



ANNO QUARTO

GEORGII V REGIS.

A.D. 1913.

No. 1123.

An Act to make better provision for the Prevention and Control of Bush and other Fires, and for other purposes, including the repeal of section 254 of The District Councils Act, 1887.

[*Assented to, December 11th, 1913.*]

BE it Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. This Act may be cited as "The Bush Fires Act, 1913." Short title.
2. (1) In this Act, unless a contrary intention clearly appears,— Interpretation.
 - "Justice" means Justice of the Peace for the State:
 - "Regulations" means regulations made under this Act:
 - "Scrub" includes trees, bushes, plants, and undergrowth of all kinds and sizes, whether alive or dead, and whether standing or not standing, and also includes any parts of any trees, bushes, plants, or underwood, and whether severed therefrom or not so severed, but does not include trees of such kinds or sizes as the Governor, by proclamation published in the *Government Gazette*, declares not to be scrub within the meaning of this Act:
 - "Stubble" includes stubble, hay, straw, grass, and herbage, whether alive or not alive, and whether standing or not standing:
 - "The State" means the State of South Australia:
 - "This Act" includes regulations made under this Act.

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(2) Wherever in this Act a period between one specified date and another specified date is fixed, such period does not include either of the said specified dates.

Repeal of Bush Fires Act and section 254 of District Councils Act.

3. (1) The Bush Fires Act, 1885, and section 254 of the District Councils Act, 1887, are hereby repealed.

(2) Such repeal shall not affect any right, interest, obligation, liability, or penalty already created, existing, incurred, imposed, or liable to be imposed, nor anything done or suffered, nor the effect of the doing, suffering, or omitting of anything before the passing of this Act.

Any proceeding in respect of any such right, interest, obligation, liability, or penalty may be commenced or carried on as if such repeal had not taken place.

Effect of statement of penalty at foot of any provision of the Act.

4. Where a penalty is stated in, or at the foot of, any section or subsection of this Act, any contravention of such section or subsection, whether by act or omission, shall be an offence against this Act, punishable upon conviction by the penalty so stated.

Prohibition of any act to include assisting, &c., and attempts.

5. Wherever in this Act there is a prohibition of the doing of anything, such prohibition shall be read as including a prohibition of the assisting in or in any way aiding or abetting the doing of such thing, and of the causing or suffering of the doing thereof, and of any attempt to do such thing, or cause it to be done, or to assist in or aid or abet the doing thereof.

Stubble not to be burnt between 15th October and 1st February, except for fire-breaks and under conditions.

Bush Fires Act, 1885, s. 3 (altered).

6. (1) Subject to subsection (2) hereof, no person shall, during the period between the fifteenth day of October and the first day of the following February, burn any stubble standing on any land, or light or maintain any fire with the intention of burning any stubble standing on any land.

(2) Where the stubble is burned or the fire is lighted and maintained only for the purpose of clearing strips of land to act as fire-breaks for preventing the spread of fire, it shall not be deemed a contravention of this section, provided that all the following conditions are strictly observed, namely:—

- i. None of the strips shall be more than two chains, or less than half a chain, in width, at any part thereof:
- ii. Before the fire is lighted, the land immediately adjoining each strip shall, throughout the whole length of each side of such strip, either be ploughed to a width of at least three feet or be cleared of all scrub, stubble, and other inflammable material to a width of at least five feet:
- iii. Not less than twenty-four hours before the fire is lighted, notice of intention to burn the strips shall be given to every owner or occupier of any land or building immediately adjoining the field or place wherein the strips are situated, who resides within five miles of such field or place:
- iv. Four

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- iv. Four men at least shall be present at the fire, from the time it is lighted until it is thoroughly extinguished, to assist in keeping it under control and prevent it from spreading beyond the strips :
- v. No such fire shall be lighted before nine o'clock in the forenoon, and every such fire shall be thoroughly extinguished before nine of the clock in the evening of the same day.

Penalty—For the first offence, not less than Two Pounds nor more than Twenty Pounds ; for every subsequent offence, not less than Five Pounds, nor more than Fifty Pounds.

7. No person shall, during the period between the thirty-first day of January and the sixteenth day of the following October, burn any stubble standing on any land, or light or maintain any fire with the intention of burning any stubble standing on any land, except subject to all the following conditions, namely :—

Stubble not to be burnt between 31st January and 16th October, except under conditions.

Ibid., s. 6 (altered).

- i. Before the fire is lighted, the land immediately adjoining on all sides the whole of the land on which the burning is to take place shall, throughout the whole length of every such side, either be ploughed to a width of at least three feet or be cleared of all scrub, stubble, and other inflammable material to a width of at least five feet :
- ii. Not less than twenty-four hours before the fire is lighted, notice of intention to burn the stubble shall be given to every owner or occupier of any land or building immediately adjoining the land whereon the burning is to take place, who resides within five miles of the last-mentioned land :
- iii. Four men at least shall be present at the fire, from the time it is lighted until it is thoroughly extinguished, to assist in keeping it under control, and prevent it from spreading beyond such last-mentioned land.

Penalty—For the first offence, not less than Two Pounds, nor more than Twenty Pounds ; for every subsequent offence, not less than Five Pounds, nor more than Fifty Pounds.

8. No person shall, during the period between the fifteenth day of October and the first day of the following February, burn any scrub on any land, or light or maintain any fire with the intention of burning any scrub on any land.

Scrub not to be burnt between 15th October and 1st February.

Ibid., s. 4 (altered).

Penalty—For the first offence, not less than Five Pounds nor more than Twenty-Five Pounds ; for every subsequent offence, not less than Ten Pounds nor more than Fifty Pounds.

9. (1) No person shall, during the period between the last day of January and the first day of the following May, burn any scrub

Scrub not to be burnt between end of January and 1st May, except under conditions.

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Ibid., ss. 5 and 6
(altered).

scrub on any land, or light or maintain any fire with the intention of burning any scrub on any land, except subject to all the following conditions, namely:—

- i. Before the fire is lighted, a space of at least fifteen feet in width immediately adjoining on all sides the whole of the land whereon such burning is to take place, and throughout the whole length of every such side, shall either be ploughed or be cleared of all scrub, stubble, and other inflammable material :
- ii. Not less than twenty-four hours before the fire is lighted, notice of intention to burn the scrub shall be given to every owner or occupier of any land or building immediately adjoining the land whereon such burning is to take place, who resides within five miles of the last-mentioned land :
- iii. Four men at least shall be present at the fire, from the time it is lighted until it is thoroughly extinguished, to assist in keeping it under control and prevent it from spreading beyond such last-mentioned land :
- iv. No such fire shall be lighted before nine o'clock in the forenoon.

Penalty—For the first offence, not less than Two Pounds, nor more than Twenty Pounds; for every subsequent offence, not less than Five Pounds, nor more than Fifty Pounds.

Additional notice
where land belongs to
the Crown.

Ibid., s. 6 (part).

10. In any of the cases mentioned in section 6, 8, or 9, the conditions thereby imposed shall not, if the land whereon the burning is to take place is held, occupied, or used under any agreement, lease, or licence granted by or on behalf of the Crown, be deemed to have been observed unless, before the fire is lighted, in addition to any notices thereby required, not less than twenty-four hours' notice has been given to a Crown lands ranger, or the police constable stationed nearest to the land whereon the burning is to take place.

Fires for charcoal
burning prohibited
between 31st October
and 1st May, except
under conditions.

New.

11. No person shall light, use, or maintain any fire in the open air for the purpose of making charcoal during the period between the thirty-first day of October and the first day of the following May, unless either—

- (a) a space of ground immediately round the pit or place in which the fire is situated, of the width of fifty feet at least in all parts, has before the fire is lighted been cleared, and is until the fire is completely extinguished kept clear, of all stubble, scrub, and other inflammable material ; or
- (b) the fire is enclosed in a kiln of brick, iron, stone, or earth, so constructed as to prevent the escape of fire or any burning material therefrom:

Penalty—For the first offence, not less than Five Pounds, nor more than Twenty-five Pounds; for every subsequent offence not less than Ten Pounds, nor more than Fifty Pounds

12. Every

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12. Every occupier of any land whereon any offence under section 6, 7, 8, 9, or 11 is committed shall, as well as the actual perpetrator thereof, be deemed guilty of such offence, and shall be liable to the same penalties as such perpetrator, unless he satisfies the Special Magistrate or Justices hearing the charge against him that the offence was not committed by him or any of his agents or servants, or by the authority or with the consent of him or any of his agents or servants.

Occupier of land *prima facie* liable for fire thereon.

New.

13. (1) With the approval in writing of the Minister of Agriculture the Council of any Municipality or District Council may, as regards such Municipality or District, and the Minister of Agriculture may, as regards any area within the State (defined in a notice under subsection (2) hereof) which is not within any Municipality or District, alter the periods or the hours, or both, mentioned in sections 6, 7, 8, 9, and 11, or any of those sections, and may by any such alteration fix earlier or later and longer or shorter periods or hours, or both periods and hours.

Municipal and District Councils and Minister may alter periods and hours for burning.

Bush Fires Act, 1885, s. 3, part (altered).

(2) No such alteration shall have any force until notice thereof has been—

- (a) published once in the *Government Gazette*, and twice in some newspaper circulating in such Municipality or District or defined area; and
- (b) in the case of an alteration made by a Council, affixed for at least thirty days on the front door or the notice board of the Council making such alteration.

(3) Upon such publication and affixing, such alteration shall have the force of law within such Municipality or District or defined area, and shall therein have the same effect as if the periods and hours fixed thereby were respectively fixed by such of the said sections 6, 7, 8, 9, and 11, as is or are applicable.

(4) No alteration or variation made before the passing of this Act by any Corporation or District Council, under section 254 of "The District Councils Act, 1887," or under any other Act, or otherwise, of the hours fixed by the Bush Fires Act, 1885, or any Act thereby repealed, within which fires may be lighted, shall have any effect with regard to any fire lighted after the passing of this Act.

14. Notwithstanding any provision of this Act, no fire shall, under any conditions, be lighted at any time on any Sunday, for any of the purposes mentioned in sections 6, 7, 8, 9, and 11.

Fires not to be lighted on Sunday. *Ibid.*, s. 7 (altered).

Penalty—For the first offence, not less than Five Pounds nor more than Twenty Five Pounds; for every subsequent offence, not less than Ten Pounds nor more than Fifty Pounds.

15. (1) No person shall, during the period between the thirty-first day of October and the first day of the following May—

Fires for purposes other than those mentioned in sections 6 to 11.

Ibid., s. 10 (altered).

- (a) light, use, or maintain any fire in the open air for any purpose whatever, except those mentioned in sections 6, 7, 8, 9, and 11, unless a space of ground immediately around such fire of

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of the width of seven feet at least in all parts has been previously cleared of all stubble, scrub, and other inflammable material :

- (b) having lighted, used, or maintained any fire in the open air, neglect to completely extinguish such fire before leaving the same.

Penalty—For the first offence, not less than Two Pounds nor more than Twenty Pounds; for every subsequent offence, not less than Five Pounds nor more than Fifty Pounds.

(2) Nothing in this section shall be construed as varying any of the provisions of any of the sections mentioned in subsection (1) hereof.

Ignitable wadding prohibited from 30th September to 1st May. Ibid., s. 8 (altered).

16. (1) No person shall, during the period between the thirtieth day of September and the first day of the following May, use for the wadding of any gun, rifle, pistol, or other firearm used or carried by him, any paper, cotton, linen, or other ignitable substance.

Penalty—Not less than Two Pounds nor more than Ten Pounds.

Persons carrying gun on land of another person liable to examination. Ibid., s. 9 (altered).

(2) If any person, within the period mentioned in subsection (1) hereof, uses or carries any gun, rifle, pistol, or other firearm upon or over the land of any other person, it shall be lawful for the owner or occupier of such land, or his servant or agent, to examine such gun, rifle, pistol, or other firearm, for the purpose of ascertaining the nature of the wadding used therein; and the person using or carrying such gun, rifle, pistol, or firearm, shall not—

- (a) refuse to allow such examination; or
 (b) upon the occasion of such examination refuse to disclose his name and address, or either, to such owner or occupier, or servant or agent; or
 (c) give a false name and address, or either.

Penalty—Not less than Two Pounds nor more than Ten Pounds.

Smoking in the open air near stacks, &c., prohibited. Ibid., s. 11 (altered).

17. No person shall, during the period between the thirty-first day of October and the first day of the following May, smoke in the open air within twenty yards of any stable, or of any rick, stack, or field of hay, corn, straw, stubble, or other inflammable vegetable production, unless—

- (a) within a town; or
 (b) with a pipe properly covered.

Penalty—Not less than One Pound nor more than Ten Pounds.

Trees not to be blasted between 31st October and 1st May except under conditions. Ibid., s. 13.

18. No person shall, during the period between the thirty-first day of October and the first day of the following May, employ gunpowder, or any other explosive substance, for the purpose of blasting any tree, wood, or timber, without having at least four persons present to prevent any fire from arising therefrom.

Penalty—Not less than One Pound nor more than Twenty Pounds.

19. (1) The

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19. (1) The Governor may, by proclamation, prohibit the placing on the ground of the substance or substances specified in the proclamation—

Placing of substances on the ground may be prohibited by proclamation.

- (a) either at any time or during the periods of the year or of the day specified in the proclamation ; New.
- (b) either anywhere in the State or within areas so specified;
- (c) either for any purpose or for the purposes so specified; and
- (d) either absolutely or except under conditions so specified.

(2) The Governor may, by proclamation, rescind, amend, or vary any proclamation made under subsection (1) hereof.

(3) Any proclamation made under this section shall be published—

- (a) in the *Government Gazette*, and
- (b) if the proclamation is to have effect throughout the State, twice in a newspaper published in Adelaide, or, if the proclamation is to have effect only within specified areas, twice in a newspaper circulating in such areas.

(4) No person shall, after the expiration of the period of fourteen days from the latest of the publications of any proclamation required by subsection (3) hereof, do anything contrary to the provisions of such proclamation.

Penalty—For the first offence, not less than One Pound, nor more than Five Pounds; for every subsequent offence, not less than Two Pounds, nor more than Twenty Pounds.

20. (1) The Governor may, by proclamation, prohibit the sale offering for sale, distribution, and use of any matches other than those made so as to strike only on a preparation affixed to the box containing the matches, or to a box containing matches of the same description—

Sale of matches of certain kinds may be prohibited during certain periods.

- (a) either anywhere in the State or within the areas specified in the proclamation :
- (b) during the periods of the year so specified, being between the thirty-first day of October and the first day of the following May.

(2) The Governor may, by proclamation, rescind, amend, or vary any proclamation made under subsection (1) hereof.

(3) Any proclamation made under this section shall be published—

- (a) in the *Government Gazette*, and
- (b) if the proclamation is to have effect throughout the State, twice in a newspaper published in Adelaide, or, if the proclamation is to have effect only in specified areas, twice in a newspaper circulating in such areas.

(4) No

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(4) No person shall, after the expiration of the period of fourteen days from the latest of the publications of any proclamation required by subsection (3) hereof, do anything contrary to the provisions of such proclamation.

Penalty—For the first offence, not less than One Pound, nor more than Five Pounds; for every subsequent offence, not less than Two Pounds, nor more than Twenty Pounds.

Placing inflammable material for the purpose of causing a fire to be punishable as a felony.

Bush Fires Act, 1885, s. 12.

21. Whosoever unlawfully and maliciously, for the purpose of causing a fire, and with intent to injure or damage any person or property, puts or places any match or other inflammable or combustible substance, matter, or thing, in such a position—

(a) that the same may be ignited, exploded, or set on fire, by the sun's rays being focussed through glass or other substance, or by friction, or other means; or

(b) that a fire may be lighted,

shall, whether a fire is caused or not, be guilty of felony, and being convicted thereof, shall be liable to be imprisoned for any term not exceeding fourteen years, with hard labor.

Damage by fire to dividing fence caused by neglect of owner or occupier of land to be made good by him. N.S.W., 28, 1912, s. 5.

22. (1) If the owner or occupier of any land clears the same of all inflammable materials for the space of at least twenty feet from any fence dividing such land from the land of any other owner or occupier; and

(a) such other owner or occupier does not clear his land contiguous to the said fence for the space of at least twenty feet; and

(b) any damage from fire happens to such dividing fence through his failing so to do;

such other owner or occupier shall, at his own costs and charges, repair or re-erect such fence within the period of one month from the day when the same is so damaged, or within such extended time as is allowed by a Special Magistrate, on application made to him in writing, of which application not less than seven days' notice in writing has been served on the owner or occupier who has cleared his land as aforesaid.

(2) If the owner or occupier who has so failed to clear his land fails to repair or re-erect such fence within such month or such extended time (if any), the owner or occupier of the first-mentioned land who has cleared the same as aforesaid may repair or re-erect such fence, and may recover the costs and expenses of so doing as money paid to the use of the owner or occupier so in default.

Power for Councils to expend rates for prevention of fires.

New.

23. A Municipal Corporation or District Council may expend any portion of its rates in paying for the clearing of any roads vested in it of stubble, scrub, and other inflammable material for the purpose of preventing the spread of fire or in the purchase of fire-preventing

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fire-preventing apparatus; and, subject to the provisions of this Act may light, use, and maintain fires, or cause the same to be lighted, used, and maintained, for the purpose of such clearing; and may prevent the passing of carriages and vehicles of any kind, cattle, and beasts of draught or burden along any road whilst fire is being used for the purpose of such clearing.

Cf. Vermin Act 1905, s. 10 (2).

Cf. D.C. Act, 1887, s. 281.

24. (1) Any Municipal or District Council may, from time to time, appoint such persons (not exceeding ten in number) as it thinks proper to be its officers under this Act.

Officers may be appointed by Councils for prevention and control of fires.

(2) No such appointment shall have any effect until notice thereof has been published in the *Government Gazette*.

Appointment to be gazetted.

(3) The general powers of the Council whereby any such officer is appointed, with respect to other officers appointed by it, shall apply with respect to its officers appointed under this section.

General powers of Council.

(4) Any officer appointed under this section shall, subject to such (if any) directions as are given by the Council, and subject to anything prescribed by regulations, take any measures which appear to him to be necessary or expedient, and practicable, for—

General duties of officers.

(a) preventing the outbreak of fire,

(b) protecting life and property in the case of any such outbreak, and

(c) controlling and extinguishing any fire or preventing the spread thereof.

(5) On the outbreak of any fire at any place within his Municipality or District any such officer shall proceed with all possible speed to such place, and, subject to anything prescribed by regulations, shall have the control and direction of the measures taken to control and extinguish such fire or to prevent it from spreading, and, subject as aforesaid, shall for that purpose have, as far as practicable in the circumstances, all the duties and powers of the Chief Officer of Fire Brigades under "The Fire Brigades Act, 1913."

Duties on outbreak of fire.

(6) This section shall only apply to fires which—

To what fires the section applies.

(a) have been lighted or are maintained unlawfully (whether in contravention of this Act or not), or

(b) have occurred accidentally, or

(c) have ceased to be under control or are not adequately controlled, and

to such other fires as are prescribed by regulations.

(7) This section shall not apply within any locality wherein "The Fire Brigades Act, 1913," applies.

Not to apply where Fire Brigades Act applies.

(8) The Governor may, by regulations, prescribe the powers and duties of officers appointed under this section, and all such matters and

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and things as may be necessary or convenient for enforcing the authority of such officers, and for carrying out the objects and provisions of this section.

Act not to affect other remedies.

Bush Fires Act, 1885, s. 14.

25. Nothing in this Act shall be construed as taking away or affecting any right of action or other remedy, whether civil or criminal, which any person may have in respect of any loss or damage occasioned by fire, or for any trespass committed.

Regulations.

26. (1) The Governor may make all such regulations as may be necessary or convenient for giving effect to the provisions of this Act or more fully carrying out its objects.

(2) Any regulation made under this Act may prescribe a penalty not exceeding Twenty Pounds in any case, for the breach of such regulation or of any other regulation so made.

Publication and effect of regulations.

(3) All regulations made under this Act—

(a) shall be published in the *Government Gazette* ;

(b) from the date of such publication, or from a later date fixed by the order making the same, shall (subject as by subsection (4) hereof provided) be of the same effect as if they were contained in this Act; and

(c) shall be laid before both Houses of Parliament within fourteen days after such publication, if Parliament is in Session, and if not, then within fourteen days after the commencement of the next Session.

Disallowance by Parliament.

(4) If either House of Parliament passes a resolution disallowing any such regulation, of which resolution notice has been given at any time within fourteen sitting days of such House after such regulation has been laid before it, such regulation shall thereupon cease to have effect, but without affecting the validity or curing the invalidity of anything done, or of the omission of anything, in the meantime.

This subsection shall apply notwithstanding that the said fourteen days, or some of them, do not occur in the same Session or Parliament as that in which the regulation is laid before it.

Resolution to be notified in the *Gazette*.

(5) When a resolution has been passed as mentioned in subsection (4) hereof, notice of such resolution shall forthwith be published in the *Government Gazette*.

Appropriation of penalties.

Bush Fires Act, 1885, s. 17

27. All moneys received for or on account of penalties imposed for offences against this Act, shall be paid to the Treasurer for the public uses of the State; except moneys received in respect of an offence committed within the limits of a Municipality or District Council District, which shall be paid over to, and for the use of, the Corporation or District Council.

28. (1) In

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28. (1) In any proceedings for an alleged offence against this Act the allegation in the information— Evidence in proceedings.

(a) that a fire was lighted or maintained with the intention or for the purpose mentioned in such information, or

(b) that any stubble was not burned, or that any fire was not lighted, only for the purpose mentioned in such information,

shall, if it is shown that the fire was lighted, or maintained, or that the stubble was burned (according to the nature of the charge), be taken to be proved, until the contrary is proved.

(2) In any proceedings for an alleged offence against this Act the burden of proving the observance of the conditions which would excuse the matter alleged in the information shall lie upon the defendant.

29. (1) All proceedings in respect of offences against this Act, not being indictable offences, shall be by information heard and determined in a summary way before any Special Magistrate or any two Justices, under the Ordinance No. 6 of 1850, and any amendments thereof, or any Act for the time being in force regulating the proceedings of Justices in summary proceedings. Procedure for offences.

(2) All convictions and orders made by such Magistrate or Justices may be enforced as provided by the said Ordinance or any other Act.

30. (1) There shall be an appeal from any conviction by a Special Magistrate or Justices under this Act, or from any order by a Special Magistrate or Justices dismissing any information under this Act, or any other order made by a Special Magistrate or Justices on any such information. Appeals.

(2) Such appeal shall be to the Local Court of Full Jurisdiction nearest to the place where the conviction or order was made, or to the Local Court of Adelaide in its Full Jurisdiction.

(3) Such appeal shall be regulated by the said Ordinance No. 6 of 1850 and any amendments thereof, or any Act for the time being in force regulating appeals to Local Courts: Provided that the Court on such appeal may make any order as to costs which it thinks fit, and the amount of costs so ordered may exceed Ten Pounds.

31. (1) The Local Court hearing such appeal may state a special case for the opinion of the Supreme Court. Special case.

(2) The Supreme Court shall deal with such special case according to the practice of the Supreme Court on special cases, and may make such order therein, including any order as to the costs of the proceedings in that Court and in the Court below, as to the Supreme Court appears just.

(3) The

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(3) The Supreme Court may send the special case back for amendment, or may itself amend the same.

(4) The Magistrate or Justices, or the Local Court, shall make an order in respect of the matters referred to the Supreme Court, in conformity with the certificate of the Supreme Court or a Judge thereof.

(5) Such order of the Magistrate or Justices, or Local Court, shall be enforced in manner provided by section 29 of this Act or otherwise by law.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

DAY H. BOSANQUET, Governor.