

1 SENATE BILL NO. 261

2 INTRODUCED BY B. HAMLETT, P. CONNELL, M. LANG, F. MOORE, R. SHAW

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA GREATER SAGE-GROUSE
5 STEWARDSHIP ACT; ESTABLISHING THE MONTANA SAGE GROUSE OVERSIGHT TEAM; PROVIDING
6 DUTIES AND RULEMAKING AUTHORITY; PROVIDING FINDINGS AND DEFINITIONS; ESTABLISHING THE
7 SAGE GROUSE STEWARDSHIP ACCOUNT; PROVIDING GRANT CRITERIA; ALLOWING FOR
8 COMPENSATORY MITIGATION; CONDITIONING THE FUNDING OF LEASES OR CONSERVATION
9 EASEMENTS; PROVIDING FOR MANAGEMENT OF CONVEYED LANDS; REQUIRING REPORTING; AND
10 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 NEW SECTION. **Section 1. Montana sage grouse oversight team -- composition.** (1) There is a
15 Montana sage grouse oversight team. The oversight team is attached to the governor's office for administrative
16 purposes only, as prescribed in 2-15-121.

17 (2) The oversight team consists of:

18 (a) the directors of the departments of:

19 (i) environmental quality;

20 (ii) fish, wildlife, and parks;

21 (iii) natural resources and conservation; and

22 (iv) transportation;

23 (b) the administrator of the division of oil and gas conservation within the department of natural resources
24 and conservation;

25 (c) ~~a~~ ONE member of the rangeland resources committee established in 2-15-3305; ~~and~~

26 (D) ONE MEMBER OF THE SENATE APPOINTED BY THE PRESIDENT OF THE SENATE;

27 (E) ONE MEMBER OF THE HOUSE OF REPRESENTATIVES APPOINTED BY THE SPEAKER OF THE HOUSE; AND

28 ~~(F)~~ a designated representative of the governor. The governor's designated representative is the
29 presiding officer of the oversight team.

30 (3) The oversight team shall meet at least quarterly to fulfill the requirements of [sections 2 through 13].

1 EACH MEETING MUST BE RECORDED ELECTRONICALLY.

2 (4) Unless otherwise provided by law, each member is entitled to be reimbursed for travel expenses, as
3 provided for in 2-18-501 through 2-18-503, incurred while performing oversight team duties.

4
5 NEW SECTION. Section 2. Short title. This part may be cited as the "Montana Greater Sage-grouse
6 Stewardship Act".

7
8 NEW SECTION. Section 3. Legislative findings and purpose. (1) The legislature finds that it is in the
9 best interests of Montana's economy, the economic stability of school trust lands, and sage grouse conservation
10 and management to enact the Montana Greater Sage-grouse Stewardship Act.

11 (2) The purpose of this act is to provide competitive grant funding and establish ongoing free-market
12 mechanisms for voluntary, incentive-based conservation measures that emphasize maintaining, enhancing,
13 restoring, expanding, and benefiting sage grouse habitat and populations on private lands, and public lands as
14 needed, that lie within core areas, general habitat, or connectivity areas.

15
16 NEW SECTION. Section 4. Definitions. As used in this part, unless the context clearly indicates
17 otherwise, the following definitions apply:

18 (1) "Connectivity area" means an area that provides an important linkage among populations of sage
19 grouse, particularly between core areas or priority populations in adjacent states and across international borders.

20 (2) "Conservation bank" means a site or group of sites established through an agreement with the United
21 States fish and wildlife service to provide ecological functions and services expressed as credits that are
22 conserved and managed for sage grouse habitat and populations and used to offset debits occurring elsewhere.

23 (3) "Core area" means an area that has the highest conservation value for sage grouse and has the
24 greatest number of displaying male sage grouse and associated sage grouse habitat.

25 (4) "Credit" means a defined unit of trade representing the accrual or attainment of resource functions
26 or value at a proposed project site.

27 (5) "Debit" means a defined unit of trade representing the loss of resource functions or value at an impact
28 or project site. The unit of measure is the same as that for a credit within a specific mitigation system.

29 (6) "Department" means the department of natural resources and conservation.

30 (7) "General habitat" means an area providing habitat for sage grouse but not identified as a core area

1 or connectivity area.

2 (8) "Habitat exchange" means a market-based system that facilitates the exchange of credits and debits
3 between interested parties.

4 (9) "Habitat quantification tool" means the scientific method used to evaluate vegetation and
5 environmental conditions related to the quality and quantity of sage grouse habitat and to quantify and calculate
6 the value of credits and debits.

7 (10) "Oversight team" means the Montana sage grouse oversight team established in [section 1].

8 (11) "Project developer" means an entity proposing an action that will result in a debit.

9 (12) "Sage grouse" means the greater sage-grouse (*Centrocercus urophasianus*).

10

11 **NEW SECTION. Section 5. Montana sage grouse oversight team -- rulemaking.** The oversight team
12 shall adopt rules to administer the provisions of this part, including:

13 (1) eligibility and evaluation criteria for grants distributed pursuant to [section 8] for projects that maintain,
14 enhance, restore, expand, or benefit sage grouse habitat or populations, including but not limited to requirements
15 for matching funds and in-kind contributions and consideration of the socioeconomic impacts of a proposed
16 project on the local community. The evaluation criteria must give greater priority to proposed projects that:

17 (a) involve partnerships between public and private entities;

18 (b) provide matching funds;

19 (c) use the habitat quantification tool adopted pursuant to subsection (2); and

20 (d) maximize the amount of credits generated per dollars of funds awarded;

21 (2) the designation of a habitat quantification tool, subject to the approval of the United States fish and
22 wildlife service;

23 (3) subject to the provisions of [section 6(2)], a method to track and maintain the number of credits
24 attributable to projects funded pursuant to this part that are available to a project developer to purchase for
25 compensatory mitigation to offset debits under [section 9];

26 (4) methods of compensatory mitigation available under [section 9];

27 (5) review and monitoring of projects funded pursuant to this part;

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

30 (7) guidance on management options for any real property conveyed to the state under this part,

1 including its sale or lease.

2

3 **NEW SECTION. Section 6. Montana sage grouse oversight team -- duties -- powers.** (1) The
4 oversight team shall:

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

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

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

12 (d) subject to the provisions of [section 7], select grant applications to receive funding from the sage
13 grouse stewardship account. The oversight team has the discretion to determine the amount of each grant in
14 accordance with the provisions of this part and may attach conditions of use to the grant.

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

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

23 (g) review compensatory mitigation plans proposed under [section 9]. If the plan includes a financial
24 contribution to the sage grouse stewardship account established in [section 7], the oversight team shall, using
25 the habitat quantification tool, determine how to secure enough credits with the financial contribution to offset the
26 debits of the project.

27 (2) If a habitat exchange is authorized in Montana by the United States fish and wildlife service, the
28 oversight team may transfer credits it is tracking pursuant to [section 5(3)] to the habitat exchange, provided that:

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

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

4 (3) The oversight team shall retroactively calculate and make available credits for leases and
 5 conservation easements purchased with funds disbursed pursuant to this part after [the effective date of this act]
 6 but prior to the adoption of rules under [section 5].

7 (4) THE OVERSIGHT TEAM SHALL SEEK A DEPREDATION ORDER FROM THE UNITED STATES FISH AND WILDLIFE
 8 SERVICE UNDER THE MIGRATORY BIRD TREATY ACT OF 1918, AS NECESSARY, TO CONTROL COMMON RAVEN (CORVUS
 9 CORAX) OR BLACK-BILLED MAGPIE (PICA HUDSONIA) TO REDUCE DEPREDATION ON SAGE GROUSE POPULATIONS AND THEIR
 10 NESTS.

11
 12 NEW SECTION. **Section 7. Sage grouse stewardship account.** (1) There is a sage grouse
 13 stewardship account in the state special revenue fund established in 17-2-102. Subject to appropriation by the
 14 legislature, money deposited in the account must be used pursuant to the provisions of this part to maintain,
 15 enhance, restore, expand, or benefit sage grouse habitat and populations for the heritage of Montana and its
 16 people.

17 (2) The following funds must be deposited in the account:

18 (a) money received by the department in the form of grants, gifts, transfers, bequests, payments for
 19 credits or financial contributions made pursuant to [section 9], and donations, including donations limited in their
 20 purpose by the grantor, or appropriations from any source intended to be used for the purposes of this account;
 21 and

22 (b) any interest or income earned on the account.

23 (3) Subject to subsections (4) and (5), the department shall make disbursements from the account to
 24 projects approved by the oversight team to receive grants.

25 (4) The majority of the funds in the account may not be disbursed before the habitat quantification tool
 26 has been adopted. The habitat quantification tool must be applied to any project funded after the habitat
 27 quantification tool has been adopted. The majority of the account funds must be awarded to projects that
 28 generate credits THAT ARE AVAILABLE FOR COMPENSATORY MITIGATION UNDER [SECTION 9]. When selecting projects
 29 to receive funds, the oversight team shall prioritize projects that maximize the amount of credits generated per
 30 dollars of funds awarded.

- 1 (5) Money deposited in the account may not be used:
- 2 (a) for fee simple acquisition of private land;
- 3 (b) to purchase water rights;
- 4 (c) to purchase a lease or conservation easement that requires recreational access or prohibits hunting,
- 5 fishing, or trapping as part of its terms; or
- 6 (d) to allow the release of any species listed under 87-5-107 or the federal Endangered Species Act, 16
- 7 U.S.C. 1531, et seq.
- 8 (6) Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the
- 9 account.

10

11 **NEW SECTION. Section 8. Grants -- eligibility.** (1) Subject to the provisions of [section 10], to be

12 eligible to receive funds pursuant to this part, a proposed project must maintain, enhance, restore, expand, or

13 benefit sage grouse habitat and populations for the heritage of Montana and its people through voluntary,

14 incentive-based efforts, including:

- 15 (a) reduction of conifer encroachment;
- 16 (b) reduction of the spread of invasive weeds that harm sagebrush health or sage grouse habitat;
- 17 (c) maintenance, restoration, or improvement of sagebrush health or quality;
- 18 (d) purchase or acquisition of leases, term conservation easements, or permanent conservation
- 19 easements that conserve or maintain sage grouse habitat, protect grazing lands, or conserve sage grouse
- 20 populations;
- 21 (e) incentives to reduce the conversion of grazing land to cropland;
- 22 (f) restoration of cropland to grazing land;
- 23 (g) modification of fire management to conserve sage grouse habitat or populations;
- 24 (h) demarcation of fences to reduce sage grouse collisions;
- 25 (i) reduction of unnatural perching platforms for raptors;
- 26 (j) reduction of unnatural safe havens for predators;
- 27 (k) sage grouse habitat enhancement that provides project developers the ability to use improved habitat
- 28 for compensatory mitigation under [section 9];
- 29 (l) establishment of a habitat exchange to develop and market credits consistent with the purposes of
- 30 this part. The habitat exchange must be authorized by the United States fish and wildlife service and must use

1 the habitat quantification tool to quantify and calculate the value of credits and debits. Funds may be allocated
2 to a habitat exchange:

3 (i) if the funds are used:

4 (A) to create and market credits in a manner consistent with the habitat quantification tool;

5 (B) for operational purposes, including monitoring the effectiveness of projects; or

6 (C) for costs associated with establishing the habitat exchange; and

7 (ii) the habitat exchange reimburses the state for its proportionate share of proceeds generated from the
8 sale of credits created with funds distributed pursuant to this part. Any proceeds received by the state pursuant
9 to this subsection (1)(i)(ii) must be deposited in the sage grouse stewardship account established in [section 7]
10 and must be used only to acquire additional credits or for operational purposes, including monitoring the long-term
11 effectiveness of compensatory mitigation projects.

12 (m) other project proposals that the oversight team determines are consistent with the purposes of this
13 part.

14 (2) Projects proposed by grant applicants may involve land owned by multiple landowners, including
15 state and federal land, provided that the majority of the involved acres are privately held and that the proposed
16 project benefits sage grouse across all of the land included in the project.

17 (3) Grants must be awarded only to organizations and agencies that hold and maintain conservation
18 easements or leases or that are directly involved in sage grouse habitat mitigation and enhancement activities
19 approved by the oversight team.

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

22 (5) IF A GRANT IS AWARDED TO A PROPOSED PROJECT THAT USES MATCHING FUNDS FROM A SOURCE THAT
23 PROHIBITS THE GENERATION OF CREDITS FOR COMPENSATORY MITIGATION, THE OVERSIGHT TEAM, WHEN POSSIBLE, SHALL
24 ALLOCATE THE CREDITS GENERATED BY THE PROPOSED PROJECT ON A PRO RATA BASIS AND MAKE AVAILABLE FOR
25 COMPENSATORY MITIGATION UNDER [SECTION 9] ONLY THOSE CREDITS ATTRIBUTABLE TO FUNDS AWARDED PURSUANT
26 TO THIS SECTION AND ANY UNRESTRICTED MATCHING FUNDS.

27
28 **NEW SECTION. Section 9. Compensatory mitigation -- findings.** (1) The legislature finds that
29 allowing a project developer to provide compensatory mitigation for the debits of a project is consistent with the
30 purpose of incentivizing voluntary conservation measures for sage grouse habitat and populations. The project

1 developer may provide compensatory mitigation by:

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

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

4 (i) purchasing an equal number of credits from a habitat exchange authorized by the United States fish
5 and wildlife service or from the available credits tracked by the oversight team pursuant to [section 5]. Payments
6 received for credits tracked by the oversight team must be deposited in the sage grouse stewardship account
7 established in [section 7].

8 (ii) if sufficient conservation credits are unavailable for purchase, making a financial contribution to the
9 sage grouse stewardship account established in [section 7] that is equal to the average cost of the credits that
10 would otherwise be required;

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

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

17 (2) All mitigation undertaken pursuant to this section must be consistent with the United States fish and
18 wildlife service's greater sage-grouse range-wide mitigation framework, state law, and any rules adopted pursuant
19 to this part.

20 (3) A mitigation action taken under this section must be conducted within general habitat, core areas,
21 or connectivity areas.

22

23 **NEW SECTION. Section 10. Leases and conservation easements.** A lease or conservation easement
24 selected to receive funds pursuant to this part binds the parties involved to an agreement in which the state is
25 a third-party beneficiary to the lease or easement with the contingent right to enforce the terms of the lease or
26 easement if the grantee fails to do so. The agreement must provide that the lease or easement may not be
27 transferred for value, sold, or extinguished without consent of the department. The state may take legal action
28 to enforce the terms of the lease or easement or to recover from the proceeds of the transfer for value, sale, or
29 extinguishment the state's pro rata share of the proceeds based on the funds the state provided pursuant to this
30 part for the creation of the lease or easement.

1
 2 **NEW SECTION. Section 11. Real property.** Real property conveyed by fee simple title to the state
 3 under this part must be administered by the department pursuant to Title 77.

4
 5 **NEW SECTION. Section 12. Application to mineral estates.** No provision of this part may be
 6 construed to alter Montana law regarding the primacy of the mineral estate, to limit access to the mineral estate,
 7 or to limit development of the mineral estate.

8
 9 **NEW SECTION. Section 13. Reporting.** The oversight team shall report to the governor regularly and
 10 provide an annual report to the governor, the environmental quality council, the board of land commissioners, and
 11 the county commissions in the counties where projects were funded pursuant to this part. The annual report must
 12 include information on activities undertaken pursuant to this part, including but not limited to:

- 13 (1) any appropriation, grant, gift, transfer, bequest, or donation received, including interest in real
 14 property;
 15 (2) each grant awarded and the details of each grant's status and results; and
 16 (3) any compensatory mitigation activities.

17
 18 **NEW SECTION. SECTION 14. TRANSFER OF FUNDS. ANY FUNDS APPROPRIATED TO THE DEPARTMENT OF**
 19 **NATURAL RESOURCES AND CONSERVATION FOR THE SAGE GROUSE CONSERVATION FUND IN THE GENERAL**
 20 **APPROPRIATIONS ACT MUST BE TRANSFERRED TO THE SAGE GROUSE STEWARDSHIP ACCOUNT ESTABLISHED IN [SECTION**
 21 **7] AND USED IN ACCORDANCE WITH [THIS ACT].**

22
 23 **NEW SECTION. SECTION 15. REVERSION OF FUNDS. IF THE UNITED STATE STATES FISH AND WILDLIFE**
 24 **SERVICE LISTS THE GREATER SAGE-GROUSE (CENTROCERCUS UROPHASIANUS) AS ENDANGERED UNDER THE**
 25 **ENDANGERED SPECIES ACT, 16 U.S.C. 1531, ET SEQ., ANY UNENCUMBERED PORTION OF AN APPROPRIATION TO THE**
 26 **DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR THE SAGE GROUSE CONSERVATION FUND IN THE**
 27 **GENERAL APPROPRIATIONS ACT THAT WAS TRANSFERRED PURSUANT TO [SECTION 14] MUST REVERT TO THE GENERAL**
 28 **FUND.**

29
 30 **NEW SECTION. Section 16. Notification to tribal governments.** The secretary of state shall send

1 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
2 Chippewa tribe.

3
4 NEW SECTION. Section 17. Codification instruction. (1) [Section 1] is intended to be codified as
5 an integral part of Title 2, chapter 15, part 2, and the provisions of Title 2, chapter 15, part 2, apply to [section 1].

6 (2) [Sections 2 through 13] are intended to be codified as an integral part of Title 76, and the provisions
7 of Title 76 apply to [sections 2 through 13].

8
9 NEW SECTION. Section 18. Effective date. [This act] is effective on passage and approval.

10 - END -