

APPROVED
 JULY 26, 2023
 BY GOVERNOR

CHAPTER
 448
 PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-THREE

H.P. 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**

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

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 1 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. The fee may be increased by the department, in consultation with the Department of Agriculture, Conservation and Forestry, based on the severity of the adverse impacts on the impacted area. For purposes of this subsection, "dual-use agricultural and solar production" means the productive use of land for agricultural production and solar energy production in accordance with standards established by rule adopted by the

Department of Agriculture, Conservation and Forestry, in consultation with the department and the Governor's Energy Office.

3. Collection of fees. All compensation fees collected under this section must be deposited in an account in the Department of Agriculture, Conservation and Forestry and must be distributed at the discretion of the commissioner for the purpose of farmland conservation and solar mitigation projects. Notwithstanding any provision of law to the contrary, eligible investment earnings credited to this account become part of the assets of the account and any balance remaining in the account at the end of a fiscal year must be carried forward for the next fiscal year.

4. Conservation option. The department shall allow an applicant to meet the requirements of this section by conserving other land in accordance with this subsection. The amount of land conserved must be equal in square footage to the impacted area. The conserved land must be subject to a perpetual 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. An applicant who wishes to meet the requirements of this section in accordance with this subsection shall submit with the application a plan to execute the option and shall complete the fee purchase or conservation easement prior to the start of construction.

5. 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 those in the impacted area unless otherwise approved by the department.

6. Responsibility for additional compensation. The requirements of this section are in addition to the requirements of section 480-Z and section 484-D.

7. Rulemaking. The department shall adopt rules to implement this section. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

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

§484-D. 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. For purposes of this section, "renewable energy development" means a development subject to the requirements of this article that is:

A. A solar energy development and associated facilities;

B. A wind energy development as defined in Title 35-A, section 3451, subsection 11 and associated facilities; or

C. A high-impact electric transmission line 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, including stewardship costs, 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 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. Funds may be used by an agency required to assist with implementation of the requirements of this section to hire contract staff.

A. The department may establish a nonlapsing 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 renewable energy development unless otherwise approved by the department and must consist of habitat comparable to the habitat affected by the renewable energy development. 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 major substantive rules under Title 5, chapter 375, subchapter 2-A.

Sec. 3. 38 MRSA c. 35 is enacted to read:

CHAPTER 35

PROTECTION OF AGRICULTURAL SOILS FROM SOLAR ENERGY DEVELOPMENTS

§3201. Definitions

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

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

2. Solar energy development. "Solar energy development" means a development that:

A. Uses ground-mounted solar arrays and installations to convert solar energy to electrical energy;

B. Occupies 5 acres or more; and

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

§3202. Permitting of solar energy development

Except as otherwise provided in this section, a person may not construct, cause to be constructed or operate a solar energy development without a permit from the Department of Agriculture, Conservation and Forestry. Notwithstanding any provision of law to the contrary, the Department of Agriculture, Conservation and Forestry has permitting authority over solar energy development. The Department of Agriculture, Conservation and Forestry shall adopt rules to implement this section, which must include, but are not limited to:

1. Administration. Administrative procedures relating to the permitting process, including required fees;

2. Permit; standards. Standards for the approval of a permit;

3. Delegation. Standards and conditions for delegation of the authority to issue permits for solar energy development to a municipality or the Maine Land Use Planning Commission; and

4. Enforcement. Procedures for the enforcement of this section.

Notwithstanding Title 5, section 8071, subsection 3, rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 4. 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 and the Governor's Energy Office, shall initiate rulemaking to define "high-value agricultural land" under the Maine Revised Statutes, Title 38, chapter 35, establish tiers of high-value agricultural land with variable compensation amounts for each tier and define "dual-use agricultural and solar production," 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, sections 484-C and 484-D and to define "wildlife and fisheries habitats" under Title 38, section 484-D, 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 high-value agricultural land 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 agricultural and solar production. Notwithstanding Title 5, chapter 375, 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 Agriculture, Conservation and Forestry, the Department of Inland Fisheries and Wildlife and the Governor's Energy Office.

Sec. 5. Application. That section of this Act that enacts the Maine Revised Statutes, Title 38, chapter 35 applies to solar energy developments on which construction begins after September 1, 2024.

Sec. 6. Appropriations and allocations. The following appropriations and allocations are made.

AGRICULTURE, CONSERVATION AND FORESTRY, DEPARTMENT OF

Bureau of Agriculture 0393

Initiative: Provides funding for contracted legal services.

GENERAL FUND	2023-24	2024-25
All Other	\$5,000	\$5,000
GENERAL FUND TOTAL	<u>\$5,000</u>	<u>\$5,000</u>

Bureau of Agriculture 0393

Initiative: Establishes one limited-period Environmental Licensing Supervisor position and provides funding for related All Other costs. This position ends June 7, 2025.

GENERAL FUND	2023-24	2024-25
Personal Services	\$84,930	\$119,745
All Other	\$9,500	\$9,500
GENERAL FUND TOTAL	<u>\$94,430</u>	<u>\$129,245</u>

DACF Administration 0401

Initiative: Provides allocations for expenditures related to centralized technology management costs for one limited-period Environmental Licensing Supervisor position.

OTHER SPECIAL REVENUE FUNDS	2023-24	2024-25
All Other	\$585	\$585
OTHER SPECIAL REVENUE FUNDS TOTAL	<u>\$585</u>	<u>\$585</u>

DACF Administration 0401

Initiative: Provides funding for centralized technology management costs related to one limited-period Environmental Licensing Supervisor position.

GENERAL FUND	2023-24	2024-25
All Other	\$3,292	\$3,292
GENERAL FUND TOTAL	<u>\$3,292</u>	<u>\$3,292</u>

**AGRICULTURE, CONSERVATION AND
FORESTRY, DEPARTMENT OF
DEPARTMENT TOTALS**

	2023-24	2024-25
GENERAL FUND	\$102,722	\$137,537
OTHER SPECIAL REVENUE FUNDS	\$585	\$585
DEPARTMENT TOTAL - ALL FUNDS	<u>\$103,307</u>	<u>\$138,122</u>