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Date 6/13/23 Majority

L D 1881
(Filing No H-493)

AGRICULTURE, CONSERVATION AND FORESTRY

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

COMMITTEE AMENDMENT "A" to HP 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 6. Rules. The department shall adopt rules to carry out the purposes of this section
2 Rules adopted pursuant to this subsection are major substantive rules under Title 5, chapter
3 375, subchapter 2-A

4 **Sec. 3. 38 MRSA c. 35** is enacted to read

5 CHAPTER 35

6 PROTECTION OF AGRICULTURAL SOILS FROM SOLAR ENERGY
7 DEVELOPMENTS

8 **§3201. Definitions**

9 As used in this chapter, unless the context otherwise indicates, the following terms
10 have the following meanings

11 **1. Dual-use agricultural and solar production.** "Dual-use agricultural and solar
12 production" means the productive use of land for agricultural production and solar energy
13 production in accordance with standards established by rule adopted by the Department of
14 Agriculture, Conservation and Forestry, in consultation with the department and the
15 Governor's Energy Office

16 **2. High-value agricultural land.** "High-value agricultural land" means land that has
17 a high value for agricultural use, as determined in accordance with rules adopted by the
18 Department of Agriculture, Conservation and Forestry, in consultation with the department
19 and the Governor's Energy Office

20 **3. Personal use of a solar energy development.** "Personal use of a solar energy
21 development" means use of a solar energy development to serve the energy needs of the
22 owner of the land on which the development is located as long as

23 A The energy is used to serve electric load located on the same side of the electric
24 meter as the solar development,

25 B None of the capacity or energy is sold to another entity, and

26 C None of the energy is used for net energy billing, as defined in Title 35-A, section
27 3209-A, subsection 1, paragraph C, by any person other than the landowner

28 **4. Solar energy development.** "Solar energy development" means a development that

29 A Uses ground-mounted solar arrays and installations to convert solar energy to
30 electrical energy,

31 B Occupies 5 acres or more, and

32 C Is wholly or partially located on high-value agricultural land

33 The Department of Agriculture, Conservation and Forestry shall adopt rules to
34 implement this section Rules adopted pursuant to this section are major substantive rules
35 as defined in Title 5, chapter 375, subchapter 2-A

36 **§3202. Prohibition**

37 Except as otherwise provided in this section, a person may not construct, cause to be
38 constructed or operate a solar energy development without a permit from the department

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

FISCAL NOTE REQUIRED

(See attached)



131st MAINE LEGISLATURE

LD 1881

LR 77(02)

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

Fiscal Note for Bill as Amended by Committee Amendment 'A'

Committee: Agriculture, Conservation and Forestry

Fiscal Note Required: Yes

A (H-493)

Fiscal Note

Current biennium revenue increase - Other Special Revenue Funds
Current biennium cost increase - Other Special Revenue Funds

Fiscal Detail and Notes

The bill establishes a solar energy compensation program which includes compensation fees for the impact of solar energy projects developed on high-value agricultural land, which must be defined through rulemaking. This fee will be determined by the Department of Environmental Protection (DEP) in consultation with the Department of Agriculture, Conservation and Forestry (ACF) and will be credited to the Maine Working Farmland Access and Protection Fund within ACF. The bill also establishes a compensation fee program for renewable energy development that impacts wildlife and fisheries habitats and directs that revenues from this fee be credited to existing accounts within the Maine Environmental Protection Fund within the DEP. As the bill directs the DEP to coordinate with the ACF to calculate the compensation fees and define the lands impacted before any revenue can be generated, no estimate is made at this time, but it is anticipated to generate significant Other Special Revenue Funds revenue for both the ACF and the DEP. Additional allocations will be required to authorize expenditure of any revenue collected.