

Summary: H.663 As Passed House, with Senate Proposal of Amendment
An Act Relating to Municipal Land Use Regulation of Accessory On-Farm Businesses
Office of Legislative Council *Revised May 8, 2018*

OVERVIEW

- Purpose: To promote the economic viability of Vermont farms and increase the consistency across the State of municipal regulation of accessory activity that supports those farms.
- The bill requires that no municipal land use bylaw have the effect of prohibiting an accessory on-farm business at the same location as a farm regulated under the rules on required agricultural practices (RAP rules).
- The bill defines and sets forth requirements for what is an accessory on-farm business.
- The bill does not amend existing exemptions from Act 250 and local land use regulation (e.g., zoning).
- The bill affects only local land use regulation. It does not affect other potentially applicable requirements such as wastewater and potable water supply permits.
- **The Senate proposal of amendment, currently on third reading, makes three changes to the bill as passed the House:**
 - **Include “farm stays” within the definition of accessory on-farm business.**
 - **Add a section to the bill that requires accessory on-farm business to post warning signs when pesticides are applied in areas where the business operates or conducts activity. The signs would be the same as required for agricultural workers under federal regulations.**
 - **Add provisions on hemp cultivation that are the same as proposed by House Agriculture in its pending amendment to S.276, Secs. 12-16.**

MORE DETAILED SUMMARY

Sec. 1: Purpose (session law)

- States the purpose summarized in the overview above.
- **The Senate proposes a technical revision to this section so that the purpose refers to Sec. 2.**

Sec. 2: 24 V.S.A. § 4412(11). Accessory On-farm Businesses

- This section amends a statute in 24 V.S.A. chapter 117, which is the chapter that authorizes and limits municipal land use regulation
- It amends 24 V.S.A. § 4412, entitled “Required provisions and prohibited effects”, by adding a new subdivision (11) on “Accessory on-farm businesses.”
- The initial language of (11) states that a bylaw cannot have the effect of prohibiting an accessory on-farm business at the same location as the farm. In effect, the bill provides for limited regulation of the business.

Subdivision (A) contains the definitions, including:

- Accessory on-farm business. Must be accessory to the farm and either or both of the following:

- Storage, processing, and sale of qualifying products, with more than 50 percent of annual sales from qualifying products principally produced on the farm at which the business is located.
- Educational, recreational, or social events that feature agricultural practices or qualifying products or both.
 - **The Senate proposes to amend this part of the definition to include “farm stays.”**
 - **“Farm stays” would mean “a paid, overnight guest accommodation on a farm for the purpose of participating in educational, recreational, or social activities on the farm that feature agricultural practices or qualifying products, or both.”**
- Farm: Land devoted primarily to farming that is subject to the RAP rules.
- Farming: Has the same meaning as in Act 250.
- Qualifying product:
 - Must be a product that is wholly one of five different categories listed in the bill.
 - These include agricultural and dairy commodities and maple syrup, livestock, and other commodities grown or raised on a farm, and products manufactured on one or more farms from commodities wholly grown or raised on one or more farms.
- RAP rules: The rules of the Agency of Agriculture, Food and Markets on required agricultural practices.

Subdivision (B) is entitled “Eligibility.” To get the benefit of the limited regulation provided by this bill, the accessory on-farm business must:

- Be operated by the farm owner, one or more persons residing on the farm parcel, and or the lessee of a portion of the farm.
- The farm must meet the threshold criteria for applicability of the RAP rules.

Subdivision (C) is entitled “Use of structures or land.” It provides that the accessory on-farm business may take place in new or existing structures or on the land. This language would allow the business to use an existing structure under the limited land use regulation of the bill; that use could not be prohibited under the municipal land use bylaws.

Subdivision (D) is entitled “Review; permit.” This is the provision that allows for limited municipal regulation of an accessory on-farm business.

- If an accessory on-farm business includes activities that are not already exempt from land use regulation under existing law, the bill allows those activities to be regulated under municipal site plan review.
- 24 V.S.A. § 4416 allows a municipality, through site plan review, “to impose, in accordance with the bylaws, appropriate conditions and safeguards with respect to: the adequacy of parking, traffic access, and circulation for pedestrians and vehicles; landscaping and screening; the protection of the utilization of renewable energy resources; exterior lighting; the size, location, and design of signs; and other matters specified in the bylaws.”
- The bill also would allow a municipality to require the business to meet performance standards it has otherwise adopted for similar commercial uses. An example of a performance standard would be a limitation on the operation to prevent adverse impact on the use of the surrounding area due to noise.

Subdivision (E) is entitled “Less restrictive” and makes clear that municipalities can adopt bylaws that are less restrictive than what is proposed in this bill.

Subdivision (F) is entitled “Notification; training” and directs the Secretary of Agriculture, Food, and Markets to provide periodic written notice and training to farms about the provisions proposed in this bill and the potential need for other permits.

Sec. 3: 6 V.S.A. § 1113. Accessory On-farm Businesses; Pesticides; Posting

The Senate proposes require that, when an agricultural pesticide is applied on a farm in an area in which an accessory on-farm business operates or conducts activity, the accessory on-farm business post the same warning signs that would be posted for agricultural workers under federal regulations.

Secs. 4-6: 6 V.S.A. chapter 34. Industrial Hemp Program Compliance with Federal Law

- In 2014, the federal farm bill authorized States to conduct industrial hemp cultivation programs.
- Hemp cultivated under the federal program is not considered a controlled substance under federal drug laws.
- Vermont has a hemp program, but it requires some minor amendments to conform with the federal farm bill.
- Secs. 4 to 6 make these minor amendments by clarifying the program is for research purposes and by providing the Agency must register hemp growers and certify the land where hemp is grown.
- The Attorney General’s Office reviewed the language and the AG thinks it is consistent with the federal farm bill authority from 2014.

Sec. 7: 6 V.S.A. § 567-568. Hemp testing

- Sec. 7 adds 6 V.S.A. § 567 requiring the Agency of Agriculture to establish a cannabis quality control program to test and verify hemp and hemp-infused products.
- Sec. 7 adds 6 V.S.A. § 568 to address when the Agency of Agriculture or a medical marijuana dispensary tests a hemp crop and the hemp has a THC content of more than 0.3 percent. Under § 568 the hemp grower can:
 - enter an agreement with a dispensary for the separation of THC from the hemp crop, return the hemp crop to the grower, and retention of the THC by the dispensary; or
 - sell the hemp crop to a dispensary registered under 18 V.S.A. chapter 86; or
 - arrange for the Secretary to destroy or order the destruction of the hemp crop.
- Sec. 7 provides that a person registered with the Secretary as growing the hemp crop shall not be subject to liability if the tested hemp has a THC concentration of one percent or less.

Sec. 8: 18 V.S.A. § 4474e. Medical Marijuana Dispensaries

Sec. 8 authorizes medical marijuana dispensaries to acquire possess, process, manufacture, transfer, transport and test industrial hemp.

Sec. 9: Effective Date – July 1, 2018