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

Reference to the Committee on Agriculture, Conservation and Forestry suggested and
ordered printed.

Presented by Representative LANDRY of Farmington.
Cosponsored by Senator BLACK of Franklin and
Representatives: GRAMLICH of Old Orchard Beach, MEYER of Eliot, ROBERTS of South
Berwick, SOBOLESKI of Phillips, STOVER of Boothbay, WOOD of Greene, Senator:
BRENNER of Cumberland.
Be it enacted by the People of the State of Maine as follows:

   Sec. 1. 7 MRSA c. 15 is enacted to read:

CHAPTER 15

PROTECTION OF AGRICULTURAL SOILS FROM SOLAR ENERGY DEVELOPMENTS

§361. Solar energy compensation fee for impact to agricultural soils

1. **Compensation fee.** A person engaging in solar energy development required to obtain a permit under Title 38, chapter 3, subchapter 1, article 6 shall pay a compensation fee for any portion of the development, including associated facilities, that is located on prime agricultural soils or soils of statewide importance under subsection 2.

2. **Prime agricultural soils or soils of statewide importance.** The department, in consultation with the Governor's Energy Office, shall establish the definitions of and process for identifying, verifying and assessing adverse impacts upon prime agricultural soils and soils of statewide importance, which may include soils located on land classified as prime farmland, land of statewide or local importance or unique farmland by the United States Department of Agriculture, Natural Resources Conservation Service.

3. **Calculating fee.** A permit applicant under subsection 1 shall submit with the permit application a compensation fee payment plan based upon the compensation fee calculated by the department using the square footage of the developed area located on prime agricultural soils or soils of statewide importance under subsection 2 and applying a per square foot compensation fee set by the department. The fee must be based upon the fair market value of land consisting of prime agricultural soils or soils of statewide importance under subsection 2 and include reasonable costs for the closing and stewardship of a compensation project completed in whole or in part with the compensation fee. Square footage of the developed area that is already subject to the compensation fee under Title 38, section 484-C may not be included in calculating the compensation fee under this subsection. The compensation fee may be reduced by the department if the permit applicant proposes mitigation strategies, including, but not limited to, dual-use solar and agricultural production or locating the development on land that is otherwise unsuitable for agricultural production. For the purposes of this subsection, "developed area" means the total area of land occupied by the solar energy development, including associated facilities.

4. **Collection of fees.** All compensation fees under this section must be collected prior to commencing construction of the development and remitted to a compensation fund established or identified by the Department of Environmental Protection under Title 38, section 484-C, subsection 3.

5. **Conservation option.** A permit applicant subject to the requirements of this section may choose to conserve, through a conservation easement or fee purchase on behalf of an eligible organization described in this subsection, an equivalent amount of square footage of prime agricultural soils or soils of statewide importance as the amount calculated in subsection 2 instead of paying a compensation fee. A conservation option under this subsection must be subject to a perpetual agricultural conservation easement or fee...
ownership by a public, quasi-public or municipal organization or a private, nonprofit organization that ensures the land remains available for agricultural production. A permit applicant who chooses a conservation option under this subsection shall submit with the permit application a plan to execute the option and shall complete the fee purchase or conservation easement prior to issuance of a permit under Title 38, chapter 3, subchapter 1, article 6.

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

7. **Responsibility for additional compensation.** The payment of a compensation fee or exercise of a conservation option under this section does not relieve the permit applicant from the requirement to complete a compensation project or pay a compensation fee under Title 38, section 480-Z or Title 38, section 484-C.

8. **Rules.** The department shall adopt rules to carry out the purposes of this section. Rules adopted pursuant to this subsection are routine technical rules under Title 5, chapter 375, subchapter 2-A.

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

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

1. **Compensation fee program.** The department shall establish a compensation fee program to fund a compensation project as an alternative means of satisfying requirements related to off-site habitat improvement or preservation that the department determines necessary to mitigate the adverse effects of a renewable energy development on wildlife and fisheries habitats, as defined by the department, to comply with section 484, subsection 3. The program is limited to solar energy development and associated facilities, wind energy developments as defined in Title 35-A, section 3451, subsection 11 and associated facilities and high-impact electric transmission lines as defined in Title 35-A, section 3131, subsection 4-A. A compensation project funded in whole or in part from compensation fees under this section must be approved by the department.

2. **Calculating compensation fee.** The department shall establish criteria for determining compensation fee amounts based upon the fair market value of land consisting of habitat comparable to the habitat affected by the development under this section and including reasonable costs for the closing and stewardship of a compensation project completed in whole or in part with the compensation fee. A portion of the fee may be used to cover the cost of administering a compensation fund in subsection 3. The fee may not include compensation for an area as defined by section 480-Z, subsection 7.

3. **Compensation fund.** The department shall establish one or more compensation funds to receive compensation fees under this section and Title 7, section 361 for restoration, enhancement or preservation activities under paragraph A or to provide compensation fees to an organization authorized by the department under paragraph B. The department may require compensation fees to be remitted to another fund or funds created by the Legislature that can carry out the purposes of this section.
A. The department may establish a compensation fund for the purpose of receiving compensation fees, grants and other related income to carry out a compensation project dedicated to payment of costs and related expenses of restoration, enhancement or preservation activities of the project. The department may make payments from the fund consistent with the purpose of the fund. Income received under this paragraph must be deposited with the Treasurer of State to the credit of the compensation fund and may be invested as provided by law. Interest on investments under this paragraph must be credited to the compensation fund.

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

4. Location and type of projects. A compensation project funded by a compensation fee under this section must be located in the same biophysical region as the development or transmission line under subsection 1 unless otherwise approved by the department and must consist of habitat comparable to the habitat affected by the development or transmission line. The department shall base approval of a compensation project on the management priorities for the biophysical region in which the project is located. For purposes of this subsection, "biophysical region" has the same meaning as in section 480-Z.

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

6. Rules. The department shall adopt rules to carry out the purposes of this section. Rules adopted pursuant to this subsection are routine technical rules under Title 5, chapter 375, subchapter 2-A.

Sec. 3. Department of Agriculture, Conservation and Forestry and Department of Environmental Protection to adopt rules. By December 31, 2023, the Department of Agriculture, Conservation and Forestry, in consultation with the Department of Environmental Protection, the Department of Inland Fisheries and Wildlife and the Governor's Energy Office, shall initiate rulemaking to establish a compensation fee program to accept and administer compensation fees under the Maine Revised Statutes, Title 7, section 361 and to define "prime agricultural soils" and "soils of statewide importance" under Title 7, section 361, subsection 2 and the Department of Environmental Protection, in consultation with the Department of Agriculture, Conservation and Forestry, the Department of Inland Fisheries and Wildlife and the Governor's Energy Office, shall
initiate rulemaking to establish a compensation fee program to accept and administer compensation fees under Title 38, section 484-C and to define "wildlife and fisheries habitats" under Title 38, section 484-C, subsection 1, which must include but not be limited to large undeveloped habitat blocks, important wildlife corridors and other habitat types identified in consultation with the Department of Inland Fisheries and Wildlife. The rules must establish variable compensation amounts based on the value of the habitats and agricultural soils affected and the degree of adverse effect caused by the development and must establish mitigation strategies that may reduce or otherwise alter any compensation fee, including but not limited to the use of wildlife-friendly fencing and dual-use solar energy and agricultural production. Notwithstanding Title 5, chapter 375, the Department of Agriculture, Conservation and Forestry and the Department of Environmental Protection may allow for the payment of a compensation fee prior to the adoption of final rules using interim criteria established in consultation with the Department of Inland Fisheries and Wildlife and the Governor's Energy Office.

**SUMMARY**

This bill requires developers of solar energy projects to pay a compensation fee or pay for conservation efforts to mitigate adverse effects on prime agricultural soils or soils of statewide importance and developers of solar energy developments, wind energy developments or high-impact electric transmission lines to pay a compensation fee to fund off-site habitat improvement or preservation projects to mitigate the adverse effects of a development on wildlife and fisheries habitats. The Department of Environmental Protection is directed to establish one or more compensation funds to carry out the projects or to authorize a public, quasi-public or municipal organization or a private, nonprofit organization to administer the funds. A solar energy developer may offset the compensation fee for the protection of prime agricultural soils or soils of statewide importance for land for which the developer paid a compensation fee to mitigate the adverse effects of a development on wildlife and fisheries habitats and may also opt in lieu of the compensation fee to conserve a comparable area of land through a conservation easement or a purchase for fee ownership by a public, quasi-public or municipal organization or a private, nonprofit organization that ensures the land remains available for agricultural production. This bill also directs the Department of Agriculture, Conservation and Forestry to adopt rules and define "prime agricultural soils" and "soils of statewide importance" and the Department of Environmental Protection to adopt rules and define "wildlife and fisheries habitats" subject to compensation fees or other conservation efforts.