

Montana Code Annotated 2021

TITLE 87. FISH AND WILDLIFE

CHAPTER 5. WILDLIFE PROTECTION

Part 9. Montana Greater Sage-Grouse Stewardship Act

Short Title

87-5-901. Short title. This part may be cited as the "Montana Greater Sage-Grouse Stewardship Act".

History: En. Sec. 2, Ch. 445, L. 2015; Sec. 76-22-101, MCA 2019; redes. 87-5-901 by Sec. 3, Ch. 326, L. 2021.

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Legislative Findings And Purpose

87-5-902. Legislative findings and purpose. (1) The legislature finds that it is in the best interests of Montana's economy, the economic stability of school trust lands, and sage grouse conservation and management to enact the Montana Greater Sage-Grouse Stewardship Act.

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

History: En. Sec. 3, Ch. 445, L. 2015; Sec. 76-22-102, MCA 2019; redes. 87-5-902 by Sec. 3, Ch. 326, L. 2021.

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Definitions

87-5-903. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

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

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

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

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

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

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

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

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

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

(10) "Oversight team" means the Montana sage grouse oversight team established in **2-15-243**.

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

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

History: En. Sec. 4, Ch. 445, L. 2015; Sec. 76-22-103, MCA 2019; redes. 87-5-903 by Sec. 3, Ch. 326, L. 2021.

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Montana Sage Grouse Oversight Team -- Rulemaking

87-5-904. Montana sage grouse oversight team -- rulemaking. The oversight team shall adopt rules to administer the provisions of this part, including:

(1) eligibility and evaluation criteria for grants distributed pursuant to **87-5-910** for projects that maintain, enhance, restore, expand, or benefit sage grouse habitat and populations, including but not limited to requirements for matching funds and in-kind contributions and consideration of the socioeconomic impacts of a proposed project on the local community. The evaluation criteria must give greater priority to proposed projects that:

- (a) involve partnerships between public and private entities;
- (b) provide matching funds;
- (c) use the habitat quantification tool adopted pursuant to subsection (2); and
- (d) maximize the amount of credits generated per dollars of funds awarded.

(2) the designation of a habitat quantification tool in consideration of applicable United States fish and wildlife service sage grouse policies, state law, and any rules adopted pursuant to this part;

(3) subject to the provisions of **87-5-905(2)**, a method to track and maintain the number of credits attributable to projects funded pursuant to this part that are available to a project developer to purchase for compensatory mitigation to offset debits under **87-5-911**;

- (4) methods of compensatory mitigation available under **87-5-911**;
- (5) review and monitoring of projects funded pursuant to this part;
- (6) criteria for the acceptance or rejection of grants, gifts, transfers, bequests, and donations, including interests in real or personal property; and

(7) guidance on management options for any real property conveyed to the state under this part, including its sale or lease.

History: En. Sec. 5, Ch. 445, L. 2015; amd. Sec. 1, Ch. 311, L. 2017; Sec. 76-22-104, MCA 2019; redes. 87-5-904 by Sec. 3, Ch. 326, L. 2021.

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Montana Sage Grouse Oversight Team -- Duties -- Powers

87-5-905. 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 **87-5-909**, 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 **87-5-911** with a goal of no net loss of habitat and a net gain preferred. If a plan includes a financial contribution to the sage grouse stewardship account established in **87-5-909**, 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 **87-5-904(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 **87-5-904**.

(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.

History: En. Sec. 6, Ch. 445, L. 2015; amd. Sec. 4, Ch. 267, L. 2019; Sec. 76-22-105, MCA 2019; redes. 87-5-905 by Sec. 3, Ch. 326, L. 2021.

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Sage Grouse Stewardship Account

87-5-909. Sage grouse stewardship account. (1) There is a sage grouse stewardship account in the state special revenue fund established in **17-2-102**. Money deposited in the account is statutorily appropriated, as provided in **17-7-502**, and, [except as provided in subsection (8),] must be used for the administration of and pursuant to the provisions of this part to maintain, enhance, restore, expand, or benefit sage grouse habitat and populations for the heritage of Montana and its people.

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

(a) money received by the department in the form of grants, gifts, transfers, bequests, payments for credits or financial contributions made pursuant to **87-5-911**, and donations, including donations limited in their purpose by the grantor, or appropriations from any source intended to be used for the purposes of this account; and

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

(3) Subject to subsections (4), (5), [and (8),] the department shall make disbursements from the account to projects approved by the oversight team to receive grants.

(4) The majority of the funds in the account may not be disbursed before the habitat quantification tool has been adopted. The habitat quantification tool must be applied to any project funded after the habitat quantification tool has been adopted. The majority of the account funds must be awarded to projects that generate credits that are available for compensatory mitigation under **87-5-911**. When selecting projects to receive funds, the oversight team shall prioritize projects that maximize the amount of credits generated per dollars of funds awarded.

(5) Money deposited in the account may not be used:

(a) for fee simple acquisition of private land;

(b) to purchase water rights;

(c) to purchase a lease or conservation easement that requires recreational access or prohibits hunting, fishing, or trapping as part of its terms; or

(d) to allow the release of any species listed under **87-5-107** or the federal Endangered Species Act, 16 U.S.C. 1531, et seq.

(6) Up to \$25,000 may be paid from the account in each fiscal year for costs associated with meetings of the oversight team.

(7) Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account.

(8) [At the end of each calendar year, the oversight team shall:

(a) conduct an audit of credits and debits as determined by the habitat quantification tool as used in compensatory mitigation pursuant to **87-5-911**;

(b) ensure the balance of credits and debits determined as provided in subsection (8)(a) results in no net loss of habitat; and

(c) direct the department to transfer up to 10% of any surplus balance calculated according to subsection (8)(b) to the state general fund until the total amount of transfers made pursuant to this subsection (8)(c) equals \$10 million.] *(Bracketed language terminates on occurrence of contingency--sec. 4, Ch. 285, L. 2021; subsection (6) replaced with "Administrative costs paid from the account are limited to \$400,000 in each fiscal year" on occurrence of contingency--sec. 5, Ch. 326, L. 2021.)*

History: En. Sec. 7, Ch. 445, L. 2015; amd. Secs. 4, 5, Ch. 360, L. 2017; amd. Sec. 1, Ch. 285, L. 2021; amd. Sec. 2, Ch. 326, L. 2021; Sec. 76-22-109, MCA 2019; redes. 87-5-909 by Sec. 3, Ch. 326, L. 2021.

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Grants -- Eligibility

87-5-910. Grants -- eligibility. (1) Subject to the provisions of **87-5-912**, to be eligible to receive funds pursuant to this part, a proposed project must maintain, enhance, restore, expand, or benefit sage grouse habitat and populations for the heritage of Montana and its people through voluntary, incentive-based efforts, including:

- (a) reduction of conifer encroachment;
- (b) reduction of the spread of invasive weeds that harm sagebrush health or sage grouse habitat;
- (c) maintenance, restoration, or improvement of sagebrush health or quality;
- (d) purchase or acquisition of leases, term conservation easements, or permanent conservation easements that conserve or maintain sage grouse habitat, protect grazing lands, or conserve sage grouse populations;
- (e) incentives to reduce the conversion of grazing land to cropland;
- (f) restoration of cropland to grazing land;
- (g) modification of fire management to conserve sage grouse habitat and populations;
- (h) demarcation of fences to reduce sage grouse collisions;
- (i) reduction of unnatural perching platforms for raptors;
- (j) reduction of unnatural safe havens for predators;
- (k) sage grouse habitat enhancement that provides project developers the ability to use improved habitat for compensatory mitigation under **87-5-911**;

(l) establishment of a habitat exchange to develop and market credits consistent with the purposes of this part. The habitat exchange must be authorized by the United States fish and wildlife service and must use the habitat quantification tool to quantify and calculate the value of credits and debits. Funds may be allocated to a habitat exchange:

- (i) if the funds are used:
 - (A) to create and market credits in a manner consistent with the habitat quantification tool;
 - (B) for operational purposes, including monitoring the effectiveness of projects; or
 - (C) for costs associated with establishing the habitat exchange; and
- (ii) if the habitat exchange reimburses the state for its proportionate share of proceeds generated from the sale of credits created with funds distributed pursuant to this part. Any proceeds received by the state pursuant to this subsection (1)(l)(ii) must be deposited in the sage grouse stewardship account established in **87-5-909** and must be used only to acquire additional credits or for operational purposes, including monitoring the long-term effectiveness of compensatory mitigation projects.

- (m) other project proposals that the oversight team determines are consistent with the purposes of this part.
- (2) Projects proposed by grant applicants may involve land owned by multiple landowners, including state and federal land, provided that the majority of the involved acres are privately held and that the proposed project benefits sage grouse across all of the land included in the project.
- (3) Grants may be awarded only to organizations and agencies that hold and maintain conservation easements or leases or that are directly involved in sage grouse habitat mitigation and enhancement activities approved by the oversight team.
- (4) Grants may not be used to supplement or replace the operating budget of an agency or organization except for budget items that directly relate to the purposes of the grant.
- (5) If a grant is awarded to a proposed project that uses matching funds from a source that prohibits the generation of credits for compensatory mitigation, the oversight team, when possible, shall allocate the credits generated by the proposed project on a pro rata basis and make available for compensatory mitigation under **87-5-911** only those credits attributable to funds awarded pursuant to this section and any unrestricted matching funds.

History: En. Sec. 8, Ch. 445, L. 2015; amd. Sec. 2, Ch. 311, L. 2017; Sec. 76-22-110, MCA 2019; redes. 87-5-910 by Sec. 3, Ch. 326, L. 2021.

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Compensatory Mitigation -- Findings

87-5-911. 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 **87-5-904**. Payments received for credits tracked by the oversight team must be deposited in the sage grouse stewardship account established in **87-5-909**.
 - (ii) if sufficient conservation credits are unavailable for purchase, making a financial contribution to the sage grouse stewardship account established in **87-5-909** 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) 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) 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.

History: En. Sec. 9, Ch. 445, L. 2015; amd. Sec. 3, Ch. 311, L. 2017; amd. Sec. 5, Ch. 267, L. 2019; Sec. 76-22-111, MCA 2019; redes. 87-5-911 by Sec. 3, Ch. 326, L. 2021.

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Leases And Conservation Easements

87-5-912. Leases and conservation easements. A lease or conservation easement selected to receive funds pursuant to this part binds the parties involved to an agreement in which the state is a third-party beneficiary to the lease or easement with the contingent right to enforce the terms of the lease or easement if the grantee fails to do so. The agreement must provide that the lease or easement may not be transferred for value, sold, or extinguished without consent of the department. The state may take legal action to enforce the terms of the lease or easement or to recover from the proceeds of the transfer for value, sale, or extinguishment the state's pro rata share of the proceeds based on the funds the state provided pursuant to this part for the creation of the lease or easement.

History: En. Sec. 10, Ch. 445, L. 2015; Sec. 76-22-112, MCA 2019; redes. 87-5-912 by Sec. 3, Ch. 326, L. 2021.

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Real Property

87-5-913. Real property. Real property conveyed by fee simple title to the state under this part must be administered by the department pursuant to Title 77.

History: En. Sec. 11, Ch. 445, L. 2015; Sec. 76-22-113, MCA 2019; redes. 87-5-913 by Sec. 3, Ch. 326, L. 2021.

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Application To Mineral Estates

87-5-914. Application to mineral estates. No provision of this part may be construed to alter Montana law regarding the primacy of the mineral estate, to limit access to the mineral estate, or to limit development of the mineral estate.

History: En. Sec. 12, Ch. 445, L. 2015; Sec. 76-22-114, MCA 2019; redes. 87-5-914 by Sec. 3, Ch. 326, L. 2021.

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Existing Land Uses And Activities Exempt

87-5-915. 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.

History: En. Sec. 1, Ch. 267, L. 2019; Sec. 76-22-115, MCA 2019; redes. 87-5-915 by Sec. 3, Ch. 326, L. 2021.

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Compensatory Mitigation Reduction Or Waiver

87-5-916. Compensatory mitigation reduction or waiver. (1) Except as provided in subsection (3), 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.

(3) Compensatory mitigation may be waived for opencut operations located outside of core areas and at least six-tenths of a mile from the center of an active lek if the permit pursuant to **82-4-431** is held by a county, city, or town in the state.

History: En. Sec. 2, Ch. 267, L. 2019; Sec. 76-22-116, MCA 2019; redes. 87-5-916 by Sec. 3, Ch. 326, L. 2021; amd. Sec. 1, Ch. 428, L. 2021.

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Operations And Maintenance Exempt

87-5-917. 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.

History: En. Sec. 3, Ch. 267, L. 2019; Sec. 76-22-117, MCA 2019; redes. 87-5-917 by Sec. 3, Ch. 326, L. 2021.

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Reporting

87-5-918. Reporting. (1) The oversight team shall report to the governor regularly and provide an annual report to the governor, the environmental quality council in accordance with **5-11-210**, 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:

- (a) any appropriation, grant, gift, transfer, bequest, or donation received, including interest in real property;
- (b) each grant awarded and the details of each grant's status and results; and
- (c) any compensatory mitigation activities.

(2) The oversight team shall annually report to the environmental quality council in accordance with **5-11-210** 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 **87-5-905(1)(j)**.

History: En. Sec. 13, Ch. 445, L. 2015; amd. Sec. 6, Ch. 267, L. 2019; amd. Sec. 106, Ch. 261, L. 2021; Sec. 76-22-118, MCA 2019; redes. 87-5-918 by Sec. 3, Ch. 326, L. 2021.