherein such work is performed; provided, that
47 no city or town shall be required to pay more for such
48 work than would have been its liability as defined by
49 section sixteen.

1 SECTION 13. Said chapter one hundred and thirty-
2 two is hereby further amended by striking out section
3 eighteen, as amended by section six B of said chapter
4 four hundred and fifteen, and inserting in place
5 thereof the following section:—

6 *Section 18.* The mayor of every city and the select-
7 men of every town shall, on or before November first
8 in each year, and at such other times as he or they

9 shall see fit or as the chief superintendent may order,
10 cause a notice to be sent to the owner, so far as can
11 be ascertained, of every parcel of land therein which is
12 infested with such public nuisances; or, if such notifi-
13 cation appears to be impracticable, by posting such
14 notice on said parcels of land, requiring that the eggs,
15 caterpillars, larvae, pupae and nest of such public
16 nuisances shall be destroyed within a time specified
17 therein. The publication of the notice in newspapers
18 published or circulated in the city or town at least
19 three times during the month of October shall be
20 deemed a compliance with the law, if in the opinion
21 of the mayor or selectmen such publication will be a
22 sufficient notice.

23 When, in the opinion of the mayor or selectmen, the
24 cost of destroying such eggs, caterpillars, larvae,
25 pupae, or nests of such public nuisances on land con-
26 tiguous and held under one ownership in a city or
27 town shall exceed one half of one per cent of the
28 assessed value thereof, a part of said premises on
29 which said eggs, caterpillars, larvae, pupae, or nests
30 of such public nuisances shall be destroyed may be
31 designated in such notice, and such requirements
32 shall not apply to the remainder of said premises.
33 The mayor or selectmen may designate the manner
34 in which such work shall be done, but all work done
35 under this section shall be subject to the approval
36 of the chief superintendent.

37 If the owner shall fail to destroy such eggs, cater-
38 pillars, larvae, pupae, or nests of such public nuisances
39 as required by said notice, the city or town, acting
40 by the local superintendent appointed under section
41 thirteen, shall, subject to the approval of the said
42 chief superintendent, destroy the same, and the amount

43 actually expended thereon, not exceeding one half of
44 one per cent of the assessed valuation of said lands, as
45 heretofore specified in this section, shall be assessed
46 upon the said lands; and such an amount in addition
47 as shall be required shall be apportioned between the
48 city or town and the commonwealth in accordance
49 with section fourteen. The amounts to be assessed
50 upon private estates as herein provided shall be
51 assessed and collected, and shall be a lien on said
52 estates, in the same manner and with the same effect
53 as in the case of assessments for street watering.

1 SECTION 14. Said chapter one hundred and thirty-
2 two is hereby further amended by striking out section
3 nineteen, as appearing in the Tercentenary Edition,
4 and inserting in place thereof the following section:—
5 *Section 19.* If in the opinion of the assessors of a
6 city or town, any land therein has received by reason
7 of the suppression of said public nuisances thereon
8 by said chief superintendent or by said city or town a
9 special benefit beyond the general advantage to all
10 land in the city or town, then the said assessors shall
11 determine the value of such special benefit and shall
12 assess the amount thereof upon said land; provided,
13 that no such assessment on lands contiguous and held
14 under one ownership shall exceed one half of one per
15 cent of the assessed valuation of said lands; and pro-
16 vided, that the owner or owners shall have deducted
17 from such assessment the amount paid and expended
18 by them during the twelve months last preceding the
19 date of such assessment toward suppressing the said
20 nuisances on said lands, if, in the opinion of the asses-
21 sors such amount has been expended in good faith.
22 Such assessment shall be a lien upon the land for three

23 years from the first day of January next after the
24 assessment has been made, and shall be collected under
25 a warrant of the assessors to the collector of taxes
26 of such city or town, in the manner and upon the
27 terms and conditions and in the exercise of the powers
28 and duties, so far as they may be applicable, prescribed
29 by chapter sixty, and real estate sold under such
30 warrant shall be subject to the provisions of said
31 chapter relative to land sold for taxes.

1 SECTION 15. Said chapter one hundred and thirty-
2 two is hereby further amended by striking out section
3 twenty-two, as amended by section seven of said
4 chapter four hundred and fifteen, and inserting in
5 place thereof the following section:—

6 *Section 22.* A person aggrieved by the taxes as-
7 sessed upon him for the suppression of such public
8 nuisances, pursuant to section eighteen or nineteen,
9 may, within six months after the date of the first
10 tax bill issued on account of the taxes complained of,
11 apply to the assessors for the abatement thereof, who
12 may make such abatement as they deem reasonable.

1 SECTION 16. Said chapter one hundred and thirty-
2 two is hereby further amended by striking out section
3 twenty-three as appearing in the Tercentenary Edi-
4 tion, and inserting in place thereof the following
5 section:—

6 *Section 23.* The assessors shall not abate a tax
7 under section twenty-two except upon the written
8 recommendation of the local superintendent who
9 certified the assessment in question to the assessors
10 or provided them with the information as to the work
11 performed, upon which such tax was assessed, unless

12 the error or excess complained of originated in the
13 work of the assessors who laid the tax.

1 SECTION 17. Said chapter one hundred and thirty-
2 two is hereby further amended by striking out section
3 twenty-four, as appearing in the Tercentenary Edi-
4 tion, and inserting in place thereof the following
5 section: —

6 *Section 24.* The assessors shall keep a record of all
7 such taxes abated and shall preserve for three years all
8 written recommendations received under section
9 twenty-three. They shall furnish the collector of
10 taxes with a certificate of each abatement, which shall
11 relieve him from the collection of the sum abated.

1 SECTION 18. Said chapter one hundred and thirty-
2 two is hereby further amended by striking out section
3 twenty-five, as amended by section eight of said
4 chapter four hundred and fifteen, and inserting in
5 place thereof the following section: —

6 *Section 25.* The city forester or local superin-
7 tendent having charge of the suppression of public
8 nuisances referred to in section six in each city and
9 town shall have like jurisdiction over all other foliage-
10 destroying insects, within the limits of his city or
11 town. In the absence of such forester or local super-
12 intendent the mayor or selectmen may temporarily
13 deputize the tree warden to perform such duties.

1 SECTION 19. Said chapter one hundred and thirty-
2 two is hereby further amended by striking out section
3 twenty-six, as amended by section nine of said chapter
4 four hundred and fifteen, and inserting in place
5 thereof the following section: —

6 *Section 26.* The city forester, local superintendent,
7 or other officer designated in section twenty-five, or
8 their agents, may enter upon private lands for sup-
9 pression work done under said section twenty-five,
10 as provided by sections eighteen and nineteen, and
11 the owners of such private lands may be taxed for
12 such suppression work as so provided; provided, that
13 nothing contained in this section shall require the
14 commonwealth to pay any part of any expense so
15 incurred on private property; and provided, further
16 that no land shall be assessed hereunder which has
17 been assessed the maximum amount provided by
18 sections eighteen and nineteen, and the aggregate
19 assessment on any parcel of private land for suppres-
20 sion of public nuisances referred to in section eleven
21 and for work under section twenty-five shall not
22 exceed the maximum provided by said sections.

1 SECTION 20. Said chapter one hundred and thirty-
2 two is hereby further amended by striking out section
3 twenty-seven, as amended by section ten of said
4 chapter four hundred and fifteen, and inserting in
5 place thereof the following section:—

6 *Section 27.* To assist in suppressing public nui-
7 sances referred to in section eleven, the local super-
8 intendent in any city or town may furnish, at cost,
9 to any owner of real estate situated within said city
10 or town, arsenate of lead, other spraying materials or
11 creosote. Such materials shall be used only for the
12 suppression of such public nuisances and only upon
13 the land of the purchaser.

1 SECTION 21. Said chapter one hundred and thirty-
2 two is hereby further amended by striking out section

3 twenty-eight, as amended by section eleven of said
4 chapter four hundred and fifteen, and inserting in
5 place thereof the following section: —

6 *Section 28.* The amounts due for material fur-
7 nished under section twenty-seven shall be charged
8 by the local superintendent or other proper officer to
9 the owners of private estates, and shall be collected
10 in the same way as amounts assessed in private work
11 and shall be a lien on said estates in the same manner
12 as said assessments. The amounts thus charged shall
13 be deducted from the total amount expended in each
14 city or town for the suppression of public nuisances
15 as provided in section fifteen.

1 SECTION 22. Said chapter one hundred and thirty-
2 two is hereby further amended by striking out section
3 twenty-nine, as appearing in the Tercentenary Edi-
4 tion, and inserting in place thereof the following
5 section: —

6 *Section 29.* To assist in suppressing public nui-
7 sances referred to in section eleven the city forester or
8 local superintendent in any city or town may obtain
9 from the chief superintendent, at cost, arsenate of
10 lead, spraying materials or creosote. Such materials
11 shall be used only for the suppression of such nuisances
12 and only upon lands owned or controlled by the city
13 or town. The cost of such materials shall be certified
14 by the chief superintendent to the state treasurer and
15 shall be collected by him as an additional state tax
16 upon the city or town making such purchase.

1 SECTION 23. Section five of chapter forty of the
2 General Laws is hereby amended by striking out
3 paragraph (23), as appearing in the Tercentenary

4 Edition, and inserting in place thereof the following
5 paragraph:—

6 (23) For suppressing public nuisances referred to
7 in section eleven of chapter one hundred and thirty-
8 two.

1 SECTION 24. Chapter two hundred and sixty-six
2 of the General Laws is hereby amended by striking
3 out section one hundred and nineteen, as appearing
4 in the Tercentenary Edition, and inserting in place
5 thereof the following section:—

6 *Section 119.* Whoever knowingly brings the public
7 nuisances known as gypsy moth, brown tail moth,
8 or any other tree-destroying pests or their nest, pupae
9 or larvae, into the commonwealth, or whoever know-
10 ingly transports said insects or their nests, pupae, or
11 larvae from one town to another in the common-
12 wealth, except when engaged in, and for the purpose
13 of, suppressing them, or whoever knowingly evades
14 the requirements of a quarantine regulation estab-
15 lished under any provision of chapter one hundred
16 and thirty-two, shall be punished by fine of not more
17 than two hundred dollars or imprisonment for not
18 more than two months, or both.

