

SENATE BILL NO. 299

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO SAGE GROUSE
CONSERVATION; EXEMPTING CERTAIN EXISTING LAND USES AND ACTIVITIES FROM REGULATION;
REVISING MONTANA SAGE GROUSE OVERSIGHT TEAM AUTHORITY; ~~REQUIRING~~ REVISING
~~REPORTING OF DEVELOPMENT PROJECTS REVIEWED~~ REQUIREMENTS; REVISING COMPENSATORY
MITIGATION REQUIREMENTS; REVISING THE CALCULATION OF CERTAIN CONSERVATION CREDITS;
PROVIDING DEFINITIONS; AMENDING SECTIONS 76-22-102, 76-22-104, 76-22-105, 76-22-110, 76-22-111,
~~AND~~ 76-22-112, AND 76-22-118, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Existing land uses and activities exempt.** (1) Existing land uses and
activities are recognized and respected, and those uses and activities, including those authorized by permit but
not yet conducted, that existed as of January 1, 2016, may not be managed under the stipulations of a sage
grouse conservation strategy adopted by the governor through executive order or a policy, rule, or regulation
adopted by the oversight team. Those existing land uses and activities may continue within an existing defined
project boundary even if they exceed the stipulations of those documents. HOWEVER, PERMITTING AGENCIES SHALL
APPLY SEASONAL USE RESTRICTIONS, AS NECESSARY, FOR DISCRETIONARY ACTIVITIES AT EXISTING LAND USE SITES.

(2) For the purposes of this section, the term:

(a) "defined project boundary" includes but is not limited to a right-of-way, easement corridor, recognized
oil and gas unit, drilling and spacing unit, mine plan, and subdivision plat; and

(b) "existing land uses and activities" includes but is not limited to railroads, oil and gas, mining,
agriculture, processing facilities, power lines, telecommunications facilities, including wire and fiber optic cable,
housing, and operations and maintenance activities of existing energy systems that occur within a defined project
boundary.

NEW SECTION. **Section 2. Compensatory mitigation ~~REDUCTION OR waiver for tall structures and~~**

1 ~~buried cable. (1) If a project developer proposes constructing a tall structure or deploying buried cable that would~~
 2 ~~otherwise require compensatory mitigation to offset debits, the oversight team shall waive the compensatory~~
 3 ~~mitigation if: THE OVERSIGHT TEAM SHALL CONSIDER ON A CASE-BY-CASE BASIS REQUESTS FOR A REDUCTION IN OR~~

4 ~~WAIVER OF COMPENSATORY MITIGATION BASED UPON AN ASSESSMENT INCLUDING BUT NOT LIMITED TO THE FOLLOWING:~~

5 ~~(A) THE SOCIOECONOMIC BENEFIT OF OR SERVICE PROVIDED BY A PROJECT THAT IS LOCATED AT LEAST~~
 6 ~~SIX-TENTHS OF A MILE FROM THE PERIMETER OF AN ACTIVE LEK BUT FOR WHICH IT IS ECONOMICALLY INFEASIBLE TO BE~~
 7 ~~LOCATED MORE THAN 2 MILES FROM THE CENTER OF AN ACTIVE LEK;~~

8 ~~(a)(B) WHETHER the project is undertaken and completed outside of the sage grouse mating season; OR~~

9 ~~(b) the project would provide a service, such as emergency, mobile, or broadband communications,~~
 10 ~~including deployment of fiber optic cable, that would result in a socioeconomic benefit to the community served~~
 11 ~~by the project;~~

12 ~~(c) WHETHER the project involves one-time construction and does not require ongoing disturbance once~~
 13 ~~completed, except for occasional routine maintenance of existing facilities;~~

14 ~~(d) the project is located at least six-tenths of a mile from the perimeter of an active lek and it is~~
 15 ~~economically infeasible to locate the project further away; or~~

16 ~~(e) the cost of compensatory mitigation would result in rate increases for consumers of the service~~
 17 ~~provided.~~

18 ~~(2) For the purposes of this section, the term "tall structure" includes communication towers and weather~~
 19 ~~towers.~~

20 ~~(2) THE OVERSIGHT TEAM SHALL PROVIDE A SUMMARY OF THE REASONS WHY A REDUCTION IN OR WAIVER OF~~
 21 ~~COMPENSATORY MITIGATION IS APPROVED OR DENIED.~~

22

23 **Section 3.** Section 76-22-102, MCA, is amended to read:

24 **"76-22-102. Legislative findings and purpose.** (1) The legislature finds that it is in the best interests
 25 of Montana's economy, the economic stability of school trust lands, and sage grouse conservation and
 26 management to enact the Montana Greater Sage-Grouse Stewardship Act.

27 (2) The purpose of this act is to:

28 ~~(a) balance the competing interests of economic development in Montana and conservation of the sage~~
 29 ~~grouse; and~~

30 ~~(b) provide competitive grant funding and establish ongoing free-market mechanisms for voluntary,~~

1 incentive-based conservation measures that emphasize maintaining, enhancing, restoring, expanding, and
 2 benefiting sage grouse habitat and populations on private lands, and public lands as needed, that lie within core
 3 areas, general habitat, or connectivity areas."

4

5 **Section 4.** Section 76-22-104, MCA, is amended to read:

6 **"76-22-104. Montana sage grouse oversight team -- rulemaking.** ~~(1)~~ The Subject to provisions of
 7 subsection (2), the oversight team shall adopt rules to administer the provisions of this part, including:

8 ~~(1)(a)~~ (a) eligibility and evaluation criteria for grants distributed pursuant to 76-22-110 for projects that
 9 maintain, enhance, restore, expand, or benefit sage grouse habitat and populations, including but not limited to
 10 requirements for matching funds and in-kind contributions and consideration of the socioeconomic impacts of a
 11 proposed project on the local community. The evaluation criteria must give greater priority to proposed projects
 12 that:

13 ~~(a)~~(i) involve partnerships between public and private entities;

14 ~~(b)~~(ii) provide matching funds;

15 ~~(c)~~(iii) use the habitat quantification tool adopted pursuant to subsection ~~(2)~~ (1)(b); and

16 ~~(d)~~(iv) maximize the amount of credits generated per dollars of funds awarded.

17 ~~(2)(b)~~ (b) the designation of a habitat quantification tool in consideration of applicable United States fish and
 18 wildlife service sage grouse policies, state law, and any rules adopted pursuant to this part;

19 ~~(3)(c)~~ (c) subject to the provisions of 76-22-105(2), a method to track and maintain the number of credits
 20 attributable to projects funded pursuant to this part that are available to a project developer to purchase for
 21 compensatory mitigation to offset debits under 76-22-111;

22 ~~(4)(d)~~ (d) methods of compensatory mitigation available under 76-22-111;

23 ~~(5)(e)~~ (e) review and monitoring of projects funded pursuant to this part;

24 ~~(6)(f)~~ (f) criteria for the acceptance or rejection of grants, gifts, transfers, bequests, and donations, including
 25 interests in real or personal property; and

26 ~~(7)(g)~~ (g) guidance on management options for any real property conveyed to the state under this part,
 27 including its sale or lease.

28 (2) Any policy, rule, or regulation adopted by the oversight team must refer to measurements of distance
 29 in miles."

30

1 **Section 5.** Section 76-22-105, MCA, is amended to read:

2 **"76-22-105. Montana sage grouse oversight team -- duties -- powers.** (1) The oversight team shall:

3 (a) cooperate with organizations to maintain, enhance, restore, expand, and benefit sage grouse habitat
4 and populations;

5 (b) identify and map core areas, connectivity areas, and general habitat, subject to the approval of the
6 governor;

7 (c) evaluate grant applications. As part of its evaluation, the oversight team shall solicit and consider the
8 views of interested and affected persons and entities, including local, state, tribal, and federal governmental
9 agencies, and boards, commissions, and other political subdivisions of the state;

10 (d) subject to the provisions of 76-22-109, select grant applications to receive funding from the sage
11 grouse stewardship account. The oversight team has the discretion to determine the amount of each grant in
12 accordance with the provisions of this part and may attach conditions of use to the grant.

13 (e) review and decide whether to approve proposals for the transfer to or acceptance by the state of a
14 fee simple interest in real property. The oversight team shall recommend an approved proposal to the board of
15 land commissioners for a final determination. Prior to making a recommendation, the oversight team shall publish
16 a notice in a newspaper of general circulation in the county in which the real property is located and provide an
17 opportunity for public comment.

18 (f) review and decide whether to accept offers, from any source, in the form of grants, gifts, transfers,
19 bequests, or donations of money, personal property, or an interest in real property other than a fee simple
20 interest; and

21 (g) review and approve ACT UPON compensatory mitigation plans proposed under 76-22-111, as well as
22 requests for waivers of and reductions in compensatory mitigation PURSUANT TO [SECTION 2]. If ~~the~~ a plan includes
23 a financial contribution to the sage grouse stewardship account established in 76-22-109, the oversight team
24 shall, using the habitat quantification tool, determine how to secure enough credits with the financial contribution
25 to offset the debits of the project.

26 (h) semiannually review the number of requests made by project developers for review of proposed
27 projects for compensatory mitigation requirements. This semiannual review must include information on:

28 (i) how much time elapsed between the date the initial request was received and the date a proposed
29 compensatory mitigation plan was referred to the oversight team for consideration;

30 (ii) how many projects did or did not proceed after the initial request; and

1 (iii) if a project did not proceed or a proposed compensatory mitigation plan was not referred to the
 2 oversight team, the reason why it did not proceed or was not referred.

3 (I) WORK WITH INDUSTRY STAKEHOLDERS TO STREAMLINE THE COMPENSATORY MITIGATION REVIEW PROCESS,
 4 INCLUDING CALCULATION OF REDUCED MITIGATION COSTS FOR LOW-IMPACT PROJECTS SUCH AS TRENCHLESS
 5 EXCAVATION; AND

6 (J) MONITOR LONG-TERM STAFFING NEEDS TO EFFECTIVELY IMPLEMENT THIS PART, AS WELL AS THE COSTS AND
 7 BENEFITS OF DOING SO.

8 (2) If a habitat exchange is authorized in Montana by the United States fish and wildlife service, the
 9 oversight team may transfer credits it is tracking pursuant to ~~76-22-104(3)~~ 76-22-104(1)(c) to the habitat
 10 exchange, provided that:

11 (a) the habitat exchange uses the habitat quantification tool to quantify and calculate the value of credits
 12 available for purchase; and

13 (b) if the United States fish and wildlife service revokes authorization of the habitat exchange, the
 14 balance of the credits held by the exchange that were transferred to it by the oversight team are transferred back
 15 to the oversight team or to another habitat exchange authorized by the United States fish and wildlife service.

16 (3) The oversight team shall retroactively calculate and make available credits for leases and
 17 conservation easements purchased with funds disbursed pursuant to this part after May 7, 2015, but prior to the
 18 adoption of rules under 76-22-104.

19 (4) The oversight team shall seek a depredation order from the United States fish and wildlife service
 20 under the Migratory Bird Treaty Act of 1918, as necessary, to control common raven (*Corvus corax*) or
 21 black-billed magpie (*Pica hudsonia*) to reduce depredation on sage grouse populations and their nests."
 22

23 **Section 6.** Section 76-22-110, MCA, is amended to read:

24 **"76-22-110. Grants -- eligibility.** (1) Subject to the provisions of 76-22-112(1), to be eligible to receive
 25 funds pursuant to this part, a proposed project must maintain, enhance, restore, expand, or benefit sage grouse
 26 habitat and populations for the heritage of Montana and its people through voluntary, incentive-based efforts,
 27 including:

28 (a) reduction of conifer encroachment;

29 (b) reduction of the spread of invasive weeds that harm sagebrush health or sage grouse habitat;

30 (c) maintenance, restoration, or improvement of sagebrush health or quality;

- 1 (d) purchase or acquisition of leases, term conservation easements, or permanent conservation
2 easements that conserve or maintain sage grouse habitat, protect grazing lands, or conserve sage grouse
3 populations;
- 4 (e) incentives to reduce the conversion of grazing land to cropland;
- 5 (f) restoration of cropland to grazing land;
- 6 (g) modification of fire management to conserve sage grouse habitat and populations;
- 7 (h) demarcation of fences to reduce sage grouse collisions;
- 8 (i) reduction of unnatural perching platforms for raptors;
- 9 (j) reduction of unnatural safe havens for predators;
- 10 (k) sage grouse habitat enhancement that provides project developers the ability to use improved habitat
11 for compensatory mitigation under 76-22-111;
- 12 (l) establishment of a habitat exchange to develop and market credits consistent with the purposes of
13 this part. The habitat exchange must be authorized by the United States fish and wildlife service and must use
14 the habitat quantification tool to quantify and calculate the value of credits and debits. Funds may be allocated
15 to a habitat exchange:
- 16 (i) if the funds are used:
- 17 (A) to create and market credits in a manner consistent with the habitat quantification tool;
- 18 (B) for operational purposes, including monitoring the effectiveness of projects; or
- 19 (C) for costs associated with establishing the habitat exchange; and
- 20 (ii) if the habitat exchange reimburses the state for its proportionate share of proceeds generated from
21 the sale of credits created with funds distributed pursuant to this part. Any proceeds received by the state
22 pursuant to this subsection (1)(l)(ii) must be deposited in the sage grouse stewardship account established in
23 76-22-109 and must be used only to acquire additional credits or for operational purposes, including monitoring
24 the long-term effectiveness of compensatory mitigation projects.
- 25 (m) other project proposals that the oversight team determines are consistent with the purposes of this
26 part.
- 27 (2) Projects proposed by grant applicants may involve land owned by multiple landowners, including
28 state and federal land, provided that the majority of the involved acres are privately held and that the proposed
29 project benefits sage grouse across all of the land included in the project.
- 30 (3) Grants may be awarded only to organizations and agencies that hold and maintain conservation

1 easements or leases or that are directly involved in sage grouse habitat mitigation and enhancement activities
2 approved by the oversight team.

3 (4) Grants may not be used to supplement or replace the operating budget of an agency or organization
4 except for budget items that directly relate to the purposes of the grant.

5 (5) If a grant is awarded to a proposed project that uses matching funds from a source that prohibits the
6 generation of credits for compensatory mitigation, the oversight team, when possible, shall allocate the credits
7 generated by the proposed project on a pro rata basis and make available for compensatory mitigation under
8 76-22-111 only those credits attributable to funds awarded pursuant to this section and any unrestricted matching
9 funds."

10

11 **Section 7.** Section 76-22-111, MCA, is amended to read:

12 **"76-22-111. Compensatory mitigation -- findings.** (1) The legislature finds that allowing a project
13 developer to provide compensatory mitigation for the debits of a project is consistent with the purpose of
14 incentivizing voluntary conservation measures for sage grouse habitat and populations. The project developer
15 may provide compensatory mitigation by:

16 (a) using the habitat quantification tool to calculate the debits attributable to the project; and

17 (b) under a mitigation plan approved by the oversight team, offsetting those debits in whole or in part by:

18 (i) purchasing an equal number of credits from a habitat exchange authorized by the United States fish
19 and wildlife service or from the available credits tracked by the oversight team pursuant to 76-22-104. Payments
20 received for credits tracked by the oversight team must be deposited in the sage grouse stewardship account
21 established in 76-22-109.

22 (ii) if sufficient conservation credits are unavailable for purchase, making a financial contribution to the
23 sage grouse stewardship account established in 76-22-109 that is equal to the average cost of the credits that
24 would otherwise be required;

25 (iii) providing funds to establish a habitat exchange or finance a conservation project for the purpose of
26 creating credits to offset debits. However, the funds may not be used to subsidize mitigation by or decrease the
27 mitigation obligations of any party involved in the project.

28 (iv) undertaking other mitigation options identified and approved by the oversight team, including but not
29 limited to sage grouse habitat enhancement, participation in a conservation bank, or funding stand-alone
30 mitigation actions.

1 ~~(2) Compensatory mitigation may be waived, as provided in [section 2], or reduced by the oversight team~~
 2 ~~as follows:~~

3 ~~—— (a) When it is economically infeasible for a project developer to locate a project more than 2 miles from~~
 4 ~~the center of an active lek but the project is located at least six-tenths of a mile from the perimeter of an active~~
 5 ~~lek, the oversight team shall consider the socioeconomic benefit or service provided by the proposed project and~~
 6 ~~calculate a reduction in any necessary compensatory mitigation by an amount that is commensurate with the~~
 7 ~~socioeconomic benefit or service to be provided.~~

8 ~~—— (b) The oversight team shall calculate a reduction in any necessary compensatory mitigation that is~~
 9 ~~commensurate with the value of mitigation measures or in-kind contributions a project developer adopts or~~
 10 ~~makes, including but not limited to:~~

11 ~~—— (i) removal of predatory bird nests and deployment or use of other antineesting measures on tall~~
 12 ~~structures; and~~

13 ~~—— (ii) minimizing surface disturbance when burying utility facilities such as fiber optic or other~~
 14 ~~telecommunications cable, electric cable, and other buried utility facilities.~~

15 ~~(2)(3)(2)~~ All mitigation undertaken pursuant to this section must be taken in consideration of applicable
 16 United States fish and wildlife service sage grouse policies, state law, and any rules adopted pursuant to this part.

17 ~~(3)(4)(3)~~ A mitigation action taken under this section must be conducted within general habitat, core
 18 areas, or connectivity areas.

19 ~~(5) The oversight team may not require a project to be developed at an alternative location as part of a~~
 20 ~~mitigation plan. However, the project developer may voluntarily consider an alternative location.~~

21 ~~(4) A PROJECT DEVELOPER MAY SUBMIT ALTERNATIVE LOCATIONS FOR A PROJECT TO COMPARE THE~~
 22 ~~COMPENSATORY MITIGATION REQUIREMENTS OF EACH AND CHOOSE WHICH ALTERNATIVE TO DEVELOP BASED UPON THAT~~
 23 ~~INFORMATION."~~

24

25 **Section 8.** Section 76-22-112, MCA, is amended to read:

26 **"76-22-112. Leases and conservation easements -- calculation of credits.** (1) A lease or
 27 conservation easement selected to receive funds pursuant to this part binds the parties involved to an agreement
 28 in which the state is a third-party beneficiary to the lease or easement with the contingent right to enforce the
 29 terms of the lease or easement if the grantee fails to do so. The agreement must provide that the lease or
 30 easement may not be transferred for value, sold, or extinguished without consent of the department. The state

1 may take legal action to enforce the terms of the lease or easement or to recover from the proceeds of the
 2 transfer for value, sale, or extinguishment the state's pro rata share of the proceeds based on the funds the state
 3 provided pursuant to this part for the creation of the lease or easement.

4 (2) (A) ~~When~~ DURING CALENDAR YEAR 2019, WHEN calculating the number of credits generated by a
 5 perpetual easement, the number of credits available is equal to ~~80%~~ 40% of the raw score calculated by the
 6 habitat quantification tool, multiplied by 100 years. This subsection does not prevent the generation of additional
 7 credits for restoration or enhancement actions conducted on the same property during the life of the easement.

8 (B) AS PART OF ADAPTIVE MANAGEMENT OF THE HABITAT QUANTIFICATION TOOL AND COMPENSATORY MITIGATION
 9 POLICIES, THE OVERSIGHT TEAM SHALL EVALUATE THE CREDIT CALCULATION BASELINE OF 40% PROVIDED IN SUBSECTION
 10 (2)(A) AND DETERMINE WHETHER IT MAY BE INCREASED."

11

12 **SECTION 9.** SECTION 76-22-118, MCA, IS AMENDED TO READ:

13 **"76-22-118. Reporting.** (1) The oversight team shall report to the governor regularly and provide an
 14 annual report to the governor, the environmental quality council, the board of land commissioners, and the county
 15 commissions in the counties where projects were funded pursuant to this part. The annual report must include
 16 information on activities undertaken pursuant to this part, including but not limited to:

17 ~~(1)(a)~~ any appropriation, grant, gift, transfer, bequest, or donation received, including interest in real
 18 property;

19 ~~(2)(b)~~ each grant awarded and the details of each grant's status and results; and

20 ~~(3)(c)~~ any compensatory mitigation activities.

21 (2) The oversight team shall report to the environmental quality council:

22 (a) the findings of its review of staffing needs to effectively implement this part, as well as the costs and
 23 benefits of doing so, conducted pursuant to 76-22-105(1)(j); and

24 (b) whether the credit calculation baseline of 40% provided in 76-22-112(2) for perpetual easements may
 25 be increased."

26

27 **NEW SECTION. Section 10. Codification instruction.** [Sections 1 and 2] are intended to be codified
 28 as an integral part of Title 76, chapter 22, part 1, and the provisions of Title 76, chapter 22, part 1, apply to
 29 [sections 1 and 2].

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