

Committee Report

CONSENT CALENDAR

March 5, 2019

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on Environment and Agriculture to which was referred HB 663,

AN ACT relative to the definition of agriculture and existing agricultural uses. Having considered the same, report the same with the following amendment, and the recommendation that the bill OUGHT TO PASS WITH AMENDMENT.

Rep. Howard Pearl

FOR THE COMMITTEE

COMMITTEE REPORT

| | |
|-------------------|---|
| Committee: | Environment and Agriculture |
| Bill Number: | HB 663 |
| Title: | relative to the definition of agriculture and existing agricultural uses. |
| Date: | March 5, 2019 |
| Consent Calendar: | CONSENT |
| Recommendation: | OUGHT TO PASS WITH AMENDMENT 2019-0751h |

STATEMENT OF INTENT

This bill, as amended, clarifies language pertaining to agricultural uses and related definitions that pertain to state statutes as a whole and those specific to local planning and zoning. Many municipalities have applications filed with their land use boards related to agricultural operations, and this clarification of language will clearly convey the Legislature's position, especially as it pertains to agritourism.

Vote 20-0.

Rep. Howard Pearl
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Environment and Agriculture

HB 663, relative to the definition of agriculture and existing agricultural uses. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Howard Pearl for Environment and Agriculture. This bill, as amended, clarifies language pertaining to agricultural uses and related definitions that pertain to state statutes as a whole and those specific to local planning and zoning. Many municipalities have applications filed with their land use boards related to agricultural operations, and this clarification of language will clearly convey the Legislature's position, especially as it pertains to agritourism. **Vote 20-0.**

COMMITTEE REPORT

COMMITTEE: E & A

BILL NUMBER: HB 663

TITLE: RELATIVE TO THE DEFINITION OF AGRICULTURE AND
EXISTING AGRICULTURAL USES

DATE: 3/5/19 CONSENT CALENDAR: YES NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.
2019-07514

STATEMENT OF INTENT:

REP HOWARD PEARL FOR ENVIRONMENT & AG. THIS BILL
CLARIFIES LANGUAGE PERTAINING TO AGRICULTURAL USES
AND DEFINITIONS IN RSA 21:34-a AND IN THE PLANNING
STATUTES IN RSA 674:32 a, b. MANY MUNICIPALITIES HAVE
APPLICATIONS FILED WITH THEIR LAND USE BOARDS RELATED TO
AGRICULTURAL OPERATIONS AND THIS CLARICATION OF
LANGUAGE WILL CLEARLY CONVEY THE LEGISLATURES
POSITION, ESPECIALLY AS IT PERTAINS TO AGRITOURISM.

COMMITTEE VOTE: 20-0

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. Howard Pearl

For the Committee

Amendment to HB 663

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

2

3 1 Definition of Agriculture. Amend RSA 21:34-a, I to read as follows:

4 I. The word "farm" means any land, buildings, or structures on or in which agriculture and
5 farming **operations or** activities are carried out or conducted and shall include the residence or
6 residences of owners, occupants, or employees located on such land. Structures shall include all
7 farm outbuildings used in the care of livestock~~[-and]~~; in the production and storage of fruit,
8 vegetables, or nursery stock; in the production of maple syrup; greenhouses for the production of
9 annual or perennial plants; and any other structures used in **the operations or activities** named in
10 paragraph ~~[H]~~ **II(a) or (b)** of this section **or any combination of such individual operators or**
11 **activities.**

12 2 Definition of Agriculture. Amend RSA 21:34-a, II to read as follows:

13 II. The words "agriculture" and "farming" mean all operations **or activities** of a farm,
14 including:

15 (a)(1) The cultivation, conservation, ~~[and]~~ **or** tillage of the soil.

16 (2) The storage, use of, ~~[and]~~ **or** spreading of commercial fertilizer, lime, wood ash,
17 sawdust, compost, animal manure, septage, and, where permitted by municipal and state rules and
18 regulations, other lawful soil amendments.

19 (3) The use of ~~[and]~~ **or** application of agricultural chemicals.

20 (4) The ~~[raising]~~ **husbandry** ~~[and sale]~~ of livestock which shall include but not be
21 limited to all beef ~~[and]~~ **or** dairy cattle, steer, oxen, goats, sheep, swine, horses, mules or other
22 equidae, as well as domesticated strains of buffalo, bison, llamas, alpacas, emus, ostriches, poultry,
23 rabbits, yaks, elk (*Cervus canadensis*), fallow deer (*Dama dama*), red deer (*Cervus elephus*), ~~[and]~~
24 **or** reindeer (*Rangifer tarandus*).

25 (5) The ~~[breeding]~~ **husbandry**, boarding, raising, training, riding instruction, and
26 selling of equines.

27 (6) The ~~[commercial raising,]~~ **husbandry and** harvesting~~[-and sale of fresh water~~
28 ~~fish or other]~~ aquaculture products **including fresh or salt water finfish, shellfish, or other**
29 **aquatic organisms grown for consumption or processing.**

30 (7) The ~~[raising, breeding, or sale]~~ **husbandry** of poultry or game birds.

31 (8) The ~~[raising]~~ **husbandry** of bees **or honey.**

32 (9) The ~~[raising, breeding, or sale]~~ **husbandry** of domesticated strains of fur-

Amendment to HB 663

- Page 2 -

1 bearing animals.

2 (10) The production of greenhouse crops.

3 (11) The production, cultivation, growing, *or* harvesting~~[, and sale]~~ of any
4 agricultural, floricultural, viticultural, forestry, or horticultural crops including, but not limited to,
5 berries, herbs, honey, maple syrup, fruit, vegetables, tree fruit, grapes, flowers, seeds, grasses,
6 nursery stock, sod, trees ~~[and]~~ *or* tree products, Christmas trees grown as part of a commercial
7 Christmas tree operation, trees grown for short rotation tree fiber, compost, or any ~~[other]~~ plant
8 that can be legally grown ~~[and]~~ *or* harvested extensively for profit or subsistence.

9 (b) Any practice *or activity* on the farm incident to, *ancillary to*, or in conjunction
10 with such farming operations, including, but not necessarily restricted to:

11 (1) Preparation for market, delivery to storage or to market, or to carriers for
12 transportation to market of any products or materials from the farm.

13 (2) The transportation to the farm of supplies and materials.

14 (3) The transportation of farm workers.

15 (4) Forestry or lumbering operations.

16 (5) ~~[The]~~ Marketing or selling at wholesale,~~[or]~~ retail, *on-site or off-site*,
17 *regardless of the manner or form of the transaction* ~~[of]~~ any *livestock or products derived*
18 *principally* from the *production of the farm, including, but not limited to items listed in*
19 *subparagraph (a), whether on-site [and] or off-site, provided that marketing such products*
20 *is [where] not specifically prohibited by local regulations. [Marketing includes] For the purposes*
21 *of this section marketing shall include* agritourism, which means attracting visitors to a farm
22 to attend events ~~[and]~~ *or* activities that are accessory uses to the primary farm operation, including,
23 but not limited to, ~~[eating]~~ *being provided* a meal, making overnight stays, enjoyment of the farm
24 environment, education, *which may include instruction or learning* about ~~[farm]~~ *the farm's*
25 operations, or active involvement in the ~~[activity]~~ *activities* of the farm.

26 (6) Irrigation of growing crops from private water supplies or public water supplies
27 where not prohibited by state or local rule or regulation.

28 (7) The use of dogs for herding, working, or guarding livestock, as defined in RSA
29 21:34-a, II(a)(4).

30 (8) The production and storage of compost and the materials necessary to produce
31 compost, whether such materials originate, in whole or in part, from operations of the farm.

32 3 Definition of Agriculture. Amend RSA 21:34-a, IV to read as follows:

33 IV. *Management* practices on the farm shall include technologies recommended from time
34 to time by the university of New Hampshire cooperative extension, the New Hampshire department
35 of agriculture, markets, and food, ~~[and]~~ *or* appropriate agencies of the United States Department of
36 Agriculture.

37 4 Declaration of Purpose. Amend RSA 672:1, III-d to read as follows:

1 III-d. For purposes of paragraphs III-a, III-b, III-c, and III-e, "unreasonable interpretation"
2 includes the failure of local land use authorities to recognize that agriculture and agritourism
3 **operations or activities** as defined in RSA 21:34-a, forestry, renewable energy systems, and
4 commercial and recreational fisheries, when practiced in accordance with applicable laws and
5 regulations, are traditional, fundamental and accessory uses of land throughout New Hampshire,
6 and that a prohibition upon these uses cannot necessarily be inferred from the failure of an
7 ordinance or regulation to address them;

8 5 Agricultural Uses of Land. Amend RSA 674:32-a to read as follows:

9 674:32-a Presumption. In accordance with RSA 672:1, III-d, whenever agricultural **operations**
10 **or activities as defined in RSA 21:34-a** are not explicitly addressed with respect to any zoning
11 district or location, **such operations or activities** [they] shall be deemed to be permitted there, as
12 either a primary or accessory use, so long as conducted in accordance with best management
13 practices adopted by the commissioner of **the department of** agriculture, markets, and food and
14 with **applicable** federal and state laws, regulations, and rules.

15 6 Existing Agricultural Uses and Activities; Significant Expansion Defined. Amend RSA
16 674:32-b to read as follows:

17 674:32-b Existing Agricultural Uses **and Activities**. Any agricultural use **or activity** which
18 exists pursuant to RSA 674:32-a may without restriction be expanded, altered to meet changing
19 technology or markets, or changed to another agricultural use **or activity**, as set forth in RSA
20 21:34-a, so long as any such expansion, alteration, or change complies with all federal and state
21 laws, regulations, and rules, including **agricultural** best management [practices] **practice**
22 **guidelines** adopted by the commissioner of **the department of** agriculture, markets, and food;
23 subject, however, to the following limitations:

24 I. Any new establishment, re-establishment after abandonment, or significant expansion of
25 an operation involving the keeping of livestock, poultry, or other animals may be made subject to
26 special exception, building permit, **site plan review**, or other local land use board approval **in**
27 **accordance with the provisions of RSA 674:32-c, II and III**.

28 II. Any new establishment, re-establishment after abandonment, or significant expansion of
29 a farm stand, retail operation, or other use **or activity** involving on-site transactions with the
30 public, including agritourism as defined in RSA 21:34-a, may be made subject to applicable special
31 exception, building permit, **site plan review**, or other local land use board approval **in**
32 **accordance with the provisions of RSA 674:32-c, II and III**, and may be regulated to prevent
33 traffic and parking from adversely impacting adjacent property, streets and sidewalks, or public
34 safety. No municipality shall adopt an ordinance, bylaw, definition, or policy regarding agritourism
35 activities that conflicts with the definition of agritourism in RSA 21:34-a.

36 7 Agricultural Uses of Land. Amend RSA 674:32-c, II to read as follows:

37 II. Nothing in this subdivision, **or in RSA 674:32-b**, shall exempt new, re-established, or

Voting Sheets

HOUSE COMMITTEE ON ENVIRONMENT AND AGRICULTURE

EXECUTIVE SESSION on HB 663

BILL TITLE: relative to the definition of agriculture and existing agricultural uses.

DATE: March 5, 2019

LOB ROOM: 303

MOTION: (Please check one box)

- OTP
- ITL
- Retain (1st year)
- Adoption of Amendment # 2019-0751 H
(if offered)
- Interim Study (2nd year)

Moved by Rep. Pearl Seconded by Rep. Burby Vote: 20-0

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # _____
(if offered)
- Interim Study (2nd year)

Moved by Rep. Pearl ~~Burby~~ Seconded by Rep. Furbush Vote: 20-0

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # _____
(if offered)
- Interim Study (2nd year)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____


MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # _____
(if offered)
- Interim Study (2nd year)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

CONSENT CALENDAR: YES NO

Minority Report? Yes No If yes, author, Rep: _____ Motion _____

Respectfully submitted:  _____
Rep Barbara Comtois, Clerk

OFFICE OF THE HOUSE CLERK



1/14/2019 3:17:05 PM
Roll Call Committee Registers
Report

2019 SESSION

Environment and Agriculture

Bill #: HB 663

Motion: Adoption

AM #: 2019-0751H

Exec Session Date: 3-5-19

| <u>Members</u> | <u>YEAS</u> | <u>Nays</u> | <u>NV</u> |
|--|-------------|-------------|-----------|
| Gourgue, Amanda L. Chairman | ✓ | | |
| Bixby, Peter W. Vice Chairman | ✓ | | |
| Beaulieu, Jane E. | ✓ | | |
| Ellis, Donna R. | ✓ | | |
| Richards, Beth S. | ✓ | | |
| Sofikitis, Catherine M. | ✓ | | |
| Bouldin, Andrew J. | ✓ | | |
| Chretien, Jacqueline H. | ✓ | | |
| Dutzy, Sherry | ✓ | | |
| McConnell, Liz A. | ✓ | | |
| Murray, Megan A. | ✓ | | |
| O'Connor, John T. | ✓ | | |
| Comtois, Barbara Clerk | ✓ | | |
| Pearl, Howard C. | ✓ | | |
| Verville, Kevin <u>Thomas, Doug</u> | ✓ | | |
| Aron, Judy F. | ✓ | | |
| Bean, Harry H. | ✓ | | |
| Furbush, Michael E. | ✓ | | |
| Melvin, Charles R. | ✓ | | |
| Viens, Harry H. | ✓ | | |
| TOTAL VOTE: | <u>20</u> | <u>0</u> | |



2019 SESSION

Environment and Agriculture

Bill #: HB 163 Motion: OTPA AM #: 2019-0751 H Exec Session Date: 3-5-15

| <u>Members</u> | <u>YEAS</u> | <u>Nays</u> | <u>NV</u> |
|--------------------------------------|-------------|-------------|-----------|
| Gourgue, Amanda L. Chairman | ✓ | | |
| Bixby, Peter W. Vice Chairman | ✓ | | |
| Beaulieu, Jane E. | ✓ | | |
| Ellis, Donna R. | ✓ | | |
| Richards, Beth S. | ✓ | | |
| Sofikitis, Catherine M. | ✓ | | |
| Bouldin, Andrew J. | ✓ | | |
| Chretien, Jacqueline H. | ✓ | | |
| Dutzy, Sherry | ✓ | | |
| McConnell, Liz A. | ✓ | | |
| Murray, Megan A. | ✓ | | |
| O'Connor, John T. | ✓ | | |
| Comtois, Barbara Clerk | ✓ | | |
| Pearl, Howard C. | ✓ | | |
| Verville, Kevin → <u>Thomas Doug</u> | ✓ | | |
| Aron, Judy F. | ✓ | | |
| Bean, Harry H. | ✓ | | |
| Furbush, Michael E. | ✓ | | |
| Melvin, Charles R. | ✓ | | |
| Viens, Harry H. | ✓ | | |
| TOTAL VOTE: | <u>20</u> | <u>0</u> | |

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7 farm outbuildings used in the care of livestock~~[, and]~~; in the production and storage of fruit,
8 vegetables, or nursery stock; in the production of maple syrup; greenhouses for the production of
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26 selling of equines.

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7 Christmas tree operation, trees grown for short rotation tree fiber, compost, or any ~~[ether]~~ plant
8 that can be legally grown ~~[and]~~ *or* harvested extensively for profit or subsistence.

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10 with such farming operations, including, but not necessarily restricted to:

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12 transportation to market of any products or materials from the farm.

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18 *principally from the production of the farm, including, but not limited to items listed in*
19 *subparagraph (a), whether on-site ~~[and]~~ or off-site, provided that marketing such products*
20 *is ~~[where]~~ not specifically prohibited by local regulations. ~~[Marketing includes]~~ For the purposes*
21 *of this section marketing shall include* agritourism, which means attracting visitors to a farm
22 to attend events ~~[and]~~ *or* activities that are accessory uses to the primary farm operation, including,
23 but not limited to, ~~[eating]~~ *being provided* a meal, making overnight stays, enjoyment of the farm
24 environment, education, *which may include instruction or learning* about ~~[farm]~~ *the farm's*
25 operations, or active involvement in the ~~[activity]~~ *activities* of the farm.

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27 where not prohibited by state or local rule or regulation.

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34 to time by the university of New Hampshire cooperative extension, the New Hampshire department
35 of agriculture, markets, and food, ~~[and]~~ *or* appropriate agencies of the United States Department of
36 Agriculture.

37 4 Declaration of Purpose. Amend RSA 672:1, III-d to read as follows:

1 III-d. For purposes of paragraphs III-a, III-b, III-c, and III-e, "unreasonable interpretation"
2 includes the failure of local land use authorities to recognize that agriculture and agritourism
3 **operations or activities** as defined in RSA 21:34-a, forestry, renewable energy systems, and
4 commercial and recreational fisheries, when practiced in accordance with applicable laws and
5 regulations, are traditional, fundamental and accessory uses of land throughout New Hampshire,
6 and that a prohibition upon these uses cannot necessarily be inferred from the failure of an
7 ordinance or regulation to address them;

8 5 Agricultural Uses of Land. Amend RSA 674:32-a to read as follows:

9 674:32-a Presumption. In accordance with RSA 672:1, III-d, whenever agricultural **operations**
10 **or activities as defined in RSA 21:34-a** are not explicitly addressed with respect to any zoning
11 district or location, **such operations or activities** [they] shall be deemed to be permitted there, as
12 either a primary or accessory use, so long as conducted in accordance with best management
13 practices adopted by the commissioner of **the department of** agriculture, markets, and food and
14 with **applicable** federal and state laws, regulations, and rules.

15 6 Existing Agricultural Uses and Activities; Significant Expansion Defined. Amend RSA
16 674:32-b to read as follows:

17 674:32-b Existing Agricultural Uses **and Activities**. Any agricultural use **or activity** which
18 exists pursuant to RSA 674:32-a may without restriction be expanded, altered to meet changing
19 technology or markets, or changed to another agricultural use **or activity**, as set forth in RSA
20 21:34-a, so long as any such expansion, alteration, or change complies with all federal and state
21 laws, regulations, and rules, including **agricultural** best management [~~practices~~] **practice**
22 **guidelines** adopted by the commissioner of **the department of** agriculture, markets, and food;
23 subject, however, to the following limitations:

24 I. Any new establishment, re-establishment after abandonment, or significant expansion of
25 an operation involving the keeping of livestock, poultry, or other animals may be made subject to
26 special exception, building permit, **site plan review**, or other local land use board approval **in**
27 **accordance with the provisions of RSA 674:32-c, II and III.**

28 II. Any new establishment, re-establishment after abandonment, or significant expansion of
29 a farm stand, retail operation, or other use **or activity** involving on-site transactions with the
30 public, including agritourism as defined in RSA 21:34-a, may be made subject to applicable special
31 exception, building permit, **site plan review**, or other local land use board approval **in**
32 **accordance with the provisions of RSA 674:32-c, II and III**, and may be regulated to prevent
33 traffic and parking from adversely impacting adjacent property, streets and sidewalks, or public
34 safety. No municipality shall adopt an ordinance, bylaw, definition, or policy regarding agritourism
35 activities that conflicts with the definition of agritourism in RSA 21:34-a.

36 7 Agricultural Uses of Land. Amend RSA 674:32-c, II to read as follows:

37 II. Nothing in this subdivision, **or in RSA 674:32-b**, shall exempt new, re-established, or

Amendment to HB 663

- Page 4 -

1 expanded agricultural operations *or activities* from generally applicable building and site
2 requirements such as dimensional standards, setbacks, driveway and traffic regulations, parking
3 requirements, noise, odor, or vibration restrictions or sign regulations; provided, however, that in
4 circumstances where their literal application would effectively prohibit an agricultural use *or*
5 *activity* allowed by this subdivision, or would otherwise be unreasonable in the context of an
6 agricultural use *or activity, in accordance with the provisions of RSA 672:1, III-b*, the zoning
7 board of adjustment, building code board of appeals, or other applicable local board, after due notice
8 and hearing, shall grant a waiver from such requirement to the extent necessary to reasonably
9 permit the agricultural use *or activity*, unless such waiver would have a demonstrated adverse
10 effect on public health or safety, or *on* the value of adjacent property. Such waiver shall continue
11 only as long as utilized for the permitted agricultural use *or activity*.

12 8 Effective Date. This act shall take effect upon its passage.

Sub-Committee Actions

HOUSE COMMITTEE ON ENVIRONMENT AND AGRICULTURE

SUBCOMMITTEE WORK SESSION on HB 663

BILL TITLE: relative to the definition of agriculture and existing agricultural uses.

DATE: March 5, 2019

Subcommittee Members: Reps. Pearl, O'Connor, Aron, Viens, Gourgue and Melvin

Comments and Recommendations: Moved amendment 2019-0751h for passage and recommend to the full committee.

MOTIONS: OUGHT TO PASS WITH AMENDMENT

Moved by Rep. Rep. Gourgue

Seconded by Rep. Rep. O'Connor

Vote: 6-0

Respectfully submitted,

Rep. John O'Connor
Subcommittee Clerk

HOUSE COMMITTEE ON ENVIRONMENT AND AGRICULTURE

SUBCOMMITTEE WORK SESSION on HB 663

BILL TITLE: relative to the definition of agriculture and existing agricultural uses.

DATE: March 5, 2019

Subcommittee Members: Reps. Pearl, O'Connor, Aron, Viens, Gourgue and Melvin

Comments and Recommendations:

MOVED AMENDMENT 2019-0751A FOR PASSAGE AND RECOMMEND TO THE FULL COMMITTEE

MOTIONS: OTP, (OTP/A), ITL, Retained (1st Yr), Interim Study (2nd Yr) (Please circle one)

Moved by Rep. GORGUE Seconded by Rep. O'CONNOR AM Vote: _____

Adoption of Amendment # _____

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

_____ Amendment Adopted _____ Amendment Failed

MOTIONS: OTP, OTP/A, ITL, Retained (1st Yr), Interim Study (2nd Yr) (Please circle one)

Moved by Rep. _____ Seconded by Rep. _____ AM Vote: _____

Adoption of Amendment # _____

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

_____ Amendment Adopted _____ Amendment Failed

Respectfully submitted,

Rep. HOWARD PEARL Subcommittee Chairman/Clerk

Amendment to HB 663

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8 vegetables, or nursery stock; in the production of maple syrup; greenhouses for the production of
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20 (4) The ~~[raising]~~ **husbandry** ~~[and sale]~~ of livestock which shall include but not be
21 limited to all beef ~~[and]~~ **or** dairy cattle, steer, oxen, goats, sheep, swine, horses, mules or other
22 equidae, as well as domesticated strains of buffalo, bison, llamas, alpacas, emus, ostriches, poultry,
23 rabbits, yaks, elk (*Cervus canadensis*), fallow deer (*Dama dama*), red deer (*Cervus elephus*), ~~[and]~~
24 **or** reindeer (*Rangifer tarandus*).

25 (5) The ~~[breeding]~~ **husbandry**, boarding, raising, training, riding instruction, and
26 selling of equines.

27 (6) The ~~[commercial raising,]~~ **husbandry and** harvesting ~~[-and sale of fresh-water~~
28 ~~fish or other]~~ aquaculture products **including fresh or salt water finfish, shellfish, or other**
29 **aquatic organisms grown for consumption or processing.**

30 (7) The ~~[raising, breeding, or sale]~~ **husbandry** of poultry or game birds.

31 (8) The ~~[raising]~~ **husbandry** of bees **or honey.**

32 (9) The ~~[raising, breeding, or sale]~~ **husbandry** of domesticated strains of fur-

Amendment to HB 663

- Page 2 -

1 bearing animals.

2 (10) The production of greenhouse crops.

3 (11) The production, cultivation, growing, *or* harvesting~~[and sale]~~ of any
4 agricultural, floricultural, viticultural, forestry, or horticultural crops including, but not limited to,
5 berries, herbs, honey, maple syrup, fruit, vegetables, tree fruit, grapes, flowers, seeds, grasses,
6 nursery stock, sod, trees ~~and~~ *or* tree products, Christmas trees grown as part of a commercial
7 Christmas tree operation, trees grown for short rotation tree fiber, compost, or any ~~other~~ plant
8 that can be legally grown ~~and~~ *or* harvested extensively for profit or subsistence.

9 (b) Any practice *or activity* on the farm incident to, *ancillary to*, or in conjunction
10 with such farming operations, including, but not necessarily restricted to:

11 (1) Preparation for market, delivery to storage or to market, or to carriers for
12 transportation to market of any products or materials from the farm.

13 (2) The transportation to the farm of supplies and materials.

14 (3) The transportation of farm workers.

15 (4) Forestry or lumbering operations.

16 (5) ~~The~~ Marketing or selling at wholesale, ~~or~~ retail, *on-site or off-site*,
17 *regardless of the manner or form of the transaction* ~~of~~ any *livestock or products derived*
18 *principally* from the *production of the farm, including, but not limited to items listed in*
19 *subparagraph (a), whether on-site and or off-site, provided that marketing such products*
20 *is* ~~where~~ not *specifically* prohibited by local regulations. ~~Marketing includes~~ *For the purposes*
21 *of this section marketing shall include* agritourism, which means attracting visitors to a farm
22 to attend events ~~and~~ *or* activities that are accessory uses to the primary farm operation, including,
23 but not limited to, ~~eating~~ *being provided* a meal, making overnight stays, enjoyment of the farm
24 environment, education, *which may include instruction or learning* about ~~farm~~ *the farm's*
25 operations, or active involvement in the ~~activity~~ *activities* of the farm.

26 (6) Irrigation of growing crops from private water supplies or public water supplies
27 where not prohibited by state or local rule or regulation.

28 (7) The use of dogs for herding, working, or guarding livestock, as defined in RSA
29 21:34-a, II(a)(4).

30 (8) The production and storage of compost and the materials necessary to produce
31 compost, whether such materials originate, in whole or in part, from operations of the farm.

32 3 Definition of Agriculture. Amend RSA 21:34-a, IV to read as follows:

33 IV. *Management* practices on the farm shall include technologies recommended from time
34 to time by the university of New Hampshire cooperative extension, the New Hampshire department
35 of agriculture, markets, and food, ~~and~~ *or* appropriate agencies of the United States Department of
36 Agriculture.

37 4 Declaration of Purpose. Amend RSA 672:1, III-d to read as follows:

1 III-d. For purposes of paragraphs III-a, III-b, III-c, and III-e, "unreasonable interpretation"
2 includes the failure of local land use authorities to recognize that agriculture and agritourism
3 **operations or activities** as defined in RSA 21:34-a, forestry, renewable energy systems, and
4 commercial and recreational fisheries, when practiced in accordance with applicable laws and
5 regulations, are traditional, fundamental and accessory uses of land throughout New Hampshire,
6 and that a prohibition upon these uses cannot necessarily be inferred from the failure of an
7 ordinance or regulation to address them;

8 5 Agricultural Uses of Land. Amend RSA 674:32-a to read as follows:

9 674:32-a Presumption. In accordance with RSA 672:1, III-d, whenever agricultural **operations**
10 **or activities as defined in RSA 21:34-a** are not explicitly addressed with respect to any zoning
11 district or location, **such operations or activities** [they] shall be deemed to be permitted there, as
12 either a primary or accessory use, so long as conducted in accordance with best management
13 practices adopted by the commissioner of **the department of** agriculture, markets, and food and
14 with **applicable** federal and state laws, regulations, and rules.

15 6 Existing Agricultural Uses and Activities; Significant Expansion Defined. Amend RSA
16 674:32-b to read as follows:

17 674:32-b Existing Agricultural Uses **and Activities**. Any agricultural use **or activity** which
18 exists pursuant to RSA 674:32-a may without restriction be expanded, altered to meet changing
19 technology or markets, or changed to another agricultural use **or activity**, as set forth in RSA
20 21:34-a, so long as any such expansion, alteration, or change complies with all federal and state
21 laws, regulations, and rules, including **agricultural** best management [~~practices~~] **practice**
22 **guidelines** adopted by the commissioner of **the department of** agriculture, markets, and food;
23 subject, however, to the following limitations:

24 I. Any new establishment, re-establishment after abandonment, or significant expansion of
25 an operation involving the keeping of livestock, poultry, or other animals may be made subject to
26 special exception, building permit, **site plan review**, or other local land use board approval **in**
27 **accordance with the provisions of RSA 674:32-c, II and III.**

28 II. Any new establishment, re-establishment after abandonment, or significant expansion of
29 a farm stand, retail operation, or other use **or activity** involving on-site transactions with the
30 public, including agritourism as defined in RSA 21:34-a, may be made subject to applicable special
31 exception, building permit, **site plan review**, or other local land use board approval **in**
32 **accordance with the provisions of RSA 674:32-c, II and III**, and may be regulated to prevent
33 traffic and parking from adversely impacting adjacent property, streets and sidewalks, or public
34 safety. No municipality shall adopt an ordinance, bylaw, definition, or policy regarding agritourism
35 activities that conflicts with the definition of agritourism in RSA 21:34-a.

36 7 Agricultural Uses of Land. Amend RSA 674:32-c, II to read as follows:

37 II. Nothing in this subdivision, **or in RSA 674:32-b**, shall exempt new, re-established, or

Amendment to HB 663

- Page 4 -

1 expanded agricultural operations *or activities* from generally applicable building and site
2 requirements such as dimensional standards, setbacks, driveway and traffic regulations, parking
3 requirements, noise, odor, or vibration restrictions or sign regulations; provided, however, that in
4 circumstances where their literal application would effectively prohibit an agricultural use *or*
5 *activity* allowed by this subdivision, or would otherwise be unreasonable in the context of an
6 agricultural use *or activity, in accordance with the provisions of RSA 672:1, III-b*, the zoning
7 board of adjustment, building code board of appeals, or other applicable local board, after due notice
8 and hearing, shall grant a waiver from such requirement to the extent necessary to reasonably
9 permit the agricultural use *or activity*, unless such waiver would have a demonstrated adverse
10 effect on public health or safety, or *on* the value of adjacent property. Such waiver shall continue
11 only as long as utilized for the permitted agricultural use *or activity*.

12 8 Effective Date. This act shall take effect upon its passage.

Sub-Committee Minutes

HOUSE COMMITTEE ON ENVIRONMENT AND AGRICULTURE

SUBCOMMITTEE WORK SESSION on HB 663

BILL TITLE: relative to the definition of agriculture and existing agricultural uses.

DATE: February 12, 2019

Subcommittee Members: Reps. Pearl, O'Connor, Aron, Viens, Melvin and Gourgue

Comments and Recommendations: The committee is having thoughtful discussion. I've continued the work session until 1:15. Committee completed review and a new draft will be created using the suggested edits.

Respectfully submitted,

Rep. Howard Pearl
Subcommittee Chairman

HOUSE COMMITTEE ON ENVIRONMENT AND AGRICULTURE

SUBCOMMITTEE WORK SESSION on HB 663

BILL TITLE: relative to the definition of agriculture and existing agricultural uses.

DATE: 2/12/19

Subcommittee Members: Reps. Pearl, O'Connor, Aron, Viens, Melvin and Gourgue

Comments and Recommendations:

THE COMMITTEE IS HAVING THOUGHTFUL DISCUSSION. I'VE CONTINUED THE WORK SESSION UNTIL 1:16. COMMITTEE COMPLETED REVIEW AND A NEW DRAFT WILL BE CREATED USING THE SUGGESTED EDITS

MOTIONS: OTP, OTP/A, ITL, Retained (1st Yr), Interim Study (2nd Yr)
(Please circle one)

Moved by Rep. _____ Seconded by Rep. _____ AM Vote: _____

Adoption of Amendment # _____

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

_____ Amendment Adopted _____ Amendment Failed

MOTIONS: OTP, OTP/A, ITL, Retained (1st Yr), Interim Study (2nd Yr)
(Please circle one)

Moved by Rep. _____ Seconded by Rep. _____ AM Vote: _____

Adoption of Amendment # _____

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

_____ Amendment Adopted _____ Amendment Failed

Respectfully submitted,

Rep. Howard Pearl
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON ENVIRONMENT AND AGRICULTURE

SUBCOMMITTEE WORK SESSION on HB 663

BILL TITLE: relative to the definition of agriculture and existing agricultural uses.

DATE: February 7, 2019

Subcommittee Members: Reps. Gourgue, Bixby, Comtois, Beaulieu, Ellis, Richards, Chretien, Dutzy, McConnell, O'Connor, Pearl, Verville, Aron, Bean, Melvin and Viens

Comments and Recommendations: Rep Pearl - Had a good hearing -- suggestions of adding in parts about fish

Line 16 and 17

Line 20 - change and back to or

Joel - definition goes back to 1961 - line 26 to 30 - this committee studied this 20 years ago - the present statute - the and/or's will be to rely on lines 20 to 30 in the amendment - and then you can eliminate all references to sale -

Rep O'Connor - zoning and planning boards - RSA21 and RSA674 - shows how complicated it is for ag people - right to farm laws - trying to reeducate people

Rep Verville - 1/2 dozen fruit trees - are municipalities trying to zone out farming in this state - Rep Pearl yes - especially when it comes to livestock -

Rep Dutzy - farms that do not sell anything - example therapeutic farms

Rep Bixby - riding stables provide a service and do not sell anything

Erick Sawtelle - 1. Clarify \$1k caveat - has more to do w/IRS and other agencies for matching donations

2. Sale - historically that was never in there as it was never a problem 20 years ago - now a lot of people are removed from agriculture - some planning/zoning boards - because you may be in a residential area - and ag is 2nd - Sale put in - so planning boards can see what constitutes agriculture - is the activity agriculture or not - Sale this is definitely part of ag - iib5 - not prohibited by local regulations - if you take word sale out you will need to articulate more - he recommends leaving Sale in there

Rep Bixby - attach anything in iia and put sale after that OR SALE after everyone after them

Rep from municipal association - term in ii 5 b - in the past when she has thought about ag vs commercial - she never thought about it being commercial to be ag - line 26 -Marketing - there are local land use boards to still impose local regulations - local regulations are in place even in RSA674

Rep Bixby - does it make more sense for the boards to add OR SALE to every item or emphasize it more clearly in B 5? Rep from municipal association - it needs to be one or the other - would like a perspective from a land use board member -

Rob Johnson from NHFB - this issue is one of the 2 most common questions he receives - would like to have SALE added to each item -

Erick Sawtelle - one thing that might clear it up - ambiguity of 2b5 - change the structure of that language - if you put in not prohibited - Senator Boutin - definition of Agritourism - amended version on line 29

Permissive zoning if it specifically listed you can use - Prohibitive zoning - you can do unless specifically prohibited -

Agritourism is allowed unless specifically prohibitive -

Line 2b5 - current - change where not prohibitive by local regulations - put right after retail and not after the products-

Add selling to after marketing -

Erick Sawtelle - town of lee - definition of seasonal farm stand but can have permanent farm market -

Are you talking about both the sale and the product - because it is in 2a you will not need in 6(5)

Perhaps send to actual subcommittee or make amendment

Erick Sawtelle - line 14 - needs to be articulated more

Rep Bixby - smaller # of people to craft language - trying to wordsmith w/20 people is too much - we are not going to finish this today -

Erick Sawtelle – what is intent – that is what needs to be articulated
Joel – line 14 – individual/collectively
Subcommittee to work on it

Respectfully submitted,

Rep. Barbara Comtois
Subcommittee Clerk

HOUSE COMMITTEE ON ENVIRONMENT AND AGRICULTURE

SUBCOMMITTEE WORK SESSION on HB 663

BILL TITLE: relative to the definition of agriculture and existing agricultural uses.

DATE: February 7, 2019

Subcommittee Members: Reps. Gourgue, Bixby, Comtois, Beaulieu, Ellis, Richards, Sofikitis, Andrew Bouldin, Chretien, Dutzy, McConnell, M. Murray, O'Connor, Pearl, Verville, Aron, Bear, Furbush, Melvin and Viens

Comments and Recommendations:

MOTIONS: OTP, OTP/A, ITL, Retained (1st Yr), Interim Study (2nd Yr)
(Please circle one)

Moved by Rep. _____ Seconded by Rep. _____ AM Vote: _____

Adoption of Amendment # _____

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

_____ Amendment Adopted _____ Amendment Failed

MOTIONS: OTP, OTP/A, ITL, Retained (1st Yr), Interim Study (2nd Yr)
(Please circle one)

Moved by Rep. _____ Seconded by Rep. _____ AM Vote: _____

Adoption of Amendment # _____

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

_____ Amendment Adopted _____ Amendment Failed

Respectfully submitted,

Rep. _____
Subcommittee Chairman/Clerk

Agritourism is allowed unless specifically prohibitive –

Line 2b5 – current – change where not prohibitive by local regulations – put right after retail and not after the products-

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Erick Sawtelle – what is intent – that is what needs to be articulated

Joel – line 14 – individual/collectively

Subcommittee to work on it

HB663 Work Session – February 07, 2019

Rep Pearl - Had a good hearing – suggestions of adding in parts about fish

Line 16 and 17

Line 20 - change and back to or

Joel – definition goes back to 1961 – line 26 to 30 – this committee studied this 20 years ago – the present statute – the ands/ors will be to rely on lines 20 to 30 in the amendment – and then you can eliminate all references to sale –

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Rob Johnson from NHFB – this issue is one of the 2 most common questions he receives – would like to have SALE added to each item –

Erick Sawtelle – one thing that might clear it up – ambiguity of 2b5 – change the structure of that language – if you put in not prohibited – Senator Boutin – definition of Agritourism – amended version on line 29

Permissive zoning if it specifically listed you can use – Prohibitive zoning – you can do unless specifically prohibited –

Hearing Minutes

HOUSE COMMITTEE ON ENVIRONMENT AND AGRICULTURE

PUBLIC HEARING ON HB 663

BILL TITLE: relative to the definition of agriculture and existing agricultural uses.

DATE: January 29, 2019

LOB ROOM: 303 **Time Public Hearing Called to Order:** 10:30 a.m.

Time Adjourned: 11:14 a.m.

Committee Members: Reps. Gourgue, Bixby, Beaulieu, Ellis, Sofikitis, Andrew Bouldin, Chretien, Dutzy, McConnell, M. Murray, O'Connor, Pearl, Aron, Bean, Furbush and Melvin

Bill Sponsors:

Rep. Pearl

Rep. Lang

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Howard Pearl - Prime sponsor of the bill. We will be working off the amendment mostly. Original bills intent was to clear up municipal confusion. The amendment is the document we'll use.

***Erick Sawtelle, Chair of Agriculture Commission, NH Farm Bureau** - Supports the bill. As a farmer, RSA 672:1 - Agriculture is a fluid dynamic. Livestock, equine, etc. definitions (including sales) is creating confusion for municipalities. There are corrections needed even in amendment. Three confusion terms: agriculture activities (no definition), operations, practices, uses. Seeking to clarify language to keep prohibitions to be minimal, and allow uninhibited farming. Keeping terminology consistent in the amended bill. There are terms that are terms that are being interchanged. Looking to be inclusive if a farmer meets one or more of the criteria.

Rep. Bixby: Why in lines 5, 9, and 13, the "and" an "br" terms are being interchanged? ANS: It separates them out, looking at two different concepts.

Rep. Dutzy: Couldn't we just use "and/or?" ANS: We want to make the language clear you can do one of the agriculture items or all. Agriculture, of aquatic animals are taking a different angle.

What makes them different then commercial fisheries? ANS: Requires rearing of a marine species in a portion of.

Rep. Aron: What is commercial? ANS: There is no definition.

Rep. Murray: Water rights/legal ability? ANS: DES and Fish and Game. There are many government divisions involved in license and use. Agriculture is a hybrid of many things.

Rep. Bixby: Would the language in line 16 clarify the intent throughout?

Rep. Chretien: Could the use of "or" cover it all?

Rep. O'Connor: Can we go through the surface of the bill first? And go to a committee on language? ANS: Yes. Line 5, pg. 2 includes "management" because it helps run the farm in best practices. (ie. manure, and technology)

Line 22, "practice"

On line 22, do they put out guidelines or rules? ANS: They put out best management practices.

Land use zoning clarified language included to help zoning boards clarify the language.

Rep. Beaulieu: Will this assist Bedrock Gardens in allowing them to do what they need to do?

ANS: Yes, there haven't been updates at the state or municipal level to alleviate the confusion.

There are other gardens like it? ANS: Yes.

Margaret Byrnes, NH Municipal Association - We don't oppose this legislation. Clarification would be welcomed. Delivered - derived. Site plan review terms need included. Municipalities have the ability to create their own. Definition of "agriculture" to address their zoning ordinance.

Rep. O'Connor: How would superior courts rule if their local definition differ from the state? ANS: I have no antidote experienced on that, but there are two statutes 21:34a. In general, no appeal process has played out.

Erick Sawtelle - There is no discretion for municipalities to restrict in the RSA's provided title LXIV 674.

I agree with that, all in all this is a good clarification. I think we need to use the "or."

Rep. Gourgue: Would you be willing to share thoughts in subcommittee? Yes.

Respectfully submitted,

Rep. Megan A. Murray
Acting Clerk

HOUSE COMMITTEE ON ENVIRONMENT AND AGRICULTURE

PUBLIC HEARING ON HB 663

BILL TITLE: relative to the definition of agriculture and existing agricultural uses.

DATE: January 29, 2019

ROOM: 303

Time Public Hearing Called to Order: 10:30

Time Adjourned: 11:14

(please circle if present)

Committee Members: Repts. Gourgue, Bixby, Comtois, Beaulieu, Ellis, Richards, Sofikitis, Andrew Bouldin, Chretien, Dutzy, McConnell, M. Murray, O'Connor, Pearl, Verville, Aron, Bear, Furbush, Melvin and Viens

Bill Sponsors:

Rep. Pearl

Rep. Lang

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

* Rep. Pearl - Canterbury 210 - We will be working off the Amendment mostly - original bill's intent was to clear up municipal confusion The Amendment is the doc we'll use

Murray

* Eric Sawtelle, Lee, Farmer, Chair of Ag. Commission, Chair of Nt Farm Bureau, also rep. self

* as a farmer, RSA 102:1 - Agriculture is a fluid dynamic Livestock, equine, etc. definitions (including sales) is creating confusion for municipalities.

There are corrections needed even in Amendment three confusing terms: agriculture activities (no definitions), Operations, practices, uses

Seeking to clarify language to keep prohibitions to be minimal, and allow uninhibited farming.

* See attached notes too.

Eric Sawtelle:

Keeping terminology consistent in the amended bill. There are terms that are being interchanged. Looking to be inclusive if a farmer meets one or more of the criteria.

Q: ^{Rep.} Binby: Why in lines 5, 9, ~~13~~¹³, the "and" an "or" terms are being interchanged?

A: Sawtelle: It separates them out, looking at 2 different concepts.

Q: Rep. Ditzzy: Couldn't we just use "and/or"?

A: Sawtelle: we want to make the language clear you can do one of the agriculture items or all.

Sawtelle Agriculture, of aquatic animals are taking a different angle:

What ^{commercial} makes them different than fisheries?

Aquaculture: requires rearing of a marine species.
in a portion of

Rep. Aron what is commercial?

Sawtelle: there is no definition

Q: Rep. Murray Q: What rights, legality?

A: DEs and Fish + Game

B: There are many Gov. Divisions involved in license + use

Sawtelle: Aquaculture is a hybrid of many things

Bobby

Q: would the language in line 16 clarify the intent throughout.

Q:

Chretien: could ~~the~~ use of "or" cover it all.

O'Connor: can we go through the surface of the bill first? And go to a committee on language?

Sawtelle

A: Gorgue: yes

Sawtelle: ~~misprint~~ line 5 pg. 2 includes "management" because it helps run the farm in best practices. (ie. manure, and technology)

line 22: "practice"

O'Connor

Q: on line 22: do they put out guidelines or rules?

Sawtelle

A: they put out best ~~pract~~ practices. ~~the~~

Sawtelle: land use zoning clarified
language included to help zoning boards
clarify the language.

110: Rep Beaulieu: Will this assist Bedrock Gardens in allowing them to do what they need to do?

A: Sawelle: Yes, there haven't been updates at the state or municipal level to alleviate the confusion.

Q: Beaulieu - there are other "gardens" like it

A: Yes.

Margaret Barnes: ^{with} NH Municipal Association we don't oppose

- This legislation. Clarification would be welcomed.
- delivered → derived
- site plan review terms need included.
- municipalities have the ability to create their own definition of "agriculture" to address their zoning ord.

Q: O'Connor: How would superior courts rule if their local definition differs from the state

A: Barnes: I have no anecdotal experience on that, but there are two statutes 21:34a. In general no appeal process has played out.

* Eric

Sawelle: There is no discretion for municipalities to restrict in the RSAs provided (title ~~XXXXXX~~ ^{LXIV}, 674

Margaret Barnes: I agree with that, all in all this is a good clarification. I think we need to use the "or"

Q: Gorgue: Would you be willing to share thoughts in subcomm. Barnes A: Yes

Testimony

For Use With
HB 151 + HB 663

TITLE I

THE STATE AND ITS GOVERNMENT

CHAPTER 21

STATUTORY CONSTRUCTION

Section 21:34-a

21:34-a Farm, Agriculture, Farming. –

I. The word "farm" means any land, buildings, or structures on or in which agriculture and farming activities are carried out or conducted and shall include the residence or residences of owners, occupants, or employees located on such land. Structures shall include all farm outbuildings used in the care of livestock, and in the production and storage of fruit, vegetables, or nursery stock; in the production of maple syrup; greenhouses for the production of annual or perennial plants; and any other structures used in operations named in paragraph II of this section.

II. The words "agriculture" and "farming" mean all operations of a farm, including:

- (a)(1) The cultivation, conservation, and tillage of the soil.
- (2) The storage, use of, and spreading of commercial fertilizer, lime, wood ash, sawdust, compost, animal manure, septage, and, where permitted by municipal and state rules and regulations, other lawful soil amendments.
- (3) The use of and application of agricultural chemicals.
- (4) The raising and sale of livestock which shall include but not be limited to all beef and dairy cattle, steer, oxen, goats, sheep, swine, horses, mules or other equidae, as well as domesticated strains of buffalo, bison, llamas, alpacas, emus, ostriches, poultry, rabbits, yaks, elk (*Cervus canadensis*), fallow deer (*Dama dama*), red deer (*Cervus elephus*), and reindeer (*Rangifer tarandus*).
- (5) The breeding, boarding, raising, training, riding instruction, and selling of equines.
- (6) The commercial raising, harvesting, and sale of fresh water fish or other aquaculture products.
- (7) The raising, breeding, or sale of poultry or game birds.
- (8) The raising of bees.
- (9) The raising, breeding, or sale of domesticated strains of fur-bearing animals.
- (10) The production of greenhouse crops.
- (11) The production, cultivation, growing, harvesting, and sale of any agricultural, floricultural, viticultural, forestry, or horticultural crops including, but not limited to, berries, herbs, honey, maple syrup, fruit, vegetables, tree fruit, grapes, flowers, seeds, grasses, nursery stock, sod, trees and tree products, Christmas trees grown as part of a commercial Christmas tree operation, trees grown for short rotation tree fiber, compost, or any other plant that can be legally grown and harvested extensively for profit or subsistence.
- (b) Any practice on the farm incident to, or in conjunction with such farming operations, including, but not necessarily restricted to:
 - (1) Preparation for market, delivery to storage or to market, or to carriers for transportation to market of any products or materials from the farm.
 - (2) The transportation to the farm of supplies and materials.
 - (3) The transportation of farm workers.
 - (4) Forestry or lumbering operations.
 - (5) The marketing or selling at wholesale or retail, of any products from the farm, on-site and off-site, where not prohibited by local regulations. Marketing includes agritourism, which means attracting visitors to a farm to attend events and activities that are accessory uses to the primary farm operation, including, but not limited to, eating a meal, making overnight stays, enjoyment of the farm environment, education about farm operations, or active involvement in the activity of the farm.
 - (6) Irrigation of growing crops from private water supplies or public water supplies where not prohibited by state or local rule or regulation.

(7) The use of dogs for herding, working, or guarding livestock, as defined in RSA 21:34-a, II(a)(4).

(8) The production and storage of compost and the materials necessary to produce compost, whether such materials originate, in whole or in part, from operations of the farm.

III. A farm roadside stand shall remain an agricultural operation and not be considered commercial, provided that at least 35 percent of the product sales in dollar volume is attributable to products produced on the farm or farms of the stand owner.

IV. Practices on the farm shall include technologies recommended from time to time by the university of New Hampshire cooperative extension, the New Hampshire department of agriculture, markets, and food, and appropriate agencies of the United States Department of Agriculture.

V. The term "farmers' market" means an event or series of events at which 2 or more vendors of agricultural commodities gather for purposes of offering for sale such commodities to the public. Commodities offered for sale must include, but are not limited to, products of agriculture, as defined in paragraphs I-IV. "Farmers' market" shall not include any event held upon any premises owned, leased, or otherwise controlled by any individual vendor selling therein.

VI. [Repealed.]

Source. 1961, 140:1. 1977, 95:1. 1979, 60:1. 1985, 6:1. 1997, 250:1. 1999, 191:2. 2005, 107:1. 2006, 11:5; 326:1. 2007, 157:1. 2008, 8:1, eff. July 4, 2008. 2014, 97:2, eff. Aug. 10, 2014. 2016, 267:1, 6, eff. June 16, 2016.

TITLE LXIV PLANNING AND ZONING

CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

Agricultural Uses of Land

Section 674:32-c

674:32-c Other General Provisions. –

- I. The tilling of soil and the growing and harvesting of crops and horticultural commodities, as a primary or accessory use, shall not be prohibited in any district.
- II. Nothing in this subdivision shall exempt new, re-established, or expanded agricultural operations from generally applicable building and site requirements such as dimensional standards, setbacks, driveway and traffic regulations, parking requirements, noise, odor, or vibration restrictions or sign regulations; provided, however, that in circumstances where their literal application would effectively prohibit an agricultural use allowed by this subdivision, or would otherwise be unreasonable in the context of an agricultural use, the board of adjustment, building code board of appeals, or other applicable local board, after due notice and hearing, shall grant a waiver from such requirement to the extent necessary to reasonably permit the agricultural use, unless such waiver would have a demonstrated adverse effect on public health or safety, or the value of adjacent property. Such waiver shall continue only as long as utilized for the permitted agricultural use.
- III. Nothing in this subdivision shall apply to any aspect of an agricultural operation determined to be injurious to public health or safety under RSA 147. Nothing in this subdivision shall be deemed to modify or limit the duties and authority of the department of environmental services under RSA 485 or RSA 485-A or the commissioner of the department of agriculture, markets, and food under title XL.
- IV. Nothing in this subdivision shall be deemed to affect the regulation of sludge or septage.

Source. 2000, 279:3, eff. July 1, 2001.

TITLE LXIV PLANNING AND ZONING

CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

Agricultural Uses of Land

Section 674:32-d

674:32-d Agritourism Permitted. – Agritourism, as defined in RSA 21:34-a, shall not be prohibited on any property where the primary use is for agriculture, subject to RSA 674:32-b, II.

Source. 2016, 267:5, eff. June 16, 2016.

TITLE LXIV PLANNING AND ZONING

CHAPTER 672 GENERAL PROVISIONS

Purpose

Section 672:1

672:1 Declaration of Purpose. – The general court hereby finds and declares that:

I. Planning, zoning and related regulations have been and should continue to be the responsibility of municipal government;

II. Zoning, subdivision regulations and related regulations are a legislative tool that enables municipal government to meet more effectively the demands of evolving and growing communities;

III. Proper regulations enhance the public health, safety and general welfare and encourage the appropriate and wise use of land;

III-a. Proper regulations encourage energy efficient patterns of development, the use of solar energy, including adequate access to direct sunlight for solar energy uses, and the use of other renewable forms of energy, and energy conservation. Therefore, the installation of solar, wind, or other renewable energy systems or the building of structures that facilitate the collection of renewable energy shall not be unreasonably limited by use of municipal zoning powers or by the unreasonable interpretation of such powers except where necessary to protect the public health, safety, and welfare;

III-b. Agriculture makes vital and significant contributions to the food supply, the economy, the environment and the aesthetic features of the state of New Hampshire, and the tradition of using the land resource for agricultural production is an essential factor in providing for the favorable quality of life in the state. Natural features, terrain and the pattern of geography of the state frequently place agricultural land in close proximity to other forms of development and commonly in small parcels. Agricultural activities are a beneficial and worthwhile feature of the New Hampshire landscape. Agritourism, as defined in RSA 21:34-a, is undertaken by farmers to contribute to both the economic viability and the long-term sustainability of the primary agricultural activities of New Hampshire farms. Agricultural activities and agritourism shall not be unreasonably limited by use of municipal planning and zoning powers or by the unreasonable interpretation of such powers;

III-c. Forestry, when practiced in accordance with accepted silvicultural principles, constitutes a beneficial and desirable use of New Hampshire's forest resource. Forestry contributes greatly to the economy of the state through a vital forest products industry; and to the health of the state's forest and wildlife resources through sustained forest productivity, and through improvement of wildlife habitats. New Hampshire's forests are an essential component of the landscape and add immeasurably to the quality of life for the state's citizens. Because New Hampshire is a heavily forested state, forestry activities, including the harvest and transport of forest products, are often carried out in close proximity to populated areas. Further, the harvesting of timber often represents the only income that can be derived from property without resorting to development of the property for more intensive

uses, and, pursuant to RSA 79-A:1, the state of New Hampshire has declared that it is in the public interest to encourage preservation of open space by conserving forest and other natural resources. Therefore, forestry activities, including the harvest and transport of forest products, shall not be unreasonably limited by use of municipal planning and zoning powers or by the unreasonable interpretation of such powers;

III-d. For purposes of paragraphs III-a, III-b, III-c, and III-e, "unreasonable interpretation" includes the failure of local land use authorities to recognize that agriculture and agritourism as defined in RSA 21:34-a, forestry, renewable energy systems, and commercial and recreational fisheries, when practiced in accordance with applicable laws and regulations, are traditional, fundamental and accessory uses of land throughout New Hampshire, and that a prohibition upon these uses cannot necessarily be inferred from the failure of an ordinance or regulation to address them;

III-e. All citizens of the state benefit from a balanced supply of housing which is affordable to persons and families of low and moderate income. Establishment of housing which is decent, safe, sanitary and affordable to low and moderate income persons and families is in the best interests of each community and the state of New Hampshire, and serves a vital public need. Opportunity for development of such housing shall not be prohibited or unreasonably discouraged by use of municipal planning and zoning powers or by unreasonable interpretation of such powers;

III-f. New Hampshire commercial and recreational fisheries make vital and significant contributions to the food supply, the economy, the environment, and the aesthetic features of the state of New Hampshire, and the tradition of using marine resources for fisheries production is an essential factor in providing for economic stability and a favorable quality of life in the state. Many traditional commercial and recreational fisheries in New Hampshire's rivers and estuarine systems are located in close proximity to coastal development. Such fisheries are a beneficial and worthwhile feature of the New Hampshire landscape and tradition and should not be discouraged or eliminated by use of municipal planning and zoning powers or the unreasonable interpretation of such powers.

IV. The citizens of a municipality should be actively involved in directing the growth of their community;

V. The state should provide a workable framework for the fair and reasonable treatment of individuals;

V-a. The care of up to 6 full-time preschool children and 3 part-time school age children in the home of a child care provider makes a vital and significant contribution to the state's economy and the well-being of New Hampshire families. The care provided through home-based day care closely parallels the activities of any home with young children. Family based care, traditionally relied upon by New Hampshire families, should not be discouraged or eliminated by use of municipal planning and zoning powers or the unreasonable interpretation of such powers; and

VI. It is the policy of this state that competition and enterprise may be so displaced or limited by municipalities in the exercise of the powers and authority provided in this title as may be necessary to carry out the purposes of this title.

Source. 1983, 447:1. 1985, 68:1; 335:3; 369:1. 1989, 42:1; 170:1. 1990, 174:1; 180:1, 2. 1991, 198:1. 2002, 73:1. 2008, 299:3, eff. Jan. 1, 2010; 357:2, 3, eff. July 11, 2009. 2016, 267:2, 3, eff. June 16, 2016.

Bill as
Introduced

HB 663 - AS INTRODUCED

2019 SESSION

19-0827
08/10

HOUSE BILL

663

AN ACT

relative to the definition of agriculture and existing agricultural uses.

SPONSORS:

Rep. Pearl, Merr. 26; Rep. Lang, Belk. 4

COMMITTEE:

Environment and Agriculture

ANALYSIS

This bill makes changes to the definitions of agriculture and existing agricultural activities and uses in zoning and planning ordinances and rules.

.....

Explanation:

Matter added to current law appears in *bold italics*.

Matter removed from current law appears [~~in brackets and struck through~~].

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 Nineteen

AN ACT relative to the definition of agriculture and existing agricultural uses.

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

1 1 Definition of Agriculture. Amend RSA 21:34-a, II(b)(5) to read as follows:

2 (5) The marketing or selling at wholesale, ~~[-or]~~ retail, *or, if a nonprofit, for a*
3 *donation*, of any products from the farm, on-site and off-site, where not prohibited by local
4 regulations. Marketing includes agritourism, which means attracting visitors to a farm to attend
5 events and activities that are accessory uses to the primary farm operation, including, but not
6 limited to, eating a meal, making overnight stays, enjoyment of the farm environment, education
7 about farm operations, or active involvement in the activity of the farm.

8 2 Existing Agricultural Uses and Activities; Significant Expansion Defined. Amend RSA
9 674:32-b to read as follows:

10 674:32-b Existing Agricultural Uses *and Activities*.

11 I. Any agricultural use *or activity* which exists pursuant to RSA 674:32-a may without
12 restriction be expanded, altered to meet changing technology or markets, or changed to another
13 agricultural use, as set forth in RSA 21:34-a, so long as any such expansion, alteration, or change
14 complies with all federal and state laws, regulations, and rules, including best management
15 practices adopted by the commissioner of agriculture, markets, and food; subject, however, to the
16 following limitations:

17 ~~[I-]~~ (a) Any new establishment, re-establishment after abandonment, or significant
18 expansion of an operation involving the keeping of livestock, poultry, or other animals may be made
19 subject to special exception, building permit, or other local land use board approval.

20 ~~[II-]~~ (b) Any new establishment, re-establishment after abandonment, or significant
21 expansion of a farm stand, retail operation, or other use involving on-site transactions with the
22 public, including agritourism as defined in RSA 21:34-a, may be made subject to applicable special
23 exception, building permit, or other local land use board approval and may be regulated to prevent
24 traffic and parking from adversely impacting adjacent property, streets and sidewalks, or public
25 safety. No municipality shall adopt an ordinance, bylaw, definition, or policy regarding agritourism
26 activities that conflicts with the definition of agritourism in RSA 21:34-a.

27 II. *In this section, "significant expansion" means any activity or use that expands a*
28 *structure on the property by 25 percent.*

29 3 Agritourism; Cross Reference Changed. Amend RSA 674:32-d to read as follows:

30 674:32-d Agritourism Permitted. Agritourism, as defined in RSA 21:34-a, shall not be
31 prohibited on any property where the primary use *of the property* is for agriculture, subject to

HB 663 - AS INTRODUCED

- Page 2 -

1 [~~RSA 674:32-b, II~~] *RSA 674:32-b, I(b)*.

2 4 Effective Date. This act shall take effect 60 days after its passage.