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Date: (Filing No. H-)

AGRICULTURE, CONSERVATION AND FORESTRY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
131ST LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1206, L.D. 1881, “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 ”

Amend the bill by striking out everything after the enacting clause and inserting the following:

Sec. 1. 38 MRSA §484-C is enacted to read:

§484-C. Solar energy compensation fee for impact to high-value agricultural land

1. Compensation fee. The department shall establish a solar energy compensation program in accordance with this section. The program must require a person who obtains approval under this article to construct or cause to be constructed a solar energy development located on high-value agricultural land as defined in section 3201, subsection 2 to pay a compensation fee or other form of compensation in accordance with this section for any portion of the development, including associated facilities, that is located on high-value agricultural land, referred to in this section as "the impacted area."

2. Calculating fee. The compensation fee under this section must be calculated by the department, in consultation with the Department of Agriculture, Conservation and Forestry, using the square footage of the impacted area and applying a per square foot compensation fee set by the department. The fee must be based upon the fair market value of the impacted area and include reasonable costs, including stewardship costs, for a compensation project, as defined by the department by rule, that is completed in whole or in part with the compensation fee. Square footage of the impacted area that is already subject to the compensation fee under section 484-D may not be included in calculating the compensation fee under this subsection. The compensation fee may be reduced by the department, in consultation with the Department of Agriculture, Conservation and Forestry, if the applicant proposes mitigation strategies, including, but not limited to, dual-use agricultural and solar production, as defined under section 3201, subsection 1. The fee may be increased by the department, in consultation with the Department of Agriculture,

COMMITTEE AMENDMENT

1 Conservation and Forestry, based on the severity of the adverse impacts on the impacted
2 area.

3 **3. Collection of fees.** All compensation fees collected under this section must be
4 deposited in the Maine Working Farmland Access and Protection Fund in Title 5, section
5 6203-C.

6 **4. Conservation option.** The department shall allow an applicant to meet the
7 requirements of this section by conserving other land in accordance with this subsection.
8 The amount of land conserved must be equal in square footage to the impacted area. The
9 conserved land must be subject to a perpetual conservation easement or fee ownership by
10 a public, quasi-public or municipal organization or a private, nonprofit organization that
11 ensures the land remains available for agricultural production. An applicant who wishes
12 to meet the requirements of this section in accordance with this subsection shall submit
13 with the application a plan to execute the option and shall complete the fee purchase or
14 conservation easement prior to the start of construction.

15 **5. Location and type of projects.** A compensation project funded in whole or in part
16 by a compensation fee or land designated for a conservation option under this section must
17 be located in the same region as the solar energy development and must consist of soils
18 comparable to those in the impacted area unless otherwise approved by the department.

19 **6. Responsibility for additional compensation.** The requirements of this section are
20 in addition to the requirements of section 480-Z and section 484-D.

21 **7. Rulemaking.** The department shall adopt rules to implement this section. Rules
22 adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter
23 375, subchapter 2-A.

24 **Sec. 2. 38 MRSA §484-D** is enacted to read:

25 **§484-D. Compensation fee program for renewable energy development**

26 **1. Compensation fee program.** The department shall establish a compensation fee
27 program to fund a compensation project as an alternative means of satisfying requirements
28 related to off-site habitat improvement or preservation that the department determines
29 necessary to mitigate the adverse effects of a renewable energy development on wildlife
30 and fisheries habitats, as defined by the department, to comply with section 484, subsection
31 3. For purposes of this section, "renewable energy development" means a development
32 subject to the requirements of this article that is:

33 A. A solar energy development and associated facilities;

34 B. A wind energy development as defined in Title 35-A, section 3451, subsection 11
35 and associated facilities; or

36 C. A high-impact electric transmission line as defined in Title 35-A, section 3131,
37 subsection 4-A.

38 A compensation project funded in whole or in part from compensation fees under this
39 section must be approved by the department.

40 **2. Calculating compensation fee.** The department shall establish criteria for
41 determining compensation fee amounts based upon the fair market value of land consisting
42 of habitat comparable to the habitat affected by the development under this section and

1 including reasonable costs, including stewardship costs, of a compensation project
2 completed in whole or in part with the compensation fee. A portion of the fee may be used
3 to cover the cost of administering a compensation fund in subsection 3. The fee may not
4 include compensation for an area as defined by section 480-Z, subsection 7.

5 **3. Compensation fund.** The department shall establish one or more compensation
6 funds to receive compensation fees under this section for restoration, enhancement or
7 preservation activities under paragraph A or to provide compensation fees to an
8 organization authorized by the department under paragraph B. The department may require
9 compensation fees to be remitted to another fund or funds created by the Legislature that
10 can carry out the purposes of this section. Funds may be used by an agency required to
11 assist with implementation of the requirements of this section to hire contract staff.

12 A. The department may establish a nonlapsing compensation fund for the purpose of
13 receiving compensation fees, grants and other related income to carry out a
14 compensation project dedicated to payment of costs and related expenses of restoration,
15 enhancement or preservation activities of the project. The department may make
16 payments from the fund consistent with the purpose of the fund. Income received under
17 this paragraph must be deposited with the Treasurer of State to the credit of the
18 compensation fund and may be invested as provided by law. Interest on investments
19 under this paragraph must be credited to the compensation fund.

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

33 **4. Location and type of projects.** A compensation project funded by a compensation
34 fee under this section must be located in the same biophysical region as the renewable
35 energy development unless otherwise approved by the department and must consist of
36 habitat comparable to the habitat affected by the renewable energy development. The
37 department shall base approval of a compensation project on the management priorities for
38 the biophysical region in which the project is located. For purposes of this subsection,
39 "biophysical region" has the same meaning as in section 480-Z.

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

1 The department shall issue a permit if the department finds that the fee owner of high-value
2 agricultural land has filed a federal Internal Revenue Service Form 1040, Schedule F in
3 each of the 3 calendar years preceding the submission of an application for a permit under
4 Title 35-A, chapter 34-D with a gross income of at least \$10,000 on federal Internal
5 Revenue Service Form 1040, Schedule F in each calendar year.

6 A person is not required to obtain a permit under this section for personal use of a solar
7 energy development or dual-use agricultural and solar production on high-value
8 agricultural land.

9 The department shall adopt rules to implement this section. The department, in
10 adopting rules under this section, shall consult with the Department of Agriculture,
11 Conservation and Forestry and the Governor's Energy Office. Rules adopted under this
12 section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

13 **Sec. 4. Department of Agriculture, Conservation and Forestry and**
14 **Department of Environmental Protection to adopt rules.** By December 31, 2023,
15 the Department of Agriculture, Conservation and Forestry, in consultation with the
16 Department of Environmental Protection and the Governor's Energy Office, shall initiate
17 rulemaking to define "high-value agricultural land" under the Maine Revised Statutes, Title
18 38, chapter 35, establish tiers of high-value agricultural land with variable compensation
19 amounts for each tier and define "dual-use agricultural and solar production," and the
20 Department of Environmental Protection, in consultation with the Department of
21 Agriculture, Conservation and Forestry, the Department of Inland Fisheries and Wildlife
22 and the Governor's Energy Office, shall initiate rulemaking to establish a compensation fee
23 program to accept and administer compensation fees under Title 38, sections 484-C and
24 484-D and to define "wildlife and fisheries habitats" under Title 38, section 484-D,
25 subsection 1, which must include but not be limited to large undeveloped habitat blocks,
26 important wildlife corridors and other habitat types identified in consultation with the
27 Department of Inland Fisheries and Wildlife. The rules must establish variable
28 compensation amounts based on the value of the habitats and high-value agricultural land
29 affected and the degree of adverse effect caused by the development and must establish
30 mitigation strategies that may reduce or otherwise alter any compensation fee, including
31 but not limited to the use of wildlife-friendly fencing and dual-use agricultural and solar
32 production. Notwithstanding Title 5, chapter 375, the Department of Environmental
33 Protection may allow for the payment of a compensation fee prior to the adoption of final
34 rules using interim criteria established in consultation with the Department of Agriculture,
35 Conservation and Forestry, the Department of Inland Fisheries and Wildlife and the
36 Governor's Energy Office.

37 **Sec. 5. Application.** That section of this Act that enacts the Maine Revised Statutes,
38 Title 38, chapter 35 applies to solar energy developments on which construction begins
39 after September 1, 2024.'

40 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
41 number to read consecutively.

SUMMARY

1
2 This amendment, which is the majority report of the committee, changes the terms
3 "prime agricultural soils" and "soils of statewide importance" to "high-value agricultural
4 land."

5 The amendment requires the Department of Environmental Protection, in consultation
6 with the Department of Agriculture, Conservation and Forestry, to calculate the
7 compensation fee for solar energy development that is located on high-value agricultural
8 land.

9 The amendment directs the Department of Agriculture, Conservation and Forestry, in
10 consultation with the Department of Environmental Protection, the Department of Inland
11 Fisheries and Wildlife and the Governor's Energy Office, to define "dual-use agricultural
12 and solar production," "high-value agricultural land" and "wildlife and fisheries habitats"
13 through rulemaking.

14 The amendment provides that the solar energy compensation fee for impact to high-
15 value agricultural land may be increased by the Department of Environmental Protection,
16 in consultation with the Department of Agriculture, Conservation and Forestry, based on
17 the severity of the adverse impacts of the proposed developed area.

18 The amendment requires the solar energy compensation fee for impact to high-value
19 agricultural land to be deposited in the Maine Working Farmland Access and Protection
20 Fund.

21 This amendment prohibits the construction of solar energy development with ground-
22 mounted panels on high-value agricultural land occupying 5 acres or more without a permit
23 from the Department of Environmental Protection. The department is required to issue a
24 permit if the department finds that the fee owner of the high-value agricultural land has
25 filed a federal Internal Revenue Service Form 1040, Schedule F in each of the 3 calendar
26 years with a gross income of at least \$10,000 in each calendar year preceding the
27 submission of an application for a permit under the solar energy development
28 decommissioning law.

29 The amendment provides that a person is not required to obtain a permit for a solar
30 energy development that meets the requirements established by the department by rule for
31 personal use of a solar energy development or dual-use agricultural and solar production
32 on high-value agricultural land.

33 **FISCAL NOTE REQUIRED**

34 **(See attached)**