

# MAINE STATE LEGISLATURE

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# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 1777

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S.P. 601

In Senate, May 23, 2019

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**An Act To Add Rivers, Streams and Brooks to the Department of  
Environmental Protection's Compensation Fee Program**

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Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.  
Reference to the Committee on Environment and Natural Resources suggested and ordered  
printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator FOLEY of York.

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

2 **Sec. 1. 38 MRSA §480-Z, sub-§3**, as amended by PL 2011, c. 655, Pt. JJ, §31  
3 and affected by §41 and amended by c. 657, Pt. W, §5, is further amended to read:

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

12 A. The program may include the following:

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

15 (1-A) Identification of management priorities for the areas listed in subsection 7,  
16 paragraphs C, D and E;

17 (2) Identification of the types of losses eligible for compensation under this  
18 subsection;

19 (3) Standards for compensation fee projects;

20 (4) Calculation of compensation fees based on the functions and values of the  
21 affected areas and the cost of compensation, taking into account the potential  
22 higher cost of compensation when a project is implemented at a later date; and

23 (5) Methods to evaluate the long-term effectiveness of compensation fee projects  
24 implemented under this subsection in meeting the management priorities  
25 identified pursuant to subparagraphs (1) and (1-A).

26 B. Any compensation fee may be paid into a compensation fund established by the  
27 department as provided in subparagraph (1) or to an organization authorized by the  
28 department as provided in subparagraph (2). A compensation project funded in  
29 whole or in part from compensation fees must be approved by the department.

30 (1) The department may establish compensation funds for the purpose of  
31 receiving compensation fees, grants and other related income. A compensation  
32 fund must be a fund dedicated to payment of costs and related expenses of  
33 restoration, enhancement, preservation and creation projects. The department  
34 may make payments from the fund consistent with the purpose of the fund.  
35 Income received under this subsection must be deposited with the State Treasurer  
36 to the credit of the compensation fund and may be invested as provided by law.  
37 Interest on these investments must be credited to the compensation fund.

38 (2) The department may enter into an enforceable, written agreement with a  
39 public, quasi-public or municipal organization or a private, nonprofit  
40 organization for the protection of natural areas. Such an organization must  
41 demonstrate the ability to receive compensation fees, administer a compensation

1 fund and ensure that compensation projects are implemented consistent with  
2 local, regional or state management priorities. If compensation fees are provided  
3 to an authorized organization, the organization shall maintain records of  
4 expenditures and provide an annual summary report as requested by the  
5 department. If the authorized agency is a state agency other than the department,  
6 the agency shall establish a fund meeting the requirements specified in  
7 subparagraph (1). If the organization does not perform in accordance with this  
8 subsection or with the requirements of the written agreement, the department may  
9 revoke the organization's authority to conduct activities in accordance with this  
10 subsection.

11 Rules adopted pursuant to this subsection are routine technical rules under Title 5, chapter  
12 375, subchapter 2-A.

13 **Sec. 2. 38 MRSA §480-Z, sub-§7, ¶¶D and E**, as enacted by PL 2007, c. 527,  
14 §1, are amended to read:

15 D. High and moderate value waterfowl and wading bird habitat, including nesting  
16 and feeding areas; ~~and~~

17 E. Shorebird nesting, feeding and staging areas; and

18 **Sec. 3. 38 MRSA §480-Z, sub-§7, ¶F** is enacted to read:

19 F. Rivers, streams and brooks.

20 **SUMMARY**

21 This bill adds rivers, streams and brooks to the list of protected natural resources for  
22 which the Department of Environmental Protection may develop a compensation fee  
23 program. The bill also removes a statutory requirement that the department, when  
24 developing a compensation fee program, consult with the Department of Agriculture,  
25 Conservation and Forestry and the Department of Inland Fisheries and Wildlife.