

**Department of Legislative Services**  
 Maryland General Assembly  
 2020 Session

**FISCAL AND POLICY NOTE**  
**Third Reader - Revised**

Senate Bill 985

(Senator Hester, *et al.*)

Education, Health, and Environmental Affairs

Health and Government Operations

**Certified Local Farm Enterprise Program and Certified Local Farm Enterprise  
 Food Aggregation Grant Fund - Establishment**

This bill establishes the Certified Local Farm Enterprise Program and office in the Maryland Department of Agriculture (MDA) to encourage State agencies (including public four-year universities) to achieve an overall goal of purchasing 20% of food from certified local farm enterprises. It also establishes a nonbudgeted Certified Local Farm Enterprise Food Aggregation Grant Fund within the Maryland Agricultural and Resource-Based Industry Development Corporation (MARBIDCO) to establish and operate food aggregation, storage, processing, and distribution sites across the State through grants and near-equity investments.

**Fiscal Summary**

**State Effect:** General fund expenditures increase by \$140,000 in FY 2021 to implement the program, which reflects the authorization in the FY 2021 operating budget, as enacted, for MARBIDCO to transfer \$140,000 of its appropriation by budget amendment to MDA to cover the cost of the two positions required by the bill, contingent on enactment of this bill or its cross file. Out-year expenditures reflect ongoing operating costs. The nonbudgeted grant fund has no effect on State expenditures, as discussed below. No effect on revenues. **This bill establishes a mandated appropriation beginning in FY 2022.**

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	140,000	139,100	142,300	147,100	152,100
Net Effect	(\$140,000)	(\$139,100)	(\$142,300)	(\$147,100)	(\$152,100)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** None.

**Small Business Effect:** Meaningful.

## Analysis

### Bill Summary:

#### *Certified Local Farm Enterprise Program*

A certified local farm enterprise is one that meets specified nutrient management requirements in current law and is certified by MDA.

Each State agency must structure its procurement procedures to try to achieve an overall percentage goal of 20% – of its total dollar value of procurement contracts for food – being made directly or indirectly to certified local farm enterprises. An agency may achieve the goal through competitive sealed bids and proposals and small procurements under terms in current law.

The Office for the Certified Local Farm Enterprise Program administers the program and must establish (1) guidelines for each unit to consider when determining the appropriate participation goal for each food contract procurement; (2) procedures governing how the participation of certified local farm enterprises is counted toward contract goals; and (3) regulations to maximize notice to, and the opportunity to participate in the food procurement process by, a wide range of local farm enterprises. MDA must create two positions to provide staff to the office (which this analysis is treating as a mandated appropriation). Each unit must consider specified factors and follow specified procedures in setting participation goals for each food contract.

If an agency does not achieve the goal set for a specific contract, it must demonstrate to the office that it took all necessary and reasonable steps to achieve the goal. The office may grant a waiver if a unit provides a reasonable demonstration of good faith efforts to achieve the goal. Waivers may also be granted for sole source, expedited, or emergency procurements. The office must submit an annual report to the Board of Public Works (BPW) by July 31 of each year with specified information about waivers requested and granted. BPW must keep a record of waivers requested and submit a copy to specified committees of the General Assembly by October 1 of each year.

MDA must develop and maintain a directory of all certified local farm enterprises, including specified information about them, and make the directory accessible to the public on its website.

In a matter regarding decertification of a certified local farm enterprise, the office may subpoena witnesses, administer oaths, and compel production of records, books, papers, and other documents. If a person fails to comply with a subpoena or otherwise fails to

comply, a court of competent jurisdiction may pass an order compelling compliance. The office must make available a fraud hotline for reporting violations of the bill's provisions.

Within 90 days after the end of the fiscal year, each unit must report specified information to the office.

### *Certified Local Farm Enterprise Food Aggregation Grant Fund*

The fund is a nonbudgeted fund that consists of money appropriated in the State budget, principal that is repaid from near-equity investments, and any other money from any other source. It may only be used for establishing and operating food aggregation, storage, processing, and distribution sites across the State through grants and near-equity investments.

**Current Law:** The University System of Maryland, Morgan State University, and St. Mary's College of Maryland are exempt from most provisions of State procurement law, but they are subject to the bill's requirements.

State procurement law establishes a purchasing price preference for locally grown food. BPW is required to establish a percentage price preference of no more than 5% for locally grown food that agencies may apply. Regulations allow agencies to use any price preference up to 5%. The preference allows a State agency to award a contract to a responsible bidder whose bid is not the lowest bid price if the bidder's product is locally grown food and the difference between the bid price and lowest bid price is less than the preference granted. State schools and facilities must require the use of the percentage price preference, to the extent practicable, in their purchase of food.

The General Assembly established MARBIDCO in 2004 as a public corporation to assist the State's farm, forestry, and seafood businesses by providing targeted business assistance services. The corporation is authorized to develop agricultural industries and markets, support the commercialization of agricultural processes and technology, assist with rural land preservation efforts, and alleviate the shortage of nontraditional capital and credit available at affordable interest rates for investment in agricultural and resource-based businesses. The corporation administers several loan and grant programs to support these activities.

Under the Water Quality Improvement Act of 1998 (Chapters 324 and 325), agricultural operations with \$2,500 or more in gross annual income and livestock operations with 8,000 pounds or more of live animal weight must have and comply with a nutrient management plan for nitrogen and phosphorus. A nutrient management plan is prepared to "manage the amount, placement, timing, and application of animal waste, commercial fertilizer, sludge, or other plant nutrients to prevent pollution by transport of bioavailable

nutrients and to maintain productivity.” MDA certifies and licenses nutrient management consultants and businesses to prepare nutrient management plans for farm operations and also issues certificates to farm operators to develop their own plans.

**Background:** According to the 2017 Census of Agriculture, there were 12,429 farms in Maryland in 2017, with an average size of 160 acres. Of the total number of farms, 6,803 (55%) were smaller than 50 acres and 6,125 (49%) had total sales of less than \$5,000.

**State Expenditures:**

*Certified Local Farm Enterprise Program*

The bill requires MDA to assign two positions to the office to implement the bill. MDA advises that it requires an agricultural marketing specialist and an administrative officer to staff the office and implement the bill’s requirements. General fund expenditures for these positions increase by \$118,444 in fiscal 2021, which accounts for the bill’s October 1, 2020 effective date. This estimate reflects the cost of hiring the two staff described above and includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2
Salaries and Fringe Benefits	\$105,133
Operating Expenses	13,311
Residual Funding Restricted in the Budget	<u>21,556</u>
<b>Total FY 2021 MDA Expenditures</b>	<b>\$140,000</b>

However, the fiscal 2021 operating budget, as enacted, authorizes MARBIDCO to transfer \$140,000 of its general fund appropriation to MDA by budget amendment to cover the cost of the two positions described above and for equipping the office, contingent on the enactment of this bill or its cross file. Funds not expended for this purpose may not otherwise be transferred or expended and revert to the general fund. Accordingly, this analysis assumes that general funds totaling \$140,000 are expended in fiscal 2021 due to this bill.

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

Also, to the extent the bill results in an increase in State purchases of locally grown food, the existing price preference may result in higher State expenditures.

### *MARBIDCO Grant Fund*

The grant fund is a nonbudgeted fund, for which a State appropriation is an unlikely but allowable source of funding. This analysis, therefore, assumes that the grant fund obtains funding from sources other than the State, as also allowed by the bill, so there is no effect on State expenditures. (Otherwise, general fund expenditures increase further to capitalize the fund.) MARBIDCO advises that it can manage the grant program with existing resources.

The Budget Reconciliation and Financing Act of 2020 (BRFA), as passed by the General Assembly, mandates that, contingent on the enactment of this bill or its cross file, \$435,000 of MARBIDCO's mandated appropriation from fiscal 2022 through 2025 be used to make grants and near-equity investments to (1) support the creation or expansion of agricultural product aggregation and storage sites and (2) facilitate participation in the Certified Local Farm Enterprise Program. The BRFA does not allocate the funds to the nonbudgeted grant fund created by the bill, and MARBIDCO indicates that it will not deposit the money into the fund.

**Small Business Effect:** Small farms in the State likely benefit from the State's goal to purchase 20% of its food from local farms. Similarly, small farms likely benefit from MARBIDCO grants to enhance distribution facilities and networks.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** HB 1488 (Delegate Charkoudian, *et al.*) - Health and Government Operations.

**Information Source(s):** Maryland State Department of Education; Maryland Department of Agriculture; Department of General Services; Maryland Department of Health; Department of Juvenile Services; Department of Public Safety and Correctional Services; Board of Public Works; Maryland Agricultural and Resource-Based Industry Development Corporation; U.S. Department of Agriculture; Department of Legislative Services

**Fiscal Note History:**  
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Third Reader - March 14, 2020

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Revised - Budget Information - April 7, 2020

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