

## **S.323 and H.941 Side by Side: Comparing Municipal Regulation of Agriculture Sections**

Note: S.323 and H.941 both set out to address municipal regulation of agriculture. They do so in ways that make a traditional side-by-side comparison difficult to follow. Below is some analysis to help with reviewing the sections.

### **Sec. 1 Comparison Analysis**

*In re 8 Taft Street* is a Vermont Supreme Court case that ruled that municipalities may regulate farming activity, even if it is subject to regulation by the Required Agricultural Practices Rule (RAPs Rule). Prior to *Taft Street*, it was assumed that municipalities could not regulate farming activity that was subject to the RAPs Rule. Municipalities were only permitted to regulate farming activity that was not subject to the RAPs Rule.

S.323 states the intention to overturn the holding in this case and restore the status quo that municipalities may not regulate farming or the construction of farm structures pursuant to 24 V.S.A. § 4413(d).

H.941 does not specifically mention *Taft Street*. H.941 states that it is the intent of the General Assembly that municipalities may not regulate farming or the construction of farm structures pursuant to 24 V.S.A. § 4413, with the exceptions outlined later in the bill.

### **Sec. 2 Comparison Analysis**

For reference, the pre-*Taft Street* status quo is that municipalities may not regulate farming or the construction of farm structures that is subject to the RAPs Rule. The pre-*Taft Street* status quo also means that farming activities that are not subject to the RAPs Rule may be subject to municipal regulation.

S.323 uses language to restore the pre-*Taft Street* status quo by amending 24 V.S.A. § 4413(d)(1)(C) and (D). This section further prohibits municipalities from regulating the raising, feeding, or management of a small backyard poultry flock, excluding roosters. This section also prohibits municipalities from regulating “the cultivation or other use of land for growing plants, including for food, fiber, Christmas trees, maple sap, or horticultural, viticultural, and orchard crops.”

H.941 uses language to restore the pre-*Taft Street* status quo by amending 24 V.S.A. § 4413(d)(1)(A) and (B), but with exceptions that H.941 adds to subdivision 4412(16) that are found later in the bill. Unlike S.323, this section does not prohibit municipalities from regulating small backyard poultry flocks. This section does prohibit municipalities from regulating “the cultivation or other use of land for growing plants for food for personal use, donation, or sale, including orchard crops, viticultural crops, and for maple sap. As used in this subdivision, “food” means articles or agricultural commodities for human or animal consumption.”

### **Sec. 3 Comparison Analysis**

S.323 amends the RAPs Rule by changing certain threshold requirements for farming activity to be subject to the RAPs Rule. This section increases the income threshold and removes the Schedule F criterion. It also grants the Secretary of Agriculture additional authority to regulate the raising, feeding, or management of livestock on less than 4 acres under certain conditions.

H.941 does not amend the RAPs Rule. H.941 amends 24 V.S.A. § 4412 by adding two subdivisions that restrict, but do not prohibit, municipal regulation of farming and having poultry. H.941 adds subdivision 4412(15) to state: “No bylaw shall have the effect of prohibiting the raising, feeding, or management of poultry, excluding roosters, for personal use, donation, or sale. As used in this section, “poultry” has the same meaning as in 6 V.S.A. § 1459(4).” A municipality may regulate a poultry flock, but its bylaws shall not have the effect of prohibiting a poultry flock.

H.941 adds subdivision 4412(16) to permit some municipal regulation of farms and farm structures that are subject to the RAPs Rule. A municipality may regulate farms or farm structures if “a farm or farm structure subject to the Required Agricultural Practices Rule on a parcel less than 0.75 acres that was not operating as of July 1, 2026 and is not on conserved land.” If those criteria are met, a municipality may regulate a farm or farm structure with respect to “(A) Ingress and egress of vehicular traffic and ensuring pedestrian safety, including regulating parking, signage, pavement markings, functional enclosure of livestock adjacent to road; and (B) Siting and setbacks requirements.” For farms subject to the RAPs Rule that were not operating as of July 1, 2026, and are not on conserved land, this section would permit some municipal regulation of farming activity on parcels of less than 0.75 acres.

### **Sec. 4 Comparison Analysis**

S.323 does not have a Sec. 4 that concerns municipal regulation of agriculture.

H.941 establishes a Municipal Regulation of Farming Study. The Secretary of Agriculture would convene a stakeholder group. This group would study options to address conflicts, the RAPs Rule, stocking densities on parcels of less than 10 acres, utilizing ordinances to address livestock, protecting the right to grow food for personal consumption, including livestock, and creating rules that would permit enforcement actions for farm operations based on health, safety, or the integrity of the broader industry. The report would be due on or before January 31, 2027.

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S.323	H.941
<p><b>Sec. 1. FINDINGS AND INTENT; MUNICIPAL REGULATION OF AGRICULTURE</b></p> <p><u>(a) For purposes of Sec. 2 of this act, the General Assembly finds that:</u></p> <p><u>(1) Since enactment of 2004 Acts and Resolves No. 115, it has been both the intent of the General Assembly and the controlling law that a municipality shall not regulate farming, including the construction of farm structures.</u></p> <p><u>(2) The Vermont Supreme Court’s decision in In re 8 Taft Street DRB &amp; NOV Appeals, 2025 VT 27 reversed application of at least the past 20 years of law to hold that municipalities may regulate farming by municipal bylaw.</u></p> <p><u>(3) To avoid the unintended consequences of the decision in In re 8 Taft Street DRB &amp; NOV Appeals, 2025 VT 27, it is necessary for the General Assembly to clarify and restate that municipalities under ordinance or bylaw shall not regulate farming or the construction of farm structures as set forth in 24 V.S.A. § 4413(d).</u></p> <p><u>(4) In addition, the General Assembly finds that municipalities shall not regulate by bylaw the growing of plants and the raising of a small backyard poultry flock, excluding roosters.</u></p> <p><u>(b) For purposes of Sec. 2 of this act, it is the intent of the General Assembly to overturn the holding in In re 8 Taft Street DRB &amp; NOV Appeals, 2025 VT 27 and to clarify that municipalities lack authority to regulate farming or the construction of farm structures as set forth in 24 V.S.A. § 4413(d).</u></p>	<p><b>Sec. 1. FINDINGS AND INTENT; MUNICIPAL REGULATION OF AGRICULTURE</b></p> <p><u>(a) The General Assembly finds that since the enactment of 2004 Acts and Resolves No. 115, it has been both the intent of the General Assembly and the controlling law that a municipality shall not regulate farming, including the construction of farm structures.</u></p> <p><u>(b) It is the intent of the General Assembly to clarify that municipalities lack authority to regulate farming or the construction of farm structures as set forth in 24 V.S.A. § 4413, with the exception of farming and the construction of farm structures in accordance with 24 V.S.A. § 4412.</u></p>
<p><b>Sec. 2.</b> 24 V.S.A. § 4413(d) is amended to read:</p> <p>(d)(1) A bylaw under this chapter shall not regulate:</p> <p>(A) <del>required agricultural practices, including the construction of farm structures, as those practices are defined by the Secretary of Agriculture,</del></p>	<p><b>Sec. 2.</b> 24 V.S.A. § 4413 is amended to read:</p> <p>§ 4413. LIMITATIONS ON MUNICIPAL BYLAWS</p> <p align="center">* * *</p> <p>(d)(1) A bylaw under this chapter shall not regulate:</p> <p>(A) <del>required agricultural practices, including the construction of farm structures, as those practices are defined by the Secretary of Agriculture,</del></p>

~~Food and Markets~~ the cultivation or other use of land for growing plants, including for food, fiber, Christmas trees, maple sap, or horticultural, viticultural, and orchard crops;

~~(B)~~ the raising, feeding, or management of a small backyard poultry flock, excluding roosters;

~~(C)~~ farming that meets the minimum threshold criteria in the Required Agricultural Practices Rule and is therefore required to comply with the Required Agricultural Practices Rule;

~~(D)~~ the construction of farm structures, including as defined in the Required Agricultural Practices Rule;

~~(B)(E)~~ accepted silvicultural practices, as defined by the Commissioner of Forests, Parks and Recreation, including practices that are in compliance with the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation; or

~~(C)(F)~~ forestry operations.

(2) As used in this section:

(A) “Farming” has the same meaning as in 10 V.S.A. § 6001(22) or in the Required Agricultural Practices Rule.

~~(B)~~ “Farm structure” means a building, enclosure, or fence for housing livestock, raising horticultural or agronomic plants, or carrying out other practices associated with accepted agricultural or farming practices, including a silo, as “farming” is defined in 10 V.S.A. § 6001(22), but excludes a dwelling for human habitation.

~~(B)(C)~~ “Forestry operations” has the same meaning as in 10 V.S.A. § 2602.

~~(D)~~ “Poultry” has the same meaning as in 6 V.S.A. § 1459(4).

\* \* \*

**Sec. 3.** Section 3 of the Agency of Agriculture, Food and Markets, Vermont Required Agricultural Practices Rule for the Agricultural Nonpoint

~~Food and Markets~~ farming that meets the minimum threshold criteria in the Required Agricultural Practices Rule and is therefore required to comply with the Required Agricultural Practices Rule, except as described in section 4412(16) of this title;

~~(B)~~ construction of a farm structure as defined by the Required Agricultural Practices Rule, except as described in section 4412(16) of this title;

~~(C)~~ the cultivation or other use of land for growing plants for food for personal use, donation, or sale, including orchard crops, viticultural crops, and for maple sap. As used in this subdivision, “food” means articles or agricultural commodities for human or animal consumption;

~~(D)~~ the cultivation of ornamental plants as defined in 6 V.S.A. § 1101;

~~(E)~~ accepted silvicultural practices, as defined by the Commissioner of Forests, Parks and Recreation, including practices that are in compliance with the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation; or

~~(C)(F)~~ forestry operations.

(2) As used in this section:

~~(A)~~ “Farm structure” means a building, enclosure, or fence for housing livestock, raising horticultural or agronomic plants, or carrying out other practices associated with accepted agricultural or farming practices, including a silo, as “farming” is defined in 10 V.S.A. § 6001(22) has the same meaning as defined in the Required Agricultural Practices Rule, but excludes a dwelling for human habitation.

~~(B)~~ “Forestry operations” has the same meaning as in 10 V.S.A. § 2602.

~~(C)~~ “Farming” has the same meaning as in 10 V.S.A. § 6001(22).

\* \* \*

**Sec. 3.** 24 V.S.A. § 4412 is amended to read:  
 § 4412. REQUIRED PROVISIONS AND PROHIBITED EFFECTS

Source Pollution Control Program is amended to read:

**Section 3. Required Agricultural Practices Activities and Applicability**

3.1 Persons engaged in farming and the agricultural practices as defined in Section 3.2 of this rule and who meet the minimum threshold criteria for applicability of this rule as found in Section 3.1(a)–(g) must meet all applicable Required Agricultural Practices conditions, restrictions, and operating standards, and are not subject to municipal zoning bylaws. Persons engaged in farming who are in compliance with these conditions, restrictions, and operating standards, as applicable, shall be presumed to not have a discharge of agricultural wastes to waters of the State. Compliance with the Required Agricultural Practices Rule is required if a person:

- (a) is required to be permitted or certified by the Secretary, consistent with the requirements of 6 V.S.A. Chapter 215 and this rule; or
- (b) has produced an annual gross income from the sale of agricultural products of ~~\$2,000.00~~ \$5,000.00 or more in an average year; or
- (c) is preparing, tilling, fertilizing, planting, protecting, irrigating, and harvesting crops for sale or for charitable contributions of farm crops that are allowable under 26 U.S.C. § 170(c) and that are made to an organization that is unrelated to the owner of the land on a farm that is no less than 4.0 contiguous acres in size; or
- (d) is raising, feeding, or managing at least the following number of adult livestock on a farm that is no less than 4.0 contiguous acres in size:
  - (1) four equines;
  - (2) five cattle, cows, or American bison;
  - (3) 15 swine;
  - (4) 15 goats;
  - (5) 15 sheep;
  - (6) 15 cervids;
  - (7) 50 turkeys;
  - (8) 50 geese;
  - (9) 100 laying hens;

Notwithstanding any existing bylaw, the following land development provisions shall apply in every municipality:

\* \* \*

(15) No bylaw shall have the effect of prohibiting the raising, feeding, or management of poultry, excluding roosters, for personal use, donation, or sale. As used in this section, “poultry” has the same meaning as in 6 V.S.A. § 1459(4).

(16) A bylaw may regulate the following for a farm or farm structure subject to the Required Agricultural Practices Rule on a parcel less than 0.75 acres that was not operating as of July 1, 2026 and is not on conserved land:

(A) Ingress and egress of vehicular traffic and ensuring pedestrian safety, including regulating parking, signage, pavement markings, functional enclosure of livestock adjacent to road; and

(B) Siting and setbacks requirements.

(10) 250 broilers, pheasant, Chukar partridge, or Coturnix quail;

(11) three camelids;

(12) four ratites;

(13) 30 rabbits;

(14) 100 ducks;

(15) 1,000 pounds of cultured trout; or

(16) other livestock types, combinations, or numbers as designated by the Secretary based upon or resulting from the impacts upon water quality consistent with this rule; or

(e) is raising, feeding, or managing ~~other livestock types, combinations, and numbers, or managing crops or engaging in other agricultural practices~~ on at least 1.0 and less than 4.0 contiguous acres in size that the Secretary has determined, after the opportunity for a hearing, to be causing adverse water quality impacts and in a municipality where no ordinances are in place to manage the activities causing the water quality impacts and has sufficient land base for appropriate nutrient and waste management. The Secretary has the discretion to determine, after consultation with the appropriate municipal authority, if the land base is adequate to properly manage the number and type of livestock while evaluating whether compliance with the Required Agricultural Practices is reasonable or impractical; or

(f) is managed by a farmer filing with the Internal Revenue Service a 1040(F) income tax statement in at least one of the past two years is raising, feeding, or managing livestock on less than 1.0 contiguous acre or on between 1.0 and 4.0 contiguous acres in a municipality that lacks ordinances or bylaws to regulate livestock, and the Secretary determines, after an opportunity for a hearing, that the livestock are causing significant adverse water quality impacts and the Required Agricultural Practices should apply to protect water quality; or

(g) has a prospective business or farm management plan, approved by the Secretary, describing how the farm will meet the threshold requirements of this section.

3.2 The agricultural practices on farms ~~meeting that~~ meet the minimum threshold criteria set forth in

Section 3.1 that are governed by this rule and are not subject to municipal zoning bylaws include:

- (a) the confinement, feeding, fencing, and watering of livestock;
- (b) the storage and handling of agricultural wastes principally produced on the farm;
- (c) the collection of maple sap principally produced from trees on the farm and/or production of maple syrup from sap principally produced on the farm;
- (d) the preparation, tilling, fertilization, planting, protection, irrigation, and harvesting of crops;
- (e) the ditching and subsurface drainage of farm fields and the construction of farm ponds;
- (f) the stabilization of farm fields adjacent to banks of surface water, and the establishment and maintenance of vegetated buffer zones and riparian buffer zones;
- (g) the construction and maintenance of farm structures, farm roads, and associated infrastructure;
- (h) the on-site storage, preparation, production, and sale of fuel or power from agricultural products or wastes principally produced on the farm;
- (i) the on-site storage, preparation, and sale of agricultural products principally produced on the farm from raw agricultural commodities principally produced on the farm;
- (j) the on-site storage of agricultural inputs for use on the farm including, but not limited to, lime, fertilizer, pesticides, compost and other soil amendments, and the equipment necessary for operation of the farm; and
- (k) the management of livestock mortalities produced on the farm.

**Sec. 4. MUNICIPAL REGULATION OF FARMING STUDY; REPORT**

(a) The Secretary of Agriculture, Food and Markets shall convene a stakeholder group to examine options to address conflicts between landowners that involve agricultural livestock activities in densely populated villages, towns, or cities in Vermont. At a minimum, the stakeholder group shall include membership-based agricultural organizations, the Vermont League of Cities and Towns, Vermont Farm to Plate, and individuals with

expertise in local or regional planning, as well as zoning administration.

(b) The stakeholder group shall consider options to address conflicts, including establishing or expanding the Required Agricultural Practices Rule to regulate livestock, particularly addressing stocking densities on parcels of less than 10 acres; utilizing ordinances to address livestock; protecting the right to grow food for personal consumption, including livestock; and creating rules like the Cannabis Control Board rule to enforce against an operation based on health, safety, or the integrity of the broader industry.

(c) On or before January 31, 2027, the Secretary shall submit a report to the House Committees on Agriculture, Food Resiliency, and Forestry and on Environment and the Senate Committees on Agriculture and on Natural Resources and Energy that summarizes findings, considerations, and any recommendations of the stakeholder group and offers a recommendation from the Secretary on solutions, including recommended statutory changes or rulemaking, that would best support municipalities when significant landowner conflicts arise regarding livestock.

**Sec. 27.** EFFECTIVE DATE

This act shall take effect on July 1, 2026.

**Sec. 5.** EFFECTIVE DATE

This act shall take effect on July 1, 2026.