

Bill as
Introduced

HB 663 - AS AMENDED BY THE HOUSE

19Mar2019... 0751h

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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, I to read as follows:

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

10 2 Definition of Agriculture. Amend RSA 21:34-a, II to read as follows:

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

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

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

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

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

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

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

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

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

30 (9) The ~~[raising, breeding, or sale]~~ **husbandry** of domesticated strains of fur-
31 bearing animals.

1 (10) The production of greenhouse crops.

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

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

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

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

13 (3) The transportation of farm workers.

14 (4) Forestry or lumbering operations.

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

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

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

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

31 3 Definition of Agriculture. Amend RSA 21:34-a, IV to read as follows:

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

36 4 Declaration of Purpose. Amend RSA 672:1, III-d to read as follows:

37 III-d. For purposes of paragraphs III-a, III-b, III-c, and III-e, "unreasonable interpretation"
38 includes the failure of local land use authorities to recognize that agriculture and agritourism

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1 **operations or activities** as defined in RSA 21:34-a, forestry, renewable energy systems, and
2 commercial and recreational fisheries, when practiced in accordance with applicable laws and
3 regulations, are traditional, fundamental and accessory uses of land throughout New Hampshire,
4 and that a prohibition upon these uses cannot necessarily be inferred from the failure of an
5 ordinance or regulation to address them;

6 5 Agricultural Uses of Land. Amend RSA 674:32-a to read as follows:

7 674:32-a Presumption. In accordance with RSA 672:1, III-d, whenever agricultural **operations**
8 **or activities as defined in RSA 21:34-a** are not explicitly addressed with respect to any zoning
9 district or location, **such operations or activities** [they] shall be deemed to be permitted there, as
10 either a primary or accessory use, so long as conducted in accordance with best management
11 practices adopted by the commissioner of **the department of** agriculture, markets, and food and
12 with **applicable** federal and state laws, regulations, and rules.

13 6 Existing Agricultural Uses and Activities; Significant Expansion Defined. Amend RSA
14 674:32-b to read as follows:

15 674:32-b Existing Agricultural Uses **and Activities**. Any agricultural use **or activity** which
16 exists pursuant to RSA 674:32-a may without restriction be expanded, altered to meet changing
17 technology or markets, or changed to another agricultural use **or activity**, as set forth in RSA
18 21:34-a, so long as any such expansion, alteration, or change complies with all federal and state
19 laws, regulations, and rules, including **agricultural** best management [~~practices~~] **practice**
20 **guidelines** adopted by the commissioner of **the department of** agriculture, markets, and food;
21 subject, however, to the following limitations:

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

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

34 7 Agricultural Uses of Land. Amend RSA 674:32-c, II to read as follows:

35 II. Nothing in this subdivision, **or in RSA 674:32-b**, shall exempt new, re-established, or
36 expanded agricultural operations **or activities** from generally applicable building and site
37 requirements such as dimensional standards, setbacks, driveway and traffic regulations, parking
38 requirements, noise, odor, or vibration restrictions or sign regulations; provided, however, that in

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1 circumstances where their literal application would effectively prohibit an agricultural use *or*
2 *activity* allowed by this subdivision, or would otherwise be unreasonable in the context of an
3 agricultural use *or activity, in accordance with the provisions of RSA 672:1, III-b*, the zoning
4 board of adjustment, building code board of appeals, or other applicable local board, after due notice
5 and hearing, shall grant a waiver from such requirement to the extent necessary to reasonably
6 permit the agricultural use *or activity*, unless such waiver would have a demonstrated adverse
7 effect on public health or safety, or *on* the value of adjacent property. Such waiver shall continue
8 only as long as utilized for the permitted agricultural use *or activity*.

9 8 Effective Date. This act shall take effect upon its passage.

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6 *activity* allowed by this subdivision, or would otherwise be unreasonable in the context of an
7 agricultural use *or activity, in accordance with the provisions of RSA 672:1, III-b*, the board of
8 adjustment, building code board of appeals, or other applicable local board, after due notice and
9 hearing, shall grant a waiver from such requirement to the extent necessary to reasonably permit
10 the agricultural use *or activity*, unless such waiver would have a demonstrated adverse effect on
11 public health or safety, *or on* the value of adjacent property. Such waiver shall continue only as long
12 as utilized for the permitted agricultural use *or activity*.

13 8 Effective Date. This act shall take effect upon its passage.

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3 farming **operations or** activities are carried out or conducted and shall include the residence or
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6 vegetables, or nursery stock; in the production of maple syrup; greenhouses for the production of
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- 1 (8) The ~~[raising]~~ *husbandry* of bees *or production of honey*.
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3 animals.
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21 technology or markets, or changed to another agricultural use *or activity*, as set forth in RSA 21:34-
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23 regulations, and rules, including *agricultural* best management practices *guidelines* adopted by
24 the commissioner of *the department of* agriculture, markets, and food; subject, however, to the
25 following limitations:

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

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

CHAPTER 338
HB 663 - FINAL VERSION
- Page 4 -

1 338:7 Agricultural Uses of Land. Amend RSA 674:32-c, II to read as follows:

2 II. Nothing in this subdivision, *or in RSA 674:32-b*, shall exempt new, re-established, or
3 expanded agricultural operations *or activities* from generally applicable building and site
4 requirements such as dimensional standards, setbacks, driveway and traffic regulations, parking
5 requirements, noise, odor, or vibration restrictions or sign regulations; provided, however, that in
6 circumstances where their literal application would effectively prohibit an agricultural use *or*
7 *activity* allowed by this subdivision, or would otherwise be unreasonable in the context of an
8 agricultural use *or activity, in accordance with the provisions of RSA 672:1, III-b*, the board of
9 adjustment, building code board of appeals, or other applicable local board, after due notice and
10 hearing, shall grant a waiver from such requirement to the extent necessary to reasonably permit
11 the agricultural use *or activity*, unless such waiver would have a demonstrated adverse effect on
12 public health or safety, *or on* the value of adjacent property. Such waiver shall continue only as long
13 as utilized for the permitted agricultural use *or activity*.

 338:8 Effective Date. This act shall take effect upon its passage.

Approved: September 05, 2019

Effective Date: September 05, 2019

Amendments

Sen. Feltes, Dist 15
Rep. Pearl, Merr. 26
April 11, 2019
2019-1476s
08/10

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 operations 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~~[-]~~ *and* use of~~[-and]~~ *or* spreading of commercial fertilizer, lime, wood
17 ash, sawdust, compost, animal manure, septage, and, where permitted by municipal and state rules
18 and 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, *or* riding instruction~~[-~~
26 ~~and 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 *or*
31 *production of eggs*.

1 (8) The [raising] *husbandry* of bees *or production of honey*.

2 (9) The [~~raising, breeding, or sale~~] *husbandry* of domesticated strains of fur-
3 bearing animals.

4 (10) The production of greenhouse crops.

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

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

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

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

16 (3) The transportation of farm workers.

17 (4) Forestry or lumbering operations.

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

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

30 (7) The use of dogs for herding, working, or guarding livestock, as defined in RSA
31 21:34-a, II(a)(4).

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

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

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

1 Agriculture.

2 4 Declaration of Purpose. Amend RSA 672:1, III-d to read as follows:

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

10 5 Agricultural Uses of Land. Amend RSA 674:32-a to read as follows:

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

17 6 Existing Agricultural Uses and Activities. Amend RSA 674:32-b to read as follows:

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

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

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

37 7 Agricultural Uses of Land. Amend RSA 674:32-c, II to read as follows:

1 II. Nothing in this subdivision, *or in RSA 674:32-b*, shall exempt new, re-established, or
2 expanded agricultural operations *or activities* from generally applicable building and site
3 requirements such as dimensional standards, setbacks, driveway and traffic regulations, parking
4 requirements, noise, odor, or vibration restrictions or sign regulations; provided, however, that in
5 circumstances where their literal application would effectively prohibit an agricultural use *or*
6 *activity* allowed by this subdivision, or would otherwise be unreasonable in the context of an
7 agricultural use *or activity*, *in accordance with the provisions of RSA 672:1, III-b*, the board of
8 adjustment, building code board of appeals, or other applicable local board, after due notice and
9 hearing, shall grant a waiver from such requirement to the extent necessary to reasonably permit
10 the agricultural use *or activity*, unless such waiver would have a demonstrated adverse effect on
11 public health or safety, or *on* the value of adjacent property. Such waiver shall continue only as
12 long as utilized for the permitted agricultural use *or activity*.

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UNAPPROVED

Amendment to HB 663

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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
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Amendment to HB 663

- Page 2 -

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4 (11) The production, cultivation, growing, **or** harvesting~~[, and sale]~~ of any
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9 that can be legally grown ~~[and]~~ **or** harvested extensively for profit or subsistence.

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20 **whether** on-site ~~[and]~~ **or** off-site, **provided that marketing such products is** ~~[where]~~ not
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37 Agriculture.

Amendment to HB 663

- Page 3 -

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2 III-d. For purposes of paragraphs III-a, III-b, III-c, and III-e, "unreasonable interpretation"
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6 regulations, are traditional, fundamental and accessory uses of land throughout New Hampshire,
7 and that a prohibition upon these uses cannot necessarily be inferred from the failure of an
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30 public, including agritourism as defined in RSA 21:34-a, may be made subject to applicable special
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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 board of
7 adjustment, building code board of appeals, or other applicable local board, after due notice and
8 hearing, shall grant a waiver from such requirement to the extent necessary to reasonably permit
9 the agricultural use *or activity*, unless such waiver would have a demonstrated adverse effect on
10 public health or safety, or *on* the value of adjacent property. Such waiver shall continue only as
11 long as utilized for the permitted agricultural use *or activity*.

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

Committee Minutes

SENATE CALENDAR NOTICE
Energy and Natural Resources

Sen Martha Fuller Clark, Chair
Sen Dan Feltes, Vice Chair
Sen David Watters, Member
Sen Jeb Bradley, Member
Sen Bob Giuda, Member

Date: April 5, 2019

HEARINGS

Thursday	04/11/2019	
(Day)	(Date)	
Energy and Natural Resources	LOB 101	1:00 p.m.
(Name of Committee)	(Place)	(Time)

NOTE: The Committee will meet at 1:00 p.m. or 30 minutes following the end of Session.

1:00 p.m.	HB 139	relative to restrictions on smoking in state forests, parks, land, or buildings operated by the department of natural and cultural resources.
1:20 p.m.	HB 475	establishing a shoreland septic system study commission.
1:40 p.m.	HB 663	relative to the definition of agriculture and existing agricultural uses.
2:00 p.m.	HB 668	relative to heating, agitating or other devices in public waters.

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

HB 139

Rep. Leishman

Rep. Vann

HB 475

Rep. Spang

Rep. Oxenham

Rep. Malloy

Sen. Bradley

Sen. Fuller Clark

Sen. Watters

Sen. Feltes

HB 663

Rep. Pearl

Rep. Lang

HB 668

Rep. Huot

Griffin Roberge 271-7875

Martha Fuller Clark
Chairman

Senate Energy and Natural Resources Committee
Griffin Roberge 271-7875

HB 663, relative to the definition of agriculture and existing agricultural uses.

Hearing Date: April 11, 2019.

Time Opened: 1:44 p.m.

Time Closed: 2:04 p.m.

Members of the Committee Present: Senators Fuller Clark, Feltes, Watters, Bradley and Giuda.

Members of the Committee Absent: None.

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

Sponsors:

Rep. Pearl

Rep. Lang

Who supports the bill: Representative Howard Pearl (Merrimack - District 26), Erick Sawtelle (Lee, NH), Robert Johnson, II (NH Farm Bureau Federation), Jay Phinizy (Acworth, NH).

Who opposes the bill: None.

Who is neutral on the bill: Margaret Byrnes (NH Municipal Association).

Summary of testimony presented in support:

Representative Howard Pearl

Merrimack - District 26

- Offered amendment 2019-1476s, which replaced the entirety of HB 663. The amendment made technical changes.
- HB 663 makes changes to the definition of agriculture in RSA 21:34-a and corresponding changes to planning and zoning statutes in RSA 672:1 and RSA 674:32.
- There were past issues in how land use boards were defining state statutes and agriculture in their communities. HB 663 brings consistency to three areas of statute to prevent confusion and provide clarity.
- HB 663 has the support of the NH Farm Bureau Federation (NHFBF), the NH Municipal Association (NHMA), and the NH Department of Agriculture, Markets & Food (DAMF).
- Senator Fuller Clark wanted to clarify that amendment 2019-1476s replaced the entirety of HB 663 as amended by the House.
 - Representative Pearl said that was correct.
- Senator Watters asked what issues were being raised by land use boards.
 - Representative Pearl said there were issues in how land use boards were interpreting the statute, specifically related to agritourism. SB 412 (2018) created a protocol where applicants could appeal to the DAMF Commissioner on agritourism issues.

Erick Sawtelle

Lee, NH

- Three issues led to amendment 2019-1476s:

- o Clean up RSAs 21:34-a, 672:1, and 674:32. There were different terms used between the three RSAs that were not consistent. While RSA 21:34-a referenced operations on a farm, RSA 672:1 and 674:32 referenced activities. Therefore, if a farm operation was not an activity, a farm owner could not engage in that activity.
- o Clean up language that was vague or ambiguous. Planning boards have made unreasonable interpretations of RSA 672:1 and RSA 674:32, leading to issues with farms. Many members on planning boards know nothing about agriculture - planning boards were different forty years ago when farming was more prevalent.
- o Makes cross-references to other statutes to provide clarity and direction to local planning boards on where relevant statutes may be found.
- Senator Watters wanted to be sure that local control remains.
 - o Mr. Sawtelle said local control remained.
- Senator Fuller Clark asked Mr. Sawtelle what were the problems that emerged at the local levels.
 - o Mr. Sawtelle said there are two types of zoning: prohibitive and permissive. Most zoning is permissive, meaning an activity can take place only if allowed in local zoning ordinances. Some local zoning ordinances do not adopt the state definition. It brings up questions regarding legislative intent and inconsistent interpretations. HB 663 will reduce misinterpretation of state statute. These three RSAs have been tinkered with over the six years, but never holistically like in HB 663.

Robert Johnson, II

Policy Director, NH Farm Bureau Federation (NHFBF)

- HB 663 offers clarity and consistency to the three RSAs.
- The operations or activities of a farm in RSA 21:34-a, II are listed with the word "and." There have been instances where local planning boards claim farms are not engaging in all the activities listed. The inclusion of "or" allows for flexibility in engaging in certain activities.
- Senator Feltes said he supports amendment 2019-1476s. He wanted clarification that the DAMF Commissioner is supportive of the HB 663.
 - o Mr. Johnson said the DAMF Commissioner supported the bill.
- Senator Fuller Clark said she had a meeting scheduled with the DAMF Commissioner. She asked if there was anything else that should be brought forward.
 - o Mr. Johnson said the DAMF Commissioner has not seen amendment 2019-1476s. Senator Fuller Clark may want to check with him on it.
 - o Mr. Sawtelle said he sent the DAMF Commissioner amendment 2019-1476s, but the DAMF Commissioner was unable to attend HB 663's public hearing due to his attendance at an event.
- Senator Fuller Clark said the committee could act on HB 663, but wanted to know if the committee should wait until after her meeting with the DAMF Commissioner.
 - o Representative Pearl said that the changes in amendment 2019-1476s are so insignificant that he did not imagine the DAMF Commissioner having a problem with it. He saw no issue with moving forward on HB 663.

Margaret Byrnes

Executive Director, NH Municipal Association (NHMA)

- NHMA is neutral on HB 663 and amendment 2019-1476s.
- HB 663 does not do anything to curb the local control of zoning or land use boards.

Summary of testimony presented in opposition: None.

Neutral Information Presented: None.

GJR, edited by Marie Marston.

Date Hearing Report completed: April 11, 2019.

Speakers

Voting Sheets

Senate Energy & Natural Resources Committee
EXECUTIVE SESSION RECORD
2019-2020 Session

Bill # HB 663

Hearing date: 04/11/19

Executive Session date: 04/11/2019

Motion of: Amendment 1476s Vote: 5-0

Committee Member	Present	Made by	Second	Yes	No
Sen. Fuller Clark, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Feltes, Vice Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Watters	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Bradley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Giuda	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: OTPA Vote: 5-0

Committee Member	Present	Made by	Second	Yes	No
Sen. Fuller Clark, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Feltes, Vice Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Watters	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Bradley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Giuda	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Present	Made by	Second	Yes	No
Sen. Fuller Clark, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Feltes, Vice Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Watters	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Bradley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Giuda	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: Feltes

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Thursday, April 11, 2019

THE COMMITTEE ON Energy and Natural Resources

to which was referred **HB 663**

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

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 5-0

AMENDMENT # 1488s

Senator Dan Feltes
For the Committee

Griffin Roberge 271-7875

ENERGY AND NATURAL RESOURCES

HB 663, relative to the definition of agriculture and existing agricultural uses.

Ought to Pass with Amendment, Vote 5-0.

Senator Dan Feltes for the committee.

Docket of HB663

Docket Abbreviations

Bill Title: relative to the definition of agriculture and existing agricultural uses.**Official Docket of HB663.:**

Date	Body	Description
1/16/2019	H	Introduced 01/03/2019 and referred to Environment and Agriculture HJ 3 P. 24
1/23/2019	H	Public Hearing: 01/29/2019 10:30 am LOB 303
1/30/2019	H	Full Committee Work Session: 02/07/2019 11:00 am LOB 301-303
2/8/2019	H	Subcommittee Work Session: 02/12/2019 10:00 am LOB 303
2/6/2019	H	==RECESSED== Executive Session: 02/12/2019 01:15 pm LOB 303
2/28/2019	H	Subcommittee Work Session: 03/05/2019 09:55 am LOB 303
2/26/2019	H	==CONTINUED== Executive Session: 03/05/2019 10:30 am LOB 303
3/11/2019	H	Committee Report: Ought to Pass with Amendment #2019-0751h for 03/19/2019 (Vote 20-0; CC) HC 16 P. 8
3/19/2019	H	Amendment #2019-0751h : AA VV 03/19/2019 HJ 10 P. 21
3/19/2019	H	Ought to Pass with Amendment 2019-0751h: MA VV 03/19/2019 HJ 10 P. 21
4/1/2019	S	Introduced 03/28/2019 and Referred to Energy and Natural Resources; SJ 12
4/5/2019	S	Hearing: 04/11/2019, Room 101, LOB, 01:40 pm; the committee will meet at 1:00 p.m. or 30 minutes following the end of session; SC 17A
4/11/2019	S	Committee Report: Ought to Pass with Amendment #2019-1488s , 04/18/2019; SC 18
4/18/2019	S	Special Order to 04/25/2019, Without Objection, MA; 04/18/2019 SJ 13
4/18/2019	S	Committee Report: Ought to Pass with Amendment #2019-1488s , 04/25/2019; SC 19
4/25/2019	S	Committee Amendment #2019-1488s , AA, VV; 04/25/2019; SJ 14
4/25/2019	S	Ought to Pass with Amendment 2019-1488s, MA, VV; OT3rdg; 04/25/2019; SJ 14
5/8/2019	H	House Concurs with Senate Amendment 2019-1488s (Rep. Gourgue): MA VV 05/08/2019 HJ 15 P. 2
5/31/2019	S	Enrolled (In recess 05/30/2019); SJ 19
5/31/2019	H	Enrolled 05/23/2019 HJ 16 P. 51
9/9/2019	H	Signed by Governor Sununu 09/05/2019; Chapter 338; Eff: 09/05/2019

NH House

NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: HB 663

Senate Committee: ENR

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

Bill version as it came to the committee

All Calendar Notices

Hearing Sign-up sheet(s)

Prepared testimony, presentations, & other submissions handed in at the public hearing

Hearing Report

Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

- amendment # 1476 - amendment # 1488

- amendment # _____ - amendment # _____

Executive Session Sheet

Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

- amendment # _____ - amendment # _____

- amendment # _____ - amendment # _____

Post Floor Action: (if applicable) {Clerk's Office}

Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

Enrolled Bill Amendment(s)

Governor's Veto Message

All available versions of the bill: {Clerk's Office}

as amended by the senate as amended by the house

final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Committee Aide

Date

Senate Clerk's Office JM