

HOUSE BILL NO. HB0013

Sage grouse mitigation credits.

Sponsored by: Joint Minerals, Business & Economic
Development Interim Committee

A BILL

for

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

7

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

9

10 **Section 1.**

11

12 (a) The legislature finds that:

13

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

4

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

10

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

16

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

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

4
5 (v) In order to avoid a listing under the
6 Endangered Species Act, the state's management of greater
7 sage-grouse, including any compensatory mitigation program,
8 must be based on scientific principles;

9
10 (vi) It shall be the policy of the state that
11 greater sage-grouse habitat management and preservation
12 activities should be balanced to protect and accommodate
13 private property, industry and species habitat objectives
14 that are furthered by a pragmatic, science-based management
15 program that includes compensatory mitigation.

16
17 **Section 2.** W.S. 9-19-201 through 9-19-204 are created
18 to read:

19
20 ARTICLE 2

21
22 SAGE GROUSE COMPENSATORY MITIGATION CREDITS

1 **9-19-201. Short title.**

2

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

5

6 **9-19-202. Definitions.**

7

8 (a) As used in this act:

9

10 (i) "Additionality" means the benefits of a
11 compensatory mitigation measure that improve the baseline
12 conditions of impacted resources and their values, services
13 and functions in a manner that is demonstrably new and
14 would not have occurred without the compensatory mitigation
15 measure;

16

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

20

21 (iii) "Compensatory mitigation" means
22 replacement, substitution or enhancement of ecological

1 functions to offset anticipated losses of those functions
2 caused by impacts to the greater sage-grouse;

3

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

9

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

14

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

20

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

1

2 (viii) "Effects" mean changes in the
3 environmental conditions that are relevant to the greater
4 sage-grouse. Direct effects are caused by an action and
5 occur at the same time and place. Indirect effects are
6 caused by an action but occur at a later time, at another
7 place or both;

8

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

14

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

18

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

22

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

4

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

7

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

16

17 (xv) "Permitting agency" means the state agency
18 that authorizes a project or action that uses compensatory
19 mitigation credits as mitigation for unavoidable residual
20 impacts associated with the project or action;

21

22 (xvi) "Replacement" means a physical and
23 biological metric that will replace an impacted acre with

1 an equal or greater amount of habitat where threats have
2 been removed or abated;

3

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

7

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

10

11 **9-19-203. Compensatory mitigation; guidelines.**

12

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

21

22 (b) The board of land commissioners, after
23 consultation as appropriate with the department of

1 agriculture, the department of environmental quality, the
2 game and fish department, the oil and gas conservation
3 commission, the department of transportation and the
4 Wyoming wildlife and natural resource trust account board,
5 shall adopt rules for the establishment and administration
6 of a compensatory mitigation credit system for greater
7 sage-grouse in Wyoming, including rules for evaluating
8 ecological functions, services and values. The rules shall
9 at a minimum provide for:

10

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

18

19 (ii) Establishment of a compensatory mitigation
20 oversight group to consist of representatives of the
21 department of agriculture, the game and fish department,
22 the Wyoming wildlife and natural resource trust account
23 board and the office of state lands and investments to

1 evaluate and provide technical review using the criteria
2 established under paragraph (i) of this subsection and,
3 where appropriate, recommend certification of any
4 mitigation credit provider seeking approval under this act.

5 The group may request assistance from any state, local and
6 federal agency to review credit provider applications and
7 other mitigation measures;

8
9 (iii) The service area for the use of
10 compensatory mitigation credits, provided that mitigation
11 shall take place within the state of Wyoming;

12
13 (iv) The length of credits to be used and sold,
14 provided that any term credit shall be sold for the period
15 of the expected impact. Credit term expiration before
16 restoration of the impacted location to suitability shall
17 require the party responsible for the mitigation to
18 purchase additional credits or negotiate a credit contract
19 extension. Credit mitigation shall remain in place until
20 the impact to the habitat of greater sage-grouse is
21 restored to suitability. Any term credit sold under this
22 act shall be for a period of not less than five (5) years;

23

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

7

8 (vi) Criteria for other forms of mitigation,
9 including operator-offered measures and restoration
10 credits;

11

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

16

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

22

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

8
9 (x) Requirements for periodic financial and
10 performance audits to be conducted on each mitigation
11 credit provider authorized to offer credits and any
12 purchaser of term credits under the compensatory mitigation
13 credit system created by this section. Audits shall be
14 conducted only to ensure that the mitigation credit
15 provider or purchaser are in compliance with the
16 requirements of this act and any rules promulgated for the
17 mitigation credit system;

18
19 (xi) Eligibility criteria for mitigation credit
20 providers, including a requirement that a mitigation credit
21 provider shall be a resident of or authorized to conduct
22 business in Wyoming;

23

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

5
6 (A) Any corrective measures which a
7 mitigation credit provider or their successor in interest
8 is required to take to ameliorate any material injury or
9 adverse impacts to the land or habitat used for
10 compensatory mitigation for which credits are offered that
11 materially impairs the conservation objectives of that land
12 or habitat;

13
14 (B) The bankruptcy or financial failure of
15 a mitigation credit provider authorized to offer credits
16 under the compensatory mitigation credit system;

17
18 (C) Maintenance, monitoring and management
19 costs.

20
21 (c) Every conservation easement used to serve as a
22 credit under this act shall bind the parties thereto to an
23 agreement that provides that the state of Wyoming is a

1 third-party beneficiary to the easement solely with the
2 contingent rights to enter onto the land subject to the
3 easement for inspection and to enforce the terms of the
4 easement if the grantee fails to enforce any of the terms
5 of the easement. The state shall have the right to access a
6 mitigation credit provider's financial assurances in order
7 to address any of the occurrences specified in W.S.
8 9-19-203(b)(xii).

9

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

15

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

21

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

4

5 (ii) July 1, 2023.

6

7 **9-19-204. Compensatory mitigation; fees; accounts.**

8

9 (a) The board of land commissioners may create an
10 account exclusively for each mitigation credit provider.
11 The board may accept funds for deposit into each account as
12 part of the financial assurances required under rules
13 adopted by the board of land commissioners pursuant to W.S.
14 9-19-203(b). The board shall manage the expenditure of
15 funds within each account. Funds within each account shall
16 be invested by the state treasurer as authorized under W.S.
17 9-4-715(a), (d) and (e).

18

19 (b) The board shall collect a fee of one thousand
20 five hundred dollars (\$1,500.00) from each mitigation
21 credit provider for creating an account as provided by
22 subsection (a) of this section. An account established
23 pursuant to subsection (a) of this section shall be subject

1 to an annual fee of one percent (1%) of the account's
2 balance for the annual administration, operation, reporting
3 and accounting of the account. The board shall assess and
4 collect the annual fee on the date set by rule during each
5 year in which the account is in existence. The board shall
6 collect the annual fee by deducting it from the balance of
7 the account.

8

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

17

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

23

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

2

3 **36-2-101. Composition; powers generally.**

4

5 The governor, secretary of state, state treasurer, state
6 auditor, and superintendent of public instruction, being
7 constituted a "board of land commissioners" by the
8 provisions of section 3, article 18, of the constitution of
9 the state of Wyoming, shall as such board, have the
10 direction, control, leasing, care and disposal of all lands
11 heretofore or hereafter granted or acquired by the state
12 for the benefit and support of public schools or for any
13 other purpose whatsoever, subject to the limitations
14 contained in the constitution of the state, and the laws
15 enacted by the legislature. The board shall have the power
16 and authority to take such official action as may be
17 necessary in securing title to land grants, or any other
18 lands acquired by the state. The board shall oversee the
19 compensatory mitigation credit system established under
20 W.S. 9-19-201 through 9-19-204 and shall promulgate rules
21 and regulations in accordance with W.S. 9-19-201 through
22 9-19-204.

23

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

5

6 Section 5.

7

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

10

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

15

16 (END)