

MAINE STATE LEGISLATURE

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No. 2223

H.P. 1589

House of Representatives, February 26, 2008

An Act To Expand the Natural Resources Protection Act Compensation Program

Reported by Representative KOFFMAN of Bar Harbor for the Joint Standing Committee on Natural Resources pursuant to Public Law 2007, chapter 290, section 17.

Reference to the Committee on Natural Resources suggested and ordered printed under Joint Rule 218.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

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

2 **Sec. 1. 38 MRSA §480-Z**, as amended by PL 2005, c. 592, §§3 and 4, is further
3 amended to read:

4 **§480-Z. Compensation**

5 The department may establish a program providing for compensation of unavoidable
6 ~~freshwater or coastal wetland~~ losses to an area listed in subsection 7 due to a proposed
7 activity. Compensation must include the restoration, enhancement, creation or
8 preservation of ~~wetlands~~ an area or areas that have functions or values similar to the
9 ~~wetlands~~ area impacted by the activity, unless otherwise approved by the department.
10 Preservation may include protection of uplands adjacent to ~~wetlands~~ an area.

11 The department may require that compensation include the design, implementation
12 and maintenance of a compensation project or, in lieu of such a project, may allow the
13 applicant to purchase credits from a mitigation bank or to pay a compensation fee. If
14 compensation is required, the completion and maintenance of a project, purchase of
15 credits or payment of a compensation fee must be a condition of the permit.

16 The department shall identify an appropriate project, or determine the amount of
17 credits or compensation fee, based upon the compensation that would be necessary to
18 restore, enhance, create or preserve ~~wetlands~~ areas with functions or values similar to the
19 ~~wetlands~~ areas impacted by the activity. However, the department may allow the
20 applicant to conduct a project of equivalent value, or allow the purchase of credits or
21 payment of a compensation fee of equivalent value, to be used for the purpose of
22 restoring, enhancing, creating or preserving other ~~wetland~~ functions or values of the area
23 that are environmentally preferable to the functions and values impacted by the activity,
24 as determined by the department. The loss of functions or values of one type of area may
25 not be compensated for by the restoration, enhancement, creation or preservation of
26 another type of area. ~~The~~ For example, the loss of functions or values of a coastal
27 wetland may not be compensated for by the restoration, enhancement, creation or
28 preservation of freshwater wetland functions or values.

29 A project undertaken pursuant to this section must be approved by the department.
30 The department shall base its approval of a wetlands compensation project on the wetland
31 management priorities identified by the department for the watershed or biophysical
32 region in which the project is located. The department shall base its approval of a
33 compensation project concerning an area listed in subsection 7, paragraph C, D or E on
34 the management priorities identified by the department for the type of habitat. The
35 department may not approve a compensation project for unavoidable losses to an area
36 until the applicant has complied with all other applicable provisions of this article and all
37 applicable rules adopted by the department pursuant to this article. For purposes of this
38 section, "biophysical region" means a region with shared characteristics of climate,
39 geology, soils and natural vegetation.

40 **1. Location of project.** A compensation project must be located on or adjacent to
41 the project site, unless otherwise approved by the department. A compensation project

1 must be located in the same watershed as the ~~wetlands~~ area affected by the activity unless
2 the department determines, based on regional hydrological or ecological priorities, that
3 there is a scientific justification for locating the compensation project outside of the same
4 watershed.

5 **2. Approval of mitigation bank.** A mitigation bank from which any credits are
6 purchased must be approved by the department consistent with all applicable federal rules
7 and regulations.

8 **3. Compensation fee program.** The department may develop a wetlands
9 compensation fee program for the areas listed in subsection 7, paragraphs A and B in
10 consultation with the State Planning Office, the United States Army Corps of Engineers
11 and state and federal resource agencies, including the United States Fish and Wildlife
12 Service and the United States Environmental Protection Agency. The department may
13 develop a compensation fee program for the areas listed in subsection 7, paragraphs C, D
14 and E in consultation with the Department of Inland Fisheries and Wildlife.

15 A. The program may include the following:

16 (1) Identification of wetland management priorities on a watershed or
17 biophysical region basis;

18 (1-A) Identification of management priorities for the areas listed in subsection 7,
19 paragraphs C, D and E;

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

22 (3) Standards for compensation fee projects;

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

27 (5) Methods to evaluate the long-term effectiveness of compensation fee projects
28 implemented under this subsection in meeting the ~~wetland~~ management priorities
29 identified pursuant to ~~subparagraph~~ subparagraphs (1) and (1-A).

30 B. Any compensation fee may be paid into a ~~wetlands~~ compensation fund
31 established by the department as provided in subparagraph (1) or to an organization
32 authorized by the department as provided in subparagraph (2). A compensation
33 project funded in whole or in part from compensation fees must be approved by the
34 department.

35 (1) The department may establish a ~~wetlands~~ compensation fund funds for the
36 purpose of receiving compensation fees, grants and other related income. ~~The~~
37 ~~wetlands~~ A compensation fund must be a fund dedicated to payment of costs and
38 related expenses of ~~wetland~~ restoration, enhancement, preservation and creation
39 projects. The department may make payments from the fund consistent with the
40 purpose of the fund. Income received under this subsection must be deposited
41 with the State Treasurer to the credit of the ~~wetlands~~ compensation fund and may

1 be invested as provided by law. Interest on these investments must be credited to
2 the ~~wetlands~~ compensation fund.

3 (2) The department may enter into an enforceable, written agreement with a
4 public, quasi-public or municipal organization or a private, nonprofit
5 organization for the protection of ~~wetlands and other~~ natural areas. Such an
6 organization must demonstrate the ability to receive compensation fees,
7 administer a ~~wetlands~~ compensation fund and ensure that compensation projects
8 are implemented consistent with local, regional or state ~~wetland~~ management
9 priorities ~~for the watershed in which the project is located~~. If compensation fees
10 are provided to an authorized organization, the organization shall maintain
11 records of expenditures and provide an annual summary report as requested by
12 the department. If the authorized agency is a state agency other than the
13 department, the agency shall establish a fund meeting the requirements specified
14 in subparagraph (1). If the organization does not perform in accordance with this
15 subsection or with the requirements of the written agreement, the department may
16 revoke the organization's authority to conduct activities in accordance with this
17 subsection.

18 Rules adopted pursuant to this subsection are routine technical rules under Title 5, chapter
19 375, subchapter 2-A.

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

25 7. Areas. As used in this section, "area" includes:

26 A. Freshwater wetlands;

27 B. Coastal wetlands;

28 C. Significant vernal pool habitat;

29 D. High and moderate value waterfowl and wading bird habitat, including nesting
30 and feeding areas; and

31 E. Shorebird nesting, feeding and staging areas.

32 **SUMMARY**

33 This bill expands the section of the Natural Resources Protection Act concerning
34 compensation for unavoidable impacts to freshwater and coastal wetlands to also address
35 compensation for unavoidable impacts to significant vernal pool habitat, high and
36 moderate value waterfowl and wading bird habitat and shorebird nesting, feeding and
37 staging areas.