

B-Engrossed
House Bill 3086

Ordered by the House July 3
Including House Amendments dated April 11 and July 3

Sponsored by COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Allows State Department of Fish and Wildlife, after consultation with specified parties, to develop and administer uniform policy for mitigating adverse effects that proposed actions may have on core area habitat of sage grouse. Specifies permissive and required contents of policy.

Provides that person that seeks permit or other form of permission from state agency for proposed action that may affect core area habitat of sage grouse may file report with State Department of Fish and Wildlife in certain cases. Specifies contents of report. Requires department to evaluate report. Requires department to issue order in certain cases.

Appropriates moneys from General Fund to State Department of Fish and Wildlife to be expended for purposes of carrying out duties of department under Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to sage grouse; appropriating money; and declaring an emergency.

3 **Be It Enacted by the People of the State of Oregon:**

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

11 **(2) If the department develops a mitigation policy under this section, the policy may in-**
12 **clude:**

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

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

17 **(3) If the department develops a mitigation policy under this section, the policy must:**

18 **(a) Provide that the department review, at least once every five years, the mapping by**
19 **the department of core area habitat of sage grouse and revise the mapping, if necessary, to**
20 **account for any new and substantial biological information; and**

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

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (4) If the department develops a mitigation policy under this section for the purpose of
2 benefiting sage grouse as a result of a listing as a sensitive, threatened or endangered spe-
3 cies under ORS 496.171 to 496.182, or a listing as a candidate, threatened or endangered spe-
4 cies pursuant to the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531 et
5 seq.), the policy shall ensure, to the greatest extent practicable, that any use of land, water
6 or other natural resources occurring in a habitat identified as part of a mitigation bank or
7 other mitigation framework developed under the policy may continue after the department
8 identifies the habitat as part of a mitigation bank or other mitigation framework.

9 (5)(a) Subsections (1) to (4) of this section do not affect the ability of a person to develop
10 a proposal under section 2 of this 2013 Act for off-site mitigation or a mitigation bank in
11 order to meet the requirements of this state and local and federal governments concerning
12 the mitigation of the adverse effects that a proposed action by the person may have on core
13 area habitat of sage grouse.

14 (b) Any proposal for off-site mitigation or a mitigation bank developed under this section
15 and section 2 of this 2013 Act must not result in a net loss of either the quality or quantity
16 of sage grouse habitat and must provide a net benefit to the quality or quantity of sage
17 grouse habitat.

18 **SECTION 2.** (1) Subject to and consistent with the federal Endangered Species Act of 1973
19 (P.L. 93-205, 16 U.S.C. 1531 et seq.) and notwithstanding any provision of ORS 496.171 to
20 496.182:

21 (a) If a person applies for a permit, license, authorization or other form of permission
22 required by law from a state agency for a proposed action that may affect core area habitat
23 of sage grouse, the person may file with the State Department of Fish and Wildlife, at any
24 time before or after the commencement of the relevant permitting, licensing, authorization
25 or other form of permission process, a report that uses the best scientific and commercial
26 data available to provide a description of the proposed action and its possible effects on the
27 habitat.

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

31 (c)(A) Within 60 days after the filing of the report described in this section, the depart-
32 ment shall evaluate whether the proposals specified in the report result in a net loss of ei-
33 ther the quality or quantity of sage grouse habitat and provide a net benefit to the quality
34 or quantity of sage grouse habitat.

35 (B)(i) If the department concludes that the proposals specified in the report do not result
36 in a net loss of either the quality or quantity of sage grouse habitat and do provide a net
37 benefit to the quality or quantity of sage grouse habitat, the department shall issue an order
38 finding that the core area habitat of sage grouse affected by the proposed action is not
39 irreplaceable. The department may not thereafter reverse or modify the order except pur-
40 suant to a judgment of a court.

41 (ii) If the department concludes that the proposals specified in the report result in a net
42 loss of either the quality or quantity of sage grouse habitat and do not provide a net benefit
43 to the quality or quantity of sage grouse habitat, a person affected by the action may request
44 a contested case hearing before the State Fish and Wildlife Commission, to be conducted as
45 provided in ORS chapter 183.

1 **(2) The provisions of this section apply to a site certificate for an energy facility de-**
2 **scribed in ORS 469.300 (11)(a)(F), but do not apply to a site certificate for any other facility**
3 **under the provisions of ORS 469.300 to 469.563.**

4 **(3) The commission may adopt rules to carry out the provisions of this section.**

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

7 **(2) The State Fish and Wildlife Commission may adopt rules or take any other action**
8 **before the operative date specified in subsection (1) of this section that is necessary to im-**
9 **plement, on and after the operative date specified in subsection (1) of this section, sections**
10 **1 and 2 of this 2013 Act.**

11 **SECTION 4. In addition to and not in lieu of any other appropriation, there is appropri-**
12 **ated to the State Department of Fish and Wildlife, for the biennium beginning July 1, 2013,**
13 **out of the General Fund, the amount of \$500,000, which may be expended for the purposes**
14 **of carrying out the duties of the department under sections 1 to 3 of this 2013 Act.**

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

18