LEGISLATIVE COMMITTEE MINUTES

SB164

Bill as Introduced

SB 164-FN-LOCAL - AS INTRODUCED

2023 SESSION

23-1042
08/05

SENATE BILL ***164-FN-LOCAL***

AN ACT relative to biodiverse environments.

SPONSORS: Sen. Watters, Dist 4; Sen. Perkins Kwoka, Dist 21; Sen. Avard, Dist 12; Sen. Altschiller, Dist 24; Sen. Fenton, Dist 10; Rep. Bixby, Straf. 13; Rep. Read, Rock. 10

COMMITTEE: Energy and Natural Resources

ANALYSIS

This bill defines biodiversity and requires its inclusion in certain land use regulations.

This bill also creates a form contract to preserve the rights of domestic animals and wild animals.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

23-1042
08/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to biodiverse environments.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Findings. The general court finds:

I. There is an average 69 percent decline in global populations of mammals, fish, birds, reptiles, and amphibians since 1970 including the loss of nearly 3,000,000,000,000 birds in North America since 1970, and 1,000,000 animal and plant species are now threatened with extinction.

II. Invasive species and warming temperatures pose a threat to the biodiversity of New Hampshire.

III. Three-quarters of the land-based environment and roughly 66 percent of the ocean environment have been significantly altered. More than a third of the world's land surface and nearly 75 percent of freshwater resources are now devoted to crop or livestock production. Climate change and pollution worsen the impact of other stressors on nature and our well-being.

IV. The people of the state of New Hampshire, including future generations, deserve a clean, healthy, and biodiverse environment, including pure water, clean air, natural beauty, healthy ecosystems and a stable climate, necessary for the preservation of the natural, cultural, scenic and healthful qualities of the environment.

V. Ecosystem services of a biodiverse environment benefit New Hampshire citizens, so the state of New Hampshire recognizes the need to maintain biodiversity and to enhance its capacity to adapt to change and provide for the needs of future generations. New Hampshire recognizes the responsibility to develop and utilize these resources in a manner consistent with their conservation and biodiversity.

VI. The state, including each branch, agency, and political subdivision, recognizes their roles as trustees of the natural resources of the state, among them its waters, air, flora, fauna, climate, and public lands. The state recognizes the duty to conserve, protect, and maintain these resources for the benefit of all the people, including generations yet to come.

2 New Subparagraph; Innovative Land Use Controls. Amend RSA 674:21, I by inserting after subparagraph (j) the following new subparagraph:

(o) Rights to a clean, healthy, and biodiverse environment.

3 Innovative Land Use Controls; Biodiversity Included. Amend RSA 674:21, VI(b) to read as follows:

(b) An owner of record wishing to utilize the village plan alternative in the subdivision and development of a parcel of land, by locating the entire density permitted by the existing land use regulations of the political subdivision within which the property is located, on 20 percent or less of

the entire parcel available for development, shall grant to the municipality within which the property is located, as a condition of approval, a recorded easement reserving the remaining land area of the entire, original lot, solely for agriculture, forestry, ***biodiversity,*** and conservation, or for public recreation. The recorded easement shall limit any new construction on the remainder lot to structures associated with farming operations, forest management operations, and conservation uses, and shall specify that the restrictions contained in the easement are enforceable by the municipality. Public recreational uses shall be subject to the written approval of those abutters whose property lies within the village plan alternative subdivision portion of the project at the time when such a public use is proposed.

4 Innovative Land Use Controls. Amend RSA 674:21, VII to read as follows:

VII.*(a)* In this section, "integrated land development permit option" means an optional land use control to allow a project to proceed, in whole or in part, as permitted by the department of environmental services under RSA 489.

(b) In this chapter, "biodiversity" means all of the species, including plants, bacteria, animals, and humans in a particular region, habitat, or ecosystem, that work together to maintain balance and support life. Biodiversity includes the variability among living organisms from all sources including terrestrial, marine, and other aquatic ecosystems and the ecological complexes of which they are a part, including variation in genetic, phenotypic, phylogenetic, and functional attributes, as well as changes in abundance and distribution over time and space within and among species, biological communities, and ecosystems.

5 New Paragraph; Municipal Charters. Amend RSA 674:21 by inserting after paragraph VII the following new paragraph:

VIII. Municipalities may pass charters protecting the rights of residents to a clean, healthy, and biodiverse environment, including pure water, clean air, natural beauty, healthy ecosystems, and a stable climate, and to the preservation of the natural, cultural, scenic and healthful qualities of the environment within its bounds.

6 Declaration of Intent; Conservation Restriction; Biodiversity. Amend RSA 79-B:1 to read as follows:

79-B:1 Declaration of Intent. It is the declared intent of this chapter to provide for a fair, consistent and equitable method of municipal assessment of conservation restriction land which provides a demonstrated public benefit, based upon the conservation ***and biodiversity*** uses to which the land is perpetually limited. In addition, it is the declared intent of this chapter to further assist in the preservation of open space in this state in the public interest by promoting the granting and acquisition of permanent conservation restrictions on such open space land which provides a demonstrated public benefit. ***In this chapter, "biodiversity" means all of the species, including plants, bacteria, animals, and humans in a particular region, habitat or ecosystem, that***

work together to maintain balance and support life. Biodiversity includes the variability among living organisms from all sources including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are a part, including variation in genetic, phenotypic, phylogenetic, and functional attributes, as well as changes in abundance and distribution over time and space within and among species, biological communities, and ecosystems.

7 Declaration of Public Interest; Discretionary Easements; Biodiversity. Amend RSA 79-C:1 to read as follows:

79-C:1 Declaration of Public Interest. It is hereby declared to be in the public interest to encourage the preservation of open space which is potentially subject to development, thus providing a healthful and attractive outdoor environment for work and recreation of the state's citizens, maintaining the character of the state's landscape, and conserving the ***biodiversity,*** land, water, forest, agricultural, recreational, and wildlife resources. It is further declared to be in the public interest to prevent the loss of open space due to property taxation at values incompatible with open space usage. The means for encouraging preservation of open space authorized by this chapter is the acquisition of discretionary easements of development rights by town or city governments on such open space land which provides a demonstrated public benefit. ***In this chapter, "biodiversity" means all of the species, including plants, bacteria, animals, and humans in a particular region, habitat, or ecosystem, that work together to maintain balance and support life. Biodiversity includes the variability among living organisms from all sources including terrestrial, marine, and other aquatic ecosystems and the ecological complexes of which they are a part, including variation in genetic, phenotypic, phylogenetic, and functional attributes, as well as changes in abundance and distribution over time and space within and among species, biological communities, and ecosystems.***

8 Qualifying Land; Discretionary Easements; Biodiversity. Amend RSA 79-C:3, II(a)(2) to read as follows:

(2) The land has conservation, ***biodiversity,*** and recreational values which make it attractive for public use.

9 Conservation Restriction; Biodiversity Included. Amend RSA 477:45, I to read as follows:

I. A conservation restriction shall mean a right to prohibit or require, a limitation upon, or an obligation to perform, acts on or with respect to, or uses of, a land or water area, whether stated in the form of a restriction, easement, covenant or condition, in any deed, will, or other instrument executed by or on behalf of the owner of the area or in any order of taking, which right, limitation, or obligation is appropriate to retaining or maintaining such land or water area, including improvements thereon, predominantly in its ***biodiversity,*** natural, scenic, or open condition, or in agricultural, farming, open space or forest use, or in any other use or condition consistent with the protection of environmental quality.

10 Community Heritage Investment; Biodiversity. Amend RSA 227-M:2, IV-V to read as follows:

IV. "Easement interests" means conservation, ***including biodiversity***, historic preservation, or scenic easements, development rights, or any other similar protective interest in real property held in perpetuity, or a term easement that is held for a specific period of time and not in perpetuity as part of a farm viability program.

V. "Eligible resource" means a natural, cultural, or historical resource including archaeological sites; historic buildings and structures which house cultural events and programs; historic properties including buildings and structures; historic and cultural lands and features; ecologically significant lands; ***biodiverse areas;*** existing and potential public water supply lands; farmland; forestland; habitat for rare species or important wildlife; wildlife corridors and habitat strongholds as defined in RSA 207:1; lands for recreation; riverine, lake, estuarine, and ocean shorelands; scenic areas and view sheds; and wetlands and associated uplands.

11 New Section; Contract; Animal Guardianship. Amend RSA 437 by inserting after section 13-a the following new section:

437:13-b Contract; Animal Guardianship.

I. The owner of a domestic animal may enter into a contract with another person in order to enforce the rights due to the animal as enumerated in the contract. If the owner of such animal violates the terms of the contract, the other party may file for enforcement of the contract in the superior court in which the owner and domestic animal or animals are located.

II. The form of the contract shall follow the form provided in this paragraph:

1. The parties agree that the domestic animal or animals, in possession of the owner, are a unique form of property and that as such, these animals while within the bounds of the owner, by the execution of this deed/contract, shall receive equitable title for themselves. Legal title shall transfer to the owner of the animal who shall be considered both legal titleholder and guardian of the animals. The owner agrees that another person or entity so designated by the owner in this contract may represent the interests of the animals, should the owner fail in his or her guardian obligation towards the animals. The parties agree that the animals are living animals in need of a suitable environment in the care of the owner and that the owner has certain duties to provide a suitable environment in which the animal may flourish appropriately according to their species in said environment under this contract and under the laws of the state of New Hampshire.

2. List of duties. The new owner agrees that when making decisions which have an impact on the animals, the needs and interest of the animals shall be taken into account.

(List of particular needs and interests covered shall be included in the legal transfer.)

3. In the event the new owner/guardian shall fail to meet obligations under this contract, the entity designated in section 1, on behalf of the animal, shall have standing to bring an enforce action under the terms of this contract in a court of law, including in case of a gross failure to provide adequate

conditions for the animals to flourish, or the case of violation of the anticruelty or environmental laws the right to obtain the transfer of legal title to another human or entity that is willing and able to meet the responsibilities of being an owner/guardian.

4. I _____, owner of _____ animals, including as state of new Hampshire statute authorizes for wild animals, and their habitat located on property_____ desirous of creating a new legal status for the domestic animals on my property, do hereby convey to these animals equitable title in him/herself, while retaining for myself legal title. I understand that this transforms my relationship with the animals to one of a guardian, and that I will henceforth have the obligation of taking into account the needs and interests of the animals when making decisions about the animals. I hereby pledge to inform any subsequent owner of this changed legal status.

I acknowledge that if I fail in my obligation as a guardian, an appropriate court will have jurisdiction to impose equitable relief for the benefits of the animals.

(Here add acknowledgment)

12 Conservation Restrictions; Application. Amend RSA 79-B:4, VI(b)(2) to read as follows:

(2) Rare or endangered or threatened species must be present; or the property must contribute to the ecological viability ***or biodiversity*** of a park or other conservation area; or it must otherwise represent a high quality native terrestrial or aquatic ecosystem.

13 New Paragraph; Biodiversity Preservation Discretionary Agreement. Amend RSA 477:45 by inserting after paragraph III the following new paragraph:

IV. "Biodiversity preservation discretionary agreement" means the restraint placed on the development rights of land whether stated in the form of a restriction, easement, covenant or condition, in any deed, will, or other instrument executed by or on behalf of the owner of the land which is appropriate to retaining the animals and the biodiversity for its ecological services, which may limit development uses.

14 New Section; Statutory Form of a Biodiversity Preservation Agreement. Amend RSA 477 by inserting after section 47 the following new section:

477:47-a Statutory Form of a Biodiversity Preservation Agreement.

I. A land owner may enter into a biodiversity preservation agreement with another person in order to enforce the rights due to the wild animals that live on his or her property as enumerated in the contract. If the owner of such property violates the terms of the contract, the other party may file for enforcement of the contract in the superior court in which the property is located.

II. The form of the contract shall follow the form provided in this paragraph:

1. The grantee agrees that the animals and their descendants, on the grantee's property, and the biodiversity necessary to sustain them, are a unique form of property and that as such, these animals while within its bounds, by the execution of this easement, shall receive equitable title for themselves. Legal title shall transfer to the new owner of the property who shall be considered both

legal titleholder and guardian of the animals. The grantee agrees that the Humane Society, Society for the Protection of New Hampshire Forests, or another land trust so designated by the grantee, may represent the interests of the animals and their descendants, should a new owner of the property fail in his or her guardian obligation towards the animals. The grantee and the party named above agree that the animals are living animals in need of a sustainable, biodiverse environment in the care of the owner of the property, and that the owner of the property shall have certain duties to provide a sustainable, biodiverse environment in which the animals and their descendants may flourish appropriately according to their species as enumerated in section 2 of this agreement.

2. List of duties. List of particular needs and interests to be covered under this agreement.

3. In the event the owner of the property shall fail to meet obligations under this contract, the person designated in section 1 of this agreement on behalf of the equitable title holding animals, shall have standing to bring an enforcement action under the terms of this agreement in superior court, including in case of a gross failure to provide adequate conditions for the animals to flourish.

4. I _____, owner of _____ animals located on property_____ desirous of creating a new legal status for the animals on my property, and the sustainable biodiversity necessary for them to thrive, do hereby convey to these animals equitable title in him/herself, and their descendants, while retaining for myself legal title. I understand that this transforms my relationship with the animals, and the sustainable biodiversity necessary for their flourishing, to one of a guardian, and that I will henceforth have the obligation of taking into account the needs and interests of the animals, and their descendants, when making decisions about the animals. I hereby pledge to inform any subsequent owner of this changed legal status.

I acknowledge that if I fail in my obligation as a guardian, an appropriate court will have jurisdiction to impose equitable relief for the benefits of the animals.

Nothing in this statute shall contravene the rights of the state of New Hampshire.

(Here add acknowledgment)

15 Departmental Planning.

I. The department of fish and game shall include preserving biodiversity in its management of lands and resources and in the wildlife action plan.

II. The department of environmental services, the department of transportation, the department of agriculture, markets, and food, and the department of business and economic affairs shall consider the preservation of biodiversity in departmental evaluation of management and projects.

16 Effective Date. This act shall take effect 60 days after its passage.

LBA
23-1042
1/17/23

SB 164-FN-LOCAL- FISCAL NOTE
AS INTRODUCED

AN ACT relative to biodiverse environments.

FISCAL IMPACT:

Due to time constraints, the Office of Legislative Budget Assistant is unable to provide a fiscal note for this bill, **as introduced**, at this time. When completed, the fiscal note will be forwarded to the Senate Clerk's Office.

AGENCIES CONTACTED:

Departments of Agriculture, Business and Economic Affairs, Environmental Services, Transportation and the New Hampshire Municipal Association

LBA
23-1042
Revised 1/30/23

SB 164-FN-LOCAL FISCAL NOTE
AS INTRODUCED

AN ACT relative to biodiverse environments.

FISCAL IMPACT: [X] State [X] County [X] Local [ ] None

	Estimated Increase / (Decrease)			
STATE:	**FY 2023**	**FY 2024**	**FY 2025**	**FY 2026**
Appropriation	$0	$0	$0	$0
Revenue	$0	$0	$0	$0
Expenditures	$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	[X] General	[ ] Education	[ ] Highway	[ ] Other

COUNTY:

Revenue	$0	$0	$0	$0
Expenditures	$0	Indeterminable	Indeterminable	Indeterminable

LOCAL:

Revenue	$0	Indeterminable	Indeterminable	Indeterminable
Expenditures	$0	Indeterminable	Indeterminable	Indeterminable

The Office of Legislative Budget Assistant is still awaiting information from the Department of Business and Economic Affairs. The Department was contacted on January 13, 2023.

METHODOLOGY:

This bill defines biodiversity and requires its inclusion in certain land use regulations. The bill also creates a form contract to preserve the rights of domestic animals and wild animals.

The Department of Agriculture, Markets and Food indicates this bill would have no fiscal impact on the Department.

The Department of Environmental Services indicates this bill would not change any fees charged by the Department, nor would it impose any additional costs on the Department. In addition, the Department assumes the proposed changes to local land use planning would be optional so the legislation would not directly affect local or county revenues or expenses.

The Department of Fish and Game indicates this bill would impact state and local expenditures by an indeterminable amount. The Department identified the following sections of the bill with a potential impact:

- Proposed RSA 674:21, I, (o) would add biodiversity as a purpose coequal with agriculture, forestry, and conservation or public recreation for a landowner or developer to convey an easement to a municipality if they subdivide a property using the village plan alternative that would cluster development within 20% of a property, retaining the remainder in open space. The Department assumes it may prove challenging for the landowner or municipality to determine how agriculture, forestry, or conservation activities may have to be modified to conserve the very broad values outlined in the biodiversity definition. This could result in lengthy discussions, potential conflict of opinions, and court cases if those conflicts cannot be resolved. This would increase costs to the municipality and landowner by an indeterminable amount.
- Proposed RSA 477:45, III would allow a landowner to enter into a "biodiversity preservation discretionary agreement" with another entity that could be in the form of a conservation easement, deed restriction, etc. to be placed on a property for the purpose of enforcing "the rights due to the wild animals that live on his or her property." This change would allow the conveyance of a conservation easement on the wild animals that may occur on or use a particular property. The Department states the costs of this change are indeterminable but potentially significant. Most wildlife have home ranges that extend beyond the property boundaries of a typical land ownership. They may be retained in an undeveloped state that would help maintain biodiverse populations, or abutting parcels could get developed, which may render the maintenance of biodiverse populations and the terms of the easement unfeasible. It would be impossible for a landowner to guarantee the well-being of a particular wildlife population or to ensure that it meets the definition of a "biodiverse" population. Given these issues, conflicts will surely occur, likely leading to court cases and an indeterminable but potentially significant state and local costs.
- Section 15 of the bill would require several state agencies to consider biodiversity in its planning. It's difficult to predict the fiscal impact of this consideration on state expenditures.

The Department of Transportation indicates in the development, construction, and maintenance of the highway network it complies with all state and federal laws regarding environmental resource protection. Including maintenance of biodiversity as a resource type would also be

included in these evaluations. To the extent existing reviews are protective, insofar as possible, of environmental resources, the inclusion of biodiversity, as it is defined in the bill, would not likely result in significant additional expenditures, however the amount of additional expenditures cannot be determined.

The New Hampshire Municipal Association states the bill defines the term "biodiversity" under RSA 674:21 and allows municipalities to pass charters protecting the rights of residents to a clean, healthy, and biodiverse environment, including pure water, clean air, natural beauty, healthy ecosystems, and a stable climate, and to the preservation of the natural, cultural, scenic and healthful qualities of the environment within its bounds. Further, the legislation allows the creation of discretionary easements for biodiversity purposes. Last, the legislation grants rights, created via contract, for domestic animals as well as rights for wild animals living in a discretionary easement created for the purpose of biodiversity. The Association assumes alterations to the rules surrounding conservation easements, including discretionary easements, may allow greater inclusion of property in tax-advantageous holdings, effectively decreasing the amount of revenue that can be expected to be generated from those properties.

It is assumed that any fiscal impact would occur after FY 2023.

AGENCIES CONTACTED:

Departments of Agriculture, Environmental Services, Fish and Game and Transportation, and New Hampshire Municipal Association

SB 164-FN-LOCAL - AS AMENDED BY THE SENATE

02/22/2023 0554s

2023 SESSION

23-1042
08/05

SENATE BILL ***164-FN-LOCAL***

AN ACT relative to consideration of biodiversity in the land and community heritage investment program.

SPONSORS: Sen. Watters, Dist 4; Sen. Perkins Kwoka, Dist 21; Sen. Avard, Dist 12; Sen. Altschiller, Dist 24; Sen. Fenton, Dist 10; Rep. Bixby, Straf. 13; Rep. Read, Rock. 10

COMMITTEE: Energy and Natural Resources

AMENDED ANALYSIS

This bill defines biodiversity and requires its inclusion in the land and community heritage investment program.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to consideration of biodiversity in the land and community heritage investment program.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Findings. The general court finds:

I. There is an average 69 percent decline in global populations of mammals, fish, birds, reptiles, and amphibians since 1970 including the loss of nearly 3,000,000,000,000 birds in North America since 1970, and 1,000,000 animal and plant species are now threatened with extinction.

II. Invasive species and warming temperatures pose a threat to the biodiversity of New Hampshire.

III. Three-quarters of the land-based environment and roughly 66 percent of the ocean environment have been significantly altered. More than a third of the world's land surface and nearly 75 percent of freshwater resources are now devoted to crop or livestock production. Climate change and pollution worsen the impact of other stressors on nature and our well-being.

IV. The people of the state of New Hampshire, including future generations, deserve a clean, healthy, and biodiverse environment, including pure water, clean air, natural beauty, healthy ecosystems and a stable climate, necessary for the preservation of the natural, cultural, scenic and healthful qualities of the environment.

V. Ecosystem services of a biodiverse environment benefit New Hampshire citizens, so the state of New Hampshire recognizes the need to maintain biodiversity and to enhance its capacity to adapt to change and provide for the needs of future generations. New Hampshire recognizes the responsibility to develop and utilize these resources in a manner consistent with their conservation and biodiversity.

VI. The state, including each branch, agency, and political subdivision, recognizes their roles as trustees of the natural resources of the state, among them its waters, air, flora, fauna, climate, and public lands. The state recognizes the duty to conserve, protect, and maintain these resources for the benefit of all the people, including generations yet to come.

2 New Paragraph; Land and Community Heritage Investment Authority; Definitions; Biodiversity. Amend RSA 227-M:2 by inserting after paragraph I the following new paragraph:

I-a. "Biodiversity" means all of the species, including plants, bacteria, animals, and humans in a particular region, habitat, or ecosystem, that work together to maintain balance and support life. Biodiversity includes the variability among living organisms from all sources including terrestrial, marine, and other aquatic ecosystems and the ecological complexes of which they are a part, including variation in genetic, phenotypic, phylogenetic, and functional attributes, as well as

changes in abundance and distribution over time and space within and among species, biological communities, and ecosystems.

3 Definition; Easement Interests; Biodiversity Added. Amend RSA 227-M:2, IV to read as follows:

IV. "Easement interests" means conservation, ***including biodiversity,*** historic preservation, or scenic easements, development rights, or any other similar protective interest in real property held in perpetuity, or a term easement that is held for a specific period of time and not in perpetuity as part of a farm viability program.

4 Definition; Eligible Resource. Amend RSA 227-M:2, V to read as follows:

V. "Eligible resource" means a natural, cultural, or historical resource including archaeological sites; historic buildings and structures which house cultural events and programs; historic properties including buildings and structures; historic and cultural lands and features; ecologically significant lands; ***biodiverse areas;*** existing and potential public water supply lands; farmland; forestland; habitat for rare species or important wildlife; wildlife corridors and habitat strongholds as defined in RSA 207:1; lands for recreation; riverine, lake, estuarine, and ocean shorelands; scenic areas and viewsheds; and wetlands and associated uplands.

5 Effective Date. This act shall take effect 60 days after its passage.

LBA
23-1042
Amended 3/6/23

SB 164-FN-LOCAL- FISCAL NOTE
AS AMENDED BY THE SENATE (AMENDMENT #2023-0554s)

AN ACT relative to consideration of biodiversity in the land and community heritage investment program.

FISCAL IMPACT: [ ] State [ ] County [ ] Local [X] None

METHODOLOGY:

This bill defines biodiversity and requires its inclusion in the land and community heritage investment program. The Office of Legislative Budget Assistant states this bill has no fiscal impact on state, county, and local expenditures or revenue.

AGENCIES CONTACTED:

Land and Community Heritage Investment Program

LBA
23-1042
Amended 3/6/23

SB 164-FN-LOCAL FISCAL NOTE
AS AMENDED BY THE SENATE (AMENDMENT #2023-0554s)

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METHODOLOGY:

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AGENCIES CONTACTED:

Land and Community Heritage Investment Program

Amendments

Sen. Watters, Dist 4
February 14, 2023
2023-0512s
08/10

Amendment to SB 164-FN-LOCAL

Amend the title of the bill by replacing it with the following:

AN ACT relative to consideration of biodiversity in the land and community heritage investment program.

Amend the bill by replacing all after the enacting clause with the following:

1 Findings. The general court finds:

I. There is an average 69 percent decline in global populations of mammals, fish, birds, reptiles, and amphibians since 1970 including the loss of nearly 3,000,000,000,000 birds in North America since 1970, and 1,000,000 animal and plant species are now threatened with extinction.

II. Invasive species and warming temperatures pose a threat to the biodiversity of New Hampshire.

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VI. The state, including each branch, agency, and political subdivision, recognizes their roles as trustees of the natural resources of the state, among them its waters, air, flora, fauna, climate, and public lands. The state recognizes the duty to conserve, protect, and maintain these resources for the benefit of all the people, including generations yet to come.

2 New Paragraph; Land and Community Heritage Investment Authority; Definitions; Biodiversity. Amend RSA 227-M:2 by inserting after paragraph I the following new paragraph:

UNAPPROVED

I-a. "Biodiversity" means all of the species, including plants, bacteria, animals, and humans in a particular region, habitat, or ecosystem, that work together to maintain balance and support life. Biodiversity includes the variability among living organisms from all sources including terrestrial, marine, and other aquatic ecosystems and the ecological complexes of which they are a part, including variation in genetic, phenotypic, phylogenetic, and functional attributes, as well as changes in abundance and distribution over time and space within and among species, biological communities, and ecosystems.

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V. "Eligible resource" means a natural, cultural, or historical resource including archaeological sites; historic buildings and structures which house cultural events and programs; historic properties including buildings and structures; historic and cultural lands and features; ecologically significant lands; ***biodiverse areas;*** existing and potential public water supply lands; farmland; forestland; habitat for rare species or important wildlife; wildlife corridors and habitat strongholds as defined in RSA 207:1; lands for recreation; riverine, lake, estuarine, and ocean shorelands; scenic areas and viewsheds; and wetlands and associated uplands.

5 Effective Date. This act shall take effect 60 days after its passage.

UNAPPROVED

2023-0512s

AMENDED ANALYSIS

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UNAPPROVED

Energy and Natural Resources
February 15, 2023
2023-0554s
08/10

Amendment to SB 164-FN-LOCAL

Amend the title of the bill by replacing it with the following:

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II. Invasive species and warming temperatures pose a threat to the biodiversity of New Hampshire.

III. Three-quarters of the land-based environment and roughly 66 percent of the ocean environment have been significantly altered. More than a third of the world's land surface and nearly 75 percent of freshwater resources are now devoted to crop or livestock production. Climate change and pollution worsen the impact of other stressors on nature and our well-being.

IV. The people of the state of New Hampshire, including future generations, deserve a clean, healthy, and biodiverse environment, including pure water, clean air, natural beauty, healthy ecosystems and a stable climate, necessary for the preservation of the natural, cultural, scenic and healthful qualities of the environment.

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VI. The state, including each branch, agency, and political subdivision, recognizes their roles as trustees of the natural resources of the state, among them its waters, air, flora, fauna, climate, and public lands. The state recognizes the duty to conserve, protect, and maintain these resources for the benefit of all the people, including generations yet to come.

2 New Paragraph; Land and Community Heritage Investment Authority; Definitions; Biodiversity. Amend RSA 227-M:2 by inserting after paragraph I the following new paragraph:

I-a. "Biodiversity" means all of the species, including plants, bacteria, animals, and humans in a particular region, habitat, or ecosystem, that work together to maintain balance and support life. Biodiversity includes the variability among living organisms from all sources including terrestrial, marine, and other aquatic ecosystems and the ecological complexes of which they are a part, including variation in genetic, phenotypic, phylogenetic, and functional attributes, as well as changes in abundance and distribution over time and space within and among species, biological communities, and ecosystems.

3 Definition; Easement Interests; Biodiversity Added. Amend RSA 227-M:2, IV to read as follows:

IV. "Easement interests" means conservation, ***including biodiversity,*** historic preservation, or scenic easements, development rights, or any other similar protective interest in real property held in perpetuity, or a term easement that is held for a specific period of time and not in perpetuity as part of a farm viability program.

4 Definition; Eligible Resource. Amend RSA 227-M:2, V to read as follows:

V. "Eligible resource" means a natural, cultural, or historical resource including archaeological sites; historic buildings and structures which house cultural events and programs; historic properties including buildings and structures; historic and cultural lands and features; ecologically significant lands; ***biodiverse areas;*** existing and potential public water supply lands; farmland; forestland; habitat for rare species or important wildlife; wildlife corridors and habitat strongholds as defined in RSA 207:1; lands for recreation; riverine, lake, estuarine, and ocean shorelands; scenic areas and viewsheds; and wetlands and associated uplands.

5 Effective Date. This act shall take effect 60 days after its passage.

2023-0554s

AMENDED ANALYSIS

This bill defines biodiversity and requires its inclusion in the land and community heritage investment program.

Committee Minutes

SENATE CALENDAR NOTICE
Energy and Natural Resources

Sen Kevin Avard, Chair
Sen Howard Pearl, Vice Chair
Sen Regina Birdsell, Member
Sen David Watters, Member
Sen Debra Altschiller, Member

Date: January 25, 2023

HEARINGS

Tuesday	01/31/2023
(Day)	(Date)

Energy and Natural Resources	State House 103	9:00 a.m.
(Name of Committee)	(Place)	(Time)

9:00 a.m.	**SB 113-FN**	relative to cost effectiveness review of the joint utility energy efficiency plan.
9:15 a.m.	**SB 123-FN**	relative to the adoption of ambient groundwater quality standards by the department of environmental services.
9:30 a.m.	**SB 160-FN**	relative to the use of OHRVs on designated trails and requiring a permit to operate certain OHRVs from before sunrise to after sunset.
9:45 a.m.	**SB 164-FN-LOCAL**	relative to biodiverse environments.

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

SB 113-FN			
Sen. Avard	Sen. Ricciardi	Sen. Watters	Sen. Innis
Sen. Bradley	Sen. Birdsell	Sen. Carson	Sen. Pearl
SB 123-FN			
Sen. Watters	Sen. Perkins Kwoka	Sen. Gray	Sen. Avard
Sen. Altschiller	Rep. Notter	Rep. Rung	Rep. Healey
Rep. W. Thomas			
SB 160-FN			
Sen. Pearl	Sen. Watters	Sen. Innis	Sen. Lang
Sen. Carson	Rep. Gagne	Rep. Potucek	
SB 164-FN-LOCAL			
Sen. Watters	Sen. Perkins Kwoka	Sen. Avard	Sen. Altschiller
Sen. Fenton	Rep. Bixby	Rep. Read	

Nikolas Liamos 271-7875

Kevin A. Avard
Chairman

Senate Energy and Natural Resources Committee

Nikolas Liamos 271-7875

SB 164-FN-LOCAL, relative to biodiverse environments.

Hearing Date: January 31, 2023

Time Opened: 9:49 a.m. **Time Closed:** 11:20 a.m.

Members of the Committee Present: Senators Avard, Pearl, Birdsell, Watters and Altschiller

Members of the Committee Absent : None

Bill Analysis: This bill defines biodiversity and requires its inclusion in certain land use regulations.

This bill also creates a form contract to preserve the rights of domestic animals and wild animals.

Sponsors:

Sen. Watters	Sen. Perkins Kwoka	Sen. Avard
Sen. Altschiller	Sen. Fenton	Rep. Bixby
Rep. Read		

Who supports the bill: Senator David Watters (SD 4), Kurt Ehrenberg, Jeanne Torpey, Senator Rebecca Perkins Kwoka (SD 21), Andrew Jones, Gary Devore, Nancy Brennan, Claudia Damon, Patricia Martin, Susan Moore, Tom St. Martin, Gregory Davis, Nancy Bishop, Melissa Hinebauch, Judith Johnson, Senator Donovan Fenton (SD 10), Kristina Snyder, and Alfrieda Englund

Who opposes the bill: Representative Jeff Goley (Hillsborough 21), Nancy Holmes, Jasen Stock, Dan Bergeron, Kyle Baker, Robert Johnson, Joe Bachar, Stacey Ober, Susan Price, Bernice Sullivan, Brian DaBois, Cindy Williams, Angela Ferrari, Thea Lahti, Erick Sawtelle, Diane Richardson, Laurie Zalewski, Kate Champney. Charlene Truell, Sosanna Folz, David Love (Rockingham 13), Jessica Hartman, Martha Verrington, Amanda Hasevlat, Leah Walter, Michael Bomba, Monica Lita, Karen Cesarini, Peter Cesarini, Carol Dubuque, Kaylyn Rifkin, Christina Murphy, Basil Makris, Pamela Zagami, Carol Cloutier, Representative Bill Boyd (Hillsborough 12), Nicky Monahan, Alessandra Folz, and Patricia Folz

Who is neutral on the bill: Matt Leahy

Summary of testimony presented in support:

Senator David Watters

Senate District 4

- Senator David Watters introduced Senate Bill 164-FN.
- Senator Watters stated that in the findings section of SB 164-FN, a reader would find that there is an average 69 percent decline in global populations of mammals, fish, birds, reptiles, and amphibians since 1970.
- Senator Watters stated that SB 164-FN largely deals with protecting New Hampshire's biodiversity.
- Senator Watters stated that invasive species and warming temperatures are negatively impacting New Hampshire's biodiversity.
- Senator Watters provided an example: The warming of the Gulf of Maine is driving out local marine life.
- Senator Watters stated that municipal, state and the federal government as well as other countries are beginning to recognize that future generations have the right to enjoy the earth just as past generations have.
- Senator Watters stated that on page 4 of SB 164-FN, there is enabling language for individuals to provide legal representation for companion animals.
- Senator Watters cited various books and philosophies that state that animals should not be governed by property rights but rather have rights similar to humans.
- Senator Howard Pearl asked if Senator Watters consulted with any agencies when drafting this bill. Senator Watters answered that he had some conversations, but the bill language was released close to the deadline so conversations with agencies has beer limited due to time constraints.

Kurt Ehrenburg

State Director, Humane Society of United States

- Kurt Ehrenburg stated that he supports the bills definition of biodiversity.
- Mr. Ehrenburg stated that he supports the animal guardianship provision.
- Mr. Ehrenburg stated that it is a disservice to animals to not afford them the right to obtain a guardianship.
- Senator Pearl asked if Mr. Ehrenburg knew if people were already able to enter into legal contracts concerning what happens to a pet after it's owner passes. Mr. Ehrenburg stated he did not know so he could not answer definitively.
- Senator Regina Birdsell asked Mr. Ehrenburg if he thinks the biodiversity section and animal guardianship section should be two separate bills. Mr. Ehrenburg stated that he believes that decision should be up to the experts.

Summary of testimony presented in opposition:

Nancy Holmes

- Nancy Holmes stated that biodiversity is not static, it changes as the environment changes.

- Ms. Holmes stated that she believes that SB 164-FN fails in its intent in establishing animal guardianship and by placing responsibly for the wildlife on a property on the property owner.
- Ms. Holmes provided an example that if this bill were to be passed, then she would be responsible to protect the bears on her property even though she has no power to protect the bears.
- Ms. Holmes stated that she believes the movement to give human rights to animals is not a mainstream movement.
- Ms. Holmes stated that she believes if SB 164-FN were to pass, then landowners would be less likely to grant environmental easements.
- Senator Watters asked Ms. Holmes if she believes that humans are included in biodiversity of an environment. Ms. Holmes confirmed that humans are included in the biodiversity of an environment.

Dan Bergeron

New Hampshire Fish and Game Department

- Dan Bergeron stated that the language in SB 164-FN is extremely broad and may cause legal issues down the road.
- Mr. Bergeron stated that the landowner provisions will be a source of conflict.
- Mr. Bergeron stated that New Hampshire wildlife are in the public trust, and that state agencies oversee the protection of the state's wildlife, the responsibility should not be shifted to landowners.
- Mr. Bergeron noted that animal habitat boundaries far exceed most property owner boundaries.
- Senator Watters asked that when taking into account the findings found on page 1 of SB 164-FN, is it fair to raise the question that the current conservation efforts are insufficient in protecting New Hampshire's biodiversity. Mr. Bergeron answered that the issue of protecting biodiversity is a complicated legal matter, and that by introducing an agreement of who is in charge of protecting biodiversity complicates things further.
- Senator Altschiller asked if SB 164-FN's definition of biodiversity and Fish and Game's definition of biodiversity is different. Mr. Bergeron responded that SB 164's definition is too broad and opens the threat of future litigation.
- Mr. Bergeron finished his testimony by stating that Fish and Game's opposition to SB 164-FN is due to the broad language and it giving human like legal rights to pets.

Robert Johnson

NH Farm Bureau

- Robert Johnson stated that if SB 164-FN were to pass, it would create fundamental and concerning changes to current New Hampshire statutes.
- Mr. Johnson stated that he believes this bill should be killed.
- Mr. Johnson stated that protecting biodiversity is already intertwined with current conservation efforts.
- Mr. Johnson stated that Fish and Game should have the responsibility to protect wildlife, not landowners.

- Mr. Johnson stated that providing guardianship for animals is not about animal care. Rather, it instead shifts the animal owner's responsibility.

Stacey Ober

Government Affairs Regional Manager, American Kennel Club

- Stacey Ober stated that the American Kennel Club advocates for responsible pet ownership.
- Ms. Ober stated that it is very common for breeders to co-own a litter of puppies and if there was a guardianship contract, it would legally complicate how breeders currently operate.
- Ms. Ober stated that by attributing property rights to animals, it allows for already established legal framework and protections to apply to animals in cases like animal cruelty.

Susan Price

Commissioner of Carroll County, Fish and Game

- Susan Price stated that Fish and Game has been entrusted with the welfare of New Hampshire's wildlife.
- Ms. Price stated that the North American model for conservation is a living guidance document that deals with biodiversity.
- Ms. Price stated that Fish and Game opposes SB 164-FN in its entirety.
- Ms. Price stated that Fish and Game was not consulted on this bill at all.

Brian Dabois

- Brain Dabois stated that he is a property owner and a pet owner.
- Mr. Dabois stated that he does not know why the pet guardianship provision is in SB 164-FN.
- Mr. Dabois stated that he believes the provision that allows for agencies to bring landowners to court for failing to protect their properties biodiversity and is unjust and wrong.

Angela Ferrari

Dog Owners of the Granite State

- Angela Ferrari stated that Dog Owners of the Granite State monitors pet legislation in New Hampshire.
- Ms. Ferrari sated that she opposes the pet guardianship provision.
- Ms. Ferrari sated that current New Hampshire law is sufficient in protecting animals. Ms. Ferrari stated that current statute already calls for pet owners to safeguard the health, safety and welfare of their pets.
- Ms. Ferrari stated that she believes the guardianship provision is a slippery slope to granting animals personhood.
- Ms. Ferrari stated that she believes that contracts for pets should be between a buyer and seller of the pet, not administered by legislators.
- Ms. Ferrari provided an example of why animal guardianship is wrong: If an animal has a guardianship contract, then the veterinarian may be restricted in providing medical care if the pets guardian is not present for the appointment.

Thea Lahti

American Kennel Club Delegate

- Thea Lahti stated that there should be a line drawn between legislation and philosophy in regard to animal rights.
- Ms. Lahti stated that the American Kennel Club opposes guardianship of animals.
- Ms. Lahti recounted a story where a group tried to sue an AKC prized breeder for the amount of dogs in their kennel. The lawsuit was dropped due to the group's claims being unfounded.

Neutral Information Presented:

Matt Leahy

Public Policy Director, Forest Society

- Matt Leahy stated that the Forest Society works to protect the biodiversity in New Hampshire.
- Mr. Leahy stated that he does not believe Senate Bill 164-FN is necessary at this given time.
- Mr. Leahy stated that land conservation easements that seek to protect biodiversity have a negative impact on development.
- Mr. Leahy noted that ongoing conservation efforts by the Forest Society and similar organizations are already working to protect the State's biodiversity.
- Mr. Leahy asked the Committee to remove the language in SB 164-FN that designates the Forest Society as the guardian of the State's wildlife.

NPL
Date Hearing Report completed: February 2, 2023

Speakers

Senate Energy and Natural Resources Committee
SIGN-IN SHEET

ıte: 1/31/2023 **Time:** 9:45 a.m.

SB 164-FN AN ACT relative to biodiverse environments

Name/Representing *(please print neatly)*

Sen. David Watters (SD 4)	Support ☑	Oppose ☐	Speaking?	Yes ☑ No ☐
Rep. Jeff Goley	Support ☐	Oppose ☒	Speaking?	Yes ☐ No ☒
Nancy Holmes	Support ☐	Oppose ☒	Speaking?	Yes ☒ No ☐
Jason Stock / NH Timberland Owners Assoc.	Support ☐	Oppose ☒	Speaking?	Yes ☐ No ☒
Dan Bergeron NHFG	Support ☐	Oppose ☒	Speaking?	Yes ☒ No ☐
Kyle Baker NH Wildlife Federation	Support ☐	Oppose ☒	Speaking?	Yes ☐ No ☒
Robert Johnson / NH Farm Bureau	Support ☐	Oppose ☒	Speaking?	Yes ☒ No ☐
Joe Bachar Congressional Sportsmen Foundation	Support ☐	Oppose ☒	Speaking?	Yes ☐ No ☒
Matt Leahy Forest Society	Support ☐	Oppose ☐	Speaking?	Yes ☒ No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐ No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐ No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐ No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐ No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐ No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐ No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐ No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐ No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐ No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐ No ☐

Senate Energy and Natural Resources Committee
SIGN-IN SHEET

ate: 1/31/2023 **Time:** 9:45 a.m.

SB 164-FN AN ACT relative to biodiverse environments

Name/Representing *(please print neatly)*

Stacy Obee AKC	Support ☐	Oppose ☒	Speaking?	Yes ☒	No ☐
Susan Price NHFG Comm.	Support ☐	Oppose ☒	Speaking?	Yes ☒	No ☐
Bernice Sullivan - citizen	Support ☐	Oppose ☒	Speaking?	Yes ☒	No ☐
Brian DuBois - Citizen-Landowner	Support ☐	Oppose ☒	Speaking?	Yes ☒	No ☐
Cindy Williams	Support ☐	Oppose ☒	Speaking?	Yes ☐	No ☒
Angela Ferrari - D.O.G.S.	Support ☐	Oppose ☒	Speaking?	Yes ☒	No ☐
Kurt Ehrenberg - Humane Society U.S.	Support ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
Thea Lattig AKC	Support ☐	Oppose ☒	Speaking?	Yes ☒	No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐	No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐	No ☐

Senate Remote Testify

Energy and Natural Resources Committee Testify List for Bill SB164 on 2023-01

Support: 17 Oppose: 29

Name	Title	Representing	Position
SAWTELLE, ERICK	A Member of the Public	Myself	Oppose
Richardson, Diane	A Member of the Public	Myself	Oppose
Torpey, Jeanne	A Member of the Public	Myself	Support
Perkins Kwoka, Senator Rebecca	An Elected Official	Myself	Support
Jones, Andrew	A Member of the Public	Myself	Support
Devore, Gary	A Member of the Public	Myself	Support
Brennan, Nancy	A Member of the Public	Myself	Support
Damon, Claudia	A Member of the Public	Myself	Support
Ferrari, Angela	A Member of the Public	Myself	Oppose
Zalewski, Laurie	A Member of the Public	Myself	Oppose
Martin, Patricia	A Member of the Public	Myself	Support
Champney, Kate	A Member of the Public	Myself	Oppose
Truell, Charlene	A Member of the Public	Myself	Oppose
Moore, Susan	A Member of the Public	Myself	Support
Folz, Sosanna	A Member of the Public	Myself	Oppose
St.Martin, tom	A Member of the Public	Myself	Support
Love, David	An Elected Official	Rockingham 13	Oppose
Hartman, Jessica	A Member of the Public	Myself	Oppose
_ rton, P	A Member of the Public	Myself	Oppose
ıa, Berlin	A Member of the Public	Myself	Oppose
Verrington, Martha	A Member of the Public	Myself	Oppose
Hasevlat, Amanda	A Member of the Public	Myself	Oppose
Walter, Leah	A Member of the Public	Myself	Oppose
Bomba, Michael	A Member of the Public	Myself	Oppose
Lita, Monica	A Member of the Public	Myself	Oppose
Cesarini, Karen	A Member of the Public	Myself	Oppose
Cesarini, Peter	A Member of the Public	Myself	Oppose
Dubuque, Carol	A Member of the Public	Myself	Oppose
Rifkin, Kaylyn	A Member of the Public	Myself	Oppose
Thomas, A	A Member of the Public	Myself	Support
Davis, Gregory	A Member of the Public	Myself	Support
Murphy, Christina	A Member of the Public	Myself	Oppose
Makris, Basil	A Member of the Public	Myself	Oppose
Zagami, Pamela	A Member of the Public	Myself	Oppose
Bishop, Nancy	A Member of the Public	Myself	Support
Cloutier, Carol	A Member of the Public	Myself	Oppose
Hinebauch, Melissa	A Member of the Public	Myself	Support
Boyd, Representative Bill	An Elected Official	Myself	Oppose
Johnson, Judith	A Member of the Public	Myself	Support
Fenton (SD 10), Senator Donovan	An Elected Official	Myself	Support
Monahan, Nicky	A Member of the Public	Myself	Oppose
Folz, Alessandra	A Member of the Public	Myself	Oppose
z, Ronald	A Member of the Public	Myself	Oppose
·olz, Patricia	A Member of the Public	Myself	Oppose
Snyder, Kristina	A Member of the Public	Myself	Support
Englund, Alfrieda	An Elected Official	Myself	Support

Testimony

AMERICAN KENNEL CLUB℠

Stacey Ober, J.D.
Government Relations
Regional Manager
New England

January 31, 2023

The Honorable Kevin Avard, Chairperson
Senate Committee on Energy and Natural Resources
107 N Main Street, State House Room 302
Concord, New Hampshire 03301-4951

RE: SB 164 Biodiverse Environments - Strong Opposition to "11 New Section; Contract; Animal Guardianship"

Dear Chair Avard, Vice-Chair Pearl, and Members of the Senate Committee on Energy and Natural Resources:

Founded in 1884, the American Kennel Club (AKC) is a not-for-profit organization that is recognized as a trusted expert in canine health, breeding, and training. We advocate for the purebred dog as a family companion and promote the ideals of responsible dog ownership. We represent over 5,000 dog clubs nationally, including 13 in New Hampshire, which represent thousands of dog owners. In 2021, AKC licensed and sanctioned 150 events in New Hampshire where more than 26,000 dogs participated. Surveys estimate that exhibitors spend $863 per show weekend, many of whom travel into New Hampshire to participate.

Section 11 of SB 164 would establish a novel and unconventional area of law being sought by animal rights groups by authorizing the private contractual appointment of animal "guardians" responsible for representing the interests of identified animals, should the owner fail in his or her "guardian" obligation towards their animals. ***AKC strongly opposes this proposed section because the term "guardian" may in fact reduce the legal classification and value of animals (including dogs) as property, and thereby restrict the rights of owners, veterinarians, and government agencies to protect and care for dogs.*** It may also subject them to frivolous and expensive litigation.

A radical assault is underway around the country, with animal rights activists waging a war against the principles of animal ownership. In this instance, at issue is so-called "animal advocacy" bills. These bills have been debated over the last several years in numerous state legislatures across the U.S., and mask a radical push to give animals the legal rights and privileges of humans. In Illinois, New Jersey, New York, Rhode Island, and Florida, proposed laws would assign advocates or guardians for animals in the same manner as those appointed for children and people lacking legal capacity.

Although they may sound benevolent, if enacted these measures will have unprecedented legal ramifications while adding nothing to the animal welfare strictures already in place. What's more, such laws stand to ultimately make everything from animal husbandry to owning a family pet fraught with legal uncertainty, increased costs, and financial risk.

At the core of these efforts are animal rights activists who see these laws as the first step in their bid to sever the bond between humans and their pets while also eliminating all animal agriculture. By turning animals into "legal beings," they aim to begin the process of completely removing them from our care, protection, and welfare-based use.

Respectfully, AKC requests that the committee strike the proposed "11 New Section; Contract; Animal Guardianship" for the above reasons. If I can be of any further assistance, I can be reached at stacey.ober@akc.org or (919) 816-3348. Thank you.

Regards,

Stacey A. Ober

Government Relations Regional Manager, New England

DOG OWNERS OF THE GRANITE STATE

Dog Owners of the Granite State
Protecting the interests of NH pet owners since 1991

January 30, 2023

Chairman Avard and Members of the Senate Energy and Natural Resources Committee –

I am writing on behalf of Dog Owners of the Granite State (D.O.G.S.) to thank you for your consideration of our objection to SB 164-FN-LOCAL, *An act relative to biodiverse environments*. On behalf of our membership of responsible local pet owners and breeders, D.O.G.S. respectfully **opposes** this bill as written.

> *D.O.G.S. is an American Kennel Club affiliated non-profit organization founded in 1991 to represent the interests of all pet owners in New Hampshire. Our membership includes a vibrant and active community of specialty breed clubs, all breed kennel clubs, dog and cat breeders, veterinarians, mushers, hunters, and livestock guardian dog owners.*

I'm going to focus primarily on the part of this bill starting on Page 4, line 14, which amends RSA 437 by inserting after section 13-a the new section: **437:13-b Contract; Animal Guardianship.**

The language in the bill actually contradicts itself. It refers to the "owner" of the animal also as only the "guardian" of the animal. Owning something means one who has the legal or rightful title to something; one to whom property belongs. While this bill is trying to give that property (the animal) "equitable title for themselves" (line 24) and authority of "...another person or entity so designated by the owner in this contract may represent the interests of the animals..." (line 26-27). Therefore, the "owner" of the animal actually does not have legal title should the other entity disapprove of something.

> "To lawyers, 'guardian' has a considerable amount of legal significance. Ownership and guardianship are not matters of semantics; they're not interchangeable terms." Attorney Gregory M. Dennis, who assisted with writing AVMA's response to the guardian initiative.

SB 164 would remove the rights of NH residents to their property and would assign unrealistic responsibilities to wildlife residents on the owners land.

> **458:16-a Property Settlement**
> II-a. Tangible property shall include **animals**...

The term guardian does nothing to promote more responsible treatment of animals. We strongly support efforts to educate the public about responsible animal ownership to ensure that all animals receive the care, love, and attention they deserve. We support laws that protect animals from abuse, neglect and cruelty (animal welfare) but oppose the political campaign to give legal rights to animals (animal rights).

NH has extensive Animal Cruelty laws already in place to ensure the welfare of animals, with five very detailed sections including numerous subsections. Just a snippet below:

> **644:8 Cruelty to Animals.**
> I. In this section, "cruelty" shall include, but not be limited to, acts or omissions injurious or detrimental to the health, safety or welfare of any animal, including the abandoning of any animal without proper provision for its care, sustenance, protection or shelter.

> As well as **206:19-b - Cruelty to Wild Animals, Fish, or Wild Birds; Enhanced Penalty**

Unintended consequences:

- Would reduce the number of people willing to allow conservation easements on their land.
- Interferes with private contracts between buyers and sellers.
- Could interfere with biomedical research involving animals, which is already strictly regulated by the federal government.
- Could interfere with farmer's decisions about animal husbandry practices.
- Has the potential to clog courts with specious cases.
- Bases all animal care decisions on the preferences of a minority group of activists, not on experience of animal owners, trainers, and scientists who are part of the majority.
    - This group of activists oppose pet breeding, animal sports, animal-based research, animals in entertainment and raising animals for food and fiber, and they plan to use guardian laws to tighten restrictions on animal use and ban activities they don't like.
- The term animal guardian is dangerous and could have long lasting and far-reaching implications for animals, animal owners, and veterinary medicine.

  The American Veterinary Medical Association (AVMA) recommends that "guardian" not be adopted, even to semantically describe the relationship between humans and their animals.

    - Veterinarians may not be able to lawfully prescribe or dispense controlled substances or prescription drugs to a guardian who no longer has legal status as the owner of an animal (i.e., current law assumes animals are owned and that owners receive drugs and administer them, as prescribed, to the animal).
    - Under guardianship, a veterinarian, contrary to the owner's wishes, may be able to release information to third parties because he/she believes it is in the best interest of the animal.
- Transfer of guardianship from one guardian to another, for profit, may not be legal. Third parties may have the opportunity to impede transfer proceedings if they deem such action to be in the best interest of the animal.
- Coverage of animal-related claims by homeowners' insurance—Homeowners' property loss insurance may no longer cover animal-related claims should animals be no longer defined as property under the law. Under guardianship, animals would no longer be considered property.
- Unconstitutional taking of private property—A complete shift to guardianship could result in claims of a state having unconstitutionally taken private property (animals) without just compensation.
- Impacts on ability to responsibly use animals—Guardianship may preclude the responsible use of animals for agricultural production (food and fiber), research, exhibition and entertainment (e.g., racing, circuses, rodeo), and companionship. Use of animals and animal products for such purposes may no longer be legal.
- Ability to control, quarantine and vaccinate animals—Guardianship may affect the ability of governmental agencies to control and quarantine animals and require vaccination. Ensuring animal and public health requires the ability to effectively control and eradicate disease.

- Conflicts between federal and state statutes, regulations and policies—Potential conflicts may arise between states' laws, regulations and policies that are predicated on the basis of guardianship and federal laws, regulations and policies that are predicated on the basis of animals as property.

- Homeless/unwanted animals—Financial burdens and inability to control burgeoning populations (e.g., problems associated with euthanasia and spay/neuter choices) may both contribute to the problem of unwanted animals.

- Use of assistance animals—The concept of assistance animals (e.g., guide dogs, hearing dogs) may be objectionable under guardianship; therefore, there may be fewer animals available to provide such services. The use of animals for search and rescue may also not be acceptable.

- Burdens of ownership—Owning or keeping animals may become burdensome with consequent negative impacts on animal-related industries, including loss of jobs.

It is a bill which intends to encourage conservation through easements but would likely discourage use of such easements due to the onerous burden placed on our landowners.

It is also curious that a bill claiming the benefits of biodiversity through changes would actually break the bond between humans and their animals which have been cultivated through centuries.

Again, thank you for your consideration of SB 164. We hope that you will simply vote this bill **Inexpedient to Legislate** to prevent eroding the rights of animal **owners** and the long list of **unintended consequences**.

Sincerely,



Angela Ferrari
President
Dog Owners of the Granite State

Resources:

https://protecttheharvest.com/what-you-need-to-know/guardianship-instead-of-ownership-is-harmful-to-animals/

https://www.naiaonline.org/about-us/position-statements/guardianship

https://www.naiaonline.org/articles/article/animal-rights-animal-welfare-which-is-it

https://naiaonline.org/articles/article/do-you-really-want-to-be-your-pets-guardian

https://naiaonline.org/naia-library/articles/quotes-from-the-leaders-of-the-animal-rights-movement

https://s3.amazonaws.com/cdn-origin-etr.akc.org/wp-content/uploads/2022/09/15124643/Guardian-v.-Owner_2018.pdf

https://www.votervoice.net/AKC/campaigns/94327/respond

https://congressionalsportsmen.org/policies/state/animal-personhood

Nikolas Liamos

›m: Diane Richardson <workingclasscanine@msn.com>
nt: Sunday, January 29, 2023 2:55 PM
Subject: Sb 164 biodiversity bill

Caution! This message was sent from outside your organization.

Dear committee

Senate bill 164 relative to biodiverse environments

This bill sounds all nice and workable at first. In fact I was thinking as I started it that "yes, having housing developments keep all the houses in one area of property sounds nice"

But

Then the further I read the more it was evident that this is a whole group of assorted bills jammed together.

Sections towards the bottom
" 11 New Section; Contract; Animal Guardianship. Amend RSA 437 by inserting after section 13-a the following new section:
7:13-b Contract; Animal Guardianship."
.. I _____, owner of _____ animals, including as state of new Hampshire statute authorizes for wild animals, and their habitat located on property_____ desirous of creating a new legal status for the domestic animals on my property, do hereby convey to these animals equitable title in him/herself, while retaining for myself legal title. I understand that this transforms my relationship with the animals to one of a guardian,"

And

"14 New Section; Statutory Form of a Biodiversity Preservation Agreement. Amend RSA 477 by inserting after section 47 the following new section:
477:47-a Statutory Form of a Biodiversity Preservation Agreement."
" desirous of creating a new legal status for the animals on my property, and the sustainable biodiversity necessary for them to thrive, do hereby convey to these animals equitable title in him/herself, and their descendants, while retaining for myself legal title. I understand that this transforms my relationship with the animals, and the sustainable biodiversity necessary for their flourishing, to one of a guardian"

discuss giving the domestic animals on the private land rights and the owners are guardians and giving the wildlife on the private land rights and deem land owner guardian.

Private land owners do not own the wildlife on their land, the state of NH does. They cannot be guardians of these animal in the legal sense.

mestic animal owners are owners not guardians

The term guardian opens up the whole debate on "personship" and the loss of rights of domestic animal owners or to the state in managing the wild animals

Several supreme courts across the country have taken up this argument and have all ruled that animals have no personship and have no "rights" but are covered under an array of ownership, management and cruelty laws and rules.

The whole bill beyond the very beginning makes me incredibly uneasy. This is obviously a bill put together with the intent to subvert or side step current NH and federal laws

I do not want my domestic animal property rights eroded.
I do not want the state of NH ability to manage the states' wildlife on properties impeded

This bill is a conglomeration of many items that could never pass alone, but they are hoping to blind you ,the educated committee with a long complicated sounding bill in hopes you'll miss the scary parts

Please kill this bill

Diane and Rob Richardson jr
Georges mills, nh
Workingclasscanine@msn.com

Nikolas Liamos

From: Tabitha Andrus <tandruscvt@yahoo.com>
Sent: Sunday, January 29, 2023 7:33 PM
To: Kevin Avard; Howard Pearl; Regina Birdsell; David Watters; Nikolas Liamos
Subject: Opposition of SB164-FN-local

Caution! This message was sent from outside your organization.

Good Evening,

My name is Tabitha Andrus. I reside in Andover, NH. I was born and raised here in NH. I am a Credentialed Veterinary Technician and have worked in animal care and medical for 19 years. I am very passionate about my patients and their owners.
I wanted to take a moment to express my serious concerns about SB 164-FN-Local. Animals are very important part of my life as well as the lives of the majority of the population. All animals deserved to be treated with kindness and compassion but allowing animals to be their own entity will destroy the ability of people to have pets.
Being referred to as a pets "guardian" will take away a pet owners ability to rehome a pet, to humanely euthanize a sick or mentally unstable pet. It will equalize animals and humans when animals cannot rationalize, prepare for the future or even think about the future. Animals live in the now, in the moment. They are unable to contribute to their house holds or society as a whole. Animals are not equal to humans, they are property as much as we love them and make them part of the family they are still poperty.
The American Veterinary Medical Association has taken a stance against referring to pet owners as "guardians".

As a pet owner and a Veterinary professional I ask you please oppose this bill, it's bad for pet owners and the pets we love.

Thank you for your time and consideration,

Tabitha Andrus, CVT

Sent from Yahoo Mail on Android

Senator Ken Avard, Chair
Energy and Natural Resources Committee
State House, Room 103
Concord, New Hampshire 03101

January 31, 2023

SB 164 - FN - Local, relative to biodiverse environments

Dear Mr. Chair and Members of the Committee,

I would ask you to consider ***SB 164-FN-local*** as inexpedient to legislate, failing that to amend the bill **deleting in its entirety *"11. New Section; Contract; Animal Guardianship."***

Section 11 assumes that there are not sufficient protections for animals wild and domestic in present statute and asks that the landowner or owner of certain animals enter into a " guardianship contract". This presumption is not only flawed but also would expand the concept of a guardian beyond the conventional and practical sense already established in statute, possibly depriving an owner of their property rights.

An owner is already by definition a "guardian" or custodian. I would have the committee refer to to RSA 436:99, specifically:

III. "Own," unless otherwise specified, shall mean to keep, harbor, or have control, charge, or custody of a dog, cat, or ferret. This term shall not apply to dogs, cats, or ferrets owned by others which are temporarily maintained on the premises of a veterinarian or kennel operator.

IV. "Owner" shall mean any person keeping, harboring, or having charge or control of, or permitting any dog, cat, or ferret to habitually be or remain on, or be lodged or fed within such person's house, yard, or premises.... "

In the case of a "wild animal," the land owner is not responsible nor does the landowner have any control whatsoever (other than to post their land). A wild animal is the property of the state and, latterly, the citizens of New Hampshire. The appropriate agencies regulate and protect wild animals and are by default responsible for the state's biodiversity.

To even suggest that an owner of an animal enter into a " guardianship contract," which this bill attempts in Section 11 does, could easily be considered a

"taking" or at the very least irresponsible and unconstitutional. The State Constitution is very clear as is statute about ownership and a citizen's right to property.

As to a "Guardianship/Guardians," there is already a process which is spelled out in RSA 644:8 when continued ownership of an animal(s) could cause harm or danger to that animal's well being. If you review 644:8 it spells out the reasons for, methods and means by which property - an animal - may be confiscated through the courts and under what circumstances custody may be granted. If you read through 644:8, "ownership or custody" is referred to a multiple number of times.

As to Guardian, a guardian by statute is required to follow a procedure including but not limited to filing an annual report, processes to remove a guardian, annual accounting, &c, &c. (RSA464-A). The language in the bill is very loose and ignores these criteria which not only offers a protection for the animal in question but the owner. This expansion of a Guardian/Guardianship does not involve the courts, the same level of protections, oversight or even the ability to remove a such a "guardian" for cause.

For the last 30 years from being appointed to the *"Pet Overpopulation Committee"* by then Governor Steve Merrill and subsequently a member of the *House Environment & Agriculture Committee* and, eventually, its Chair, we always worked very hard towards protection of an animal's care and condition but mindful of an individual's property rights.

This bill is very poorly constructed and does not offer an animal any greater level or increased of protection - in fact, probably less protection.

It is why **I feel that SB 164-FN-Local is unnecessary and should be voted inexpedient to legislate.**

Thank you for your kind consideration, I remain sincerely,

Jay Phinizy

Acworth New Hampshire.

The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner

February 6, 2023

The Honorable Kevin Avard
Chair, Energy and Natural Resources Committee
State House, Room 103
Concord, NH 03301

RE: SB 60, An Act relative to water quality

Dear Chair Avard and Members of the Committee:

Thank you for the opportunity to comment on SB 60. Many of the provisions in the bill further define or clarify existing statutes, specifically water quality certifications. The New Hampshire Department of Environmental Services' (NHDES) goal for this legislation is to clarify existing requirements and provide additional flexibility for water withdrawals while still protecting water quality.

This bill would:

1) Define the ability to waive certifications required under state law at RSA 485-A:12, III as afforded by section 401 of the Clean Water Act (CWA) and associated federal regulations.
2) Define the processing time and how the department would act on requests for water quality certifications required under RSA 485-A:12, III and section 401 of the CWA and under RSA 485-A:12, IV for surface water withdrawals.
3) Defines in RSA 485-A:12, IV the withdrawal rates and conditions of surface water withdrawals that require a water quality certification, including certain surface water withdrawals that propose to increase and potentially cause a significant lowering of water quality.
4) Clarify that rules that must be adopted by the department for reviewing requests for water quality certification include public notice and public hearing requirements.
5) Define the applicability of the water conservation rules on surface water withdrawals requiring a water quality certification under RSA 485-A:12, IV.
6) Remove language that prohibits the use of the flow statistic 7Q10 in the calculation of nutrient effluent limits under RSA 485-A:8.

NHDES supports SB 60 but recommends changes to the bill. Senate Bill 60 will provide consistency with federal law; define the applicability of the statute in terms of large surface water withdrawals; define NHDES application review and processing times of requests for required certifications; and apply the water conservation rules to large surface water withdrawals. Water quality certificates protect surface water quality and uses by ensuring compliance with NH Surface Water Quality Standards through inclusion of enforceable conditions on the certified activity. The proposed changes to the law presented in SB 60 will further define the state's role in federal processes under

section 401 of the CWA, provide clear applicability of the laws, improve the predictability of the process for applicants, and further define the processes related to water quality certifications and wastewater permitting.

Relative to point number 6 above, SB 60 removes language that was adopted in 2017 into RSA 485-A:8, Standards for Classification of Surface Waters of the State, that prohibits the use of a flow statistic commonly used in the calculation of nutrient effluent limits. The proposed change to RSA 485-A:8 is critical because of the following reasons:

1) The United State Environmental Protection Agency (EPA) is using 7Q10 for total phosphorus limits in permits whether it is allowable in state law or not as the 2017 language prohibiting the use of 7Q10 was not approved by EPA and therefore not usable in CWA actions [i.e., National Pollutant Discharge Elimination System (NPDES) permits].

2) The department is updating the Surface Water Quality Standards Rules Env-Wq 1700 and eliminating the restriction on using the 7Q10 which may benefit some communities relative to permitting while others will benefit from the flexibility in the draft rule revisions.

Senate Bill 60 will remove the restriction against using the 7Q10 flow statistic from state law. This change then allows for proposed rule revisions that may result in potentially less stringent effluent limits, although still protective of human health and aquatic life, for the regulated communities.

NHDES would like to note that since the creation of SB 60, NHDES has recognized that certain changes would improve SB 60. NHDES respectfully requests the following changes be incorporated:

1) Amending the proposed changes to RSA 485-A:12, IV:

In the current version of SB 60, changes to RSA 485-A:12, IV include removing a reference to the registration requirement under RSA 488:3. NHDES recommends keeping the reference to RSA 488:3 to retain the intent of the original law and the paragraph's connection to the definition of "withdrawal" as defined under RSA 488:2, VIII. This is accomplished by keeping "requires registration under RSA 488:3" and adding "and" prior to that phase. In addition, "of surface water" should be deleted since it had modified "or diversion", which would be deleted; and the term "volumes" should be replaced with "withdrawal rates" to more accurately reflect the unit of measurement that requires certification.

A more substantive change that NHDES recommends to SB 60 is relative to the proposed language of RSA 485-A:12, IV that would require a water quality certification for an increased surface water withdrawal that would cause a significant lowering of water quality. Currently, RSA 485-A:12, IV does not require a surface water withdrawal that was in active operation prior

to the effective date of RSA 485-A:12, IV (i.e., September 5, 2008) to obtain certification. Upon further reflection and discussions with stakeholders, we believe that this provision should be more thoroughly vetted with stakeholders. The original intention of this language was to simply clarify the law but NOT to add new requirements. The language as written could be interpreted as a new mandate and may have unintended consequences on current surface water users. Therefore, NHDES recommends striking "...or would be increased to cause a significant lowering of water quality..." from SB 60 to allow for additional internal review by NHDES and further stakeholder involvement.

3 Enforcement of Classification. Amend RSA 485-A:12, IV to read as follows:
IV. No activity that involves surface water withdrawal ~~[or diversion of surface water]~~ that ***exceeds 20,000 gallons per day over a 7-day period or more than 600,000 gallons over a 30-day period and*** requires registration under RSA 488:3, that does not otherwise require the certification required under paragraph III, and ***which did not exceed such withdrawal rates before*** ~~[was not in active operation as of]~~ the effective date of this paragraph may commence unless the department certifies that the surface water withdrawal or diversion of surface water complies with state surface water quality standards applicable to the classification for the surface water body. The certification shall include any conditions on, modifications to, or monitoring of the proposed activity necessary to provide reasonable assurance that the proposed activity complies with applicable surface water quality standards. The department may enforce compliance with any such conditions, modifications, or monitoring requirements as provided in RSA 485-A:22.

2) In the current version of SB 60, amendments to RSA 485-A:12 are proposed by adding paragraphs III-a and IV-a. NHDES recommends adding the following sentence at the end of each of those paragraphs to provide applicants with an adequate opportunity to submit a written request to NHDES for an extension to submit additional application information requested by NHDES: "Upon a written request of the applicant prior to the end of this 120-day time period, the department shall grant an extension of this 120-day time period."

2 New Paragraph; Enforcement of Classification; Request for Certification. Amend RSA 485-A:12 by inserting after both paragraph III and IV the following new paragraph:
III-a (and IV-a). In processing a request for certification under paragraph III (and IV):
(a) Within 50 days of receipt of the request for certification, the department shall either notify the person who submitted the request that the request is complete or request any additional information required to complete its evaluation of the request. Any request for additional information shall specify that the person requesting certification submit such information as soon as practicable and shall notify the person that if all of the requested information is not received within 120 days of the request, the department shall deny the

request. Upon a written request of the applicant prior to the end of this 120-day time period, the department shall grant an extension of this 120-day time period.

Thank you again for the opportunity to comment on SB 60. Should you have questions or need additional information, please feel free to contact either Ted Diers, Assistant Director of the Water Division (theodore.e.diers@des.nh.gov, 271-2951) or Erin Holmes, Watershed Bureau Administrator (erin.holmes@des.nh.gov, 271-3289).

Sincerely,

Robert R. Scott
Commissioner

ec: Sponsors of SB 60: Senators Gray, Watters, Avard; Representatives Renzullo, Hill

New Hampshire
Fish and Game Department

11 Hazen Drive, Concord, NH 03301-6500
Headquarters: (603) 271-3421
Website: www.WildNH.com

TDD Access: Relay NH 1-800-735-2964
Fax: (603) 271-1438
Email: info@wildlife.nh.gov

Scott R. Mason
Executive Director

New Hampshire Fish and Game Department

Testimony in opposition of SB 164-FN-L, an act relative to biodiverse environments

Senate Energy and Natural Resources Committee

January 31, 2023

Mr. Chairman and members of the Committee, thank you for the opportunity to speak with you today. My name is Dan Bergeron. I am the Chief of the Wildlife Division for the Fish and Game Department. I'm here today representing the Department and the Fish and Game Commission in opposition of SB 164-FN-L, an act relative to biodiverse environments.

The Department is supportive of the intent of this bill in aiming to protect the state's biodiversity. As the guardian of the state's fish, wildlife and marine resources, the New Hampshire Fish and Game Department's mission is to work in partnership with the public to conserve, manage and protect these resources and their habitats; inform and educate the public about these resources; and provide the public with opportunities to use and appreciate these resources. Much of the work the Department does is directly aimed at conserving diverse wildlife populations and habitats throughout the state. However, the Department has concerns as to how this bill may impact our management and conservation efforts should it pass.

The Department considers "biodiversity" as part of our broader conservation measures. While protecting biodiversity as a purpose or justification for these measures is laudable, this can become difficult in practice when legal requirements are associated with something as broad as biodiversity. The scope of the definition of biodiversity in this bill encompasses all species of "plants, bacteria, animals, and humans", as well as the variability among living organisms and their ecosystems including the "variation in genetic, phenotypic, phylogenetic, and functional attributes" thereof. Given the broadness of this definition it could be extremely complicated to justify whether actions are in support of maintaining biodiversity if challenged. Who determines which aspects of biodiversity take precedent and how is the maintenance of biodiversity measured? It will be challenging for landowners to determine how practices such as agriculture, forestry, and recreation may have to be modified to maintain the broad suite of variables outlined in the biodiversity definition. This could result in confusion, conflicts of opinion, and possible litigation.

Of greatest concern however, is the language pertaining to "the rights due to the wild animals" living on a given property and that "animals and their descendants" are "a unique form of property". While we feel the intent to protect wildlife and biodiversity is admirable, creating any

legal precedent enumerating rights to wild animals or classifying them as a form of property is contrary, and a threat to the North American Model of Wildlife Conservation. This model and its principles have guided wildlife management for decades and is considered one of the greatest conservation successes. Core to this model is that wildlife are held in the public trust and belong to all citizens. As such, state and federal wildlife agencies have the responsibility and duty of managing wildlife for everyone. As a result, management decisions are science based and intended to have the greatest benefit to both wildlife populations and the general public. Any laws that erode these principles could jeopardize the Department's ability to effectively manage wildlife and their habitats.

Further, most wildlife have home ranges that extend beyond the bounds of a typical land ownership. Landowners have little to no power to impact practices on abutting properties and therefore no way to guarantee the wellbeing of wildlife populations that may frequent their own properties. It can be difficult and costly to document and determine what specific factors are impacting wildlife populations. As such, this would likely lead to further confusion, conflicts, and possible litigation.

I would like to thank the Committee for allowing me to testify before you today and respectfully request the Committee members vote in Opposition of SB 164-FN-L.



Dan Bergeron
Wildlife Division Chief

1/29/2023

Chairman Avard and Members of the Senate Energy and Natural Resources Committee,

My name is Nancy Holmes. I'm from New Boston, NH. I am an animal owner, a land owner, a person who cares about wildlife, wildlands and New Hampshire. As such, I am in opposition to the passing of SB 164 - An Act relative to Biodiverse environments, as it is currently written. I have included some sections of the bill so you can see the basis for my concerns.

In section 79-B:1 Declaration of Intent are the following statements.

- *"In addition, it is the declared intent of this chapter to further assist in the preservation of open space in this state in the public interest by promoting the granting and acquisition of permanent conservation restrictions on such open space land which provides a demonstrated public benefit. "*
- *"In this chapter, "biodiversity" means all of the species, including plants, bacteria, animals, and humans in a particular region, habitat or ecosystem, that work together to maintain balance and support life."*

Then in section 79-C:1

- *"Declaration of Public Interest. It is hereby declared to be in the public interest to encourage the preservation of open space which is potentially subject to development"*

As I read this bill, my understanding of the intent is to encourage land owners, including developers, to grant the state conservation easements on their land, or a portion of it, to help preserve open space and biodiversity. A worthy goal.

Where this intent completely fails is where the concepts are included for animal guardianship, landowner responsibility for all elements of biodiversity on the land including wildlife, and the right of entities to sue the landowner or assume land or animal ownership, if they believe there is any violation occurring in the landowner's new responsibilities.

437:13-b Contract; Animal Guardianship.

II. The form of the contract shall follow the form provided in this paragraph:

"1. The parties agree that the domestic animal or animals, in possession of the owner, are a unique form of property and that as such, these animals while within the bounds of the owner, by the execution of this deed/contract, shall receive equitable title for themselves. Legal title shall transfer to the owner of the animal who shall be considered both legal titleholder and guardian of the animals. The owner agrees that another person or entity so designated by the owner in this contract may represent the interests of the animals, should the owner fail in his or her guardian obligation towards the animals. The parties agree that the animals are living animals in need of a suitable environment in the care of the owner and that the owner has certain duties to provide a suitable environment in which the animal may flourish appropriately according to their species in said environment under this contract and under the laws of the state of New Hampshire."

and 477:47-a Statutory Form of a Biodiversity Preservation Agreement.

"I. A land owner may enter into a biodiversity preservation agreement with another person in order to enforce the rights due to the wild animals that live on his or her property as enumerated in the contract. If

the owner of such property violates the terms of the contract, the other party may file for enforcement of the contract in the superior court in which the property is located. "

Where this becomes particularly dangerous for landowners is under 477:47-a Statutory Form of a Biodiversity Preservation Agreement where those statements are added that declare that the animals, including wild animals on the property, belong to, and are the responsibility of the land owner, but are their own legal entities and the landowner is their guardian.

"1. The grantee agrees that the animals and their descendants, on the grantee's property, and the biodiversity necessary to sustain them, are a unique form of property and that as such, these animals while within its bounds, by the execution of this easement, shall receive equitable title for themselves." and continues further to say

"The grantee and the party named above agree that the animals are living animals in need of a sustainable, biodiverse environment in the care of the owner of the property, and that the owner of the property shall have certain duties to provide a sustainable, biodiverse environment in which the animals and their descendants may flourish appropriately according to their species as enumerated in section 2 of this agreement."

It appears that if I granted this sort of proposed conservation easement on my land I and any future owners would become an owner/guardian of all the *"the animals and their descendants, on the grantee's property, and the biodiversity necessary to sustain them"*. A tall order for a state let alone a landowner.

My understanding is that wild animals are currently the concern of the state of New Hampshire, not the landowner, and that there are already specific rules for how a landowner may interact with that wildlife.

How will this sort of change impact landowners during natural occurrences such as drought, flood, invasive species (example emerald ash borer currently killing ash trees in NH), oil or toxic chemical spills, wildfire, or anything else out of individual landowner's control that impacts the landowner's environment?

Frogs, toads and salamanders are animals on my land. I have a vernal pond where these typically complete their metamorphosis into land creatures from eggs laid there in spring, before the pond dries up for the summer. In recent droughts there has not been enough time for that process to complete before the pond is gone. If I granted the proposed conservation easements on my land would I then become responsible to maintain that pond to ensure survival of the amphibians? Would I have to preserve the mosquitoes too? This is just a small example of the implications in this bill.

I cannot believe the majority of the landowners, their lawyers, or future land buyers would be interested in an easement where the landowner would assume the outlined onerous responsibilities and then could face lawsuits, or potentially lose their land or animals, for failing to meet impossible conditions for retaining ownership. Would you purchase such land? Would you want your town or city to purchase it?

I believe passing this bill would actually reduce the number of landowners willing to grant conservation easements on their land, potentially reducing the open space in the future because of it.

I ask you to vote SB 164 inexpedient to legislate.

Sincerely,

Nancy Holmes

New Boston, NH

Voting Sheets

Senate Energy and Natural Resources Committee
EXECUTIVE SESSION RECORD
2023-2024 Session

Bill # SB 164-FN

Hearing date: 1/31/23

Executive Session date: 2/15/23

Motion of: OTP **Vote:** 5-0

Committee Member	Present	Made by	Second	Yes	No
Sen. Avard, Chair	X			X	
Sen. Pearl, Vice Chair	X		X	X	
Sen. Birdsell	X			X	
Sen. Watters	X	X		X	
Sen. Altschiller	X			X	

Motion of: amend # 0512s **Vote:** 5-0

Committee Member	Present	Made by	Second	Yes	No
Sen. Avard, Chair	X			X	
Sen. Pearl, Vice Chair	X		X	X	
Sen. Birdsell	X			X	
Sen. Watters	X	X		X	
Sen. Altschiller	X			X	

Motion of: OTPA **Vote:** 5-0

Committee Member	Present	Made by	Second	Yes	No
Sen. Avard, Chair	X			X	
Sen. Pearl, Vice Chair	X		X	X	
Sen. Birdsell	X			X	
Sen. Watters	X	X		X	
Sen. Altschiller	X			X	

Reported out by: Sen. Watters

Notes:

Senate Energy and Natural Resources Committee

EXECUTIVE SESSION RECORD

2023-2024 Session

Bill # SB 164-FN

Hearing date: 1/31/23

Executive Session date: 2/15/23

Motion of: Consent Vote: 5-0

Committee Member	Present	Made by	Second	Yes	No
Sen. Avard, Chair	X			X	
Sen. Pearl, Vice Chair	X		X	X	
Sen. Birdsell	X			X	
Sen. Watters	X	X		X	
Sen. Altschiller	X			X	

Motion of: Vote:

Committee Member	Present	Made by	Second	Yes	No
Sen. Avard, Chair					
Sen. Pearl, Vice Chair					
Sen. Birdsell					
Sen. Watters					
Sen. Altschiller					

Motion of: Vote:

Committee Member	Present	Made by	Second	Yes	No
Sen. Avard, Chair					
Sen. Pearl, Vice Chair					
Sen. Birdsell					
Sen. Watters					
Sen. Altschiller					

Reported out by: Sen. Watters

Notes:

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE
FOR THE CONSENT CALENDAR

Thursday, February 16, 2023

THE COMMITTEE ON Energy and Natural Resources

to which was referred **SB 164-FN-LOCAL**

AN ACT relative to biodiverse environments.

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 5-0

AMENDMENT # 0554s

Senator David Watters
For the Committee

Senate Bill 164 defines biodiversity and requires its inclusion in the land and community heritage investment program. The first section of SB 164 includes findings which show the decline in the world's wildlife and that a large portion of land and bodies of water have been altered. The first section also states that the people of New Hampshire and future generations deserve a clean, healthy, and biodiverse environment. The second, third and fourth sections of SB 164 add biodiversity to the definitions of the land and community heritage investment program, easement interests, and eligible resource respectively.

Nikolas Liamos 271-7875

FOR THE CONSENT CALENDAR

ENERGY AND NATURAL RESOURCES

SB 164-FN-LOCAL, relative to biodiverse environments.
Ought to Pass with Amendment, Vote 5-0.
Senator David Watters for the committee.

Senate Bill 164 defines biodiversity and requires its inclusion in the land and community heritage investment program. The first section of SB 164 includes findings which show the decline in the world's wildlife and that a large portion of land and bodies of water have been altered. The first section also states that the people of New Hampshire and future generations deserve a clean, healthy, and biodiverse environment. The second, third and fourth sections of SB 164 add biodiversity to the definitions of the land and community heritage investment program, easement interests, and eligible resource respectively.

General Court of New Hampshire - Bill Status System

Docket of SB164

Docket Abbreviations

Bill Title: (New Title) relative to consideration of biodiversity in the land and community heritage investment program.

Official Docket of **SB164.:**

Date	Body	Description
1/20/2023	S	**Introduced** 01/19/2023 and Referred to Energy and Natural Resources; **SJ 5**
1/25/2023	S	**Hearing:** 01/31/2023, Room 103, SH, 09:45 am; **SC 8**
2/16/2023	S	Committee Report: Ought to Pass with Amendment **#2023-0554s**, 02/22/2023; Vote 5-0; CC; **SC 11**
2/22/2023	S	Committee Amendment **#2023-0554s**, AA, VV; 02/22/2023; **SJ 8**
2/22/2023	S	**Ought to Pass with Amendment** 2023-0554s, MA, VV; OT3rdg; 02/22/2023; **SJ 8**
3/20/2023	H	Introduced (in recess of) 03/16/2023 and referred to Resources, Recreation and Development
4/12/2023	H	Public Hearing: 04/19/2023 01:00 pm LOB 305-307
4/26/2023	H	Executive Session: 05/03/2023 10:30 am LOB 305-307
5/9/2023	H	Majority Committee Report: Inexpedient to Legislate 05/03/2023 **(Vote 16-4; RC)**
5/9/2023	H	Minority Committee Report: Ought to Pass
5/18/2023	H	Lay SB164 on Table (Rep. Vail): MA VV 05/18/2023 **HJ 14** P. 14

NH House	NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: SB 164-FN **Senate Committee:** ENR

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

X Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

X Bill version as it came to the committee

X All Calendar Notices

X Hearing Sign-up sheet(s)

X Prepared testimony, presentations, & other submissions handed in at the public hearing

X Hearing Report

X Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

X - amendment # 0554s ___ - amendment #_____

X - amendment # 0512s ___ - amendment #_____

X Executive Session Sheet

X Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

___ - amendment #_____ ___ - amendment #_____

___ - amendment #_____ ___ - amendment #_____

Post Floor Action: (if applicable) {Clerk's Office}

___ Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

___ Enrolled Bill Amendment(s)

___ Governor's Veto Message

All available versions of the bill: {Clerk's Office}

X as amended by the senate ___ as amended by the house

___ final version

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