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FISCAL AND POLICY NOTE
Revised

Senate Bill 198

(Senator Glassman, *et al.*)

Finance

Health and Government Operations

**Farmer's Markets - Agricultural Product Sales - Producer Mobile Farmer's
Market License**

This bill prohibits local jurisdictions from requiring a license for the sale of raw agricultural products in a farmer's market and requires the Department of Health and Mental Hygiene (DHMH) to establish a producer mobile farmer's market license. License fees may not exceed \$100 and must be based on the anticipated cost of licensing, inspecting, and regulating licenses. An individual holding a producer mobile farmer's market license may transport and sell certain goods at farmer's markets throughout the State. DHMH must inspect each mobile unit operating under the license at least once per year, and local health departments (LHDs) must enforce the bill and report any violations to DHMH. Violators are subject to civil fines up to \$1,000, paid to the county in which the violation occurred.

Additionally, the bill specifies that a license or permit is not required to deliver prepackaged foods to fill an order for a consumer.

Fiscal Summary

State Effect: The increase in license fee revenues for DHMH is only expected to recover costs associated with the bill's mobile unit inspection requirement. Current regulations permit the sale at farmer's markets of farm products that have been inspected, licensed, or certified by the Maryland Department of Agriculture (MDA).

Local Effect: Minimal decrease in revenues for some LHDs that currently charge a licensing fee for vendors who sell food at farmer's markets. Potential minimal increase in fine revenues and enforcement expenditures for LHDs.

Small Business Effect: Minimal decrease in expenditures for farmers who, under the bill, no longer pay multiple fees to sell produce at numerous farmer's markets. Based on the bill's provisions, these farmers would benefit from having to obtain only one license annually.

Analysis

Bill Summary: "Raw agricultural product" includes whole, unprocessed, grains as well as flowers, herbs, nuts, fruits, and vegetables supplied directly from the farm on which they were produced and any agricultural products DHMH identifies in regulations.

A producer mobile farmer's market licensee may transport to and sell at a farmer's market:

- products that were produced by the licensee under an on-farm processing plant license;
- products produced by the licensee, as authorized by DHMH regulations; or
- farm products that have been inspected, licensed, or certified for food safety by MDA.

Current Law/Background: A "food service facility" is a place where food or drink is prepared for sale or service, or an operation where food is served to or provided for the public, with or without charge. It is not a private kitchen where food is prepared for guests, or for service to the unemployed, homeless, or other disadvantaged populations.

Mobile food service facilities serve food out of a vehicle on land or water. Currently, licenses for mobile food service facilities are issued by the LHD in which the mobile food service facility operates. These licenses are nontransferable.

DHMH annually inspects farm processing plants which produce items such as baked goods, jams, jellies, relishes, and frozen meats. In addition, licenses are required for farmers who choose to sell these types of goods at farmer's markets.

Farmer's markets are regulated under the Code of Maryland Regulations provisions applicable to DHMH. Current regulations permit the sale of rabbit and poultry products at farmer's markets when the product is not under the jurisdiction of the U.S. Department of Agriculture (USDA) and the product is inspected and regulated by MDA, USDA, or an approving authority under a voluntary inspection program. Thus, the bill's provision that permits the sale of farm products that have been inspected, licensed, or certified by MDA only applies to poultry and rabbit products. Products must originate from animals that

are commercially raised, fed, or managed on the farm, and slaughtered and processed in accordance with the Poultry Products Inspection Act and applicable federal, State, and local regulations. Regulations identify poultry as a domesticated bird whether live or dead including a chicken, turkey, duck, goose, guinea, ratite, or squab and migratory waterfowl or game birds whether live or dead, including a pheasant, partridge, quail, or grouse. Provisions regarding poultry products also apply to rabbits and rabbit products. Neither USDA nor MDA has a voluntary inspection program in place for federally exempt farmers; however, MDA is in the process of developing such a program.

Licenses for farmer's markets are administered by LHDs. The majority of counties do not require a license for the sale of fresh farm produce, herbs, cut flowers, and bedding plants in a farmer's market. However, some counties require a license to sell produce at a farmer's market. In certain counties, licenses are only good in one location within that jurisdiction. Overall, there is extensive variation across counties regarding licenses for farmer's markets. Farmers who choose to sell produce at farmer's markets in different jurisdictions have to pay numerous licensing fees. LHDs currently inspect farmer's markets in accordance with the regulations established by DHMH.

Background: MDA estimates 110 farmer's markets operate in the State with an average of 10 vendors per market. The majority of vendors participate in more than one market. However, MDA is unsure how many farmer's market vendors are subject to licensing fees. Most markets open around May 1, and customers can purchase a variety of locally grown produce including fruits, vegetables, herbs, eggs, meats, baked goods, and cheeses. Farmer's markets are an important source of income for farmers and an important component in securing a sustainable future for Maryland agriculture.

Approximately 286 farmers in the State participate in the Farmer's Market Nutrition Program (FMNP) in which a total of \$600,000 in checks are available for eligible women, infants, children, and seniors to purchase fresh produce at farmer's markets. FMNP represents an additional source of income for local farmers.

Farmers will not be able to sell rabbit or poultry products until an inspection program is in place. MDA advises that training for farmers who wish to participate in a voluntary inspection program will begin in May 2010. Under current regulations, DHMH advises that farmers who participate in MDA's voluntary inspection program would not be subject to additional inspection requirements from the department. Enforcement would be done through LHDs. According to MDA, approximately 200 poultry and rabbit producers are exempt from USDA regulations.

Local Fiscal Effect: The fiscal impact on local governments depends on the current licensing fees, if any, for vendors in farmer's markets. Counties that currently license farmers who sell their products in farmer's markets experience a decrease in local

revenues. For instance, Baltimore City expects a revenue loss of \$11,285 due to the bill's provisions. A decrease in revenues may be offset by the bill's penalty provisions. However, it is unlikely the city will recoup all of its lost revenues through the enforcement of this law. In comparison, Montgomery County does not currently require licensure for the sale of raw agricultural products at farmer's markets; therefore, the county may experience a minimal increase in revenues due to the bill's penalty provisions. Some counties may also incur minimal increases in enforcement expenditures.

Additional Information

Prior Introductions: None.

Cross File: HB 166 (Delegate Hubbard) - Health and Government Operations.

Information Source(s): Dorchester, Howard, and Montgomery counties; Town of Rockville; Maryland Department of Agriculture; Department of Health and Mental Hygiene; Department of Legislative Services

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