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# MEMORANDUM

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**To:** Natural Resources Subcommittee

**From:** Paul Siebert, Legislative Fiscal Office  
(503) 986-1843

**Date:** June 27, 2013

**Subject:** HB 3086-A  
Work Session Recommendations

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HB 3086, as modified with the –A9 amendment, authorizes the Oregon Department of Fish and Wildlife (ODFW) to develop and administer a uniform policy of mitigating the adverse effects that proposed actions may have on core area habitat of sage grouse. This could include off-site mitigation and the formation of mitigation banks.

The –A9 amendment and the original staff measure summary, revenue are available on the Oregon Legislative Information System (OLIS). The measure history is also available on OLIS.

The measure has an indeterminate fiscal impact to the Oregon Department of Fish and Wildlife.

## **Amendment**

The –A9 amendment makes a number of policy changes relating to mitigation of core area habitat of sage grouse when a proposed action may have an adverse impact. ODFW is authorized to develop and administer a uniform policy of mitigating the adverse effects that proposed actions may have on core area habitat of sage grouse.

## **Motion #1: Move the –A9 amendment to HB 3086.**

## **LFO Recommended Change**

Add a \$500,000 General Fund appropriation to the Oregon Department of Fish and Wildlife to carry out the provisions of the bill.

*“There is appropriated to the State Department of Fish and Wildlife, for the biennium beginning July 1, 2013, out of the General Fund, the amount of \$500,000 for purposes of carrying out the provisions of this 2013 Act.”*

**Motion #2: Move the LFO recommended change to HB 3086**

**Measure to Full**

LFO recommends the measure be moved to the full Committee on Joint Ways and Means, as amended.

**Motion #3: Move HB 3086 to the full committee with a “do pass” recommendation, as amended.**

**Assignment of Carriers**

Full: \_\_\_\_\_  
2nd Chamber: \_\_\_\_\_

**PROPOSED AMENDMENTS TO  
A-ENGROSSED HOUSE BILL 3086**

1 On page 1 of the printed A-engrossed bill, delete lines 4 through 23 and  
2 delete page 2 and insert:

3 **“SECTION 1. (1) To assist persons with meeting the requirements**  
4 **of this state and local and federal governments concerning the miti-**  
5 **gation of the adverse effects that a proposed action may have on core**  
6 **area habitat of sage grouse, the State Department of Fish and Wildlife,**  
7 **after consultation with interested local and tribal governments, state**  
8 **and federal agencies and private organizations, may develop and ad-**  
9 **minister a uniform policy for mitigating the adverse effects that the**  
10 **proposed actions may have on core area habitat of sage grouse.**

11 **“(2) If the department develops a mitigation policy under this sec-**  
12 **tion, the policy may include:**

13 **“(a) Provisions for the recognition or establishment of mitigation**  
14 **banks; and**

15 **“(b) Any other framework, criteria or goals developed to facilitate**  
16 **the mitigation of the adverse effects that a proposed action may have**  
17 **on core area habitat of sage grouse in a manner that ensures a land-**  
18 **scape approach to the conservation of sage grouse.**

19 **“(3) If the department develops a mitigation policy under this sec-**  
20 **tion, the policy must:**

21 **“(a) Provide that the department review, at least once every five**  
22 **years, the mapping by the department of core area habitat of sage**

1 grouse and revise the mapping, if necessary, to account for any new  
2 and substantial biological information; and

3 “(b) Ensure that any use of a mitigation bank or other mitigation  
4 framework provided for under the policy does not result in a net loss  
5 of either the quality or quantity of sage grouse habitat and provides  
6 a net benefit to the quality or quantity of sage grouse habitat.

7 “(4) If the department develops a mitigation policy under this sec-  
8 tion for the purpose of benefiting sage grouse as a result of a listing  
9 as a sensitive, threatened or endangered species under ORS 496.171 to  
10 496.182, or a listing as a candidate, threatened or endangered species  
11 pursuant to the federal Endangered Species Act of 1973 (P.L. 93-205,  
12 16 U.S.C. 1531 et seq.), the policy shall ensure, to the greatest extent  
13 practicable, that any use of land, water or other natural resources  
14 occurring in a habitat identified as part of a mitigation bank or other  
15 mitigation framework developed under the policy may continue after  
16 the department identifies the habitat as part of a mitigation bank or  
17 other mitigation framework.

18 “(5)(a) Subsections (1) to (4) of this section do not affect the ability  
19 of a person to develop a proposal under section 2 of this 2013 Act for  
20 off-site mitigation or a mitigation bank in order to meet the require-  
21 ments of this state and local and federal governments concerning the  
22 mitigation of the adverse effects that a proposed action by the person  
23 may have on core area habitat of sage grouse.

24 “(b) Any proposal for off-site mitigation or a mitigation bank de-  
25 veloped under this section and section 2 of this 2013 Act must not re-  
26 sult in a net loss of either the quality or quantity of sage grouse  
27 habitat and must provide a net benefit to the quality or quantity of  
28 sage grouse habitat.

29 **“SECTION 2. (1) Subject to and consistent with the federal Endan-  
30 gered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531 et seq.) and not-**

1 **withstanding any provision of ORS 496.171 to 496.182:**

2 **“(a) If a person applies for a permit, license, authorization or other**  
3 **form of permission required by law from a state agency for a proposed**  
4 **action that may affect core area habitat of sage grouse, the person**  
5 **may file with the State Department of Fish and Wildlife, at any time**  
6 **before or after the commencement of the relevant permitting, licens-**  
7 **ing, authorization or other form of permission process, a report that**  
8 **uses the best scientific and commercial data available to provide a**  
9 **description of the proposed action and its possible effects on the**  
10 **habitat.**

11 **“(b) The report described in this section must describe the core area**  
12 **habitat of sage grouse affected by the proposed action, specify whether**  
13 **the habitat is essential and irreplaceable and provide proposals for**  
14 **off-site mitigation or a mitigation bank.**

15 **“(c)(A) Within 60 days after the filing of the report described in this**  
16 **section, the department shall evaluate whether the proposals for off-**  
17 **site mitigation specified in the report result in a net loss of either the**  
18 **quality or quantity of sage grouse habitat and provide a net benefit to**  
19 **the quality or quantity of sage grouse habitat.**

20 **“(B)(i) If the department concludes that the proposals for off-site**  
21 **mitigation do not result in a net loss of either the quality or quantity**  
22 **of sage grouse habitat and do provide a net benefit to the quality or**  
23 **quantity of sage grouse habitat, the department shall issue an order**  
24 **finding that the core area habitat of sage grouse affected by the pro-**  
25 **posed action is not irreplaceable. The department may not thereafter**  
26 **reverse or modify the order except pursuant to a judgment of a court.**

27 **“(ii) If the department concludes that the proposals for off-site**  
28 **mitigation result in a net loss of either the quality or quantity of sage**  
29 **grouse habitat and do not provide a net benefit to the quality or**  
30 **quantity of sage grouse habitat, a person affected by the action may**

1 request a contested case hearing before the State Fish and Wildlife  
2 Commission, to be conducted as provided in ORS chapter 183.

3 “(2) The provisions of this section apply to a site certificate for an  
4 energy facility described in ORS 469.300 (11)(a)(F), but do not apply to  
5 a site certificate for any other facility under the provisions of ORS  
6 469.300 to 469.563.

7 “(3) The commission may adopt rules to carry out the provisions  
8 of this section.

9 **“SECTION 3. (1) Except as provided in subsection (2) of this section,  
10 sections 1 and 2 of this 2013 Act become operative on January 1, 2014.**

11 **“(2) The State Fish and Wildlife Commission may adopt rules or  
12 take any other action before the operative date specified in subsection  
13 (1) of this section that is necessary to implement, on and after the  
14 operative date specified in subsection (1) of this section, sections 1 and  
15 2 of this 2013 Act.**

16 **“SECTION 4. This 2013 Act being necessary for the immediate  
17 preservation of the public peace, health and safety, an emergency is  
18 declared to exist, and this 2013 Act takes effect on its passage.”.**

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REVENUE: No revenue impact

FISCAL: Fiscal statement issued

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| <b>Action:</b>        | Do Pass as Amended and Be Printed Engrossed and Be Referred to the Committee on Ways and Means |
| <b>Vote:</b>          | 8 - 0 - 1  |
| <b>Yeas:</b>          | Clem, Esquivel, Krieger, Reardon, Thompson, Unger, Whitsett, Witt                              |
| <b>Nays:</b>          | 0  |
| <b>Exc.:</b>          | McKeown  |
| <b>Prepared By:</b>   | Beth Patrino, Administrator  |
| <b>Meeting Dates:</b> | 3/7, 4/4, 4/9  |

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**WHAT THE MEASURE DOES:** Authorizes person to file report with Department of Fish and Wildlife (ODFW) providing description of proposed action and possible effects on sage grouse habitat if person sought permission from state agency for proposed action that may affect core area sage grouse habitat and state agency asked ODFW for determination on effects of proposed project on sage grouse. Specifies contents of report. Directs ODFW, within 30 days of report filing, to evaluate if off-site mitigation proposals result in net loss of either quality or quantity of sage grouse habitat and provide net benefit to quality or quantity of habitat. If ODFW concludes off-site mitigation proposals result in no net loss and net benefit, directs ODFW to issue order finding affected sage grouse habitat is not irreplaceable. If ODFW concludes off-site mitigation proposals result in net loss of either quality or quantity of sage grouse and do not provide net benefit, person affected by action may request contested case hearing before Fish and Wildlife Commission (Commission). Authorizes Commission to adopt rules to carry out provisions. Declares emergency, effective upon passage.

**ISSUES DISCUSSED:**

- Extent of sage grouse habitat in Eastern Oregon
- Timeline for response from ODFW
- Other legislation addressing mitigation program

**EFFECT OF COMMITTEE AMENDMENT:** Replaces measure.

**BACKGROUND:** According to the United States Fish and Wildlife Service, greater sage-grouse are found in Washington, Oregon, Idaho, Montana, North Dakota, eastern California, Nevada, Utah, western Colorado, South Dakota and Wyoming and the Canadian provinces of Alberta and Saskatchewan and occupy approximately 56 percent of their historical range. House Bill 3086 A would direct ODFW to respond within 30 days to a request for an evaluation of an off-site mitigation proposal for a project affecting sage grouse habitat.