



Blanding's Turtle

FACT SHEET

Senate Bill 129



Common Nighthawk

Changes NH' endangered species law:

What SB 129 Does and Does Not do

What SB 129 does not do is alleviate the bottleneck of development project applications being reviewed by Fish & Game Department staff. Additional staff engaged in reviewing applications at F&G, more complete wildlife assessments submitted by applicants, and the end of Covid will all help relieve the bottleneck.

SB 129 also does not rush any help to the developers, because the bill is dependent on the lengthy process of rulemaking. Bill Text Lines 11-12 specify that F&G will need to define terms in the bill.

SB 129 does not use the word “appreciably” correctly [see Bill Text line 7]. The word was taken from the Federal Endangered Species Act that uses it within the definition of and not as an adverb to weaken the meaning of “jeopardize the continued existence of.” The Feds define “jeopardize the continued existence of” as: “to engage in an action that reasonably would be expected, directly or indirectly, to reduce *appreciably* the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.” [emphasis added]. Makes sense to adopt the Federal definition, not distort it.

SB 129 does not protect NH's Threatened & Endangered wildlife species to the same degree that they are protected now by the existing NH Endangered Species Conservation Act. Does a bottleneck of applications justify less protection?

SB 129 does not require “mitigation” for harm, only that the project be designed to avoid and minimize harm [see Bill Text lines 3-15]. Where’s the incentive for developers to design to avoid impacts?

What SB 129 Does

- **What SB 129 does is allows harming of NH’s Threatened & Endangered Wildlife Species [see Bill Text line 10].** The harm is called “minimized,” but minimized is not the same as “minor.” For example, the NH Supreme Court case concerned a project that impacted 37 acres of endangered species habitat, disrupting the animals’ feeding, breeding, migrating, and life expectancy. These are not minor impacts at all, but they are described as “minimized.”
- **SB 129 does contradict the legal prohibition in the NH Endangered Species Conservation Act [Section 7(c) against harming Threatened & Endangered wildlife against pursuing, capturing, wounding, disturbing, harrying and worrying and all such harmful acts [defined in RSA 207:1, XXVII].**
- **SB 129 does contemplate that there would be “unavoidable” harm to Threatened & Endangered wildlife and habitat [see Bill Text Lines 19-24], but without providing a definition of “unavoidable.”** How is “unavoidable” harm to be made consistent with Bill Text Line 9 that first states that projects are to be designed to *avoid* harm?
- **SB 129 does undermine the purpose clause of the NH Endangered Species Conservation Act [Section A:3] which is that: “Species of wildlife normally occurring within this state which may be found to be in jeopardy should be accorded such protection as is necessary to maintain and enhance their numbers.”** It would be rather difficult for these jeopardized species to maintain and enhance their populations, if they are further jeopardized by development projects.

A last fact is that SB 129 is highly controversial. The Senate’s Energy & Natural Resources Committee heard from 44 proponents and 56 opponents just for its February 8 hearing. Such a controversial and complex nature of the bill justifies further study of NH’s Endangered Species Conservation Act rather than rushed passage prone to making errors with serious consequences for NH’s already-endangered wildlife.