

# Senate Energy and Natural Resources Committee

*Max Taylor 271-1403*

**SB 109-FN**, relative to alteration of terrain permits.

**Hearing Date:** February 4, 2025

**Time Opened:** 9:39 a.m.

**Time Closed:** 10:32 a.m.

**Members of the Committee Present:** Senators Avard, Pearl, McConkey, Watters and Rosenwald

**Bill Analysis:** This bill:

I. Requires that an applicant for a permit, approval, or other written authorization submit a request for a consultation to the executive director of the fish and game department.

II. Requires that rules adopted for the threatened and endangered species compensatory mitigation fund contain provisions stating when payments are required to be made to the fund.

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**Sponsors:**

Sen. Lang  
Sen. Pearl

Sen. Gannon  
Rep. Moffett

Sen. Innis  
Rep. Spillane

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**Who supports the bill:** Senator Timothy Lang (Prime Sponsor), Marc Brown (Owl's Nest Resort), Adam Crepeau (NHDES), Matt Mayberry (Home Builders Association), James Sununu (Waterville Valley Resort), Alexx Monastioro (The Gove Group Real Estate, LLC)

**Who opposes the bill:** Eric Orff (NH Audubon), Kyle Baker (NH Wildlife Federation), Meredith Hatfield (The Nature Conservancy)

**Who is neutral on the bill:** Stephanie Simek & Dan Bergeron (NH Fish and Game)

**Summary of testimony presented in support:**

**Senator Timothy Lang**

**Prime Sponsor, Senate District 2**

- Senator Lang explained that SB 109-FN aims to improve permitting efficiency by:

- Establishing clear timelines for agency actions to prevent unnecessary delays.
- Creating the Threatened and Endangered Species Compensatory Mitigation Fund, which will allow fees collected from Alteration of Terrain permits to be used for conservation efforts.
- Senator Lang noted that the bill is part of the Governor's broader effort to improve permitting efficiency and that similar language may appear in a forthcoming House bill.
- Senator Rosenwald asked if this bill would require New Hampshire Fish and Game to do more work, and if this would be realistic given the department's funding limitations.
  - Senator Lang clarified that Fish and Game is already performing this work, but the bill sets deadlines and guidelines for their process.
  - The bill also addresses the handling of collected fees, ensuring they are directed into a dedicated fund for mitigation efforts.
- Senator Rosenwald asked if it is reasonable to impose these new requirements when they may not have the resources.
  - Senator Lang pointed out funding concerns will be addressed in the Senate Finance Committee.
  - He also stressed that permitting delays are contributing to New Hampshire's housing shortage, with developers reporting that 40% of projects stall due to slow approvals.
  - Additionally, he emphasized that permitting agencies need clear deadlines to prevent indefinite delays.
- Senator Rosenwald asked if Senator Lang will introduce funding plans for these new positions when the bill reaches the Finance Committee.
  - Senator Lang restated the funding discussion will take place in the Senate Finance Committee.
  - Senator Lang suggested that Fish and Game could generate additional revenue through measures like online OHRV registrations, which the legislature authorized years ago, but the agency has yet to implement.
- Senator Watters expressed concern about compliance with federal endangered species protections and asked Senator Lang to explain how this bill interacts with federal regulations and other agencies.
  - Senator Lang stated the bill includes necessary clarifications to help Fish and Game coordinate with other agencies.
  - Additionally, he recommended the committee request Fish and Game provide for further details on how the provisions align with federal requirements.

**Adam Crepeau (Assistant Commissioner at NH Department of Environmental Services) & Phil Trowbridge (Manager of Land Resources at NH Department of Environmental Services)**

- Mr. Crepeau stated DES supports the bill's goal of improving permitting efficiency, particularly setting a 60-day review deadline for Fish and Game.

- He stated that delays are common, with about 81 of 230 AOT permit applications requiring extensions, often due to applicants not providing necessary information or Fish and Game's limited resources.
- Mr. Crepeau emphasized the importance of consulting Fish and Game for protecting endangered species.
- Mr. Crepeau explained that while DES supports clear timelines, DES wants to avoid weakening Fish and Game's authority, as this could lead to legal challenges and inconsistencies.
- Mr. Crepeau suggested the committee hold off on passing the bill to coordinate with other upcoming legislation addressing similar issues.
- He also emphasized the willingness of DES to collaborate with Fish and Game to refine the bill's language and ensure both environmental protection and timely permitting.
- Senator Watters asked if limiting Fish and Game's role in determining protections for endangered species was necessary given that timeline delays were the primary issue.
  - Mr. Crepeau stated DES acknowledges Fish and Game as the expert agency for endangered species and removing their input from the permitting process could create legal vulnerabilities.
- Senator Watters asked if the bill could allow agencies to bypass Fish and Game entirely, making independent determinations without expert review.
  - Mr. Trowbridge responded by providing an example where Fish and Game's recommendations may extend beyond DES' regulatory scope, such as wetlands permitting. He noted that legal counsel has advised DES not to include requirements in permits that fall outside its jurisdiction.
- Senator Watters suggested working with Fish and Game to refine the language of the bill. Additionally, he suggested discussing fee structures to ensure Fish and Game has resources for permit reviews.
  - Mr. Crepeau agreed to collaborate with Fish and Game on amending the language of the bill. However, he expressed reluctance to share existing DES permit fees with Fish and Game unless overall fees were increased, as DES is already operating at its limit to meet statutory deadlines
- Senator Rosenwald asked if the language in the bill potentially allows agencies to disregard habitat concerns.
  - Mr. Crepeau clarified that DES currently consults with Fish and Game on both species and habitats. He emphasized the importance of compliance with species protections but deferred to Fish and Game on specific rule language.
  - Mr. Trowbridge explained that the rule language was designed to avoid duplication with federal regulations, particularly for agencies already following federal wildlife protection rules.
- Senator Rosenwald also asked if DES could work with Fish and Game to clarify jurisdictional boundaries.
  - Mr. Crepeau emphasized that DES is already in discussions with Fish and Game to refine the bill, and DES is primarily focused on ensuring a 60-day review period while maintaining legal defensibility.

## **Summary of testimony presented in opposition:**

### **Eric Orff**

#### **New Hampshire Audubon**

- Mr. Orff expressed concerns that the bill could disrupt a system that is already working well.
- He cautioned unnecessary changes could create unintended consequences.
- He referenced successful conservation efforts under the current system such as the growth of the black bear population and the increase of bald eagle nests.
- Mr. Orff argued that state agencies are already cooperating well on environmental protections.
- Mr. Orff urged the committee to reject the bill, and requested the bill be deemed inexpedient to legislate.

### **Meredith Hatfield**

#### **The Nature Conservancy**

- Ms. Hatfield expressed concerns that the bill would create unnecessary changes to environmental protection.
- She acknowledged New Hampshire's housing crisis and the need to balance environmental protections with housing development.
- She stressed the current system is functioning well, with Fish and Game making ongoing improvements to their system.
- Ms. Hatfield suggested if the bill moves forward with a rulemaking requirement, Fish and Game should be given more time to implement changes. She recommended extending the rulemaking deadline to 2026 due to limited resources at Fish and Game.
- Ms. Hatfield encouraged the committee to consider revisions to the bill and include The Nature Conservancy in future discussions.

## **Neutral Information Presented:**

### **Stephanie Simek (Executive Director of Fish and Game) & Dan Bergeron (Chief of the Wildlife Division)**

- Director Simek opened by acknowledging the growing challenges in environmental permitting due to increased demand over the last five years.
- She stated Fish and Game has taken steps to improve efficiency, including restructuring staff, improving data systems, and increasing outreach to applicants.
- Director Simek emphasized Fish and Game supports the goal of streamlining processes but has concerns with the bill as written, particularly regarding shifts in authority and statutory compliance.

- Mr. Bergeron referenced how the Endangered Species Conservation Act grants Fish and Game sole responsibility for protecting threatened and endangered species, and expressed concern that the bill shifts authority from Fish and Game to other agencies, allowing them to determine whether projects impact threatened and endangered species.
- Specifically, Mr. Bergeron was concerned with language on Page 1, Lines 6-7 which adds the phrase *“as such other departments or agencies determine is reasonable and prudent.”*
- Additionally, Mr. Bergeron was concerned with Line 23 in Section 4F, which states *“no other agency shall include any recommendations from Fish and Game that exceed its statutory authority.”* Mr. Bergeron believes this could prevent other agencies from enforcing Fish and Game’s recommendations, thus weakening protections.
- Mr. Bergeron explained that the current statute includes a 60-day review period, which pauses if the applicant fails to provide necessary information. He added that 82% of applications are completed within 60 days, but delays often occur because applicants fail to submit complete information.
- Director Simek expressed concern with the bills strict 60-day review period, because if an applicant does not voluntarily agree to an extension, Fish and Game would be forced to terminate the application. Thus, forcing the applicant to reapply and restart the process. In turn this could result in longer delays and a more burdensome process for applicants and Fish and Game.
- Director Simek clarified that the Threatened & Endangered Species Compensatory Mitigation Fund already exists, and Fish and Game has already collected money into the account.
- Director Simek explained that SB 109-FN would require Fish and Game to develop new rules for determining when mitigation payments are required and how they are calculated, which would be time-consuming and complex. She advocated for alternative approaches that might be more effective than a one-size-fits-all mitigation fee.
- Senator Watters asked if allowing other agencies to make these determinations would reduce the scientific basis of the process and potentially violate state and federal laws.
  - Director Simek stated shifting authority away from Fish and Game risks decisions being made without proper scientific evaluation. Additionally, it could expose the state to litigation for violating endangered species protections.
- Senator McConkey asked if applicants can track their progress, and if Fish and Game uses an online system.
  - Mr. Bergeron explained that currently, applications are handled through email. Fish and Game responds within 30 days, and if the application is complete, it moves forward. If more information is needed, the review is paused until the applicant provides necessary details.
- Senator McConkey followed up, asking if Fish and Game was working toward an online application system.

- Director Simek responded Fish and Game is not currently working toward an online application system due to funding limitations and the technology available is outdated. She emphasized that modernizing their resources is a priority for the department.
- Senator McConkey asked if applicants are notified if their application is paused.
  - Director Simek indicated applicants are notified via email that their application is paused. Once they submit the requested information the review resumes from where it left off. It is not restarted.
- Senator Watters asked if Fish and Game would be open to charging a fee for permit reviews to help cover costs.
  - Director Simek responded yes, Fish and Game is open to discussing a permit review fee. However, the department would need to consider the Governor's stance on avoiding fee increases.
- Senator Rosenwald asked how many state or federally listed threatened and endangered species are in New Hampshire.
  - Mr. Bergeron stated there are approximately 200 threatened and endangered species in New Hampshire.
- Senator Rosenwald followed up, asking if Fish and Game would be open to an MOU with DES to share part of the Alteration of Terrain permit fees to help fund reviews.
  - Director Simek stated Fish and Game is open to any funding solutions that improve efficiency.

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Date Hearing Report completed: February 7, 2025