

# Senate Energy and Natural Resources Committee

*Nikolas Liamos 271-7875*

**HB 252**, exempting certain agricultural operations from certain municipal noise ordinances.

**Hearing Date:** March 21, 2023

**Time Opened:** 9:30 a.m.

**Time Closed:** 10:06 a.m.

**Members of the Committee Present:** Senators Avar, Pearl, Birdsell, Watters and Altschiller

**Members of the Committee Absent :** None

**Bill Analysis:** This bill exempts farming and agricultural operations from municipal noise ordinances.

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**Sponsors:**

Rep. Comtois

Rep. Bixby

Rep. Aron

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**Who supports the bill:** Rep. Peter Bixby (Strafford 13), Jasen Stock, Robert Johnson, Rep. Barbara Comtois (Belknap 7), and Curtis Howland

**Who opposes the bill:** None

**Who is neutral on the bill:** None

**Summary of testimony presented:**

**Representative Barbara Comtois**

**Belknap 7**

- Representative Barbara Comtois introduced House Bill 252.
- Rep. Comtois stated that HB 252 arose out of farms being targeted by noise ordinances in their communities.
- Rep. Comtois stated that current noise ordinance times restrict farms from certain farming activities and agricultural duties due to noise time constraints.
- Rep. Comtois recounted how in her hometown, her town council was trying to implement a noise ordinance that you couldn't have any activity before 10 am on a Sunday morning and after 11 pm at night.
  - Rep. Comtois added that in this ordinance, farming would be exempt based on state and federal regulations however, current state law defers to local noise ordinances for agriculture.

- Rep. Comtois stated that HB 252 was introduced because a woman's rooster was crowing at the wrong time of day.
  - Rep. Comtois added that the woman tried to insulate her coop and put shades in her coop to try and squelch the noise.
  - Rep. Comtois noted that someone in that town's government did not like the rooster crowing.
- Rep. Comtois recounted another story of someone who owns an apple orchard, and they needed to spray after 9 pm because, when spraying pesticides, you have to do it when there's no wind drift or when the bees aren't around.
  - Rep. Comtois noted that because the farmer would have to run their tractor out of the time frame listed in the noise ordinance, the farmer's neighbors filed complaints.
- Rep. Comtois noted that situations like the two previously mentioned, are happening all around New Hampshire.
- Rep. Comtois stated that farming is 24/7, and it is unreasonable to set hours for agricultural activities.
  - Rep. Comtois recounted how she has had to fire up her tractor at midnight to birth a cow and how she's had to use a chainsaw at 3 am to remove a tree that had fallen on her fence.
- Rep. Comtois stated that she did not exempt agritourism activities from HB 252.
  - Rep. Comtois noted that agritourism is already regulated.
  - Rep. Comtois explained agritourism, as a means to attract visitors to a working farm and cannot be the main purpose of the farm.
  - Rep. Comtois continued that some people complain about the noise from weddings or music held on farms.
  - Rep. Comtois noted that House Environment and Agriculture Committee heard testimony that, if a neighbor asks a farm to keep the noise down, more often than not the farm will comply with the neighbors wishes.
- Rep. Comtois stated that a good neighbor helps the farmers.
- Senator Watters stated that he had a question pertaining to RSA 21:34-a which governs agriculture activity.
  - Sen. Watters added that in RSA 21:34-a states that agriculture activity includes off-site farmers markets.
- Sen. Watters stated that as HB 252 is written, a town could not enforce a noise ordinance on a farmer's market held in its downtown.
- Sen. Watters asked if Rep. Comtois thought if it was appropriate to exempt farmer's markets from noise ordinances.
  - Rep. Comtois replied that, farmer's markets are welcomed by the community.
  - Rep. Comtois stated that in her farmer's markets there are bands that play, but that these markets are ancillary to the farm.
  - Rep. Comtois added that she believes that a farmer or conglomerate of farmers would not act in a way to jeopardize their livelihood.
- Sen. Watters stated that he and former Sen. Boutin worked for three years to get agritourism passed.
  - Sen. Watters added that he wrote the agritourism bill to allow for certain kinds of town ordinances to continue as it is good common sense.

- Sen. Watters cited a letter submitted to the committee by the Municipal Association which stated that anything that is essential agricultural purposes is permitted under existing statute, RSA 674:32-c.
- Sen. Watters stated that he has concerns that HB 252 essentially states that no town noise ordinance is enforceable on any ancillary farm activities.
  - Rep. Comtois replied that agritourism is an accessory use to the farm.
  - Rep. Comtois defined agritourism again and recounted how her farm holds seasonal events that can last deep into the night.
  - Rep. Comtois added that if we exclude agritourism all together, a complaint could be filed which could jeopardize a farm.
- Rep. Comtois stated that she wants to preserve New Hampshire's rural heritage and if we do not offer farmers protections, then we will not have it much longer.
- Sen. Watters stated that he is all for the farmers, he just has concerns about this bill.
- Sen. Pearl stated that he is trying to take Sen. Watters' concerns into account and the intent of the bill.
- Sen. Pearl stated that he believes RSA 21:34-a is very specific in what has to be on-site events.
- Sen. Pearl stated that he believes the sponsor's intent is to allow farms to function and do whatever they need to, no matter the time of day.
- Rep. Comtois stated that noise ordinances restrict a farmer's ability to effectively carry out their duties.
- Rep. Comtois stated that a farmer's busy season is the summer, and, in the winter, which is the down season, farmers host ancillary activities to make ends meet.
  - Rep. Comtois stated that ancillary activities usually do not take place right next to the neighbors, so the activity would have to be exceptionally loud to really affect someone.
- Sen. Altschiller stated that she has been at town meetings where the noise of farms is a constant topic.
- Sen. Altschiller stated that some people are shocked that farms and animals make noises.
- Sen. Altschiller stated that it seems like HB 252 would remove a town's abilities to create their own ordinances to support farms.
  - Sen. Altschiller added that her hometown of Stratham continuously discusses noise ordinances.
- Rep. Comtois stated that her town is a rural and vacation town because it is the start of the lake's region.
  - Rep. Comtois added that the people who move to rural towns and complain about the noise, are the same people who want fresh produce and meat raised naturally.
- Rep. Comtois stated that she believes that we can only feed six percent of New Hampshire's population with the farms in our state, which means we are heavily reliant on importing food to meet our needs.
  - Rep. Comtois added that we need to protect our farmers.
- Sen. Altschiller asked if there was any discussion in the House on how HB 252 affects local control over their own town ordinances and their own ideas about noise regulation.

- Rep. Comtois stated that some people were concerned about the effects of HB 252.
  - Rep. Comtois reiterated that in her town, a noise ordinance failed to pass but the town government stated that farm activity exemptions will be based on state and federal laws.
  - Rep. Comtois added that there are no state laws regulating noise ordinances for towns, therefore a farm would be subject to a noise ordinance.
- Sen. Watters asked Rep. Comtois to confirm that she claimed that there is nothing in state statute concerning farming exemptions from noise ordinances.
- Sen. Watters explained that there is indeed a state statute concerning noise ordinance exemptions for farms, RSA 674:32-c.
  - Sen. Watters explained that in RSA 674:32-c, it states that anything necessary to a farm operation may not be prohibited by local ordinance.
  - Rep. Comtois stated that in conducting her research for HB 252, she or municipalities could not find a statute for exemptions.
  - Rep. Comtois continued by stating that RSA 674:32-c should be clearer and RSA 21:34-a should have language that is clearer.
- Sen. Watters read RSA 674:32-c to the committee, to show that farming exemptions are indeed clearly stated.
  - Sen. Watters reiterated that he supports farmers, but that he doesn't believe in saying that everything in RSA 21:34-a should not be covered by any local ordinance, it's just too broad a brush.
  - Rep. Comtois stated that she believes it is needed and it should be clearer.
- Sen. Birdsell stated that in looking at RSA 674:32-c, why does Rep. Comtois think that towns are passing ordinances on noise which include agriculture when they do not have the authority to.
  - Rep. Comtois stated that currently the state gives the authority to towns to make their own noise ordinances.
  - Rep. Comtois continued that, the agriculture exemption is in another section of law and not under agriculture.
- Sen. Pearl stated that in his reading of RSA 674:32-c, it allows for towns to create ordinances to regulate things like smell, noise, and vibrations, but it also allows for farms to go before a board to seek an exemption.
- Sen. Watters stated that when he introduced the agritourism and ancillary farm legislation, he wanted to ensure that there is a process.
  - Sen. Watters noted that RSA 21:34-a is very broad.
- Sen. Pearl stated that if he is understanding everything correctly, RSA 674:32-c allows for towns to make ordinances and that a farm can seek an exemption, and HB 252 is trying to say that no noise ordinance can be enforced upon a farm, or its activities as defined in RSA 21:34-a.
  - Rep. Comtois confirmed that a farmer does not have enough time in their life to go through the current exemption process.
  - Rep. Comtois posed a question, what if a town official opposes the farm and does not grant an exemption based on their feelings towards the farm or farmer.

## **Representative Peter Bixby**

### **Strafford 13**

- Representative Peter Bixby stated that one thing that arose during testimony in the House for this bill was, the complications agritourism presents.
- Rep. Bixby stated that the committee attempted an amendment, but it failed.
- Rep. Bixby stated that one of the committee members noticed in RSA 672:3, there is language that is related to zoning and agriculture.
  - Rep. Bixby stated that RSA 672:3, basically says that agritourism and activities listed in RSA 21:34 shall not be unreasonably limited by noise ordinances.
  - Rep. Bixby added that RSA 672 also states that zoning shall not unreasonably limit agricultural activity including agritourism.
  - Rep. Bixby added that he believes that the language in RSA 672 should be applied to Chapter 31, which is the chapter for how towns can structure their ordinances, and in Chapter 47 which is the equivalent chapter for cities.
- Rep. Bixby stated that when a town is looking to see what authority they have to make an ordinance, they usually look to Chapter 31.
- Rep. Bixby stated that it is reasonable to say, if a farm is hosting a wedding, then the noise of the wedding needs to die down at a reasonable time.
- Sen. Avaré stated that, to say what is reasonable and what is unreasonable is dicey.
  - Rep. Bixby replied that reasonableness is a standard that exists in our laws already, and that our courts have methods of dealing with reasonableness.
  - Rep. Bixby noted that there is already precedent for using a reasonableness standard, so we should transfer that to noise and zoning ordinances to allow for leeway for towns and protections for farms.
- Rep. Bixby stated that he believes HB 252 as currently written, will not survive or reach the point of being signed by the governor.
  - Rep. Bixby continued by stating he believes HB 252 has a higher likelihood of surviving with the amendments he is suggesting.

NPL

Date Hearing Report completed: March 24, 2023