

HB 3086

Relating to sage grouse

House Bill 3086 authorizes the Oregon Department of Fish and Wildlife to develop and administer a uniform policy of mitigating adverse effects that proposed actions may have on a core area sage grouse habitat. This policy could include off-site mitigation and the formation of mitigation banks, and is intended to provide a landscape approach to sage grouse mitigation efforts as opposed to the current site specific focus.

The bill allows persons applying for authorizations from state agencies for a proposed action that might affect core sage grouse habitat to file a report with ODFW describing the action and its effect on habitat along with proposed mitigation efforts. ODFW then has 60 days to evaluate the report. If ODFW concludes that the proposals do not offer sufficient mitigation, the proposer may seek a contested case hearing before the State Fish and Wildlife Commission.

The bill makes a one-time appropriation of \$500,000 General Fund to ODFW to examine developing a new policy approach to mitigation projects affecting sage grouse habitat. If ODFW chooses to implement a comprehensive new mitigation system it will need to develop a budget proposal for the 2015-17 biennium.

Your Natural Resources Subcommittee recommends HB 3086 be amended and reported out do pass, as amended.

**77th OREGON LEGISLATIVE ASSEMBLY – 2013 Session
BUDGET REPORT AND MEASURE SUMMARY**

JOINT COMMITTEE ON WAYS AND MEANS

MEASURE: HB 3086-B

Carrier – House: Rep. Bentz

Carrier – Senate: Sen. Thomsen

Action: Do Pass the A-Engrossed Measure as Amended and be Printed B-Engrossed

Vote:

House

Yeas:

Nays:

Exc:

Senate

Yeas:

Nays:

Exc:

Prepared By: Lisa Pearson, Department of Administrative Services

Reviewed By: Paul Siebert, Legislative Fiscal Office

Meeting Date: July 2, 2013

Agency

Oregon Department of Fish and Wildlife

Biennium

2013-15

Budget Summary*

	2011-13 Legislatively Approved Budget ⁽¹⁾	2013-15 Current Service Level	2013-15 Committee Recommendation	Committee Change from 2011-13 Leg. Approved	
				\$\$ Change	% Change
General Fund	\$ 0	\$ 0	\$ 500,000	\$ 500,000	100.0%
Total	\$ 0	\$ 0	\$ 500,000	\$ 500,000	100.0%

Position Summary

Authorized Positions	0	0	1	1
Full-time Equivalent (FTE) positions	0.00	0.00	1.00	1.00

⁽¹⁾ Includes adjustments through December 2012

* Excludes Capital Construction expenditures

Summary of Revenue Changes

This bill includes a General Fund appropriation to the Oregon Department of Fish and Wildlife to implement the provisions of the bill.

Summary of Natural Resources Subcommittee Action

Senate Bill 3086-B authorizes the Oregon Department of Fish and Wildlife (ODFW) to develop and administer a uniform policy of mitigating adverse effects that proposed actions may have on a core area sage grouse habitat. This policy could include off-site mitigation and the formation of mitigation banks, and is intended to provide a landscape approach to sage grouse mitigation efforts as opposed to the current site specific focus. The bill allows persons applying for authorizations from state agencies for a proposed action that might affect core sage grouse habitat to file a report with ODFW describing the action and its effect on habitat. This report may also propose off-site mitigation. ODFW then has 60 days to evaluate the report and the proposed mitigation efforts. If ODFW concludes that the proposals do not offer sufficient mitigation the proposer may seek a contested case hearing before the State Fish and Wildlife Commission. The bill makes a one-time appropriation of \$500,000 General Fund to ODFW for developing a policy and for reviewing proposals for mitigation projects affecting sage grouse habitat. If ODFW chooses to pursue a comprehensive new mitigation system in the 2015-17 biennium, it will need to propose a policy package for that budget cycle.

The appropriated funds will cover a limited duration Natural Resource Specialist 4 positions (1.00 FTE) at \$179,011 for the additional workload from reviewing proposals and contested case hearings. Services and Supplies are funded at \$320,989, of which \$70,989 supports the position's work and \$250,000 will support a contract with an external consultant. The consultant will be an expert on mitigation system design and other associated technical expertise.

DETAIL OF JOINT COMMITTEE ON WAYS AND MEANS ACTION

HB 3086-B

Oregon Department of Fish and Wildlife
 Lisa Pearson -- 503-373-7501

DESCRIPTION	GENERAL FUND	LOTTERY FUNDS	OTHER FUNDS		FEDERAL FUNDS		TOTAL ALL FUNDS	POS	FTE	
			LIMITED	NONLIMITED	LIMITED	NONLIMITED				
2011-13 Legislatively Approved Budget at Dec 2012 *	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	0	0.00	
2013-15 ORBITS printed Current Service Level (CSL)*	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	0	0.00	
<u>SUBCOMMITTEE ADJUSTMENTS (from CSL)</u>										
020-01 - Wildlife Management										
Sage Grouse Mitigation Policy and Plan review										
Personal Services	\$ 179,011	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	179,011	1	1.00
Services and Supplies	\$ 320,989	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	320,989		
TOTAL ADJUSTMENTS	\$ 500,000	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	500,000	1	1.00
SUBCOMMITTEE RECOMMENDATION *	\$ 500,000	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	500,000	1	1.00
% Change from 2011-13 Leg Approved Budget	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%		
% Change from 2013-15 Current Service Level	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%		

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

1 On page 1 of the printed A-engrossed bill, line 2, after the semicolon in-
2 sert “appropriating money;”.

3 Delete lines 4 through 23 and delete page 2 and insert:

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

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

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

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

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

22 **“(a) Provide that the department review, at least once every five**

1 years, the mapping by the department of core area habitat of sage
2 grouse and revise the mapping, if necessary, to account for any new
3 and substantial biological information; and

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

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

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

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

30 **SECTION 2.** (1) Subject to and consistent with the federal Endan-

1 **gered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531 et seq.) and not-**
2 **withstanding any provision of ORS 496.171 to 496.182:**

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

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

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

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

28 **“(ii) If the department concludes that the proposals specified in the**
29 **report result in a net loss of either the quality or quantity of sage**
30 **grouse habitat and do not provide a net benefit to the quality or**

1 quantity of sage grouse habitat, a person affected by the action may
2 request a contested case hearing before the State Fish and Wildlife
3 Commission, to be conducted as provided in ORS chapter 183.

4 “(2) The provisions of this section apply to a site certificate for an
5 energy facility described in ORS 469.300 (11)(a)(F), but do not apply to
6 a site certificate for any other facility under the provisions of ORS
7 469.300 to 469.563.

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

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

12 **“(2) The State Fish and Wildlife Commission may adopt rules or
13 take any other action before the operative date specified in subsection
14 (1) of this section that is necessary to implement, on and after the
15 operative date specified in subsection (1) of this section, sections 1 and
16 2 of this 2013 Act.**

17 **“SECTION 4. In addition to and not in lieu of any other appropri-
18 ation, there is appropriated to the State Department of Fish and
19 Wildlife, for the biennium beginning July 1, 2013, out of the General
20 Fund, the amount of \$500,000, which may be expended for the purposes
21 of carrying out the duties of the department under sections 1 to 3 of
22 this 2013 Act.**

23 **“SECTION 5. This 2013 Act being necessary for the immediate
24 preservation of the public peace, health and safety, an emergency is
25 declared to exist, and this 2013 Act takes effect on its passage.”.**

26