

SB 109-FN - AS INTRODUCED

2025 SESSION

25-1008  
07/08

SENATE BILL        **109-FN**

AN ACT            relative to alteration of terrain permits.

SPONSORS:        Sen. Lang, Dist 2; Sen. Gannon, Dist 23; Sen. Innis, Dist 7; Sen. Pearl, Dist 17;  
Rep. Moffett, Merr. 4; Rep. Spillane, Rock. 2

COMMITTEE:      Energy and Natural Resources

---

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.

-----

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 Five*

AN ACT relative to alteration of terrain permits.

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

1 1 Fish and Game; Endangered Species Conservation Act; Conservation Programs. Amend RSA  
2 212-A:9, III to read as follows:

3 III. All other state departments and agencies, to the extent possible, consistent with their  
4 authorities and responsibilities, shall assist and cooperate with the executive director in the  
5 furtherance of the purposes of this chapter for the conservation of endangered or threatened species.  
6 ~~[They]~~ **The other departments or agencies** shall take such action as **such other department or**  
7 **agency determines** is reasonable and prudent to insure that actions authorized, funded, or carried  
8 out by them do not appreciably jeopardize the continued existence of such species or result in the  
9 destruction or modification of habitat of such species which is determined by the executive director  
10 to be critical, by requiring that all such action is designed to avoid and minimize harm to such  
11 species and habitat designated as critical. For the purpose of this statute, "appreciably jeopardize  
12 the continued existence of such species" shall be defined in rules adopted by the executive director  
13 pursuant to RSA 541-A. The provisions of RSA 212-A or any rule promulgated under this chapter  
14 shall not be applicable to a state department or agency when that state department or agency, in the  
15 process of undertaking an action, is required by federal law or regulation to address the  
16 environmental impact on wildlife or wildlife habitat, of that action. **The provisions of paragraph**  
17 **IV shall apply to any permit, approval, or other written authorization issued by any other**  
18 **state department or agency.**

19 2 New Paragraph; Fish and Game; Endangered Species Conservation Act; Conservation  
20 Programs. Amend RSA 212-A:9 by inserting after paragraph III the following new paragraph:

21 IV.(a) An applicant for a permit, approval, or other written authorization from any other  
22 state department or agency shall submit a request for a consultation to the executive director if  
23 required by that state department or agency. The request for consultation shall include proposed  
24 conservation measures and the relevant application that was or will be provided to the state agency,  
25 including any attachments to the application required by the state department or agency.

26 (b) Upon receipt of a request for consultation, the executive director shall:

27 (1) Within 10 days of receipt of the request for consultation, issue to the applicant a  
28 written notice to confirm receipt of the request.

29 (2) Within 60 days of sending the written notice of confirmation, or such longer time  
30 as may be agreed upon in writing by the applicant, the executive director shall either:

**SB 109-FN - AS INTRODUCED**

**- Page 2 -**

1 (A) Determine that issuance of the requested permit, approval, or other written  
2 authorization as requested by the applicant including the applicant's proposed conservation  
3 measures satisfies the requirements of paragraph III;

4 (B) Provide the applicant and the other department or agency with additional  
5 conservation measures necessary to ensure that issuance of the requested permit, approval, or other  
6 written authorization satisfies the requirements of paragraph III; or

7 (C) Notify the applicant and the other state department or agency that issuance  
8 of the proposed permit, approval, or other written authorization will not satisfy the requirements of  
9 paragraph III, including specific findings to support the decision.

10 (e) The executive director may request any additional information needed during its 60-  
11 day review as long as the consultation process does not exceed the 60-day timeframe or a written  
12 extension agreement.

13 (d) If the executive director fails to act within the 60-day time frame established in  
14 subparagraph (b)(2) or within any extended timeline agreed to in writing by the applicant, the  
15 applicant may submit a written request for a final response to the consultation process. Within 14  
16 days of the date of receipt of such written request, the executive director shall comply with  
17 subparagraphs (b)(2)(A), (b)(2)(B), or (b)(2)(C).

18 (e) If the executive director does not comply with subparagraph (b) within the 14-day  
19 period established in subparagraph (d), issuance of the permit, approval, or other written  
20 authorization requested by the applicant shall be deemed to satisfy the requirements of paragraph  
21 III as long as the applicant follows the conservation measures it proposed as part of its request for  
22 consultation.

23 (f) No state agency shall include any recommendation from the executive director in a  
24 permit, approval, or authorization that exceeds its statutory authority.

25 3 Fish and Game; Endangered Species Conservation Act; Threatened and Endangered Species  
26 Compensatory Mitigation Fund. Amend RSA 212-A:16 to read as follows:

27 212-A:16 Threatened and Endangered Species Compensatory Mitigation Fund. There is hereby  
28 established in the state treasury a separate fund to be known as the threatened and endangered  
29 species compensatory mitigation fund into which payments made pursuant to this section shall be  
30 credited. The fund shall be non-lapsing and continually appropriated to the department, for the  
31 purpose of funding projects that facilitate a net conservation benefit to threatened and endangered  
32 species, including, but not limited to critical habitat creation or restoration and the monitoring and  
33 maintenance of such areas. The state treasurer shall invest the fund as provided by law and any  
34 interest received on such investment shall be credited to the fund. Notwithstanding any other  
35 provision of law to the contrary, the executive director may accept payment for deposit into the fund  
36 for an unavoidable loss of critical habitat from a proposed activity without the approval of the  
37 governor, the governor and council, or the commission. The executive director shall approve

SB 109-FN - AS INTRODUCED

- Page 3 -

1 disbursements from the fund following consultation with the commissioner of the department of  
2 environmental services. The department shall submit an annual report by October 1, 2022, and  
3 every year thereafter, to the fiscal committee, the speaker of the house of representatives, the  
4 president of the senate, the house clerk, the senate clerk, the governor, and the state library,  
5 summarizing all deposits and expenditures from the fund. The report shall include, but not be  
6 limited to a description of all projects undertaken. The executive director shall adopt rules under  
7 RSA 541-A for the threatened and endangered species compensatory mitigation fund no later than  
8 one year following the effective date of this section. *Such rules shall include provisions for*  
9 *when mitigation payments to the fund are required for impacts to threatened and*  
10 *endangered species or the habitats of threatened and endangered species, pursuant to RSA*  
11 *206:33-g, II, and the calculation of those payments.*

12 4 Effective Date. This act shall take effect 60 days after its passage.

**SB 109-FN- FISCAL NOTE  
AS INTRODUCED**

AN ACT relative to alteration of terrain permits.

**FISCAL IMPACT: This bill does not provide funding, nor does it authorize new positions.**

<b>Estimated State Impact</b>				
	<b>FY 2025</b>	<b>FY 2026</b>	<b>FY 2027</b>	<b>FY 2028</b>
<b>Revenue</b>	\$0	Indeterminable Increase		
<i>Revenue Fund(s)</i>	Threatened and Endangered Species Compensatory Mitigation Fund			
<b>Expenditures*</b>	\$0	Indeterminable Increase		
<i>Funding Source(s)</i>	General Fund, Threatened and Endangered Species Compensatory Mitigation Fund			
<b>Appropriations*</b>	\$0	\$0	\$0	\$0
<i>Funding Source(s)</i>	None			

**\*Expenditure = Cost of bill**

**\*Appropriation = Authorized funding to cover cost of bill**

**METHODOLOGY:**

This bill would create a new process and timeline for how the Fish and Game Department handles requests for consultation, as it relates to impacts to threatened and endangered wildlife species, associated with applications for permits, approvals, or other written authorizations from state departments or agencies. The Department states that the reduction in the overall review timeframe would limit its ability to gather the necessary information to make determinations and would likely require additional staff to process applications, and/or result in the termination of the consultation process, and result in applicants having to reinitiate the consultation process at a time when they can provide all the required information.

Currently, the Department states that the environmental review process is conducted by its environmental review unit, which consists of five (5) staff; one (1) supervisor and four (4) reviewers. The reviewer positions are funded through ARPA funds, which only cover the positions through calendar year 2025. The Department states that the proposed changes that this bill makes to review timeframes would likely require additional staff to ensure consultations are conducted within this restricted timeframe and/or force resubmittals if consultations are terminated because the Department could not receive the necessary information to make a determination under the restricted timeframe. The Department is not able to estimate how

many additional staff would be needed as it cannot predict how this restricted timeframe would increase workload or how many consultations would need to be terminated and resubmitted.

Additionally, this bill establishes a new dedicated fund (Threatened and Endangered Species Compensatory Migration Fund), funded by payments received under the related section, for the purpose of funding projects that facilitate a net conservation benefit to threatened and endangered species, including, but not limited to critical habitat creation or restoration and the monitoring and maintenance of such areas. The Department cannot predict the number of projects that would potentially be required to pay into this fund or the amount of any associated payments. Additional staff may be needed to administer the compensatory mitigation fund given the proposed changes.

Ultimately, the Department, as a rough estimate, states the fiscal impact of this bill (revenues and expenditures could be between \$500,000 and \$1,000,000 per year.

**AGENCIES CONTACTED:**

Fish and Game Department