

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

DATE: 3-25-97

(Filing No. H-111 )

NATURAL RESOURCES

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE
HOUSE OF REPRESENTATIVES
118TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 205, L.D. 258, Bill, "An Act Concerning Compensation under the Natural Resources Protection Laws"

Amend the bill in section 1 in that part designated "S480-Z." in the 3rd paragraph by inserting at the end the following: 'The loss of functions or values of a coastal wetland may not be compensated for by the restoration, enhancement, creation or preservation of freshwater wetland functions or values.'

Further amend the bill in section 1 in that part designated "S480-Z." by inserting after the 3rd paragraph the following:

'A project undertaken pursuant to this section must be approved by the department. The department shall base its approval of a compensation project on the wetland management priorities identified by the department for the watershed in which the project is located. The department may not approve a compensation project until the applicant has complied with all other applicable provisions of this article and all applicable rules adopted by the department pursuant to this article.'

Further amend the bill in section 1 in that part designated "S480-Z." in subsection 1 by inserting at the end the following: 'A compensation project must be located in the same watershed as the wetlands affected by the activity unless the department determines, based on regional hydrological or ecological priorities, that there is a scientific justification for locating the compensation project outside of the same watershed.'

COMMITTEE AMENDMENT

2 Further amend the bill in section 1 in that part designated  
3 "§480-Z." in subsection 2 in the last line (page 1, line 42 in  
4 L.D.) by inserting after the following: "department" the  
5 following: 'consistent with all applicable federal rules and  
6 regulations'

8 Further amend the bill in section 1 in that part designated  
9 "§480-Z." by striking out all of subsection 3 (page 1, lines 44  
10 to 48 and page 2, lines 1 to 29 in L.D.) and inserting in its  
11 place the following:

12 '3. Compensation fee program. The department shall develop  
13 a compensation fee program in consultation with the State  
14 Planning Office, the United States Army Corps of Engineers and  
15 state and federal resource agencies, including the United States  
16 Fish and Wildlife Service and the United States Environmental  
17 Protection Agency.

18 A. The program must include, at a minimum, the following:

19 (1) Identification of wetland management priorities on  
20 a watershed basis;

21 (2) Identification of the types of wetland losses  
22 eligible for compensation under this subsection;

23 (3) Standards for compensation fee projects;

24 (4) Calculation of compensation fees based on the  
25 functions and values of the affected wetlands and the  
26 cost of compensation, taking into account the potential  
27 higher cost of compensation when a project is  
28 implemented at a later date; and

29 (5) Methods to evaluate the long-term effectiveness of  
30 compensation fee projects implemented under this  
31 subsection in meeting the wetland management priorities  
32 identified pursuant to subparagraph (1).

33 B. Any compensation fee must be paid into a wetlands  
34 compensation fund established by the department or to an  
35 organization authorized by the department as provided in  
36 subparagraphs (1) and (2). A compensation project funded in  
37 whole or in part from compensation fees must be approved by  
38 the department.

39 (1) The department may establish a wetlands  
40 compensation fund for the purpose of receiving  
41 compensation fees, grants and other related income.

2 The wetlands compensation fund must be a fund dedicated  
4 to payment of costs and related expenses of wetland  
6 restoration, enhancement, preservation and creation  
8 projects. The department may make payments from the  
10 fund consistent with the purpose of the fund. Income  
received under this subsection must be deposited with  
the State Treasurer to the credit of the wetlands  
compensation fund and may be invested as provided by  
law. Interest on these investments must be credited to  
the wetlands compensation fund.

12 (2) The department may enter into an enforceable,  
14 written agreement with a public, quasi-public or  
16 private, nonprofit organization dedicated to the  
18 protection of wetlands and other natural areas for the  
20 purposes of receiving compensation fees, administering  
22 the wetlands compensation fund and ensuring that  
24 compensation projects are implemented consistent with  
26 the wetland management priorities identified by the  
28 department for the watershed in which the project is  
30 located. If compensation fees are provided to an  
32 authorized organization, the organization shall  
34 maintain records of expenditures and provide an annual  
summary report to the department. If the authorized  
agency is a state agency other than the department, the  
agency shall establish a fund meeting the requirements  
specified in subparagraph (1). If the organization  
does not perform in accordance with this subsection or  
with the requirements of the written agreement, the  
department may revoke the organization's authority to  
conduct activities in accordance with this subsection.  
If an organization's authorization is revoked, any  
funds remaining in the wetlands compensation fund must  
be provided to the department.

36 Rules adopted pursuant to this subsection are routine technical  
38 rules under Title 5, chapter 375, subchapter II-A.

40 4. Relationship to other provisions. The purchase of  
42 credits from a mitigation bank or the payment of a compensation  
44 fee in no way relieves the applicant of the requirement to comply  
46 with any other provision of this article, including, but not  
limited to, the requirement to avoid or minimize affects on  
wetlands and water quality to the greatest extent practicable  
under section 480-X.

48 5. Report; evaluation. The department shall submit a report  
50 annually by February 1st to the joint standing committee of the  
Legislature having jurisdiction over natural resources matters  
regarding the wetlands compensation program. The report must

2 include information on the amount and type of wetlands altered,  
3 the associated impact on wetland functions and values and the  
4 compensation required by the department. The information must be  
5 provided for each of the following categories: compensation  
6 projects implemented by the applicant, compensation authorized by  
7 the purchase of credits from a mitigation bank, compensation  
8 authorized by payment of compensation fees and wetland  
9 alterations for which compensation was not required.

10 By January 1, 2001, the department shall submit to the joint  
11 standing committee of the Legislature having jurisdiction over  
12 natural resources matters an evaluation of the effectiveness and  
13 efficiency of the compensation program developed under this  
14 section, including the amount and type of wetlands altered, the  
15 effect on wetland functions and values, an assessment of the  
16 relative environmental benefit of each compensation option, an  
17 assessment of whether coastal wetlands should be included in the  
18 program, an assessment of the requirement that the compensation  
19 project be located in the same watershed as the affected wetland  
20 and a comparison of the compensation program developed under this  
21 section with compensation prior to the effective date of this  
22 section. The department may include recommendations for  
23 extending the program and any suggested statutory changes.

24  
25 **6. Repeal.** This section is repealed October 15, 2001. The  
26 repeal of this section does not affect any valid permits,  
27 compensation projects, credits and compensation funds issued,  
28 implemented, purchased or established pursuant to this section.'

29 Further amend the bill by inserting after section 1, the  
30 following:

31  
32 **Sec. 2. Implementation.** The Department of Environmental  
33 Protection may not approve a compensation project funded in whole  
34 or in part from compensation fees until the compensation fee  
35 program developed pursuant to the Maine Revised Statutes, Title  
36 38, section 480-Z, subsection 3 has been agreed to by the United  
37 States Army Corps of Engineers, the United States Fish and  
38 Wildlife Service and the United States Environmental Protection  
39 Agency.'

40  
41 Further amend the bill in section 2 in the 2nd line (page 2,  
42 line 32 in L.D.) by striking out the following: "Maine  
43 Environmental Protection Fund" and inserting in its place the  
44 following: 'Wetlands Compensation Fund' and in the 7th and 8th  
45 lines (page 2, lines 40 and 41 in L.D.) by striking out the  
46 following: "Maine Environmental Protection Fund" and inserting in  
47 its place the following: 'Wetlands Compensation Fund'

2 Further amend the bill by relettering or renumbering any  
nonconsecutive Part letter or section number to read  
consecutively.

4  
6 Further amend the bill by inserting at the end before the  
summary the following:

8  
10 **FISCAL NOTE**

	1997-98	1998-99
<b>APPROPRIATIONS/ALLOCATIONS</b>		
Other Funds	\$957,000	\$957,000

<b>REVENUES</b>		
Other Funds	\$957,000	\$957,000

22 This bill includes Wetlands Compensation Fund allocations of  
\$957,000 and \$957,000 in fiscal years 1997-98 and 1998-99,  
24 respectively, for the Department of Environmental Protection to  
distribute funds for wetlands projects.

26 The establishment of a wetlands compensation program will  
increase dedicated revenue collections. The estimated increase  
28 of annual dedicated revenue to the Department of Environmental  
Protection may be as much as \$957,000 annually beginning in  
30 fiscal year 1997-98.'

32  
34 **SUMMARY**

36 This amendment clarifies the wetlands compensation program  
that is authorized by the bill. The amendment prohibits the  
38 compensation of coastal wetland losses by the restoration,  
enhancement, creation or preservation of freshwater wetland  
40 functions or values. The amendment specifies that a compensation  
project must be approved by the Department of Environmental  
42 Protection, and that approval must be based on the wetland  
management priorities identified for the watershed in which the  
44 project is located. The department is prohibited from approving  
a project until the applicant has complied with all other  
46 applicable provisions of the natural resources protection laws.

48 The amendment also requires that a compensation project be  
located in the same watershed as the wetlands affected by the  
activity unless the department determines, based on regional

COMMITTEE AMENDMENT "A" to H.P. 205, L.D. 258

2 hydrological or ecological priorities, that there is a scientific  
justification to locate the project outside of the watershed.

4 The amendment also clarifies that a mitigation bank must be  
consistent with all applicable federal rules and regulations.

6 The amendment requires the department to develop a  
8 compensation fee program in consultation with the State Planning  
Office and other state and federal resource agencies.

10 The amendment also requires the department to submit an  
12 annual report to the joint standing committee of the Legislature  
having jurisdiction over natural resources matters regarding the  
14 wetlands compensation program, and to submit to that committee on  
16 January 1, 2001 an evaluation of the effectiveness and efficiency  
of the compensation program.

18 The amendment repeals the statutory authorization for the  
wetlands compensation program October 15, 2001.

20 The amendment prohibits the department from approving a  
22 compensation project funded in whole or in part from compensation  
fees until the compensation fee program has been agreed to by  
24 federal resource agencies.

26 Finally, the amendment changes the allocation section to  
allocate funds from the Wetlands Compensation Fund rather than  
28 the Maine Environmental Protection Fund.

30 The amendment also adds a fiscal note.