

HOUSE . . . . . No. 872.

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Printed on motion of Mr. Robinson of Melrose. February 1.

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Commonwealth of Massachusetts.

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In the Year One Thousand Nine Hundred and Five.

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AN ACT

To provide for suppressing Gypsy and Brown-tail  
Moths.

*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. For the purposes of this act the  
2 pupæ, nests, eggs and caterpillars of the gypsy  
3 and brown-tail moths and said moths are hereby  
4 declared public nuisances, and their suppression  
5 is authorized and required; but no owner or oc-  
6 cupant of an estate infested by such nuisance  
7 shall by reason thereof be liable to an action,  
8 civil or criminal, except to the extent and in the  
9 manner and form herein set forth.

1 SECTION 2. The governor, by and with the  
2 advice and consent of the council, shall appoint a

3 commission of three persons to be known as the  
4 commission for suppressing the gypsy and brown-  
5 tail moths, and shall designate the chairman, and  
6 may at any time remove any member. The mem-  
7 bers of said commission shall hold office for the  
8 portion of the year in which they are appointed,  
9 prior to the first Monday in October, and there-  
10 after for the terms of one year, two years and  
11 three years, respectively; and annually there-  
12 after the governor shall appoint as aforesaid one  
13 commissioner to hold office for the term of three  
14 years from the first Monday of October in the  
15 year of his appointment; and if any vacancy  
16 occurs in said commission by resignation or other-  
17 wise, the governor shall in like manner appoint  
18 another person upon said commission for the  
19 residue of the term in which the vacancy occurs.  
20 The chairman shall receive an annual salary of  
21 twenty-five hundred dollars, and the other two  
22 members of said commission shall receive annual  
23 salaries of two thousand dollars each, which shall  
24 be allowed and paid out of the treasury of the  
25 Commonwealth and charged to the fund appropri-  
26 ated for the use of said commission.

27 On or before the second Wednesday of Decem-  
28 ber in each year said commission shall make a  
29 report of its proceedings and of its receipts and  
30 disbursements to the general court, which shall  
31 be numbered as one of a series of public docu-  
32 ments and shall be printed.

1 SECTION 3. Said commission shall act for the

2 Commonwealth in suppressing said moths as  
3 public nuisances, in accordance with the provi-  
4 sions of this act. For such purpose it shall  
5 establish an office or offices and keep a record of  
6 its doings and of its receipts and expenditures,  
7 showing, as far as practicable, the amount ex-  
8 pended in every year for the suppression of each  
9 kind of said moths, and may make rules and  
10 regulations. It shall employ such clerks, assist-  
11 ants, agents and servants (including expert ad-  
12 visers and inspectors) as it may deem necessary.  
13 It may make all necessary contracts on behalf of  
14 the Commonwealth; may act in co-operation with  
15 any person or persons or corporation or corpora-  
16 tions, including other states and the United  
17 States; may conduct investigations and accumu-  
18 late and distribute information concerning said  
19 moths, and concerning parasites or natural en-  
20 emies for destroying said moths; may employ  
21 the use of parasites, and devise, use and require  
22 all other lawful means of suppressing or prevent-  
23 ing said moths; may lease real estate when by it  
24 deemed necessary, and, with the approval of the  
25 board in charge, may use any real or personal  
26 property of the Commonwealth; may at all times  
27 enter upon land of the Commonwealth or of a  
28 municipality, corporation, or other owner or  
29 owners, and cut and remove trees or bushes, and  
30 do any other work in carrying out the purposes  
31 of this act; and, in the undertakings aforesaid,  
32 may expend the funds appropriated or donated  
33 therefor; but no expenditure shall be made or

34 liability incurred in excess of such appropriations  
35 and donations.

1 SECTION 4. Cities and towns shall, under the  
2 advice and general direction of said commission,  
3 destroy the gipsy and brown-tail moth eggs and  
4 nests within the limits of their highways and  
5 town ways: *provided*, that no city or town shall  
6 be required to expend in such work in a year a  
7 greater sum than one twenty-fifth of one per  
8 centum of its assessed valuation. If less than  
9 such sum shall be required therefor, then such  
10 city or town shall, during such year, under such  
11 advice and direction, expend the remainder of  
12 such sum in suppressing said moth eggs and nests  
13 on school grounds, city or town parks, and all  
14 other city or town property, so far as necessary;  
15 and the balance, if any, on private property, so  
16 far as necessary.

17 When a city or town shall fail to do said work  
18 within a time and in a manner specified by and  
19 satisfactory to said commission, then said com-  
20 mission may do the same, after giving notice to  
21 the mayor of such city or the selectmen of such  
22 town of the work proposed; and the cost thereot  
23 shall be added to the state tax of such city or  
24 town, at the time when the state tax is assessed  
25 in the following year: *provided*, that the amount  
26 so added shall not exceed the difference between  
27 the sum expended in suppressing said moths by  
28 such city or town during the twelve months last  
29 preceding the first day of January in the year in



30 which said tax is assessed, and one twenty-fifth  
31 of one per centum of the taxable property of such  
32 city or town. Said sum shall be collected by the  
33 treasurer and receiver-general and credited to the  
34 fund of said commission. Every city or town  
35 shall, by its treasurer, between the first and the  
36 tenth days of January in each year, file with the  
37 treasurer and receiver-general a statement under  
38 oath of the amount so expended during said  
39 twelve months.

1 SECTION 5. The mayor and board of aldermen  
2 in a city and the selectmen in a town shall, after  
3 such notice by publication or otherwise as they  
4 shall deem sufficient, and, after hearing all inter-  
5 ested parties, estimate the damages, if any, to  
6 property sustained by owners thereof on account  
7 of lawful proceedings under this act for the abate-  
8 ment of said nuisances, and shall make an award  
9 therefor to the owner or owners of lands contigu-  
10 ous and held under one ownership, separately,  
11 after deducting from the amount of damages in  
12 every case the benefit, if any, accruing to such  
13 property beyond the general advantage to all  
14 property in the city or town by reason of the work  
15 done thereon in abating said nuisances. Every  
16 such award shall be paid by the city or town in  
17 which the land lies to the party or parties to  
18 whom the award is made; and, if not so paid  
19 within thirty days, it may be recovered by said  
20 owner or owners in an action of contract brought  
21 within one year from the date of the award.

22 If a tenant for life or for years and the remain-  
23 derman or reversioner sustain damages by pro-  
24 ceedings under this act, entire damages shall be  
25 assessed without apportionment thereof, and shall  
26 be paid to or recoverable by a person whom the  
27 parties may appoint, or, in case of disagreement,  
28 a person whom the probate court in which the  
29 property lies shall appoint, and be held in trust by  
30 him for their benefit, according to their respective  
31 interests. The trustees shall, from the income  
32 thereof, pay to the remainderman or reversioner the  
33 value of the annual rent or other payment which  
34 would, but for such damages, have been payable by  
35 the tenant, and the balance thereof to such tenant  
36 during the period for which his estate was limited,  
37 and upon its termination shall pay the principal  
38 to the remainderman or reversioner.

39 A person aggrieved by the doings of the mayor  
40 and board of aldermen of a city or the selectmen  
41 of a town in estimating his said damages and the  
42 said betterments deducted therefrom may, upon  
43 petition to the superior court in the county in  
44 which the property lies, filed within thirty days  
45 from the date of the award, have the amount of  
46 his damages and the amount of said betterments  
47 determined by the verdict of a jury at the bar of  
48 said court, and may have judgment therefor. All  
49 persons interested in one estate may join in the  
50 petition, or either of them may bring a petition for  
51 the benefit of himself and all other persons so in-  
52 terested.

53 The Commonwealth shall refund to cities and

54 towns all amounts paid by them respectively,  
55 under the provisions of this section, in the settle-  
56 ment of damages, and deduct the same from the  
57 amount to the credit of said commission to be  
58 used under this act.

1 SECTION 6. The mayor of each city and the  
2 selectmen of each town shall, on or before the  
3 first day of November in each year, and at such  
4 other times as he or they shall see fit, cause a  
5 notice to be sent to the owner or owners of each  
6 and every parcel of land therein, so far as can be  
7 ascertained, whose premises are infested with said  
8 moths, or, if such notification appears to be im-  
9 practicable, then by posting such notice on said  
10 parcel of land, requiring that the eggs and nests of  
11 said moths shall be destroyed within a time  
12 specified in the notice.

13 When, in the opinion of the mayor or select-  
14 men, the cost of destroying such eggs and nests  
15 on lands contiguous and held under one owner-  
16 ship in a city or town shall exceed twenty-five  
17 dollars, then a portion of said premises on which  
18 said eggs or nests shall be destroyed may be  
19 designated in such notice, and such requirement  
20 shall not apply to the remainder of said premises.

21 If the owner or owners shall fail to destroy  
22 such eggs and nests in accordance with the re-  
23 quirements of such notice, then the city or town  
24 shall destroy the same within the limitations pre-  
25 scribed in section four, and, for such purpose,  
26 shall have and exercise the same powers, so far



27 as they may be applicable, as are herein conferred  
28 upon said commission.

1 SECTION 7. If, in the opinion of the assessors  
2 of a city or town, any land therein has received,  
3 by reason of the abatement of said nuisances  
4 thereon, by said commission or by said city or  
5 town, a special benefit beyond the general advan-  
6 tage to all land in the city or town, and in excess  
7 of damages caused to the owner or owners of the  
8 land by acts of the city or town or said commis-  
9 sion in abating said nuisances thereon, then the  
10 said assessors shall determine the value of such  
11 special benefit in excess of said damages, and  
12 assess the amount thereof upon said land: *pro-*  
13 *vided*, that no such assessment on lands contigu-  
14 ous and held under one ownership shall exceed  
15 the sum of twenty-five dollars; and *provided*,  
16 that the owner or owners may have deducted  
17 from such assessment the amount paid and ex-  
18 pended by him, during the last preceding twelve  
19 months, towards abating said nuisances on said  
20 land, if, in the opinion of the assessors, such  
21 amount has been expended in good faith.

22 Such assessment shall be a lien upon the land  
23 for three years from the first day of January next  
24 after the assessment has been made, and shall be  
25 collected under a warrant of the assessors to the  
26 collector of taxes of such city or town, in the  
27 manner and upon the terms and conditions and in  
28 the exercise of the powers and duties, so far as  
29 they may be applicable, prescribed by chapter



30 thirteen of the Revised Laws relative to the  
31 collection of taxes.

32 Real estate sold hereunder may be redeemed  
33 within the same time and in the same manner and  
34 under the same provisions of law, so far as they  
35 may be applicable, as are set forth in chapter thir-  
36 teen of the Revised Laws for the redemption of  
37 land sold for taxes.

38 A person aggrieved by such assessment may  
39 appeal to the superior court for the county in  
40 which the land lies, by entering a complaint in  
41 said court within thirty days after he has had  
42 actual notice of the assessment, which shall be  
43 determined as other causes by the court without  
44 a jury. Such complaint shall be heard at the first  
45 sitting of said court for trials without jury after  
46 its entry. But the court may allow further time  
47 or may advance the case for speedy trial or may  
48 appoint an auditor as in other cases. The court  
49 may revise the assessment, allow the recovery  
50 back of an amount wrongfully assessed which has  
51 been paid, set aside, in a suit begun within five  
52 years from the date thereof, a collector's sale made  
53 under an erroneous assessment, award costs to  
54 either party and render such judgment as justice  
55 and equity may require.

56 If, in the opinion of the assessors, the owner of  
57 an estate upon which such assessment has been  
58 made is by reason of age, infirmity or poverty  
59 unable to pay such assessment, they may upon  
60 application abate the same.

61 If the betterments for which an assessment is

62 made hereunder resulted from work done at the  
63 expense of the Commonwealth, then, and not  
64 otherwise, the amount collected on account  
65 thereof shall be paid to the treasurer and receiver-  
66 general and placed to the credit of said com-  
67 mission to be used under this act.

1 SECTION 8. A person who wilfully resists or  
2 obstructs a member of said commission, or an  
3 official of a city or town, or a servant or agent  
4 duly employed, while lawfully engaged in the  
5 execution of the purposes of this act, shall forfeit  
6 a sum not exceeding twenty-five dollars for each  
7 offence.

1 SECTION 9. The sum of six hundred thousand  
2 dollars is hereby appropriated to be used for the  
3 purposes of this act, of which not more than two  
4 hundred and fifty thousand dollars shall be ex-  
5 pended in any one year.

1 SECTION 10. All sections of chapter two hun-  
2 dred and ten of the acts of eighteen hundred and  
3 ninety-one and of chapter five hundred and forty-  
4 four of the acts of eighteen hundred and ninety-  
5 eight, not heretofore repealed, are hereby  
6 repealed.

1 SECTION 11. This act shall take effect upon  
2 its passage.