



AN ACT GENERALLY REVISING LAWS RELATED TO SAGE GROUSE CONSERVATION; EXEMPTING CERTAIN LAND USES AND ACTIVITIES FROM REGULATION; REVISING MONTANA SAGE GROUSE OVERSIGHT TEAM AUTHORITY; REVISING REPORTING REQUIREMENTS; REVISING COMPENSATORY MITIGATION REQUIREMENTS; PROVIDING DEFINITIONS; AMENDING SECTIONS 76-22-105, 76-22-111, AND 76-22-118, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

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 September 8, 2015, 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" means those uses and activities that require a permit or other authorization from a state agency to be conducted and 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.

Section 2. Compensatory mitigation reduction or waiver. (1) The oversight team shall consider on a case-by-case basis requests for a reduction in or waiver of compensatory mitigation based upon an assessment

including but not limited to the following:

- (a) a project that is located at least six-tenths of a mile from the center of an active lek but for which it is economically infeasible to be located more than 2 miles from the center of an active lek;
 - (b) the economic benefit to the local community and the project developer;
 - (c) whether the project is undertaken and completed outside of the sage grouse mating season; or
 - (d) whether the project involves one-time construction and does not require ongoing disturbance once completed, except for occasional routine maintenance of existing facilities.
- (2) The oversight team shall provide a summary of the reasons why a reduction in or waiver of compensatory mitigation is approved or denied.

Section 3. Operations and maintenance exempt. (1) Permitting and authorizing agencies and the oversight team shall cooperate to designate as exempt from the habitat quantification tool certain operations and maintenance activities that require a permit or other authorization from a state agency.

(2) Operations and maintenance activities that are exempt from the habitat quantification tool pursuant to subsection (1) may still be subject to 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.

Section 4. Section 76-22-105, MCA, is amended to read:

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

- (a) cooperate with organizations to maintain, enhance, restore, expand, and benefit sage grouse habitat and populations;
- (b) identify and map core areas, connectivity areas, and general habitat, subject to the approval of the governor;
- (c) evaluate grant applications. As part of its evaluation, the oversight team shall solicit and consider the views of interested and affected persons and entities, including local, state, tribal, and federal governmental agencies, and boards, commissions, and other political subdivisions of the state;
- (d) subject to the provisions of 76-22-109, select grant applications to receive funding from the sage grouse stewardship account. The oversight team has the discretion to determine the amount of each grant in accordance with the provisions of this part and may attach conditions of use to the grant.

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

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

(g) review and act upon compensatory mitigation plans proposed under 76-22-111 with a goal of no net loss of habitat and a net gain preferred. If ~~the~~ a plan includes a financial contribution to the sage grouse stewardship account established in 76-22-109, the oversight team shall, using the habitat quantification tool, determine how to secure enough credits with the financial contribution to offset the debits of the project.

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

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

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

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

(i) work with stakeholders to streamline the compensatory mitigation review process, including calculation of reduced mitigation costs for low-impact projects such as trenchless excavation; and

(j) monitor long-term staffing needs to effectively implement this part, as well as the costs and benefits of doing so.

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

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

(b) if the United States fish and wildlife service revokes authorization of the habitat exchange, the

balance of the credits held by the exchange that were transferred to it by the oversight team are transferred back to the oversight team or to another habitat exchange authorized by the United States fish and wildlife service.

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

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

Section 5. Section 76-22-111, MCA, is amended to read:

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

(a) using the habitat quantification tool to calculate the debits attributable to the project; and
 (b) under a mitigation plan approved by the oversight team, offsetting those debits in whole or in part by:
 (i) purchasing an equal number of credits from a habitat exchange authorized by the United States fish and wildlife service or from the available credits tracked by the oversight team pursuant to 76-22-104. Payments received for credits tracked by the oversight team must be deposited in the sage grouse stewardship account established in 76-22-109.

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

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

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

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

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

(4) A project developer may submit alternative locations for a project to compare the compensatory mitigation requirements of each and choose which alternative to develop based upon that information."

Section 6. Section 76-22-118, MCA, is amended to read:

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

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

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

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

(2) The oversight team shall report to the environmental quality council the findings of its review of staffing needs to effectively implement this part, as well as the costs and benefits of doing so, conducted pursuant to 76-22-105(1)(j)."

Section 7. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 76, chapter 22, part 1, and the provisions of Title 76, chapter 22, part 1, apply to [sections 1 and 2].

Section 8. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
SB 0299, originated in the Senate.

President of the Senate

Signed this _____ day
of _____, 2019.

Secretary of the Senate

Speaker of the House

Signed this _____ day
of _____, 2019.

SENATE BILL NO. 299

INTRODUCED BY M. LANG, B. HAMLETT, F. MOORE, R. OSMUNDSON, T. RICHMOND, S. SALES,
R. SHAW, J. WELBORN, K. WHITE

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