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.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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