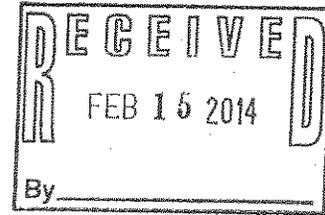


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January 10, 2014

Town Administrator  
Board of Selectmen  
Zoning Board  
Planning Board



Hello –

We are writing to you on behalf of our families, supporting neighbors and interests to make you aware of SB354, a proposed 2014 legislative bill to redefine **agritourism**. If this bill is passed as written, it would circumvent zoning regulations and has the potential to negatively impact the rural character of the state's farms, land and communities.

Agritourism was added by the 2007 New Hampshire Legislature as a definition within 21:34-a Farm, Agriculture, Farming:

*“VI. The term “agritourism” means attracting visitors to a working farm for the purpose of eating a meal, making overnight stays, enjoyment of the farm environment, education on farm operations, or active involvement in the activity of the farm which is ancillary to the farm operation.”*

This current law clearly defines farming, agriculture, and its optional subordinate activity of agritourism, and has worked well for years. The law connects agritourism to the farm's activity, and requires the activity to be smaller than the farm.

Proposed Senate Bill 354 has been introduced to the New Hampshire Legislature, which would change all that.

1. **Agritourism would not be connected to a farm's activity.** Currently, if your farm has corn, you can have a corn maze. If you have hay, you can have hay rides...relevant farming experiences like that. As proposed, if you have chickens, then you can have rock concerts.
2. **Agritourism could dwarf the agriculture.** This new bill proposes, for example, that if you have some Christmas trees with a combination of 10 acres (that don't have to be in agricultural use) along with \$5,000 gross income, you can have a campground of any size... or possibly include historic re-enactments, parties, concerts, and more!
3. **Agritourism would become defined as agriculture.** The 2007 Legislature considered this, but rejected it because it could circumvent most zoning protection for neighboring landowners.

Most New Hampshire communities allow agriculture in many zoning districts, and properly so. We want to protect and encourage our precious agricultural activities. The current law does that.

Many farms are protected by conservation easements, but the proposed bill would allow many activities now prohibited. Maybe we thought the easement would keep the land agricultural, but this new bill would allow business uses of many types to occur without connection with the current agriculture, and could greatly exceed the activity of the farm itself in terms of dollars, people, noise, and vehicles.

It has been suggested that the Legislature is being asked to consider this new bill probably as a result of a recent case in Henniker. In fact, much of the language written in SB354 removes the protective conditions that justly prohibited this individual from pursuing his commercial endeavors. The individual was given a "Cease and Desist" Order by the Town of Henniker's zoning official. His appeal to the Henniker Zoning Board of Adjustment was denied. He then appealed to the Merrimack Superior Court. In November 2013, Judge Smuckler of Merrimack County Superior Court **upheld** Henniker's decision and denied him. Judge Smukler found no nexus connection between the events and the farm, as well as the fact that the events were not ancillary to the farm operations, far surpassing the farm in size and financial gain.

There are multitudes of flourishing agritourism activities all across the state that provide activities, all falling within the original guidelines of the current RSA 21:34-a.

**The proposed legislation is a Trojan horse.** On the surface it may appear to be a vehicle that supports the local struggling farmer, but in reality it contains language that would allow unrestricted and often unrelated, commercial development without regard to local zoning and neighbor's rights to the quiet enjoyment of their property. It has the potential to devastate wildlife habitats, the quiet and rural surroundings, the land and waters of the farm property, increase a town's exposure to safety and maintenance issues, and ultimately far surpass, both financially and in purpose, the original farm itself – possibly assisting in the dissolution of the original farm.

If you have concerns or questions, please contact your state representative, your senator, as well as Attorney Cordell Johnson of the Municipal Association at (603)224-7447.

Thank you for your time and careful consideration on this important matter.

Respectfully,

Stephen and Spencer Bennett, Linda McGuire

Attachments:  
RSA 21:34-a  
SB 354

# 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, dairy cows and the production of milk, beef animals, swine, sheep, goats, as well as domesticated strains of buffalo or bison, llamas, alpacas, emus, ostriches, yaks, elk (*Cervus elephus 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, on-site and off-site, where permitted by local regulations, any products from 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. The term "agritourism" means attracting visitors to a working farm for the purpose of eating a meal, making overnight stays, enjoyment of the farm environment, education on farm operations, or active involvement in the activity of the farm which is ancillary to the farm operation.

**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.



SB 354 – AS INTRODUCED

2014 SESSION

14-2796 08/05 SENATE BILL 354

AN ACT relative to the definition of "agritourism."

SPONSORS: Sen. Odell, Dist 8; Sen. Bradley, Dist 3; Sen. Soucy, Dist 18; Sen. Woodburn, Dist 1

COMMITTEE: Energy and Natural Resources

ANALYSIS

This bill further defines "agritourism."

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.

14-2796

08/05

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Fourteen*

AN ACT relative to the definition of "agritourism."

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

1 New Subparagraph; Agritourism; Definition. Amend RSA 21:34-a, II by inserting after subparagraph (b) the following new subparagraph:

(c) Engagement by a farm in agritourism, meaning attracting members of the general public to a working farm for recreational, entertainment, or educational purposes, and to view or enjoy activities and attractions in the farm's rural environment. An activity is an agritourism activity whether or not the participant paid to participate in the activity. For purposes of this statute, a "working farm" means any parcel or parcels of land totaling at least 10 acres that can demonstrate a minimum of \$5,000 in agricultural-related gross income in at least 3 of the 5 prior years. No fixed amount of acreage of such parcel or parcels of land is required to be in active agricultural use. Agritourism uses include:

- (1) Wineries and wine tastings;
- (2) Farm and educational tours and classes including native ecology exhibits and opportunities for bird watching and astronomy;
- (3) Community gardens or community supported agriculture (CSAs);

- (4) On-farm historical reenactments, including on-farm collections of old farm machinery;
- (5) Farm-based schools;
- (6) Farm stores including roadside stands selling on-farm other local products and wares;
- (7) Agricultural processing demonstrations;
- (8) Agricultural, harvest, and holiday festivals hosted by the working farm including holiday activities, hayrides, sleigh rides, mazes, or crop art;
- (9) On-farm themed playgrounds for children;
- (10) On-farm petting zoos or farm animal exhibits;
- (11) On-farm fee-for fishing, hunting or trapping;
- (12) Temporary camping sites;
- (13) Pick-your-own operations;
- (14) On-farm entertainment including barn dances, theatrical, or musical performances and concerts;
- (15) Horseback events including riding opportunities, riding sporting events, and training for horseback sporting events;
- (16) Biking, skiing, snowshoeing and walking trails; and
- (17) Making the facilities available for on-farm picnics, reunions, weddings, parties, meetings or retreats.

2 New Subdivision; Agritourism. Amend RSA 432 by inserting after section 35 the following new subdivision:

#### Agritourism

432:36 Agritourism.

I. Agritourism shall have the same definition as found in RSA 21:34-a, II(c).

II. The commissioner may adopt rules, pursuant to RSA 541-A, relative to farm operations that constitute agritourism.

III. This section shall not limit the powers and duties of a local government to make regulations to address any emergency; to act, in clear and unambiguous cases to protect the health, safety and welfare of its citizens pursuant to RSA 674:32-b; or to enforce local noise or nuisance ordinances occurring at or around a working farm at which agritourism activities take place. In any case where a local government enforcement action is reversed by the courts on the grounds that it is improper local regulation of agritourism activities, the prevailing landowner shall be awarded the costs of the suit and reasonable attorney's fees, as determined by the court, as well as any actual damages caused to the landowner by such action.

3 Repeal. RSA 21:34-a, III, relative to the definition of agritourism, is repealed.

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