

ENROLLED ACT NO. 86, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2020 BUDGET SESSION

AN ACT relating to sage grouse; establishing a program for compensatory mitigation credits for conservation of the greater sage grouse; creating accounts; providing for a continuing appropriation; amending the duties of the board of land commissioners; requiring rulemaking; providing legislative findings; and providing for effective dates.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1.

(a) The legislature finds that:

(i) All wildlife in Wyoming, including the greater sage grouse (*centrocercus urophasianus*), is the property of the state;

(ii) Preserving and maintaining greater sage grouse populations and habitat in Wyoming is essential for avoiding a listing of the species under the Endangered Species Act and for the long-term welfare and economic security of Wyoming and its citizens;

(iii) Agriculture, tourism, recreation, energy development, mining, highway construction and timber production are important industries in Wyoming and industrial concerns should be considered as the state endeavors to thoughtfully manage the greater sage grouse;

(iv) The primary emphasis of the Wyoming greater sage grouse conservation strategy is to avoid and minimize adverse impacts to the species. But in certain cases, avoidance and minimization may not meet the standards that the sage grouse implementation team recommends because of preexisting disturbance. In cases where avoidance and minimization do not adequately address adverse impacts to

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the greater sage grouse, compensatory mitigation may be an appropriate method to ensure maintenance and enhancement of the species and its required habitats;

(v) In order to avoid a listing under the Endangered Species Act, the state's management of greater sage grouse, including any compensatory mitigation program, must be based on scientific principles;

(vi) It shall be the policy of the state that greater sage grouse habitat management and preservation activities should be balanced to protect and accommodate private property, industry and species habitat objectives that are furthered by a pragmatic, science-based management program that includes compensatory mitigation.

Section 2. W.S. 9-19-201 through 9-19-204 are created to read:

ARTICLE 2

SAGE GROUSE COMPENSATORY MITIGATION CREDITS

9-19-201. Short title.

This act shall be known and may be cited as the "Wyoming Greater Sage Grouse Compensatory Mitigation Act."

9-19-202. Definitions.

(a) As used in this act:

(i) "Additionality" means the benefits of a compensatory mitigation measure that improve the baseline conditions of impacted resources and their values, services and functions in a manner that is demonstrably new and

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would not have occurred without the compensatory mitigation measure;

(ii) "Avoidance" means avoiding an impact completely by not taking a certain action or part of an action;

(iii) "Compensatory mitigation" means replacement, substitution or enhancement of ecological functions to offset anticipated losses of those functions caused by impacts to the greater sage grouse;

(iv) "Credit" or "mitigation credit" means a defined unit representing the accrual or attainment of ecological functions or services for the greater sage grouse at a mitigation site or within a mitigation program;

(v) "Debit" means a defined unit representing the loss of ecological functions or services for greater sage grouse at a specific mitigation site or within a mitigation program;

(vi) "Durability" means the effectiveness of a mitigation measure is sustained until the direct, indirect and any other residual impacts of an action on the habitat and population of the greater sage grouse are fully remediated;

(vii) "Ecological function" means the ability of an area to support vegetation and fish and wildlife populations;

(viii) "Effects" mean changes in the environmental conditions that are relevant to the greater sage grouse. Direct effects are caused by an action and occur at the same time and place. Indirect effects are

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caused by an action but occur at a later time, at another place or both;

(ix) "Habitat assurance" means assurance that compensatory mitigation is adequate to reliably abate threats to greater sage grouse populations and habitat and is adequately offset by more security for habitats and populations where threats have been removed or abated;

(x) "Habitat vulnerability" means actions that occur in highly vulnerable or limiting habitat types that make it more difficult to replace those habitats;

(xi) "Landscape support" means an area encompassing interacting ecosystems and human systems that is characterized by a set of common management concerns;

(xii) "Minimization" means minimizing the impact to habitat and populations by limiting the degree of an action and its implementation;

(xiii) "Mitigation" means all actions to avoid, minimize, restore and compensate for ecological functions;

(xiv) "Performance audit" means an audit conducted to evaluate a mitigation credit provider's compliance with this act and the rules promulgated by the board of land commissioners for the mitigation credit system to ensure that the provider is meeting required habitat, landscape and ecological targets necessary for the continued provision of ecological functions and services for purchased credits;

(xv) "Permitting agency" means the state agency that authorizes a project or action that uses compensatory

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mitigation credits as mitigation for unavoidable residual impacts associated with the project or action;

(xvi) "Replacement" means a physical and biological metric that will replace an impacted acre with an equal or greater amount of habitat where threats have been removed or abated;

(xvii) "Service area" means a geographic area within which adverse impacts to greater sage grouse that occur may be mitigated or compensated through credits;

(xviii) "Take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect or to attempt to engage in that conduct;

(xix) "This act" means W.S. 9-19-201 through 9-19-204.

9-19-203. Compensatory mitigation; guidelines.

(a) The compensatory mitigation credit system required under this act shall be established to allow for development to be conducted in a manner that recognizes and achieves an order of avoidance, minimization and where appropriate and authorized by the permitting agency, compensatory mitigation to ensure the long-term sustainability of greater sage grouse populations and habitats.

(b) The board of land commissioners, after consultation as appropriate with the department of agriculture, the department of environmental quality, the game and fish department, the oil and gas conservation commission, the department of transportation and the Wyoming wildlife and natural resource trust account board,

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shall adopt rules for the establishment and administration of a compensatory mitigation credit system for greater sage grouse in Wyoming, including rules for evaluating ecological functions, services and values. The rules shall at a minimum provide for:

(i) Science-based criteria under which mitigation credits may be obtained, including provisions that consider additionality, durability, replacement, direct and indirect effects, habitat assurance, habitat vulnerability, occupancy, proximity, access to seasonal habitat and other landscape and habitat needs for the greater sage grouse;

(ii) Establishment of a compensatory mitigation oversight group to consist of representatives of the department of agriculture, the game and fish department, the Wyoming wildlife and natural resource trust account board and the office of state lands and investments to evaluate and provide technical review using the criteria established under paragraph (i) of this subsection and, where appropriate, recommend certification of any mitigation credit provider seeking approval under this act. The group may request assistance from any state, local and federal agency to review credit provider applications and other mitigation measures;

(iii) The service area for the use of compensatory mitigation credits, provided that mitigation shall take place within the state of Wyoming;

(iv) The length of credits to be used and sold, provided that any term credit shall be sold for the period of the expected impact. Credit term expiration before restoration of the impacted location to suitability shall require the party responsible for the mitigation to

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purchase additional credits or negotiate a credit contract extension. Credit mitigation shall remain in place until the impact to the habitat of greater sage grouse is restored to suitability. Any term credit sold under this act shall be for a period of not less than five (5) years;

(v) Criteria for the use and sale of compensatory mitigation credits, including specific compensatory mitigation debit requirements for impacts to greater sage grouse core and non-core population areas, that insure equivalence and parity between debit and credit calculations;

(vi) Criteria for other forms of mitigation, including operator-offered measures and restoration credits and measures for reduced or eliminated take;

(vii) The review process for and approval by the board of land commissioners of recommendations submitted by the compensatory mitigation oversight group established in paragraph (ii) of this subsection;

(viii) Requirements for the maintenance and submission by the board of land commissioners of records concerning ecological function and greater sage grouse habitat losses and credit and debit accounts for each mitigation credit provider;

(ix) Requirements for long-term monitoring, management and maintenance of lands associated with mitigation credits obtained under the credit system including monitoring of impacts to sage grouse habitat to ensure that the impacted location is returned to full suitability before a credit purchaser is relieved of liability for mitigation of the impact;

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(x) Requirements for periodic financial and performance audits to be conducted on each mitigation credit provider authorized to offer credits and any purchaser of term credits under the compensatory mitigation credit system created by this section. Audits shall be conducted only to ensure that the mitigation credit provider or purchaser are in compliance with the requirements of this act and any rules promulgated for the mitigation credit system;

(xi) Eligibility criteria for mitigation credit providers, including a requirement that a mitigation credit provider shall be a resident of or authorized to conduct business in Wyoming;

(xii) Requirements for financial assurance associated with compensatory mitigation credits obtained under the credit system, provided that the financial assurance requirements are sufficient to address:

(A) Any corrective measures which a mitigation credit provider or their successor in interest is required to take to ameliorate any material injury or adverse impacts to the land or habitat used for compensatory mitigation for which credits are offered that materially impairs the conservation objectives of that land or habitat;

(B) The bankruptcy or financial failure of a mitigation credit provider authorized to offer credits under the compensatory mitigation credit system;

(C) Maintenance, monitoring and management costs.

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(c) Every conservation easement used to serve as a credit under this act shall bind the parties thereto to an agreement that provides that the state of Wyoming is a third-party beneficiary to the easement solely with the contingent rights to enter onto the land subject to the easement for inspection and to enforce the terms of the easement if the grantee fails to enforce any of the terms of the easement. The state shall have the right to access a mitigation credit provider's financial assurances in order to address any of the occurrences specified in W.S. 9-19-203(b)(xii).

(d) Upon the purchase of a credit from a mitigation credit provider approved under this act, the purchaser's obligation for mitigation represented by that credit shall be transferred to the mitigation credit provider for the term of the credit.

(e) The board of land commissioners shall certify any habitat conservation bank that has been certified and approved by the United States fish and wildlife service as meeting or exceeding the requirements of this act until the earlier of:

(i) The federally approved habitat conservation bank is approved under the rules promulgated pursuant to this act; or

(ii) July 1, 2023.

9-19-204. Compensatory mitigation; fees; accounts.

(a) The board of land commissioners may create an account exclusively for each mitigation credit provider. The board may accept funds for deposit into each account as part of the financial assurances required under rules

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adopted by the board of land commissioners pursuant to W.S. 9-19-203(b). The board shall manage the expenditure of funds within each account. Funds within each account shall be invested by the state treasurer as authorized under W.S. 9-4-715(a), (d) and (e).

(b) The board shall collect a fee of one thousand five hundred dollars (\$1,500.00) from each mitigation credit provider for creating an account as provided by subsection (a) of this section. An account established pursuant to subsection (a) of this section shall be subject to an annual fee of one percent (1%) of the account's balance for the annual administration, operation, reporting and accounting of the account. The board shall assess and collect the annual fee on the date set by rule during each year in which the account is in existence. The board shall collect the annual fee by deducting it from the balance of the account.

(c) Each mitigation credit provider shall pay supervisory fees to the board of land commissioners as set forth in the rules and regulations of the board. The supervisory fees shall provide for the costs of audit and other supervisory actions of a mitigation credit provider approved under this act. The fees shall be established by rule of the board and shall be adjusted to assure consistency with the cost of audits.

(d) Fees collected under this section shall be credited to the mitigation credit fund which is hereby created. Funds within the mitigation credit fund are continuously appropriated to the department and shall only be used for purposes of this article.

Section 3. W.S. 36-2-101 is amended to read:

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36-2-101. Composition; powers generally.

The governor, secretary of state, state treasurer, state auditor, and superintendent of public instruction, being constituted a "board of land commissioners" by the provisions of section 3, article 18, of the constitution of the state of Wyoming, shall as such board, have the direction, control, leasing, care and disposal of all lands heretofore or hereafter granted or acquired by the state for the benefit and support of public schools or for any other purpose whatsoever, subject to the limitations contained in the constitution of the state, and the laws enacted by the legislature. The board shall have the power and authority to take such official action as may be necessary in securing title to land grants, or any other lands acquired by the state. The board shall oversee the compensatory mitigation credit system established under W.S. 9-19-201 through 9-19-204 and shall promulgate rules and regulations in accordance with W.S. 9-19-201 through 9-19-204.

Section 4. Not later than October 1, 2020, the board of land commissioners shall promulgate any rules necessary to establish the compensatory mitigation credit system created by section 2 of this act.

Section 5.

(a) Except as provided in subsection (b) of this section, this act is effective October 1, 2020.

(b) Sections 4 and 5 of this act are effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

ORIGINAL HOUSE
BILL NO. HB0013

ENGROSSED

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(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk