**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO.

Sage grouse mitigation credits.

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

A BILL

for

AN ACT relating to sage grouse; establishing a program for compensatory mitigation credits for conservation of the greater sage-grouse; creating an account; 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:

****
****

STAFF COMMENT

This version of the bill draft incorporates the changes suggested by the Working Group.

****
****

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 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.

****
****

STAFF COMMENT

The Committee may wish to consider whether these legislative findings are necessary and, if so, whether they should remain non-codified as provided in this bill draft.

****
****

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 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 values 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 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 the 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 provider's compliance with this act and the rules promulgated by the office of state lands and investments 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 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) "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, 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, 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 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 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 initial impact and shall remain in place until the

impact to the habitat of greater sage-grouse is restored to suitability;

****
****

STAFF COMMENT

The Working Group is considering adding the following sentence to paragraph (iv) above:

"Any term credit sold under this act shall be for a period of not less than five (5) years;"

In addition, the Working Group considered the following:

- **The minimum required length for a credit.**
- **Whether perpetual credits should be expressly specified in statute.**
- **Whether credits should last for the life of the project plus a set term of years.**
- **Whether credits should be fungible and transferable during the life of the credit.**

****
****

(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 non-credit forms of mitigation, including operator-offered measures and restoration;

(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 (i) 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 provider;

(ix) Requirements for long-term monitoring, management and maintenance of lands associated with mitigation credits obtained under the credit system;

(x) Requirements for periodic financial and performance audits to be conducted of the mitigation credit resolution account and of each mitigation provider authorized to offer credits under the compensatory mitigation credit system created by this section. Audits

shall be conducted only to ensure that the mitigation provider is in compliance with the requirements of this act and any rules promulgated for the mitigation credit system;

(xi) Eligibility criteria for mitigation providers, including a requirement that a mitigation 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) Natural disasters that occur on or at mitigation sites used to offer credits;

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

(C) Any other unforeseen acts that adversely impact land or habitat used for compensatory mitigation for which credits are offered;

(D) Maintenance, monitoring and management costs.

(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 credit provider's funds from the credit provider's subaccount created under W.S. 9-13-204(b) in order to address any of the occurrences specified in W.S. 9-13-203(b)(xii).

(d) Upon the purchase of a credit from a credit provider approved under this act, the purchaser's

obligation for mitigation represented by that credit shall be transferred to the credit provider.

(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 before January 1, 2020 as meeting the requirements of this act after the habitat conservation bank complies the rules promulgated under paragraphs (b)(viii) through (x) of this section.

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

(a) Each mitigation 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 compensatory 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.

(b) The mitigation credit resolution account is hereby created. Funds from the account shall be expended by the board of land commissioners to address any adverse impacts caused by any of the occurrences specified in W.S. 9-19-203(b)(xii). The amount paid to the account shall be established by rule and regulation of the board of land commissioners. All amounts paid by a credit provider under this subsection shall be remitted to the state treasurer and deposited and credited to a subaccount created exclusively for each credit provider. Interest earned on monies in the account shall be deposited to the credit of each subaccount. Expenditures from the account shall be made using warrants drawn by the state auditor, upon vouchers issued and signed by the director of the office of state lands and investments. Funds from the account and each subaccount shall be expended only to carry out necessary reclamation and to address adverse impacts caused by any of the occurrences specified in W.S. 9-19-203(b)(xii).

****
****

STAFF COMMENT

For W.S. 9-19-204(b) (above), the Committee may wish to consider:

- **The mechanics of managing funds of each credit provider in separate subaccounts;**
- **The source of funding for the mitigation credit resolution account (currently in the bill draft, there is no provision for funds to be deposited into the account itself). In other words, the Committee should consider who pays into the account and how much must be paid.**

****
****

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

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 July 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 July 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.

(END)