

SENATE BILL 386

P2, M2, M4
SB 985/20 – EHE

3lr1407
CF HB 63

By: **Senator Hester**

Introduced and read first time: February 1, 2023

Assigned to: Education, Energy, and the Environment

A BILL ENTITLED

1 AN ACT concerning

2 **Certified Local Farm and Chesapeake Invasive Species Provider Program –**
3 **Establishment**

4 FOR the purpose of altering the Certified Local Farm Enterprise Program to be the
5 Certified Local Farm and Chesapeake Invasive Species Provider Program;
6 expanding the purpose of the Program to include food from certified Chesapeake
7 invasive species providers in the overall percentage goal for certain procurement
8 contracts; altering the Certified Local Farm Enterprise Food Aggregation Grant
9 Fund to be the Certified Local Farm and Chesapeake Invasive Species Provider Food
10 Aggregation Grant Fund; and generally relating to the Certified Local Farm and
11 Chesapeake Invasive Species Provider Program and the Certified Local Farm and
12 Chesapeake Invasive Species Provider Food Aggregation Grant Fund.

13 BY repealing and reenacting, with amendments,
14 Article – Education
15 Section 9.11–101
16 Annotated Code of Maryland
17 (2022 Replacement Volume)

18 BY repealing and reenacting, without amendments,
19 Article – State Finance and Procurement
20 Section 11–203(e)(1) and (2)
21 Annotated Code of Maryland
22 (2021 Replacement Volume and 2022 Supplement)

23 BY repealing and reenacting, with amendments,
24 Article – State Finance and Procurement
25 Section 11–203(e)(5)(i); and 14–701 through 14–708 to be under the amended
26 subtitle “Subtitle 7. Certified Local Farm and Chesapeake Invasive Species
27 Provider Program”
28 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2021 Replacement Volume and 2022 Supplement)

BY repealing and reenacting, with amendments,
Article – Tax – Property
Section 13–209(g)(3)(i)2.
Annotated Code of Maryland
(2019 Replacement Volume and 2022 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Education

9.11–101.

(a) In this title the following words have the meanings indicated.

(b) “Fund” means the Maryland Farm–to–School Meal Grant Fund.

(c) “Local” means an agricultural product grown, harvested, produced, or
processed from a certified local farm [enterprise].

(d) “Pilot program” means the Maryland Farm–to–School Meal Grant Pilot
Program.

Article – State Finance and Procurement

11–203.

(e) (1) In this subsection, “University” means the University System of
Maryland, Morgan State University, or St. Mary’s College of Maryland.

(2) Except as otherwise provided in this subsection, this Division II does
not apply to the University System of Maryland, Morgan State University, St. Mary’s
College of Maryland, or Baltimore City Community College.

(5) (i) Except as provided in paragraph (7) of this subsection, the
following provisions of Division II of this article apply to a University and to Baltimore City
Community College:

1. § 11–205 of this subtitle (“Collusion”);

2. § 11–205.1 of this subtitle (“Falsification, concealment,
etc., of material facts”);

3. § 13–219 of this article (“Required clauses –
Nondiscrimination clause”);

4. § 13–225 of this article (“Retainage”);

5. Title 14, Subtitle 3 of this article (“Minority Business Participation”);

6. Title 14, Subtitle 7 of this article (“Certified Local Farm [Enterprise] AND CHESAPEAKE INVASIVE SPECIES PROVIDER Program”);

7. Title 15, Subtitle 1 of this article (“Procurement Contract Administration”);

8. § 15–226 of this article (“Policy established; timing of payments; notice upon nonpayment; disputes; appeals”); and

9. Title 16 of this article (“Suspension and Debarment of Contractors”).

Subtitle 7. Certified Local Farm [Enterprise] AND CHESAPEAKE INVASIVE SPECIES PROVIDER Program.

14–701.

(a) In this subtitle the following words have the meanings indicated.

(B) “CERTIFIED CHESAPEAKE INVASIVE SPECIES” MEANS A FINFISH SPECIES THAT IS:

(1) RANKED AS HIGH PRIORITY IN THE MARYLAND AQUATIC NUISANCE SPECIES MANAGEMENT PLAN; AND

(2) HARVESTED FROM THE CHESAPEAKE BAY OR ITS TRIBUTARIES.

(C) “CERTIFIED CHESAPEAKE INVASIVE SPECIES PROVIDER” MEANS A PERSON LICENSED AND AUTHORIZED AS A SEAFOOD DEALER UNDER § 4–701 OF THE NATURAL RESOURCES ARTICLE THAT:

(1) IS CERTIFIED BY THE DEPARTMENT IN ACCORDANCE WITH REGULATIONS ADOPTED UNDER THIS SUBTITLE; AND

(2) CAN DEMONSTRATE THAT THE PERSON’S PRODUCT IS A CERTIFIED CHESAPEAKE INVASIVE SPECIES.

[(b)] (D) “Certified local farm [enterprise]” means a local farm enterprise that:

(1) meets the nutrient management requirements established under Title 8, Subtitle 8 of the Agriculture Article; and

(2) is certified by the Department in accordance with regulations adopted under this subtitle.

[(c)] (E) “Department” means the Department of Agriculture.

[(d)] (F) “Office” means the Office for the Certified Local Farm [Enterprise] **AND CHESAPEAKE INVASIVE SPECIES PROVIDER** Program.

[(e)] (G) “Program” means the Certified Local Farm [Enterprise] **AND CHESAPEAKE INVASIVE SPECIES PROVIDER** Program.

14–702.

(a) (1) There is an Office for the Certified Local Farm [Enterprise] **AND CHESAPEAKE INVASIVE SPECIES PROVIDER** Program in the Department.

(2) The purpose of the Office is to administer the Program and facilitate the participation of certified local [farm enterprises] **FARMS AND CERTIFIED CHESAPEAKE INVASIVE SPECIES PROVIDERS** in the Program.

(b) (1) There is a Certified Local Farm [Enterprise] **AND CHESAPEAKE INVASIVE SPECIES PROVIDER** Program in the Office.

(2) The purpose of the Program is to encourage each unit to try to achieve an overall percentage goal of 20% of the unit’s total dollar value of procurement contracts for food from certified local [farm enterprises] **FARMS AND CERTIFIED CHESAPEAKE INVASIVE SPECIES PROVIDERS**.

(c) The Department shall create two positions to provide staff for the Office.

14–703.

(a) (1) Each unit shall structure procurement procedures, consistent with the purposes of this subtitle, to try to achieve an overall percentage goal of 20% of the unit’s total dollar value of procurement contracts for food being made directly or indirectly to certified local [farm enterprises] **FARMS AND CERTIFIED CHESAPEAKE INVASIVE SPECIES PROVIDERS**.

(2) A unit may achieve the 20% goal through:

(i) competitive sealed bids and proposals; and

(ii) small procurement in accordance with § 13–109 of this article.

(3) For procurements conducted by competitive sealed bidding, a unit shall award the contract to the responsible bidder that submits the responsive bid that:

- (i) 1. has the lowest bid price;
2. has the lowest evaluated bid price; or
3. for procurements subject to § 11–202(3) of this article, is the bid most favorable to the State; and

(ii) meets or makes a good faith effort to meet any applicable goal established under this subtitle.

(4) For procurements conducted by competitive sealed proposals, a unit shall award the contract to the responsible offeror:

- (i) proposing the most advantageous offer; and
- (ii) that meets or makes a good faith effort to meet any applicable goal established under this subtitle.

(b) The Office, in consultation with the Secretary of Agriculture, shall establish guidelines for each unit to consider when determining the appropriate local farm [enterprise] **AND CHESAPEAKE INVASIVE SPECIES PROVIDER** participation percentage goal for a procurement contract for food in accordance with subsection (c) of this section.

(c) Each unit shall:

(1) consider the practical severability of all procurement contracts for food and, in accordance with § 11–201 of this article, may not bundle contracts;

(2) implement a program that will enable the unit to evaluate each procurement contract for food to determine the appropriate local farm [enterprise] **AND CHESAPEAKE INVASIVE SPECIES PROVIDER** participation goals, if any, for the contract based on:

(i) the availability of certified local [farm enterprises] **FARMS AND CERTIFIED CHESAPEAKE INVASIVE SPECIES PROVIDERS** to respond competitively to contract opportunities; and

(ii) the contract goal guidelines established under subsection (b) of this section;

(3) monitor and collect data with respect to a unit's compliance with contract goals, including explanations for failing to meet contract goals; and

(4) institute corrective action when a unit does not make good faith efforts to comply with contract goals.

(d) The Office shall, in consultation with the Secretary of Agriculture, establish procedures governing how the participation of certified local [farm enterprises] **FARMS AND CERTIFIED CHESAPEAKE INVASIVE SPECIES PROVIDERS** is counted toward contract goals under the Program.

(e) (1) (i) If a unit does not achieve the certified local farm [enterprise] **AND CERTIFIED CHESAPEAKE INVASIVE SPECIES PROVIDER** participation goals on a procurement contract for food, the unit shall demonstrate to the Office that the unit took all necessary and reasonable steps to achieve the goals.

(ii) A waiver of any part of the certified local farm [enterprise] **AND CERTIFIED CHESAPEAKE INVASIVE SPECIES PROVIDER** goals for a procurement contract for food shall be granted if a unit provides to the Office a reasonable demonstration of good faith efforts to achieve the goals.

(2) The Office may waive any of the requirements of this subsection relating to the establishment, use, and waiver of certified local farm [enterprise] **AND CERTIFIED CHESAPEAKE INVASIVE SPECIES PROVIDER** goals for a sole source, expedited, or emergency procurement in which the public interest cannot reasonably accommodate use of those requirements.

(3) Except for waivers granted in accordance with paragraph (2) of this subsection, when a waiver determination is made, the Office shall issue the determination in writing.

(4) On or before July 31 each year, the Office shall submit directly to the Board an annual report of waivers requested and waivers granted under this subsection.

(5) The report required under paragraph (4) of this subsection shall contain the following information on those procurement contracts for food where the Office considered a unit's request for waiver of all or a portion of the local farm [enterprise] **AND CHESAPEAKE INVASIVE SPECIES PROVIDER** goals:

(i) the contract titles, numbers, and dates;

(ii) the number of waiver requests received;

(iii) the number of waiver requests granted; and

(iv) any other information specifically requested by the Board.

(f) The Board shall keep a record of information regarding any waivers requested in accordance with this section and submit a copy of the record to the Senate Education,

Health, and Environmental Affairs Committee and the House Health and Government Operations Committee on or before October 1 each year, in accordance with § 2–1257 of the State Government Article.

14–704.

(a) In accordance with Title 10, Subtitle 1 of the State Government Article, the Office shall adopt regulations to implement this subtitle.

(b) The regulations shall establish procedures to be followed by units, certified local [farm enterprises] **FARMS AND CERTIFIED CHESAPEAKE INVASIVE SPECIES PROVIDERS**, and successful bidders or offerors to maximize notice to, and the opportunity to participate in the food procurement process by, a broad range of local [farm enterprises] **FARMS AND CHESAPEAKE INVASIVE SPECIES PROVIDERS**.

(c) The regulations shall include provisions:

(1) designating the Office to certify and decertify local [farm enterprises] **FARMS AND CHESAPEAKE INVASIVE SPECIES PROVIDERS** for all units through a single process, including provisions that promote and facilitate the submission of some or all of the certification application through an electronic process;

(2) specifying that a unit may not allow a local farm [enterprise] **OR CHESAPEAKE INVASIVE SPECIES PROVIDER** to participate as if it were a certified local farm [enterprise] **OR CERTIFIED CHESAPEAKE INVASIVE SPECIES PROVIDER** if the local [farm enterprise's] **FARM'S OR CHESAPEAKE INVASIVE SPECIES PROVIDER'S** certification is pending;

(3) consistent with this subtitle, relating to any circumstances under which the Office may waive obligations of a unit relating to certified local farm [enterprise] **AND CERTIFIED CHESAPEAKE INVASIVE SPECIES PROVIDER** participation goals; and

(4) that the Office considers necessary or appropriate to:

(i) encourage participation by local [farm enterprises] **FARMS AND CHESAPEAKE INVASIVE SPECIES PROVIDERS**; and

(ii) protect the integrity of the procurement process.

14–705.

(a) In the same manner and with the same fees as provided by law in civil cases, in a matter regarding the decertification of a certified local farm [enterprise] **OR CERTIFIED CHESAPEAKE INVASIVE SPECIES PROVIDER**, the Office may:

(1) subpoena witnesses;

(2) administer oaths; and

(3) compel the production of records, books, papers, and other documents.

(b) If a person fails to comply with a subpoena issued under subsection (a) of this section, or fails to produce documents or other evidence, on petition of the Office, a court of competent jurisdiction may pass an order directing compliance with the subpoena or compelling the production of documents or other evidence.

(c) The Office shall make available a fraud hotline for reporting violations of this section.

14–706.

(a) Within 90 days after the end of the fiscal year, each unit shall report to the Office.

(b) A report under this section for the preceding fiscal year shall:

(1) state the total number and value of procurement contracts for food between the unit and certified local [farm enterprises] **FARMS AND CERTIFIED CHESAPEAKE INVASIVE SPECIES PROVIDERS;**

(2) indicate the percentage that those procurement contracts for food represent of the total number and value of procurement contracts for food awarded by a unit;

(3) state the total number and the names of certified local [farm enterprises] **FARMS AND CERTIFIED CHESAPEAKE INVASIVE SPECIES PROVIDERS** that participated in procurement contracts for food awarded by a unit;

(4) for each certified local farm [enterprise] **OR CERTIFIED CHESAPEAKE INVASIVE SPECIES PROVIDER** included in the report under item (3) of this subsection, list all procurement contracts for food awarded by a unit to the certified local farm [enterprise] **OR CERTIFIED CHESAPEAKE INVASIVE SPECIES PROVIDER**, including a description of the contract; and

(5) contain other such information as required by the Office, subject to approval by the Board.

(c) A report under this section shall be:

(1) in a form prescribed by the Office; and

(2) approved by the Board.

1 14-707.

2 (a) (1) The Department shall develop and maintain a directory of all certified
3 local [farm enterprises] **FARMS AND CERTIFIED CHESAPEAKE INVASIVE SPECIES**
4 **PROVIDERS.**

5 (2) The directory shall be accessible to the public on the Department's
6 website.

7 (b) The Department shall include the following information for each certified local
8 farm [enterprise] **AND CERTIFIED CHESAPEAKE INVASIVE SPECIES PROVIDER**
9 included in the directory:

10 (1) all contract information available to the Department for the certified
11 local farm [enterprise] **OR CERTIFIED CHESAPEAKE INVASIVE SPECIES PROVIDER;**

12 (2) the certification number of the certified local farm [enterprise] **OR**
13 **CERTIFIED CHESAPEAKE INVASIVE SPECIES PROVIDER;** and

14 (3) any other information the Department considers necessary or
15 appropriate to encourage participation in the procurement process by local [farm
16 enterprises] **FARMS AND CHESAPEAKE INVASIVE SPECIES PROVIDERS.**

17 (c) The Department shall:

18 (1) update the directory at least once a year; and

19 (2) identify as recently certified in the directory each local farm
20 [enterprise] **AND CHESAPEAKE INVASIVE SPECIES PROVIDER** that has obtained
21 certification during the calendar year.

22 14-708.

23 (a) There is a Certified Local Farm [Enterprise] **AND CHESAPEAKE INVASIVE**
24 **SPECIES PROVIDER** Food Aggregation Grant Fund.

25 (b) The purpose of the Fund is to support the creation of food aggregation, storage,
26 processing, and distribution sites across the State through grants and near-equity
27 investments.

28 (c) The Maryland Agricultural and Resource-Based Industry Development
29 Corporation shall administer the Fund.

30 (d) The Fund consists of:

(1) money appropriated in the State budget to the Fund;

(2) principal that is repaid from near-equity investments; and

(3) any other money from any other source accepted for the benefit of the Fund.

(e) The Fund may be used only for establishing and operating food aggregation, storage, processing, and distribution sites across the State through grants and near-equity investments.

Article – Tax – Property

13–209.

(g) (3) (i) 2. For fiscal year 2025 only, the Governor shall include in the annual budget bill a General Fund appropriation in the amount of \$2,735,000 to the Maryland Agricultural and Resource-Based Industry Development Corporation established under Title 10, Subtitle 5 of the Economic Development Article to be used as follows:

A. \$2,300,000 to support the Corporation’s rural business loan programs and small matching grant programs; and

B. \$435,000 for grants and near-equity investments to:

I. support the creation or expansion of agricultural product aggregation and storage sites; and

II. facilitate participation in the Certified Local Farm [Enterprise] AND CHESAPEAKE INVASIVE SPECIES PROVIDER Program.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2023.