



131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 1881

H.P. 1206

House of Representatives, May 3, 2023

An Act Regarding Compensation Fees and Related Conservation Efforts to Protect Soils and Wildlife and Fisheries Habitat from Solar and Wind Energy Development and High-impact Electric Transmission Lines Under the Site Location of Development Laws

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

Robert B. Hunt

ROBERT B. HUNT
Clerk

Presented by Representative LANDRY of Farmington.
Cosponsored by Senator BLACK of Franklin and
Representatives: GRAMLICH of Old Orchard Beach, MEYER of Eliot, ROBERTS of South Berwick, SOBOLESKI of Phillips, STOVER of Boothbay, WOOD of Greene, Senator: BRENNER of Cumberland.

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

2 **Sec. 1. 7 MRSA c. 15** is enacted to read:

3 **CHAPTER 15**

4 **PROTECTION OF AGRICULTURAL SOILS FROM SOLAR ENERGY**
5 **DEVELOPMENTS**

6 **§361. Solar energy compensation fee for impact to agricultural soils**

7 **1. Compensation fee.** A person engaging in solar energy development required to
8 obtain a permit under Title 38, chapter 3, subchapter 1, article 6 shall pay a compensation
9 fee for any portion of the development, including associated facilities, that is located on
10 prime agricultural soils or soils of statewide importance under subsection 2.

11 **2. Prime agricultural soils or soils of statewide importance.** The department, in
12 consultation with the Governor's Energy Office, shall establish the definitions of and
13 process for identifying, verifying and assessing adverse impacts upon prime agricultural
14 soils and soils of statewide importance, which may include soils located on land classified
15 as prime farmland, land of statewide or local importance or unique farmland by the United
16 States Department of Agriculture, Natural Resources Conservation Service.

17 **3. Calculating fee.** A permit applicant under subsection 1 shall submit with the permit
18 application a compensation fee payment plan based upon the compensation fee calculated
19 by the department using the square footage of the developed area located on prime
20 agricultural soils or soils of statewide importance under subsection 2 and applying a per
21 square foot compensation fee set by the department. The fee must be based upon the fair
22 market value of land consisting of prime agricultural soils or soils of statewide importance
23 under subsection 2 and include reasonable costs for the closing and stewardship of a
24 compensation project completed in whole or in part with the compensation fee. Square
25 footage of the developed area that is already subject to the compensation fee under Title
26 38, section 484-C may not be included in calculating the compensation fee under this
27 subsection. The compensation fee may be reduced by the department if the permit applicant
28 proposes mitigation strategies, including, but not limited to, dual-use solar and agricultural
29 production or locating the development on land that is otherwise unsuitable for agricultural
30 production. For the purposes of this subsection, "developed area" means the total area of
31 land occupied by the solar energy development, including associated facilities.

32 **4. Collection of fees.** All compensation fees under this section must be collected prior
33 to commencing construction of the development and remitted to a compensation fund
34 established or identified by the Department of Environmental Protection under Title 38,
35 section 484-C, subsection 3.

36 **5. Conservation option.** A permit applicant subject to the requirements of this section
37 may choose to conserve, through a conservation easement or fee purchase on behalf of an
38 eligible organization described in this subsection, an equivalent amount of square footage
39 of prime agricultural soils or soils of statewide importance as the amount calculated in
40 subsection 2 instead of paying a compensation fee. A conservation option under this
41 subsection must be subject to a perpetual agricultural conservation easement or fee

1 ownership by a public, quasi-public or municipal organization or a private, nonprofit
2 organization that ensures the land remains available for agricultural production. A permit
3 applicant who chooses a conservation option under this subsection shall submit with the
4 permit application a plan to execute the option and shall complete the fee purchase or
5 conservation easement prior to issuance of a permit under Title 38, chapter 3, subchapter
6 1, article 6.

7 **6. Location and type of projects.** A compensation project funded in whole or in part
8 by a compensation fee or land designated for a conservation option under this section must
9 be located in the same region as the solar energy development and must consist of soils
10 comparable to the soils adversely impacted by the development unless otherwise approved
11 by the department.

12 **7. Responsibility for additional compensation.** The payment of a compensation fee
13 or exercise of a conservation option under this section does not relieve the permit applicant
14 from the requirement to complete a compensation project or pay a compensation fee under
15 Title 38, section 480-Z or Title 38, section 484-C.

16 **8. Rules.** The department shall adopt rules to carry out the purposes of this section.
17 Rules adopted pursuant to this subsection are routine technical rules under Title 5, chapter
18 375, subchapter 2-A.

19 **Sec. 2. 38 MRSA §484-C** is enacted to read:

20 **§484-C. Compensation fee program for renewable energy development**

21 **1. Compensation fee program.** The department shall establish a compensation fee
22 program to fund a compensation project as an alternative means of satisfying requirements
23 related to off-site habitat improvement or preservation that the department determines
24 necessary to mitigate the adverse effects of a renewable energy development on wildlife
25 and fisheries habitats, as defined by the department, to comply with section 484, subsection
26 3. The program is limited to solar energy development and associated facilities, wind
27 energy developments as defined in Title 35-A, section 3451, subsection 11 and associated
28 facilities and high-impact electric transmission lines as defined in Title 35-A, section 3131,
29 subsection 4-A. A compensation project funded in whole or in part from compensation fees
30 under this section must be approved by the department.

31 **2. Calculating compensation fee.** The department shall establish criteria for
32 determining compensation fee amounts based upon the fair market value of land consisting
33 of habitat comparable to the habitat affected by the development under this section and
34 including reasonable costs for the closing and stewardship of a compensation project
35 completed in whole or in part with the compensation fee. A portion of the fee may be used
36 to cover the cost of administering a compensation fund in subsection 3. The fee may not
37 include compensation for an area as defined by section 480-Z, subsection 7.

38 **3. Compensation fund.** The department shall establish one or more compensation
39 funds to receive compensation fees under this section and Title 7, section 361 for
40 restoration, enhancement or preservation activities under paragraph A or to provide
41 compensation fees to an organization authorized by the department under paragraph B. The
42 department may require compensation fees to be remitted to another fund or funds created
43 by the Legislature that can carry out the purposes of this section.

1 A. The department may establish a compensation fund for the purpose of receiving
2 compensation fees, grants and other related income to carry out a compensation project
3 dedicated to payment of costs and related expenses of restoration, enhancement or
4 preservation activities of the project. The department may make payments from the
5 fund consistent with the purpose of the fund. Income received under this paragraph
6 must be deposited with the Treasurer of State to the credit of the compensation fund
7 and may be invested as provided by law. Interest on investments under this paragraph
8 must be credited to the compensation fund.

9 B. The department may enter into an enforceable, written agreement with a public,
10 quasi-public or municipal organization or a private, nonprofit organization with
11 expertise in the conservation of natural or working lands. The organization must
12 demonstrate the ability to receive compensation fees, administer a compensation fund
13 and ensure that compensation projects are implemented consistent with local, regional
14 or state management priorities. If compensation fees are provided to an authorized
15 organization, the organization shall maintain records of expenditures and provide an
16 annual summary report as requested by the department. If the organization is a state
17 agency other than the department, the agency shall establish a fund meeting the
18 requirements specified in paragraph A. If the organization does not perform in
19 accordance with this paragraph or with the requirements of the written agreement with
20 the department, the department may revoke the organization's authority to conduct
21 activities in accordance with this paragraph.

22 **4. Location and type of projects.** A compensation project funded by a compensation
23 fee under this section must be located in the same biophysical region as the development
24 or transmission line under subsection 1 unless otherwise approved by the department and
25 must consist of habitat comparable to the habitat affected by the development or
26 transmission line. The department shall base approval of a compensation project on the
27 management priorities for the biophysical region in which the project is located. For
28 purposes of this subsection, "biophysical region" has the same meaning as in section 480-Z.

29 **5. Relationship to other provisions.** The payment of a compensation fee under this
30 section does not relieve the renewable energy development of the requirement to comply
31 with any other provision of this article, including but not limited to the requirement to avoid
32 and minimize adverse impacts on natural resources to the greatest extent practicable.

33 **6. Rules.** The department shall adopt rules to carry out the purposes of this section.
34 Rules adopted pursuant to this subsection are routine technical rules under Title 5, chapter
35 375, subchapter 2-A.

36 **Sec. 3. Department of Agriculture, Conservation and Forestry and**
37 **Department of Environmental Protection to adopt rules.** By December 31, 2023,
38 the Department of Agriculture, Conservation and Forestry, in consultation with the
39 Department of Environmental Protection, the Department of Inland Fisheries and Wildlife
40 and the Governor's Energy Office, shall initiate rulemaking to establish a compensation fee
41 program to accept and administer compensation fees under the Maine Revised Statutes,
42 Title 7, section 361 and to define "prime agricultural soils" and "soils of statewide
43 importance" under Title 7, section 361, subsection 2 and the Department of Environmental
44 Protection, in consultation with the Department of Agriculture, Conservation and Forestry,
45 the Department of Inland Fisheries and Wildlife and the Governor's Energy Office, shall

1 initiate rulemaking to establish a compensation fee program to accept and administer
2 compensation fees under Title 38, section 484-C and to define "wildlife and fisheries
3 habitats" under Title 38, section 484-C, subsection 1, which must include but not be limited
4 to large undeveloped habitat blocks, important wildlife corridors and other habitat types
5 identified in consultation with the Department of Inland Fisheries and Wildlife. The rules
6 must establish variable compensation amounts based on the value of the habitats and
7 agricultural soils affected and the degree of adverse effect caused by the development and
8 must establish mitigation strategies that may reduce or otherwise alter any compensation
9 fee, including but not limited to the use of wildlife-friendly fencing and dual-use solar
10 energy and agricultural production. Notwithstanding Title 5, chapter 375, the Department
11 of Agriculture, Conservation and Forestry and the Department of Environmental Protection
12 may allow for the payment of a compensation fee prior to the adoption of final rules using
13 interim criteria established in consultation with the Department of Inland Fisheries and
14 Wildlife and the Governor's Energy Office.

15 SUMMARY

16 This bill requires developers of solar energy projects to pay a compensation fee or pay
17 for conservation efforts to mitigate adverse effects on prime agricultural soils or soils of
18 statewide importance and developers of solar energy developments, wind energy
19 developments or high-impact electric transmission lines to pay a compensation fee to fund
20 off-site habitat improvement or preservation projects to mitigate the adverse effects of a
21 development on wildlife and fisheries habitats. The Department of Environmental
22 Protection is directed to establish one or more compensation funds to carry out the projects
23 or to authorize a public, quasi-public or municipal organization or a private, nonprofit
24 organization to administer the funds. A solar energy developer may offset the
25 compensation fee for the protection of prime agricultural soils or soils of statewide
26 importance for land for which the developer paid a compensation fee to mitigate the adverse
27 effects of a development on wildlife and fisheries habitats and may also opt in lieu of the
28 compensation fee to conserve a comparable area of land through a conservation easement
29 or a purchase for fee ownership by a public, quasi-public or municipal organization or a
30 private, nonprofit organization that ensures the land remains available for agricultural
31 production. This bill also directs the Department of Agriculture, Conservation and Forestry
32 to adopt rules and define "prime agricultural soils" and "soils of statewide importance" and
33 the Department of Environmental Protection to adopt rules and define "wildlife and
34 fisheries habitats" subject to compensation fees or other conservation efforts.