

Governor's
Intergovernmental Commission
for Agriculture

Report to
Governor Martin O'Malley

December, 2012

Earl F. Hance
Secretary
Maryland Department of Agriculture

and Chair
Governor's Intergovernmental Commission for Agriculture

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The Governor's Intergovernmental Commission for Agriculture (GICA) was established on June 29, 2006, to “promote the economic profitability of agriculture in the State by ensuring that all appropriate State agencies work in a cooperative, coordinated manner with local government and industry groups in planning, implementing, overseeing and evaluating intergovernmental initiatives related to agricultural affairs of the State.” The Commission currently has 20 duly appointed members (APPENDIX A). From 2010-2012, the Commission has been focusing on the following projects:

1. Completion of a toolkit to assist local areas (the final product was the annual report for 2010 and 2011 combined).
2. Develop ways to promote more education of agriculture in a school curriculum and to the public in general.
3. Ongoing review and development of strategies to address farmer concerns regarding county planning/zoning and health regulations. Of particular interest have been value-added agriculture, wineries, farmers markets, and environmental regulations.

Completion of a toolkit to assist local areas

In late 2006, the Maryland Agricultural Commission developed Maryland's Statewide Plan for Agricultural Policy and Resource Management. This plan outlined some of the issues important to Maryland agriculture and tasked GICA with the implementation of certain aspects of the plan, including the development of a toolkit.

In May 2011, GICA released “Understanding and Responding to the Changing Needs of Maryland Agriculture – A Toolkit for Local Communities.” Section 1 describes top issues facing Maryland agriculture, including global competition and access to markets, regulations and environmental adaptation, loss of farmland, labor challenges, input costs and wildlife damage. Section 2 looks at farmer responses to changes, including diversification, and alternative energy production. Section 3 incorporates tools for problem solving, including recommending a food processing and distribution system, land use, local zoning and health regulations that take into account emerging agriculture, wildlife policies, and strengthened right to farm policies. Production of the toolkit was sponsored by the Maryland Department of Agriculture's Agricultural Conflict Resolution Service, Maryland Agricultural and Resource-Based Industry Development Corporation (MARBIDCO), Maryland Farm Bureau, Maryland Grain Producers Utilization Board, Maryland Wineries Association and Mid-Atlantic Farm Credit. A copy of the toolkit can be found at: <http://www.mda.maryland.gov/pdf/gica.toolkit.pdf>

Develop ways to promote more education of agriculture in a school curriculum

Commission members generally agree that agricultural education is geared more towards younger kids. More outreach and education opportunities are needed for older children. However, before determining what GICA would focus on, Commission members suggested developing a survey to determine what was already in existence. The survey was completed at the beginning of 2012.

Agricultural Education Survey Results

- 297 Responses
- All 24 jurisdictions included in survey

- Programs are: state, county and individual
- 67 percent of respondents run an informal education program, 33 percent run a formal education program.
- Nearly 40 percent of respondents were from non-profit organizations

Barriers and Potential Solutions Identified by Respondents

Barriers

- Lack of funding
- Weather for field trips
- Liability issues
- Lack of public interest
- Negative peer pressure among children
- Limits on times students can be outside classrooms
- Lack of interest from “higher ups”
- Lack of commitment to organized programs
- Farmers do not have time to do public outreach

Potential Solutions

- Integrate with school curriculum incubators for beginning farmers
- Incorporate agricultural education into the school curriculum early
- Provide more hands-on activities for younger kids
- Develop programs that make a relevant connection to students’ lives
- Have more research and data available
- More funding needed from different sources
- Increased State support for fairs and general agricultural programs

During 2011, GICA heard several presentations on agricultural education programs as well, including from George Mayo from the Maryland Agricultural Education Foundation (MAEF) and Karen Fedor, from MDA’s Marketing Section. There are 43 schools with agricultural education programs, 74 statewide agricultural educators and almost 4,600 students in Maryland enrolled in agricultural education programs. The problem is that agricultural education is a Career and Technology program and not part of the school curriculum.

Education and outreach to the public is also important. Mae Johnson, MDA’s Agriculture Conflict Resolution Service spoke with Commission members on a new partnership with the Maryland Realtors Association, designed to train realtors so that they are well-versed in agricultural issues when selling homes near or next door to farms.

Subsequently, GICA members voted for a motion asking the Secretary of Agriculture to meet with the incoming State Superintendent of Schools. In September, 2012, Secretary Hance, Deputy Secretary Setting, Mr. Mayo, and Mr. Chuck Fry, Maryland Farm Bureau, met with State Superintendent Dr. Lowery and Assistant Superintendent Kathy Oliver. Dr. Lowery was already aware of the importance of agriculture in education in Maryland. Discussion also included the successful collaboration between the Maryland State Department of Education (MSDE), MDA, the state’s public school systems and others in executing the Farm to School program. Everyone left the meeting confident that the new Superintendent of Maryland schools will be an advocate for agriculture in education.

Updates on Legislative and Regulatory Changes

MDA's poultry and rabbit certification program

Deanna Baldwin, Food Quality Assurance Program Manager for MDA, has given several updates to Commission members about MDA's new poultry/rabbit processing program. Previously, the problem had been that while poultry processing of less than 20,000 chickens and rabbits are completely exempt from federal requirements, at the state level, these activities are required to be certified by an "approved source" in order for the Department of Health and Mental Hygiene (DHMH) to permit farmers to sell to the public in places such as farmers markets, retail stores and restaurants. They are not required to be certified for on-farm processing, where the public can see the farm directly. MDA, DHMH and the University of Maryland have been working together on a program, training more than 200 farmers. Forty-seven producers are now certified and selling at farmers markets, to retailers and restaurants. DHMH is also waiving the license for inspection if a farmer is in the poultry/rabbit certification program. DHMH does not require a separate license for storage or transport of the poultry or rabbits if the farmer is in MDA's program. MDA's certification also covers the on-farm storage of meat slaughtered and processed in a United States Department of Agriculture (USDA) facility. Previously a separate On-Farm Home Processing License had been required by DHMH. Producers selling poultry, rabbits and/or meat at Farmer's Markets are also required to obtain a Mobile Farmers Market license from DHMH. MDA, however, conducts the inspection of the transport (sanitation and temperature) while on the farm, inspecting the slaughter operation instead of another inspector from DHMH coming to the farm to inspect.

Ongoing Issues: county zoning issues and the discharge permit issue on which MDA is working with the Maryland Department of the Environment (MDE). Federal law also prohibits anyone from slaughtering for someone else unless their facility is subject to 24-hour USDA inspection. This is not something that can be addressed at the state level.

The Food Safety Modernization Act and Implications for Maryland Farmers

Food Safety Modernization Act (FSMA)

The main impact of FSMA on Maryland farmers will be the produce regulations (which have not been published yet). For many years MDA has had a Cooperative Agreement with USDA to conduct Good Agricultural Practices (GAP) audits for USDA GAP certification. This certification is based on FDA guidance to the industry for the safe production of fruits and vegetables. The FDA Guidance and USDA audit focus on microbial contamination. USDA audits are voluntary, but wholesale buyers are now requiring GAP certification. FDA will require the use of its own guidance through FSMA. The guidance covers worker health and hygiene, quality of water used for irrigation, pesticide application and washing produce (ensuring the water is not contaminated), manure use as fertilizer, and fecal contamination of fields by wildlife and pets. Some commodities are high-risk and FDA will be ranking commodities because of the FSMA. For example, leafy greens are high risk, but corn is considered a low risk. Because MDA has been so involved in the issue, it developed "Maryland GAP," in conjunction with the University of Maryland. There is no charge to participate in this program, and participation will help with compliance with future FSMA regulations. Producers that pass the MDA inspection get a certificate that they can display.

This program is important because while there is an exemption in FSMA for smaller direct marketers (\$500,000 in sales and at least 51% in direct sales), FDA can revoke the exemption at any time. A food-borne illness connected with Maryland's buy local program would be devastating for small farmers.

Specific issues in FSMA

Manure – FDA’s regulations will state how long before harvest non composted manure can be applied. The combination of nutrient management restrictions on application dates and FDA application restrictions will mean in reality composting will be the only realistic option.

Surface water for irrigation/water quality -- There is a big difference, for example, in how you address water quality issues pertaining to various produce and how you would treat them. Farmers will also have to figure out a way to restrict wildlife. One method is to exclude produce contaminated by wildlife from harvest. There will be more inspections for MDA. Currently 30 farmers are USDA GAP-certified. The goal is to get all farmers aware of the food safety issues with fruits and vegetables and documenting their food safety procedures.

Licensing Requirements from DHMH

Producer Mobile Farmers Market License – This is a statewide license resulting from 2010 legislation allowing a farmer to get one license for one fee and go to any farmers market in the state. It is not a required license so if they set up in a county that doesn’t charge a fee they don’t have to get the statewide license. You must be a Maryland farmer in order to get this license.

Sampling license – The law allows a county to put a seasonal sampling license into effect (subject to the approval of the county council) and charge an unspecified fee. This particular license does not come through DHMH. If a county has not implemented this kind of license, the health department would still have to give them a temporary 14-day permit. Currently only five or six counties allow a seasonal license. You must be the person who makes the food in order to get this license.

On-farm processing -- If a farmer is working on a new product, it’s important to submit a plan application as soon as possible. This lets DHMH quickly know what the farmer is proposing. A new plan review fee has been implemented but farmers are excluded from paying this fee.

Maryland Wineries Legislative and Regulatory Issues

Overview of the Industry

In the past three years, 23 new wineries have become licensed (61 total). There are currently 15 in the licensing process. Wineries are now licensed and regulated by the Comptroller at the state level. There are three major activities on which the wineries focus: tourism, agriculture and land preservation. Wineries need to have a sustainable business and sales environment. Two percent of all wine purchased in Maryland is from local wineries, with the market growing by 10-15 percent per year. And, other kinds of similar products are increasing in availability. For example, seven percent of hard cider comes from local wineries. There is also an increase in local farm breweries.

The Maryland Winery Modernization Act

The Maryland Winery Modernization Act was passed to update prohibition-era laws. Wineries are now regulated at the state level by the Comptroller’s office. However, there continues to be county zoning and health regulatory issues. For example, in Howard County, 100 percent of grapes have to come from your own winery. And, you currently cannot build a winery until the vineyard comes into production. Kent County does define wineries but counties don’t want to know what other counties are doing. Other issues are water permits, as well as waste from a winery, which impacts the size of a septic system. Wineries also have the opportunity to now do direct shipping. Recently, MDA’s state chemist issued an official determination that winery/greywater waste is a soil condition. The benefit to this finding is that if wineries include their grey water and pomace in nutrient management plans, they can have a smaller

septic system.

Ongoing Issues

What is a winery – definitions, uses, standards vary by county. There is a state definition in the alcohol code but planning and health regulations are very different. The concerns expressed by the wineries can be applicable to other kinds of value-added agriculture. For some farms to survive, value-added products are needed. Land is very expensive. Some GICA members felt that the problem becomes when the line is crossed from agriculture to commercial. If more things are added then you become commercial rather than agricultural. From a county perspective, however, wineries have always been considered commercial. Wineries fall into categories in which they don't really fit. There are, however, ways to address this issue.

For health regulations in general, there are different conclusions about regulations for wineries, depending on the counties. DHMH however, has jurisdiction only when food service is involved. Otherwise, as stated earlier, wineries are under the jurisdiction of the Comptroller. Some of the problems that exist in Maryland do not exist in Virginia. "Expressed powers" don't exist in Virginia. In Maryland you must have an expressed authority to do something. In addition, having a county agricultural marketing professional (AMP) is helpful in navigating regulatory requirements. In counties where there is no AMP, there is no one to help guide someone who wants to have a value-added product.

County Zoning and Health Regulatory Concerns

Prince George's County --Water usage and septic related to a local event. How much water is used is over-estimated. The county representative said that was based on estimates from MDE, which were probably 10 times what the winery actually uses.

Anne Arundel County – Impact fees. A local producer in Anne Arundel County was charged a \$15,000 impact fee before even getting underway. They moved production to Kent County. They did get a text amendment approved in the county to get an exemption from the fee.

Washington County – The local winery was asked by the county to pick an existing definition to plug a winery into in terms of what made the most sense. The winery was given the choice of a church or community center. The winery picked a church based on the amount of investment required vs. investments in the requirements for a community center.

Carroll County – Permitting wineries span issues concerning septic, bathrooms, plumbing, and fire suppression. A Carroll County winery had trouble getting a septic system installed.

Frederick County – A local winery was told to install a grease trap, even though they didn't make or serve prepared food.

Wildlife Issues -- Pete Jayne Associate Director for Game Management, Wildlife and Heritage Service, Department of Natural Resources

The current permit issued to address crop damage by deer is tied to a landowner or farming lease. The landowner or farm lessee may designate other persons to shoot deer under their permit. A survey of crop damage permit holders showed over 85% were satisfied with the program. Mr. Jayne discussed the financial impact of wildlife damage and provided advice to what counties could do to reduce damage. He noted that some counties have been proactive with their deer management programs, and while this process is very time consuming initially, it ultimately allows the county to take deer management actions much more efficiently over the long term. There is a state law that protects a landowner from liability if they are not charging for hunting. The University of Maryland Extension has a publication which looks at liability issues. Wildlife issues are addressed in more detail in the GICA toolkit.

Phase II of the Watershed Implementation Plan – Royden Powell, MDA and Jim George, MDE

The interim final targets will be challenging. Different sectors will be required to reach the goals,

through a systematic objective approach. Maryland is already halfway to meeting its load reduction goals and will get credit for work done in the past. The starting points for agriculture are the loads without BMPs, and 2010 land use with no BMPs.

The WIP accounts for load growths and how they should be managed. For example, as new houses are built, where are they built? The motivation is smart growth. MDA has also begun a nutrient trading program which fits into the offset policy. There have been ongoing public meetings. Currently there have been a series of meetings dealing with the offset policy.

Stormwater Management – Ken Pensyl, MDE

Ken Pensyl from MDE talked about Stormwater Regulations. In 2007, the General Assembly passed legislation which set the stage for urban development. The new law moved from structural BMPs to the more non-specific “maximum extent practical.” In 2000, there were new regulations that incorporated incentives and credits into the site plan. The new law also included redevelopment and flexible options. In 2009, 50% of development is actually redevelopment. There was a compromise but the same flexible option. The 2007 Stormwater Management Act brought consistency between agencies. Right now they are trying to deal with stormwater regulations in regards to poultry houses. There are currently several options available. Currently there is a notice of intent in that one acre of disturbance needs a general permit.

PlanMaryland – Overview and Update – Rich Josephson, Director of Planning Services, Maryland Department of Planning

Mr. Josephson provided an overview and update on PlanMaryland. Mr. Josephson handed out a “quiz” to determine the level of knowledge that the audience has about PlanMaryland. PlanMaryland is a “new state plan for improving coordination between state agencies and collaboration with local governments.” By 2035 Maryland will grow by one million residents. Since 1973 1,000,000 acres of agricultural and forested land has been converted to development. PlanMaryland is a policy and process plan. It will serve as a framework for better coordinating agricultural programs and funds in areas identified by MDA and local jurisdictions.

MDA Marketing Efforts – Mark Powell, Chief of Marketing, Maryland Department of Agriculture

Mr. Powell presented on the MDA marketing efforts – trends include “locavore” – knowing the farmer and food safety. Studies show that more than 52 percent of Marylanders are now aware of MDA’s Maryland’s Best program. Preference for Maryland-grown produce has increased by 37 percent since 2006.

SB 236 -- The Sustainable Growth and Agricultural Preservation Act of 2012 – John Leocha, MDP, Jay Sakai, MDE

MDE and Maryland Department of Planning (MDP) representatives Jay Sakai and John Leocha, respectively, did a presentation on the implementation of SB 236 the Sustainable Growth and Agricultural Preservation Act of 2012.

Tier I – Existing public sewerage

Tier II – Public sewerage; planned septic systems shall be viewed as interim.

Tier III – Septic Systems

Tier IV – Preservation and conservation areas. No major subdivisions; only minor.

A key aspect is that transfer of development rights (TDRs) can remain. The bill allows for a maximum of 15 lots in a Tier IV receiving area. If the county does not have a TDR program, a farm can be a receiving area for TDRs if identified as such. Rights can be transferred from Tier IV to Tiers I, II, III, but cannot be transferred from I, II, or III into IV. Only rights from Tier IV can be transferred within Tier IV. Some

county representatives on GICA have expressed concern about how to mesh state goals with county goals. There had been significant debate in the General Assembly about the role of the local areas. In the end, decisions are left to local planning and zoning officials. Part of the process concerns the issue of large lot developments in rural areas. The analysis needs to consider the cost of fire and other services. For stormwater management, however, there is already a cost to the local community for environmental degradation. Some counties have different processes. A property has to perc before a plan is approved. The State is trying to make the process as simple as possible. The problem with past smart growth efforts is that after 10 years, studies have shown there is still too much development going on and too much state funding for suburban sprawl.

Healthy Food Financing Initiative (HFFI) – Brian Lang and Eugene Kim, The Food Trust, Philadelphia, PA

HFFI provides access to financing, new or expanded grocery stores. The rates of obesity are increasing (BMI – obesity if above 30%). We need to change the way people eat. There are few or no places to purchase healthy foods in certain areas of the county. More than 23 million people live in food deserts in the U.S. The Pennsylvania Healthy Food Financing Initiative has provided \$30 million in grants/loans for investments in underserved areas. The Food Trust is looking at research to see if there has been an improvement. The challenge is getting a sample size. The Healthy Food Financing program has \$125 million in funding available. Community Development bank awarded HFFI to Howard Park for development of Shoprite. In February, 2012, the Food Trust launched a task force in Maryland to discuss solutions to food deserts. Recommendations were published recently, focusing on grocery store development, nutrition and transportation issues, security concerns and workforce shortages.

Food Policy Councils and GICA – Delegate Doyle Niemann

Food and agriculture face critical issues both now and in the future, and we now need to figure out how to move ahead. The Department of Health and Mental Hygiene had a food policy work group during the interim which focused on Farm to School and other food and nutrition issues. The House Environmental Matters Committee is a political component of these issues and has to balance priorities. Delegate Niemann has several action items for GICA to consider: There are fewer resources and demands for action. Food Councils are vehicles for a way to move policy issues forward. There are a multitude of things already going on. How do we facilitate this? We need to identify specific obstacles, develop strategies and need to develop online opportunities. The National Ag Library has put together a 20-page package of abstracts on food policy councils. Examples of what GICA could focus on: Food Deserts both in rural and urban areas. Access is also a big issue. Other subjects might be marketing, economics and obesity/nutrition.

Some efforts are already underway for things such as “food hubs,” and obesity/nutrition issues (St. Mary’s and Charles County) Several GICA members commented that there are a lot of opportunities to provide food but there is more demand than there are farmers. Examples of local efforts dealing with nutrition: the “Obesity coalition” in St. Mary’s County and efforts by the Charles County Health Department to promote more fruits and vegetables.

Action Item for 2013: Develop strategies to help farmers address ongoing zoning/health regulations as they continue to diversify and create more value-added products.

At the final 2012 meeting, due to the discussion involving wineries and other value added products, Secretary Hance announced that he would form a workgroup for 2013 to look at what the ongoing county zoning and health regulations issues are and discuss some solutions. The first step will be to send a survey out to producers to identify some of the county issues that wineries, direct marketers and others have before proceeding with a big work group. The categories of producers on which to focus would be:

wineries, creameries, direct marketing, agritourism, farm stands (some would fall into more than one category). Some of the potential topics on which the workgroup will focus:

1. Clarification needed from state agencies on definitions/activities
2. The categories of agriculture mentioned above not clearly defined or not defined at all in various state and county codes.
3. Regular outreach is needed to county agency personnel and officials about emerging agricultural industries. It has been tried in the past but continues to be an issue.
4. Lack of knowledge on the part of producers as to what their options/rights are to challenge a county decision. This is particularly problematic in the counties where there is no AMP.

The first step before establishing a workgroup will be to develop a survey for producers to look at potential county zoning/planning and health regulations, with GICA member input for agricultural producers to respond to during January and February 2013. The survey will attempt to identify county/zoning/permitting and health regulatory issues they have faced. That survey would be distributed to GICA members for comment. Following the survey's completion, the results would be sent through the Maryland Association of Counties to their county officials for comment. GICA staff will also review similar efforts in other states, including revisions to right to farm laws, and present those and the survey results at the next GICA meeting, scheduled for Tuesday, June 4, 2013.

Appendix A

Governor's Intergovernmental Commission for Agriculture 2009 Members

Secretary Earl F. Hance (chair) Maryland Department of Agriculture

Appointed Members

Kenneth Bounds	General Public, Mid Atlantic Farm Credit
Cheryl DeBerry	General Public, Agricultural Specialist, Garrett County
Tom Hartsock	Maryland Agricultural Commission
Vanessa Finney	General Public, Maryland Nursery and Landscape Assoc.
Sarah O'Herron	MARBIDCO
Rodney Glotfelty	MD Association of County Health Officials
Daniel T. Magness	Producer, Harford County
Robin Frazier	MD Association of Counties
James L. McCarron	MD Municipal League
Vacant	Rural Maryland Council
Gail Webb Owings	MD Association of County Planning Officials
Pamela Saul	General Public, Ag Producer, Montgomery County
Jim Steele	Maryland Farm Bureau
Gabe Zepp	General Public, Agricultural Specialist, Carroll County

State Agency Secretaries/Deans

Secretary John Griffin	Department of Natural Resources
Secretary John Colmers	Department of Health and Mental Hygiene
Secretary David Edgerley	Department of Business and Economic Development
Secretary Shari Wilson	Department of the Environment
Secretary Richard E. Hall	Department of Planning
Dr. Cheng-I Wei	College of Agriculture and Natural Resources

Staff

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