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Increasing Local Food Procurement by Rhode Island Institutions

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I. INTRODUCTION

This report considers how state agencies in Rhode Island can increase the amount of locally-grown food they are purchasing and serving in meals. Spending more public dollars on locally-grown food to serve in state agencies such as prisons, hospitals, and child care centers would deliver a boon to the state economy and would encourage more Rhode Island farmers to start or expand their farming operations in the state. Local food procurement also increases the amount of fresh, nutritious food provided to inmates, patients, and employees that eat at public institutions.

The Rhode Island Food Policy Council's Policy Committee identified institutional food procurement as one of its priority areas in the fall of 2013, and asked the Harvard Food Law and Policy Clinic to develop recommendations for policy advocacy in this area. This report analyzes policies passed in other states to promote local food procurement and assesses how different models of local food procurement policies have been successful or faced challenges in meeting their goals. In developing this report, the authors conducted research and interviews with key stakeholders involved in institutional food procurement in Rhode Island. Based on those findings, this report considers how current Rhode Island laws and policies could be amended to promote increased purchasing of locally grown foods by state agencies. Since these institutions are spending public dollars on food purchases, state policymakers have the authority to redirect these resources towards strengthening the state economy and investing in Rhode Island's public health and natural environment. In addition to recommending policy changes, this report describes how other stakeholders and the public can play a crucial role in making a local procurement policy successful.

A. Benefits of Local Food Procurement

There are several compelling reasons why policymakers and advocates should work to increase local food procurement by state agencies.

1. *Healthy, Fresh, Safe Food*: Increasing the amount of locally-grown food served in state agencies will likely improve the nutritional quality of the meals, since many local products are fresher and less processed than food that has been shipped long distances. For example, using more fresh fruits and vegetables can decrease the added sugars and salt in institutional meals, as food service employees will have control over the food preparation instead of using canned or processed produce, which can contain large amounts of added sugars and salt. Food that is freshly harvested also has a higher nutrient value, it can taste better, and it is less susceptible to contamination from the farm, storage, or shipping processes.¹ During the major spinach recall in 2006, a senior U.S. Food and Drug Administration official advised that "the risk is significantly reduced if you know the farmer and know his farm," as the bacteria making people sick was suspected to be from a large commercial farm on the West Coast.² Lastly, offering fresh, local products can encourage clientele to eat more of

¹ Rita Klavinski, *7 Benefits of Eating Local Foods*, Michigan State Univ. Extension, http://msue.anr.msu.edu/news/7_benefits_of_eating_local_foods (last visited Nov. 3, 2014).

² Marian Burros, *A Stopgap for the Spinach Lover*, N.Y. TIMES (Sept. 20, 2006), <http://www.nytimes.com/2006/09/20/dining/20greens.html>.

these healthy foods. For example, introducing locally-grown foods into meals has also been shown to increase consumption of fruits and vegetables among children.³

2. *Economic Driver and Job Creator:* Local food procurement by public institutions can expand economic opportunities for farmers, food businesses, and other workers in Rhode Island. Secretary of Agriculture Tom Vilsack noted that Farm to School programs, in which schools procure food from local farms to serve in school meals, “offer[] new opportunities for America’s farmers and ranchers in addition to supporting off-farm jobs”⁴ As the market for locally-grown food increases, it creates a stable and significant source of revenue for farmers, making farming a more viable profession and encouraging farmers to spend money in other parts of the local economy, such as on personal expenses, farm supplies from Rhode Island businesses, and labor. In fact, one Connecticut-based study showed that for each dollar in agricultural sales, an additional dollar is spent on other economic activity in the state.⁵ In Oregon, one study found that for every dollar spent by schools on locally-grown food, an additional 86 cents was spent in Oregon.⁶ Local food businesses such as processors and distributors would also benefit from increased local procurement, and be able to expand operations and hire new workers. By purchasing from Rhode Island farms, as opposed to out-of-state producers, agencies can reinvest state dollars within the state economy.⁷
3. *Environmental Benefits:* The transportation of food across long distances is a very energy-intensive process, and Rhode Island can reduce its carbon footprint from transportation by switching to foods not transported over hundreds or thousands of miles.⁸ Procuring food from local farms also enables Rhode Island institutions to verify the growing practices of farmers, and therefore purchase more sustainably-produced food. The Rhode Island Division of Agriculture encourages and provides resources for farms in Rhode Island using sustainable growing practices to minimize pollution.⁹ Most livestock farms in Rhode Island have fewer than 20 animals,¹⁰ and thus do not create the same environmental harms as the large concentrated livestock operations that produce most of the meat consumed in the U.S.¹¹ Sustainable agriculture has a host of environmental benefits, such as “surface and ground water filtration, improved air quality,” as well as providing “feeding and

³ Betty T. Izumi et al., *Results from the 2004 Michigan Farm-to-School Survey*, 76 J. SCHOOL HEALTH 169, 169–170 (2006).

⁴ Michael Gibney, *Tester and Vilsack Discuss Farm to School Program in Bozeman*, BOZEMAN DAILY CHRONICLE, available at http://www.bozemandailychronicle.com/news/article_5affea24-2996-11df-9846-001cc4c002e0.html (Mar. 7, 2010).

⁵ RIGOBERTO LOPEZ ET AL., ECONOMIC IMPACTS OF CONNECTICUT’S AGRICULTURAL INDUSTRY, UNIV. OF CONNECTICUT DEP’T OF AGRIC. AND RES. ECON. AND THE CONNECTICUT CTR. FOR ECON. ANALYSIS 5 (Sept. 2010), <http://www.are.uconn.edu/documents/economicimpacts.pdf>.

⁶ DEBORAH KANE ET AL., THE IMPACT OF 7 CENTS, ECOTRUST 25 (2011), http://www.ecotrust.org/media/7-Cents-Report_FINAL_110630.pdf.

⁷ One study has suggested that money directed into the state economy in this way circulates up to fifteen times. KELLI SANGER & LESLIE ZENZ, WASH. STATE DEP’T OF AGRIC., FARM-TO-CAFETERIA CONNECTIONS: MARKETING OPPORTUNITIES FOR SMALL FARMS IN WASHINGTON STATE 2 (2004), available at <http://agr.wa.gov/Marketing/SmallFarm/docs/102-FarmToCafeteriaConnections-Web.pdf>.

⁸ See David Pimentel et al., *Reducing Energy Inputs in the US Food System*, 38 HUM. ECOLOGY 459, 467–68 (2008).

⁹ R.I. Div. of Agric., *Best Management Practices*, <http://www.dem.ri.gov/programs/bnatres/agricult/ecology.php> (last visited Sept. 20, 2014).

¹⁰ TABLE 14: CATTLE AND CALVES HERD SIZE BY INVENTORY AND SALES: 2012, 2012 CENSUS OF AGRIC., U.S. DEP’T OF AGRIC. (May 2014), http://www.agcensus.usda.gov/Publications/2012/Full_Report/Volume_1,_Chapter_1_State_Level/Rhode_Island/st44_1_014_016.pdf.

¹¹ See Pew Commission on Industrial Farm Animal Production, *Putting Meat on the Table: Industrial Farm Animal Production in America* (2008), available at http://www.ncifap.org/_images/pcfapsmry.pdf.

breeding areas for local bird populations and... habitat for many other land and aquatic species.”¹² Supporting these more environmentally-friendly farming operations creates a commercial market which enables farmers to make a living while growing food in a more responsible way.

B. REPORT ROADMAP AND SCOPE

This report starts in Section II by analyzing the current laws and policies in Rhode Island that support procurement of locally-grown food by public institutions. While these policies are a promising start, this report explains their limitations and describes how policymakers could strengthen or enact new policies to better promote local food procurement by state agencies. In Section III, this report discusses the unique challenges and opportunities for local food procurement in Rhode Island, based on findings from research and interviews with government employees, advocates, and food producers in Rhode Island. In Section IV, this report recommends several policy strategies for increasing local food procurement in Rhode Island, and explains how non-profits, government actors, farmers and private companies can help to successfully implement these policies.

This initial report provides an overview of food procurement practices by state agencies and other public institutions in Rhode Island and describes preliminary strategies to increase local food procurement in the state. Due to limited time and resources, this report is limited in scope and does not provide a comprehensive analysis of Rhode Island state agencies’ procurement processes. While this report aims to provide a useful framework for state policy change, further research is needed to gain a complete understanding of the varying purchasing practices by each state agency in order to develop specific recommendations tailored to each agency.

II. CURRENT LAWS AND POLICIES

Rhode Island citizens and policymakers have recognized the importance of local food procurement, as reflected in several policies and programs currently in place. This section examines these policies and explains how they could be strengthened and expanded to better promote local food procurement in Rhode Island.

A. Rhode Island Foodstuffs Law

Rhode Island’s Foodstuffs Law directs purchasing agents at state institutions to procure food grown or produced in Rhode Island when it is of “good quality,” “available at . . . prevailing market prices,” and “required by the state institutions.”¹³ This gives purchasing agents broad discretion in deciding to purchase locally-grown food, as there is no guidance on what constitutes “good quality,” “prevailing market price,” or “required by the institution.” Thus, perhaps not surprisingly, the law seems to have had very little effect on the purchasing behavior of state institutions.¹⁴ Most purchasing agents do not

¹² R.I. Agric. P’ship, *A Vision for Rhode Island: Five Year Strategic Plan 4* (May 2011), available at http://www.rhodyag.com/docs/RI_agriculture_5yr_strategicplan.pdf.

¹³ R.I. GEN. LAWS ANN. § 37-2-8 (West 2014).

¹⁴ Telephone Interview with Nicole Pollock, R.I. Food and Nutrition Pol’y Advisory Council and Legislative Liaison, R.I. Dep’t of Environ. Mgmt. (Mar. 31, 2014).

take the law into account when making purchasing decisions.¹⁵ Even if they did, many local products might not be considered “available at market prices” because local farms might charge more than a large commercial wholesaler. It also would be difficult to claim that these foods are “required” by institutions if their current menu offerings consist largely of products that cannot be grown in the region. To increase local food procurement, institutions would need to be encouraged to change their menus and seek out more products that could be produced locally.

This type of law is a version of a tie-goes-to-local law, although it gives even more discretion to purchasing agents than similar laws in other states. Sixteen other states have tie-goes-to-local laws.¹⁶ While the language varies, these laws generally state that when price and quality are equal, the purchasing agent is required to preference a product grown in-state. These types of laws will generally have a limited impact, since local farmers will often have to charge more than a large commercial food distributor. Thus, policies should be enacted that provide a stronger preference for locally-grown foods in state agency bidding processes.

B. Master Price Agreement Request for Proposal with Local Foods Provision

In 2012, the Rhode Island General Assembly created an Interagency Food and Nutrition Policy Advisory Council (“Interagency Council”), which is now composed of the Directors of seven state agencies.¹⁷ One of the Interagency Council’s central duties is to “examine issues regarding the identification and development of solutions to regulatory and policy barriers to developing a strong sustainable food economy and healthful nutrition practices.”¹⁸ Since its inception, the Interagency Council has made great strides towards promoting local food procurement in Rhode Island. After encouragement from his other Council members, the Director of the Department of Administration (DOA) led his agency in issuing a revised Request for Proposal (RFP) for its Master Price Agreement (MPA) that encourages vendors bidding on the contract to provide more locally-grown foods, and requires them to track local purchasing.¹⁹ The RFP emphasizes that one of its primary goals is to: “Maximize to the greatest extent possible, while balancing budgetary concerns, the purchase of local foodstuffs.”²⁰

The MPA is a contract through which many Rhode Island state agencies purchase some or all of their food. Vendors selling through the MPA agree to “provide services or goods at an agreed maximum rate or cost as needs arise” over the term of the contract, so this is often the most affordable option for state

¹⁵ *Id.*

¹⁶ See CAL. GOV’T CODE § 4331 (West 2012); CONN. GEN. STAT. ANN. § 4a-51 (West 2012); FLA. STAT. ANN. § 287.082 (West 2012); FLA. STAT. ANN. § 287.0822 (West 2012); IDAHO ADMIN. CODE r. 38.05.01.082 (2012); IOWA CODE ANN. § 73.1 (West 2012); KY. REV. STAT. ANN. § 45A.645 (West 2012); ME. REV. STAT. tit. 7, § 213 (2011); MISS. CODE. ANN. § 31-7-15 (West 2012); MO. ANN. STAT. § 34.070 (West 2012); N.C. GEN. STAT. ANN. § 143-59 (West 2012); 4 PA. CODE § 7a.41 (2013); R.I. GEN. LAWS ANN. § 37-2-8 (West 2013); TENN. CODE ANN. § 12-3-1113(a) (2014); TEX. GOV’T CODE ANN. § 2155.444 (West 2011); VT. STAT. ANN. tit. 29, § 909 (West 2012); VA. CODE ANN. § 2.2-4324 (West 2012).

¹⁷ R.I. GEN LAWS § 21-36-3 (West 2014) (“There shall be an inter-agency food and nutrition policy advisory council which shall consist of seven (7) members: the director of health, or his or her designee; the director of environmental management, or his or her designee; the director of administration, or his or her designee; the director of the department of human services, or his or her designee; the director of the division of elderly affairs, or his or her designee; the director of the department of corrections, or his or her designee; and the commissioner of elementary and secondary education, or his or her designee.”)

¹⁸ R.I. GEN LAWS § 21-36-3 (West 2012).

¹⁹ R.I. DEP’T OF ADMIN., RFP #2548562 TITLE: FOOD-PRIME VENDOR 1 (2014) (herein “Revised RFP”).

²⁰ *Id.* at 7.

agencies.²¹ Yet, some public institutions purchase some or all of their food outside the MPA, from sources such as independent distributors and local businesses. For example, the Department of Corrections utilizes “spot purchases” for many of their food needs, which are generally smaller orders of specific products.²² However, the MPA does cover a large portion of agency food purchasing: around \$4 million dollars per year²³ (40% of the \$10 million that the state spends on total food purchasing).²⁴

The revised RFP now requires that as part of any contract under the MPA, vendors must keep track of their local food purchases and provide a quarterly report showing their expenditures on local food.²⁵ For this RFP, “local” foods are classified into three tiers: “Tier 1 = Grown, Raised or Caught in Rhode Island; Tier 2 = Grown, Raised or Caught in New England; Tier 3 = Grown, Raised or Caught outside of Rhode Island, but distributed, packaged or otherwise processed in Rhode Island by a Rhode Island entity.”²⁶ The vendor must specify under which tiers their local purchasing falls. While the current RFP only encourages vendors to purchase local food, it reserves the right to set a benchmark for what percentage of foods vendors must purchase locally at a future date.²⁷

The revised RFP has several important benefits. First, this contractual agreement can be easily enforced because DOA can terminate the contract if the vendor is not meeting the conditions.²⁸ Second, the RFP places the burden of collecting data on a private company profiting from the contract, rather than state agencies with little resources to track their purchasing. Vendors are also the party purchasing the food from producers, so it should be easier to identify where the food comes from. Third, the regional approach incentivizes vendors to purchase from farms throughout New England, which will promote the creation of a regional food system that provides Rhode Islanders with more options and variety of foods. Fourth, since the RFP is not a price preference law, it will not trigger other states’ reciprocal preference laws, which could harm Rhode Island producers exporting their goods to other states. Lastly, the quarterly reports will help the DOA establish a baseline for the amount of local goods that are currently being purchased by Rhode Island institutions through the MPA.²⁹ This type of tracking law has been piloted in other states, including New York and Iowa, as a way to ensure that the goals set by future policy are both ambitious and achievable based on current levels of local food purchasing.

While this is a significant first step, the data tracked through this RFP will be incomplete since many state agencies are purchasing some or all of their food items outside of the MPA. It would be helpful for agencies to track their local food purchasing outside of the MPA to create a more comprehensive picture of local food procurement. With this information, Rhode Island policymakers would be able to better determine local food procurement goals that would be positive and practical for the state.

²¹ *Id.* at 3.

²² Telephone Interview with Dan Majcher, Legal Counsel, R.I. Dep’t of Admin. Div. of Purchases (Apr. 18, 2014).

²³ *Id.*

²⁴ AMERICAN FARMLAND TRUST, CONSERVATION LAW FOUNDATION, NORTHEAST SUSTAINABLE AGRICULTURE WORKING GROUP, NEW ENGLAND FOOD POLICY: BUILDING A SUSTAINABLE FOOD SYSTEM 98 (March 2014), *available at* http://www.clf.org/wp-content/uploads/2014/03/1.New_England_Food_Policy_FULL.pdf.

²⁵ Revised RFP, *supra* note 19, at 15.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Telephone Interview with Dorothy Brayley, Former Executive Director, Kids First Rhode Island (Mar. 31, 2014).

²⁹ Telephone Interview with Nicole Pollock, *supra* note 14.

C. Proposed Reciprocal Preference Law

In 2014, a bill was introduced in the Rhode Island General Assembly that would create a reciprocal preference policy.³⁰ The bill would apply to contracts for all goods purchased by Rhode Island institutions, ranging from highway and construction contracts to food purchases.³¹ This bill would require the DOA to publish a list of all preferences that other states give to in-state businesses, and Rhode Island purchasing agents would increase the price of bids from businesses in those states by the same percentage.³² For example, since Massachusetts provides a 10% price preference to Massachusetts-grown food, Rhode Island would treat bids from Massachusetts growers and distributors as if they were 10% more expensive. Thirty-one states have adopted similar laws.³³

On one hand, the reciprocal preference law might make Rhode Island products more affordable as compared to products from states against which the preference is applied. However, this would work against the goal of creating a New England regional food system. In the 2014 report “New England Food Policy: Building a Sustainable Food System,” the authors recommend that all six New England states adopt a tiered regional procurement preference “where in-state food products receive the highest preference, regional food products receive a lesser preference, and out-of-region food products receive no preference.”³⁴ As a small state, Rhode Island would benefit from developing a regional, as opposed to simply one-state, food system. Since Massachusetts has a price preference law,³⁵ a reciprocal preference would erode the ability of agencies to purchase foods from this neighboring state, and it would hamper the willingness of New England states to collaborate to strengthen their regional food system. Further, since only nine states have price preference laws, the reciprocal preference would not apply for the vast majority of out-of-state products, and thus is not the most effective way to promote Rhode Island producers.³⁶ The bill passed in the House in June 2014 and has been transferred to the Senate for consideration.

³⁰ 2013 R.I.H.B. 7235 (NS) (West 2014).

³¹ E-mail from Kenneth Marshall, Representative, Rhode Island General Assembly, to Timothy Fleming, Student, Harvard Food Law and Policy Clinic (Apr. 22, 2014, 14:56 EST) (on file with author).

³² 2013 R.I.H.B. 7235 (NS) (West 2014).

³³ ALA. CODE § 39-3-5 (2014); CAL. PUB. CON. CODE § 6107 (West 2014); COL. REV. STAT. ANN. § 8-18-101 (West 2014); CONN. GEN. STAT. ANN. § 4e-48 (West 2014); FLA. STAT. ANN. § 287.084 (West 2014); GA. CODE ANN., § 50-5-60 (West 2014); HAW. REV. STAT. § 103D-1004 (West 2014); IDAHO CODE ANN. § 67-2348 (West 2014); 30 ILL. COMP. STAT. ANN. 500/45-10 (West 2014); IOWA CODE ANN. § 73A.21 (West 2014); KAN. STAT. ANN. § 75-3740(A) (West 2014); KY. REV. STAT. § 45A.494 (West 2014); LA. REV. STAT. § 1595.1 (2014); ME. REV. STAT. ANN. tit 5, § 1825-B(9) (West 2014); MD. CODE, ANN., STATE FIN. & PROC., § 14-401 (West 2014); MICH. COMP. LAWS ANN. § 18.1268 (West 2014); MINN. STAT. ANN. § 16C.06 (West 2014); MISS. CODE ANN. § 31-7-47 (West 2014); MONT. CODE ANN. § 18-1-102 (West 2014); NEB. REV. STAT. ANN. § 73-101.01 (West 2014); NJ. ADMIN. CODE § 17:12-2.13 (2014); NY STATE FIN. LAW § 165(6) (McKinney 2014); N.C. GEN. STAT. ANN. § 143-59(A) (West 2014); N.D. ADMIN. CODE § 89-07-02-26 (2014); OH. ADMIN. CODE § 123:5-1-11(D) (West 2014); OK. STAT. ANN. tit. 74, § 85.17A (West 2014); OR. REV. STAT. ANN. § 279A.120 (West 2014); TEX. GOV'T. CODE ANN. § 2252.002 (West 2014); UTAH CODE ANN. § 63G-6a-1003 (West 2014); VA. CODE ANN. § 2.2-4324 (West 2014); WASH. REV. CODE ANN. § 39.26.260 (West 2014); WIS. STAT. ANN. § 16.75 (West 2014).

³⁴ American Farmland Trust et al., *supra* note 24, at 100 (citing *Tools for Advocates: Increasing Local Food Procurement by State Agencies, Colleges and Universities*, HARV. FOOD L. & POL'Y CLINIC (July 2013), http://www.chlpi.org/wp-content/uploads/2013/12/Local-Procurement-Handout_FINAL_WEB-FRIENDLY.pdf.)

³⁵ Mass. Gen. Laws Ann. ch. 7, § 23B (West 2010).

³⁶ See ALA. CODE § 41-16-20 (2014); ALASKA STAT. ANN. § 36.15.050 (West 2012); 30 ILL. COMP. STAT. ANN. 500/45-50 (West 2012); 30 ILL. COMP. STAT. ANN. 595/10 (West 2012) (providing that the price preference is optional); IND. CODE ANN. § 5-22-15-23.5 (West 2012); LA. REV. STAT. ANN. § 38:2251 (2012); LA. REV. STAT. ANN. § 39:1595 (2012); LA. REV. STAT. ANN. § 38:2251.1 (2012); MD. CODE

D. Price Preference for Locally-Produced Milk

Rhode Island has enacted a narrow price preference policy for locally-produced milk. Price preference policies, adopted in nine other states, allow the state purchasing agents to give local products a preference by decreasing the bid price on those products by a certain amount or percentage when comparing them to out-of-state products.³⁷ For example, if a state agency wanted to purchase two hundred bushels of apples and the lowest bid from an out-of-state producer was \$5,000, under a 10 percent price preference for in-state products, the contract could go to a local grower whose price is \$5,500 or less. It is important to note that the price preference given to local farmers in the bid process does not lower the actual bid price. The institution will still pay the vendor's proposed price, but the preference allows institutions to choose to purchase from a local farmer with slightly higher prices, thus keeping state dollars in the state.

Rhode Island's price preference law grants Rhode Island milk producers a 0.25% price preference over out-of-state producers when they are competing for a public school procurement contract.³⁸ Notably, this law is limited both in the product covered and the type of public institution covered, and is thus much narrower than other state price preferences that cover all locally-grown products and more public institutions. This law has apparently had a limited effect. When interviewed, a representative of Rhody Fresh, Rhode Island's dairy cooperative, had no knowledge of the law or any indication that Rhode Island purchasing agents were following its terms.³⁹ The law is likely not being enforced for several reasons. First, the price preference is extremely small, and thus even those dairies that know about the law do not have a strong incentive to make sure it is enforced. It also could be too small to alter who has the lowest bid during an institution's ordering process and thus, even if applied, would not affect who wins the contract. Second, the preference is part of a 1992 law that called for the creation of a Milk Commission, which was designed to enforce rules regarding milk pricing such as the price preference.⁴⁰ To date, the Milk Commission has never been created, and thus there is no group implementing the law.⁴¹

E. Tax Credit for Selling Rhode Island Food to Schools

Rhode Island also offers an income tax credit to distributors or other "middle men" selling Rhode Island-grown produce to schools, equal to 5% of the cost of the food.⁴² The General Assembly passed the law in

ANN., STATE FIN. & PROC. § 14-407 (West 2012); MASS. GEN. LAWS ANN. ch. 7, § 23B (West 2012); OHIO ADMIN. CODE 123:5-1-06 (2012) (allowing for a price preference to be applied to bordering states); S.C. CODE ANN. § 11-35-1524 (2012).

³⁷ Price preferences range from five to fifteen percent. See ALA. CODE § 41-16-20 (2014); ALASKA STAT. ANN. § 36.15.050 (West 2012); 30 ILL. COMP. STAT. ANN. 500/45-50 (West 2012); 30 ILL. COMP. STAT. ANN. 595/10 (West 2012) (providing that the price preference is optional); IND. CODE ANN. § 5-22-15-23.5 (West 2012); LA. REV. STAT. ANN. § 38:2251 (2012); LA. REV. STAT. ANN. § 39:1595 (2012); LA. REV. STAT. ANN. § 38:2251.1 (2012); MD. CODE ANN., STATE FIN. & PROC. § 14-407 (West 2012); MASS. GEN. LAWS ANN. ch. 7, § 23B (West 2012); OHIO ADMIN. CODE 123:5-1-06 (2012) (allowing for a price preference to be applied to bordering states); S.C. CODE ANN. § 11-35-1524 (2012).

³⁸ R.I. GEN. LAWS ANN. § 21-4.1-8 (West 2014).

³⁹ Telephone Interview with Stephen Volpe, Chief Operating Officer, Rhody Fresh (Mar. 26, 2014).

⁴⁰ R.I. GEN. LAWS ANN. § 21-4.1-8 (West 2014).

⁴¹ Telephone Interview with Stephen Volpe, *supra* note 39.

⁴² R.I. GEN. LAWS § 44-30-27 (West 2014) ("Upon presentation of written certification by a local education agency, an individual or entity domiciled in the state for the entire tax year, shall be entitled to an income tax credit for the purchase of produce grown in the state which shall be furnished or used in connection with that individual's or entity's agreement to provide food,

2007, the earlier days of the current Farm to School movement in Rhode Island, when advocates hoped the bill would raise awareness about the benefits of Farm to School programs.⁴³ While that aspect of the legislation was a success, its practical effect may be more limited.

The law provides an incentive for food service companies and distributors to purchase produce from Rhode Island growers to sell to elementary and secondary schools.⁴⁴ Since the benefit only applies to “individual[s] or entit[ies]” that *purchase* “produce grown in the state” and then use that produce “in connection with [their] agreement to provide food to . . . a local education agency,” growers and producers are not themselves eligible for this benefit because they are not *purchasing* their own products. The aim of this policy is that distributors receiving a tax credit might be willing to pay slightly more for products from local growers, and could afford to charge schools less for those goods. Yet no one interviewed for this report, including Farm to School activists and distributors, had heard of distributors taking advantage of the tax credit. There are several possible reasons for why the tax credit is not being more broadly used. First, it is possible that no one is aware of the tax credit and it is not well-publicized. Second, the incentive might not be large enough to make it worth the administrative effort of keeping the necessary records to receive it. Third, the price differential between local and imported food might be larger than the 5% tax credit, and therefore it is not enough to create a meaningful economic incentive.

Even if there was more awareness about this incentive, the law as currently written is limited in several significant ways. First, the law only benefits distributors, food management companies, and other “middle men” rather than farmers or producers. Second, the law only mentions “produce,” implying that the tax credit is only available for locally-grown fruits and vegetables sold to schools. Thus any distributor selling locally-grown meat, dairy, eggs or seafood to schools might not be covered.⁴⁵ Third, the law only benefits distributors who sell to elementary and secondary schools.⁴⁶ Those selling to other public institutions, including universities, would not be eligible for the tax credit.

Policymakers could either work to broaden the existing law, or redirect these fiscal resources to more directly benefit public institutions and local farmers. It might be more effective to use these resources to provide financial assistance or reimbursement to institutions for a percentage of their local purchases, or to provide a financial benefit to local producers selling either directly or through a distributor to public institutions. Focusing the financial incentives on either the purchasers or the local growers will more directly decrease costs associated with local food procurement.

services or other products to a local education agency. The income tax credit shall be equal to five percent (5%) of the cost of farm products grown or produced in the state. Any amount of income tax credit not deductible in the taxable year of certification may not be carried over to the following year. The credit may not be applied until all other credits available to the taxpayer for that taxable year are applied.”)

⁴³ Telephone Interview with Dorothy Brayley, *supra* note 28.

⁴⁴ *Id.*

⁴⁵ Research for this report could not identify a conclusive answer to what types of products are covered by this law.

⁴⁶ R.I. GEN. LAWS ANN. § 44-30-6 (West 2014) (“Any term used in the Rhode Island personal income tax law shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required”); therefore, we apply 34 C.F.R. § 77.1 (“Local educational agency means . . . A public board of education or other public authority legally constituted within a State for either administrative control of or direction of, or to perform service functions for, public elementary or secondary schools . . .”).

F. Farm to School in Rhode Island

Farm to School programs in Rhode Island have been very successful. As of 2012, Rhode Island was the only state in the nation where every school district served at least some foods that were grown in-state.⁴⁷ The amount of Rhode Island-grown food purchased by schools increased nearly ten-fold in just five years from 2006 to 2010.⁴⁸ Much of this progress was made possible through the Rhode Island Farm to School Project, a collaborative effort among government agencies, school districts and non-profits such as Kids First Rhode Island. This coalition worked with school districts to explain the federal guidelines on geographic preference, and to insert language into districts' Requests for Proposals (RFPs) that made clear that they would give a preference to vendors selling locally-grown products.⁴⁹ The districts and vendors also expressly stated in their contracts the amount of locally-grown food that the vendor had committed to provide for the school.⁵⁰ Including clear language in both the RFP and the contract made it easier for both school districts and vendors to meet their commitments, and for districts to enforce the contract if the vendor was not meeting its obligations.⁵¹

The Rhode Island Farm to School Project also helped to mitigate the additional cost of purchasing local-grown products by connecting schools to farmers who had products that they were willing to sell for discounted prices. For example, farmers had trouble selling misshapen potatoes or smaller apples at regular markets, and they were thus willing to sell those products to schools for lower prices.⁵²

Given the preference language in school districts' RFPs and advocacy by parents and community members, some food management companies responded by purchasing more food from Rhode Island farms. Food management companies sign contracts with schools to manage the entire nutrition program at the school, procuring and overseeing the preparation of all of the school's food.⁵³ In 2006, the food management company Chartwells piloted a program to increase its contracts with local growers, and has expanded upon this program in the subsequent years.⁵⁴ In addition to food management companies, distributors have responded to these RFPs by providing sample menus with local products and pledging to purchase up to 15% of food products locally.⁵⁵

It is important to note that schools operate very differently from state agencies. Schools receive significant federal funding and in-kind food provision. They also have to meet federal nutrition standards and make meals appealing to students, which create unique incentives for improving the quality of meals that might not be present at other public institutions. In addition, the U.S. Department of Agriculture (USDA) published a rule in 2011 that allows schools to implement a geographic preference during the formal procurement process that gives a preference to "local" unprocessed agricultural

⁴⁷ R.I. Agric. P'ship, *supra* note 12, at 7.

⁴⁸ *Id.*

⁴⁹ Telephone Interview with Dorothy Brayley, *supra* note 28.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ U.S. DEP'T OF AGRIC. FOOD AND NUTRITION SERV., *Contracting with Food Service Management Companies: Guidance for School Food Authorities* 1.2-5 (April 2009), available at <http://www.fns.usda.gov/sites/default/files/FSMCGuidance-sfa.pdf>.

⁵⁴ Telephone Interview with Barbara Cohen, District Manager, Chartwells School Dining (April 08, 2014).

⁵⁵ Telephone Interview with Becky Bessette, Administrator, Child Nutrition Programs, R.I. Dep't of Elementary and Secondary Education (Apr. 16, 2014).

products.⁵⁶ State agencies do not have this explicit permission to apply a geographic preference, and thus state policies are helpful in clarifying how agencies can (or must) preference locally-grown food products in their procurement processes. The Rhode Island Foodstuffs Law gives agencies the authority to preference local food under certain conditions, and a stronger law would give state agencies additional opportunities or instructions to preference more locally-grown food.

Despite the differences between school and agency purchasing, the success of Farm to School programs is still relevant as it demonstrates how publically-funded institutions in Rhode Island can successfully implement a geographic preference to increase local food procurement. With adequate support and resources, public institutions can amend their bidding processes and develop new contracts with vendors that explicitly state the amount of locally-grown food that the vendor will provide. As demonstrated by Chartwells and some school food distributors, food vendors will likely respond by increasing their offerings of locally-grown food to stay competitive in public institutions' bidding processes.

III. PERCEIVED CHALLENGES FOR LOCAL PROCUREMENT IN RHODE ISLAND

Rhode Island has several geographic and political characteristics that pose challenges to increasing local food procurement by state agencies. While these are worth noting to understand the complexity of the issue, none of these challenges is insurmountable, and this section describes several strategies for overcoming these hurdles.

A. Insufficient Supply of Local Products

First, there is concern that Rhode Island's limited amount of productive farmland and New England's climate pose challenges to sufficient food production to meet the needs of Rhode Island institutions. While Rhode Island producers likely could not meet 100% of institutions' needs, they can certainly provide more of the products served in institutional meals than they now do. More data is needed to identify what percentage of institutional purchasing is from Rhode Island producers (the revised Master Price Agreement RFP will help collect this data). Yet given that only 1% of the food consumed in Rhode Island is produced in the state, it is possible that agencies purchase a similarly low percentage of their food from in-state sources.⁵⁷ In that case, it would be a significant revenue generator for local farms if the percentage increased to even 10-15%. A representative from the Interagency Council estimates that this percentage is a realistic goal given current production levels.⁵⁸

As agencies purchase more locally-grown products, Rhode Island producers will have the economic incentive to scale up production, thus being able to provide a larger percentage of agency needs. Producers would also be willing to change and expand the types of crops they are growing to meet agency needs.⁵⁹ Rhode Island farmers can produce many food products that can be served in institutions; several of the state's top food commodities include vegetables such as sweet corn and

⁵⁶ GEOGRAPHIC PREFERENCE OPTION FOR THE PROCUREMENT OF UNPROCESSED AGRICULTURAL PRODUCTS IN CHILD NUTRITION PROGRAMS, 76 FED. REG. 22603 (Apr. 22, 2011); 42 U.S.C.A. § 1758(j) (2012).

⁵⁷ Telephone Interview with Nicole Pollock, *supra* note 14.

⁵⁸ *Id.*

⁵⁹ Telephone Interview with Tess Brown-Lavoie, Co-Founder, Sidewalk Ends Farm (Apr. 15, 2014).

potatoes, fruits, fish, dairy products, poultry, pork, and beef.⁶⁰ In addition there are a number of other vegetables and fruits that can be grown in Rhode Island, such as carrots, eggplant, spinach, squash, tomatoes, and berries.⁶¹ Lastly, locally-produced food that is currently exported to other states could be kept within the state, decreasing transportation-related costs and emissions. For example, a representative from Rhody Fresh noted that the cooperative distributes only 80% of its members' dairy products within the state, and these members must seek out-of-state buyers for the rest of their supply.⁶²

B. Shortage of Productive Farmland

Even if there was a new market for locally-grown products, farmers might have trouble scaling up production because there is limited land available for farming in the state. Since 1940, the state has lost 84% of its farmland, and remaining farms are shrinking in size.⁶³ This decline is in part due to the extremely high real estate prices in Rhode Island, and the pressure to convert farmland into commercial and residential development. In 2010, Rhode Island farmland cost an average of \$13,600 per acre to purchase, the highest cost in the nation.⁶⁴ This price is almost triple the average value of \$4,690 per acre for farmland in the Northeast, and more than six times the national average of \$2,140.15.⁶⁵ Of the farmland that has survived, much of it is being used to grow non-food products, with 62 percent of Rhode Island's total agricultural sales coming from sod, nurseries, and greenhouse activities.⁶⁶

By providing a market for local farmers to sell their goods, a local procurement policy would inject extra dollars into the state's agricultural economy, encouraging more farmers to stay on the land, and new farmers to purchase land and start growing food for local markets. While a local procurement policy would not solve the problem of limited, expensive farmland, it would further the efforts of several groups of stakeholders already working to keep more farmland in operation.⁶⁷

For example, the Rhode Island Department of Environmental Management has proposed a program where it would purchase farms, restrict development rights, and then sell the land to farmers at the farm's agricultural value as opposed to its often higher development value.⁶⁸ Other government and

⁶⁰ *Rhode Island Food Assessment*, KARP RESOURCES (Nov. 2011), available at

http://www.rifoodcouncil.org/sites/default/files/Rhode%20Island%20Food%20Assessment_1.pdf.

⁶¹ *New England Fruits And Vegetables, 2012 Crop*, U.S. DEP'T OF AGRIC. NAT'L AGRIC. STATISTICS SERV. NEW ENGLAND FIELD OFF. (2012), available at http://www.nass.usda.gov/Statistics_by_State/New_England_includes/Publications/05ftrveg.pdf.

⁶² Telephone Interview with Stephen Volpe, *supra* note 39.

⁶³ RHODE ISLAND LAND TRUST COUNCIL, FARMRI 2.0: CRAFTING THE NEW GENERATION OF INITIATIVES FOR SAVING RHODE ISLAND'S WORKING FARMS 10 (2010), available at http://www.rilandtrusts.org/documents/FarmRI_2.0_Final.pdf (last visited Apr. 25, 2014).

⁶⁴ *Id.* at 2.

⁶⁵ *Id.*

⁶⁶ *Id.* at 10.

⁶⁷ See e.g. *Farm Seekers*, LAND FOR GOOD, www.landforgood.org (last visited Apr. 10, 2014) (describing how Land For Good helps farmland seekers by providing instruction, counseling them on the purchase of land, and "researching and promoting new approaches, methods and public policies that improve farmland access, affordability and security"); *Farmland Ecology*, R.I. DEP'T OF ENVIRON. MGMT., <http://www.dem.ri.gov/> (last visited Apr. 10, 2014) (describing the DEM's Farmland Preservation Program, which purchases the development rights to land from farmers "which enables them to retain ownership of their property while protecting the lands for agricultural use"); Molly Cohen, Daniel Rosenbaum, & Malik Touanassa, *Rhode Island Land-Linking Program: Background Research and Policy Analysis*, HARV. FOOD L. & POL'Y CLINIC (Feb. 2014), available at http://www.chlpi.org/wp-content/uploads/2013/12/Land-Linking_Background_Research_Report_FINAL_1.pdf.

⁶⁸ Telephone Interview with Michelle Sheehan, Assistant to State Land Conservation Program, R.I. Dep't of Environ. Mgmt. (Nov. 19, 2013).

non-profit groups are also working to link and match farmers with available farmland in Rhode Island. Recently, the Harvard Food Law and Policy Clinic created a report for the Rhode Island Food Policy Council recommending policy strategies to link more beginning farmers to suitable farmland in Rhode Island.⁶⁹ In addition, there are other efforts underway to open up more land for farmland, such as changing land used to produce turf into land used to grow vegetables.⁷⁰ These efforts are showing progress, as Rhode Island was one of the only states in the country to experience an increase in the number of farms in the 2012 U.S. Department of Agriculture Census.⁷¹ Most of that growth was seen in small farms (less than nine acres).⁷² A local food procurement policy could support this growth and efforts to preserve Rhode Island farmland, and would further strengthen the agriculture sector in the state.

C. Bidding Process Poses Challenges to Small Producers

The standard bidding process by which vendors secure a contract with state agencies also poses several barriers to local producers. To secure a contract, a bidder needs to be able to supply every item on the contract, which can often be as broad as all of the fresh produce or dairy needed by that institution in the next year. While Rhode Island producers could provide all of the apples and pears, they likely cannot provide the bananas, oranges, or other products that could be included in the contract. Similarly, a dairy contract could include milk, yogurt, ice cream, and cottage cheese, and a bidder would not be able to bid on the contract if they cannot provide every type of dairy in the contract.⁷³ While contracts for each individual product would make it easier for small producers to compete, it would also significantly increase agency costs, as each contract requires separate negotiations, invoices, and deliveries.⁷⁴

This challenge can be addressed in several ways. First, if agencies specify that they are looking for vendors that provide locally-grown products, this will incentivize larger distributors to purchase food from local farmers. Large food management companies like Chartwells have the capacity to aggregate locally-produced food with out-of-state products, and thus provide all of the food products requested by the institution. Alternatively, if local growers want to sell directly to institutions so that they retain more of the profits, they can aggregate food among multiple local farms to be able to offer a more diverse range of products. In turn, purchasing agents can enable more local growers to compete for their contracts by taking the initial step of dividing their contracts into two categories: products that are available in-state and those that are not. For example, a purchaser could separate their vegetable contract into two contracts: one for greens, potatoes, onions and other products available in New

⁶⁹ Molly Cohen, Daniel Rosenbaum, & Malik Touanassa, *Rhode Island Land-Linking Program: Background Research and Policy Analysis*, HARV. FOOD L. & POL'Y CLINIC 6-11 (Feb. 2014), available at http://www.chlpi.org/wp-content/uploads/2013/12/Land-Linking_Background_Research_Report_FINAL_1.pdf.

⁷⁰ Telephone Interview with Nicole Pollock, *supra* note 12.

⁷¹ U.S. DEP'T OF AGRIC., 2012 CENSUS OF AGRICULTURE, VOLUME 1, CHAPTER 1: STATE LEVEL DATA: RHODE ISLAND, TABLE 1 (May 2014), available at http://www.agcensus.usda.gov/Publications/2012/Full_Report/Volume_1,_Chapter_1_State_Level/Rhode_Island; Tim Faulkner, *Small Farms Growing in Rhode Island*, EcoRI NEWS (Feb. 20, 2014, 11:29PM), <http://www.ecori.org/farming/2014/2/20/small-farms-growing-in-rhode-island.html>.

⁷² U.S. DEP'T OF AGRIC., 2012 CENSUS OF AGRICULTURE, VOLUME 1, CHAPTER 1: STATE LEVEL DATA: RHODE ISLAND, TABLE 1 (May 2014), available at http://www.agcensus.usda.gov/Publications/2012/Full_Report/Volume_1,_Chapter_1_State_Level/Rhode_Island.

⁷³ Telephone Interview with Stephen Volpe, *supra* note 39 (explaining that since they do not produce cottage cheese or ice cream, could not apply for some state contracts).

⁷⁴ Telephone Interview with Nicole Pollock, *supra* note 14.

England, and one for the rest of their vegetable needs. In this way, the purchasing agent is only managing one additional contract, and enabling local producers to compete on one of the contracts.

D. Budget Constraints for Agencies

State agencies that are already working with tight budget constraints are rightly resistant to any policies that encourage or require them to purchase products that could be more expensive. In the case of local food procurement, purchasing agents have argued that to purchase local food, their food offerings would have to take a cut somewhere else. Does it make sense to purchase 500 local tomatoes instead of 800 imported tomatoes, with every meal recipient thus getting less tomato in their meal? To address this challenge, resources and support staff must be central components of any local procurement policy.

First, training for institution food preparation staff on how to do more scratch-cooking can help to cut down on costs related to purchasing more local products, as less-processed products can often be less expensive than purchasing the finished product (i.e. potatoes instead of hash browns). In addition, a procurement preference policy could be accompanied by funding for public institutions to be reimbursed for some or all of the cost differential between local and not-local products. Given state budgetary constraints, this funding could be made temporary to help agencies transition to purchasing locally-grown produce and connecting with local growers. Lastly, as described in *Section II.F. Farm to School in Rhode Island*, institutions could connect with farmers willing to sell them non-standard products at lower prices, such as cosmetically-damaged or irregularly-sized produce that is still nutritious and tasty.

IV. EXAMPLES FROM OTHER STATES

Other states that have implemented policies to increase local food procurement can serve as helpful examples for Rhode Island. This section discusses several options for local procurement policies that have been enacted in other states, and describes the benefits and potential pitfalls of each structure based on other states' experiences.

A. Price Preference

As mentioned in *Section II.D. Price Preference for Locally-Produced Milk*, nine states have enacted laws that encourage or require state agencies to purchase products from in-state growers when the price for the in-state products is up to a certain amount higher than the comparable product imported from outside the state.⁷⁵ For example, Massachusetts currently has a price-preference policy where purchasing agents are instructed to purchase agricultural products from within the state unless the price exceeds the price of out-of-state goods by more than 10%.⁷⁶ In Massachusetts, the preference is coupled with a law that requires the purchasing agents to make "reasonable efforts to facilitate the

⁷⁵ See ALA. CODE § 41-16-20 (2014); ALASKA STAT. ANN. § 36.15.050 (West 2012); 30 ILL. COMP. STAT. ANN. 500/45-50 (West 2012); 30 ILL. COMP. STAT. ANN. 595/10 (West 2012) (providing that the price preference is optional); IND. CODE ANN. § 5-22-15-23.5 (West 2012); LA. REV. STAT. ANN. § 38:2251 (2012); LA. REV. STAT. ANN. § 39:1595 (2012); LA. REV. STAT. ANN. § 38:2251.1 (2012); MD. CODE ANN., STATE FIN. & PROC. § 14-407 (West 2012); MASS. GEN. LAWS ANN. ch. 7, § 23B (West 2012); OHIO ADMIN. CODE 123:5-1-06 (2012) (allowing for a price preference to be applied to bordering states); S.C. CODE ANN. § 11-35-1524 (2012).

⁷⁶ MASS. GEN. LAWS ANN. ch. 7, § 23B (West 2014).

purchase” of agricultural products that are “grown or produced” in the state.⁷⁷ Eight other states have a price preference policy.⁷⁸ Some states, like Massachusetts and Alaska, phrase this preference as a requirement, stating that purchasers “shall” apply the preference,⁷⁹ while other states, such as Illinois, make the preference optional by saying the purchasing agent “may” apply the preference.⁸⁰ Georgia, while using “shall” language, does not set a defined amount; rather, it only requires state purchasing agents to apply a “preference as far as may be reasonable and practicable.”⁸¹

The intent of such a preference is to help locally-grown foods be price-competitive with out-of-state products. Since agencies generally must award contracts to the lowest bidders, this policy allows them to purchase from local growers that otherwise would be priced out by large distributors that benefit from economies of scale. Preference policies with concrete percentages also have the benefit of providing clear guidance to agency purchasers, which make these laws easier to implement and enforce.

One alternative version of a price preference law is a reasonable preference law. Enacted in five states (different from the nine states with a price preference law),⁸² reasonable preference laws instruct state purchasing agents to give preference to in-state products to the maximum extent possible, or as long as it would be reasonable given the difference in price. For example, in Colorado, a governmental body “shall award the contract to a resident bidder” if “the resident bidder’s bid or quoted price reasonably exceeds the lowest bid or price quoted for products produced outside the state.”⁸³ Similarly, in New Jersey, “the Director of the Division of Purchase and Property to the maximum extent possible, shall make contracts available for . . . agricultural food products and commodities grown or raised in New Jersey.”⁸⁴

The central concern with both price preference and reasonable preference laws is that they impose requirements on state agencies without providing the additional money to purchase these more expensive goods. Absent a compliance mechanism or resources, state agencies might not implement the preference. In Massachusetts, for example, research conducted by the Harvard Food Law and Policy Clinic found that many purchasing agents were not complying with the state’s 10% price preference law.⁸⁵ Several states have grappled with the challenge of enforcing procurement preference laws when agency purchasers are not complying with the law. Connecticut allows the state to recover the costs of a contract that does not comply with procurement law from the head of the offending agency.⁸⁶ Illinois

⁷⁷ MASS. GEN. LAWS ANN. ch. 7, § 23B (West 2014).

⁷⁸ ALASKA STAT. ANN. § 36.15.050 (West 2012); 30 ILL. COMP. STAT. ANN. 500/45-50 (West 2014); 30 ILL. COMP. STAT. ANN. 595/10 (West 2014) (providing that the price preference is optional); IND. CODE ANN. § 5-22-15-23.5 (West 2014); LA. REV. STAT. ANN. § 38:2251 (2014); LA. REV. STAT. ANN. § 39:1595 (2014); LA. REV. STAT. ANN. § 38:2251.1 (2014); MD. CODE ANN., STATE FIN. & PROC. § 14-407 (West 2014); MASS. GEN. LAWS ANN. CH. 7, § 23B (West 2014); OHIO ADMIN. CODE 123:5-1-06 (2014) (allowing for a price preference to be applied to bordering states); S.C. CODE ANN. § 11-35-1524 (2014).

⁷⁹ ALASKA STAT. ANN. § 36.15.050 (West 2014).

⁸⁰ 30 ILL. COMP. STAT. ANN. 595/10 (West 2014).

⁸¹ GA. CODE ANN. § 50-5-60 (West 2014).

⁸² COLO. REV. STAT. ANN. § 8-18-103 (West 2012); GA. CODE ANN. § 50-5-60 (West 2012); GA. CODE ANN. § 50-5-61 (West 2012); MINN. STAT. ANN. § 16C.12 (West 2012); MONT. CODE ANN. § 18-4-132 (West 2011); N.J. STAT. ANN. § 52:32-1.6 (West 2012).

⁸³ COLO. REV. STAT. ANN. § 8-18-103 (West 2012).

⁸⁴ N.J. STAT. ANN. § 52:32-1.6 (West 2012).

⁸⁵ Allison Condra, Emily Broad Leib et al., *Increasing Local Food Procurement by Massachusetts State Agencies*, HARV. FOOD L. & POL’Y CLINIC (forthcoming Nov.-Dec. 2014).

⁸⁶ CONN. GEN. STAT. ANN. § 4a-65 (West 2014).

subjects anyone who “willfully” violates the procurement law to “immediate dismissal,”⁸⁷ and Iowa goes even further, making failure to apply the preference a misdemeanor.⁸⁸

Personally penalizing agency purchasers who are trying to make the best decision for their agencies does not seem like the best approach. Instead, the state could consider enacting a less coercive mechanism, such as publishing a public database comparing local food procurement practices of various state agencies, which would create competition between agencies and increase public awareness about which institutions are complying with and/or resisting the law.⁸⁹ Another approach would be providing agencies resources that would make compliance more feasible. For example, the state could provide training to agency purchasers on how to restructure their contracts, on the benefits of purchasing locally, and on strategies to reduce the cost of purchasing locally. The state could also reimburse some or all of the additional cost when institutions apply the price preference to purchase locally-grown food. Thus, if an agency paid slightly more for a local food product because they applied the price preference, they would be reimbursed for some or all of the extra cost for the food. As mentioned above, this funding could be permanent or temporary to help agencies transition to purchasing more locally.

A final challenge with price preference policies is that they could trigger reciprocal price provisions in states where Rhode Island businesses are trying to sell agricultural products. Connecticut has a reciprocal preference provision, as do nearby states such as New York and Maine.⁹⁰ More research is needed on how much Rhode Island-grown food is purchased by other states’ public institutions, and thus to what extent these reciprocal preference laws would affect Rhode Island commerce.

B. Benchmark for Local Purchasing

Other states have enacted laws that establish a percentage benchmark which either encourages or requires purchasing agents to purchase that percentage of their food orders from in-state producers. Illinois’ Local Food, Farms, and Jobs Act establishes a benchmark goal that state agencies and state-owned facilities will purchase 20% of their food from within Illinois by 2020, and public entities that purchase over \$25,000 of food each year will purchase 10% of their food from within Illinois by 2020.⁹¹ In addition, Illinois allows purchasing agents to apply a 10% price-preference to locally grown foods.⁹² The Illinois benchmark provision is aspirational, as it does not provide any penalties for not meeting the benchmark, and the price preference is optional as well. In Maine, a bill proposed in 2013 would have established a mandatory minimum percentage, requiring purchasing agents to spend at least 15% of their food budgets on Maine-grown food for 10 years beginning in 2014, at least 25% for the next 10 years and at least 35% beginning in 2034.⁹³ The bill passed, but was vetoed by the governor in 2014.

⁸⁷ 30 ILL. COMP. STAT. ANN. 500/50-75 (West 2014).

⁸⁸ IOWA CODE ANN. § 73.5 (West 2014). Note that Iowa’s law is a tie-goes-to-local preference, and thus it might be harder to prove that a purchasing agent had not applied the preference.

⁸⁹ See Jonathan Abrams, et al., *Increasing Local Food Procurement by Massachusetts Colleges & Universities*, HARVARD FOOD LAW & POL’Y CLINIC (2012), available at <http://blogs.law.harvard.edu/foodpolicyinitiative/files/2011/09/Increasing-Local-Food-Procurement-by-Mass-State-Colleges-FINAL2.pdf>.

⁹⁰ CONN. GEN. STAT. ANN. § 4e-48 (West 2014); NY STATE FIN. LAW § 165(6) (McKinney 2014); ME. REV. STAT. ANN. tit 5, § 1825-B(9) (West 2014).

⁹¹ 30 ILL. COMP. STAT. ANN. 595/10 (West 2014).

⁹² 30 ILL. COMP. STAT. ANN. 595/10 (West 2014).

⁹³ H.P. 888, 2013 Leg., 126th Sess. (Me. 2013).

There are several advantages to benchmark policies. First, this type of policy gives agencies time to find sources of local food and scale up to purchase more local food over time. Second, benchmark policies give agency purchasers the flexibility to meet the benchmark with local products that also align with their budgetary constraints. Agencies can find local products that might be of equal or lesser cost than out-of-state products and apply those purchases towards the benchmark. Unlike a price preference that encourages or requires them to spend more money on local products, a benchmark policy focuses on the overall percentage of local purchases rather than individual purchases. Notably, this could benefit purchasers but harm local growers, who might find they have to lower their prices to secure an agency contract. Third, agencies can write the benchmark into their contracts with food management companies and distributors, so that these private companies are encouraged or required to provide that percentage of their food from local sources.⁹⁴ As seen in Rhode Island schools, vendors can respond to these local requirements by pledging to significantly increase the amount of local products they provide in the contract.⁹⁵

However benchmark policies can also present some challenges. First, agencies are presented with the significant administrative burden to develop a system to keep track of their local food purchasing over the year, so that they can report what percentage of food they purchased from local producers at the end of the year. Second, enacting a benchmark policy necessitates that policymakers have a clear understanding of current institutional purchasing practices, as a benchmark set either too high or too low will not be effective in increasing local procurement. Since the only way to evaluate the efficacy of a benchmark law is to track the percentage of institutional purchasing over time, the state also needs to have baseline purchasing data in order to conduct this evaluation.

C. Tracking Laws

To develop a baseline percentage of institutional procurement of local foods, states have enacted tracking laws that require state institutions to keep track of their purchasing practices. The revised RFP for the Master Price Agreement includes a tracking provision, requiring that distributors that have a contract under the MPA track the amount of locally-grown foods they purchase throughout the year. This information will only provide a partial picture of how much institutional food is currently locally-grown, as the MPA only makes up about 40% of state agency purchasing. The DOA could go further with a policy that requires agencies to track their local food procurement for purchases outside the MPA. Combining this data, the state would have a baseline amount on which they could base a benchmark policy. Tracking policies can also help to publicize efforts and accomplishments of agency purchasers, spur competition between agencies, increase public awareness, and call attention to agencies that are falling short compared to others by sharing this information online and in other media outlets.

There are several different models for tracking laws in other states. In Illinois, the Local Food, Farm, and Jobs Council was tasked with assisting agencies in recording information “(i) identifying the percentage of local farm or food products purchased for fiscal year 2011 as the baseline; and (ii) tracking and reporting local farm or food products purchases on an annual basis.”⁹⁶ In Kentucky, state agencies that

⁹⁴ Abrams, et al., *supra* note 89, at 38-39.

⁹⁵ Telephone Interview with Becky Bessette, *supra* note 55.

⁹⁶ 30 ILL. COMP. STAT. ANN. 595/10 (West 2014).

purchase Kentucky-grown food do not get assistance from the state, but are required to “provide [an annual] report to the Legislative Research Commission and to the Department of Agriculture describing the types, quantities, and costs of each product purchased.”⁹⁷

Lastly, New York amended its local procurement law in 2013 in an effort to increase information sharing and thereby help agencies purchase more locally-grown food.⁹⁸ Prior to the amendments, there was “little to no reporting, or evidence, that agencies or successful bidders [we]re making an effort to buy locally-grown foods, even when they [we]re available at a competitive price.”⁹⁹ The amendment establishes a process where purchasing agents work closely with the New York Department of Agriculture and Markets (NYSDAM) to determine when their food purchases can be fulfilled by an in-state business. If NYSDAM believes that the order can be filled locally, the state agency can amend its bid solicitation to require a certain amount of locally-grown food.¹⁰⁰ All bidders must certify that food products offered through a contract are in conformity with the percentage of locally-grown food specified in the solicitation.¹⁰¹ This provision helps the agencies more accurately measure the amount of locally-grown food they are purchasing.

Agency purchasers will likely see the tracking law as a burden and an extra task for them to include in their already busy days. If there is no incentive to keep accurate records of local purchasing, they might not report all local purchases they make, or it might have the adverse effect of creating a disincentive for agencies to purchase locally-grown products because there will be the extra administrative task of reporting the purchase. Thus, it is important for policymakers to consider how to incentivize agencies to conduct accurate tracking, whether it is through publicizing the results of the tracking or offering recognition or awards for increased local food procurement.

D. Tie Goes to Local Laws

Lastly, sixteen states have enacted “tie-goes-to-local” laws, which require state agencies to award contracts to in-state producers over out-of-state producers when the quality, quantity, and cost of products are equal. As mentioned above in *Section II.A. Rhode Island Foodstuffs Law*, this type of law will often run into challenges because locally-grown food will often be slightly more expensive, or be a different variety than imported foods. That being said, other states provide helpful examples of ways to clarify and broaden tie-goes-to-local laws.

⁹⁷ KY. REV. STAT. ANN. § 45A.645.

⁹⁸ See N.Y. STATE FIN. LAW § 165(4) (McKinney 201).

⁹⁹ Memo for A 05102, 2013 State Assemb. (N.Y. 2013). The new law requires a high level of communication between New York’s Department of Agriculture and Markets (NYSDAM) and state agencies when purchasing food. New York instructs NYSDAM to create a list of locally-grown food products, determining “those periods of time each year that those food products are available in sufficient quantities for competitive purchasing.” State agencies must advise NYSDAM whenever they intend to solicit a bid for any foods on the list, and NYSDAM then determines whether those foods can be purchased from New York state businesses in sufficient quantities to meet agency demand. If agency demand can be met, the agency can insert a requirement for locally-grown food into the bid solicitation. All bidders must certify that food products offered through a contract are in conformity with the percentage of locally-grown food specified in the solicitation. If NYSDAM determines that agency demand for certain products cannot be met through the purchase of locally-grown food, then the agency issues a bid without a requirement for locally-grown food.

¹⁰⁰ N.Y. STATE FIN. LAW § 165(4)(c)(iii).

¹⁰¹ See N.Y. STATE FIN. LAW § 165(4)(f)(1) (McKinney 2014).

For example, in Iowa, a state agency “shall use only those products and provisions grown . . . within the state of Iowa, when they are found in marketable quantities in the state and are of a quality reasonably suited to the purpose intended, and can be secured without additional cost over foreign products or products of other states.”¹⁰² Similarly, in Missouri, a state purchasing agent “shall give preference to all commodities . . . produced, processed, or grown within the State of Missouri . . . when quality is equal or better and delivered price is the same or less,” or “whenever competing bids, in their entirety, are comparable.”¹⁰³ These two laws clearly instruct agency purchasers to purchase locally-grown food when the vendor can supply the requested quantity, the quality is reasonably similar, and there is no additional price burden.

States can also choose to broaden the factors they consider when determining bids “in their entirety.” For example, Vermont’s tie-goes-to-local law extends its consideration of products beyond just price, including “the interests of the state relating to the proximity of the supplier and the costs of transportation, and relating to the economy of the state and the need to maintain and create jobs in the state.”¹⁰⁴ These broader considerations would benefit local farmers and producers, as procuring local foods decreases transportation costs, benefits the state economy, and creates jobs.

V. RECOMMENDATIONS

As described above, Rhode Island has several promising policies already in place that should be expanded and actively enforced to promote more local food procurement by public agencies. In addition, some of the local procurement policies enacted in other states could serve as models for new Rhode Island policy to further increase local food procurement in the state. The following section starts by proposing several recommendations for how to amend current laws and create new laws to increase local food procurement. It is important to note that these recommendations will be more effective if implemented in tandem with each other rather than passed as standalone laws. This section also highlights some of the key resources and sources of support that will be helpful in successfully implementing these policy changes.

A. Legal and Policy Changes

1. *Enact a More Robust Tracking Policy*

The state would benefit from a comprehensive understanding of current agency purchases and what percentage of these purchases are Rhode Island products. The amended RFP for the Master Price Agreement is a significant starting place, and will help the state gain a much better understanding of what locally-grown food is currently being purchased by state agencies. Yet the state should also have information about the other institutional purchasing happening outside of the MPA. A policy that tasks agencies with tracking all of their purchases of locally-grown food and reporting their purchases to the DOA would give the state this more comprehensive look. This law would also apply to agencies and institutions that do not purchase from the MPA. Purchasing agents should be incentivized to accurately track their purchasing, either with publicity or financial incentives as described in the previous section.

¹⁰² IOWA CODE ANN. § 73.1 (West 2012).

¹⁰³ MO. ANN. STAT. § 34.070 (West 2012).

¹⁰⁴ VT. STAT. ANN. TIT. 29, § 909 (West 2014).

The Division of Purchasing should also create a list of products that are available in Rhode Island, and when purchasing agents are soliciting bids on contracts that include those foods, the agencies should be encouraged to include language in the bid solicitation requiring those foods to be locally-sourced. Much like the New York policy described above, this system will help the enforcing agency keep track of local purchasing.

2. Establish a Percentage Price Preference for all Local Food Products and Institutions

Rhode Island should join the states that have a general price preference for local food products. The price preference currently given to milk in Rhode Island, 0.25%, is significantly less than other state preferences. For example, South Carolina offers a preference of 10%, while Alaska provides a preference of 7%.¹⁰⁵

Agencies will likely object to a law requiring them to pay up to 10% more for goods, which would lead to them buying fewer products and perhaps not meeting all of their needs.¹⁰⁶ If there are no additional resources available for agencies, policymakers can consider making the preference optional. The Illinois law states that agencies “may” apply a preference, and Georgia only requires a preference as far as is “reasonable and practicable.” However, a mandate might be more effective and provide clearer guidance.¹⁰⁷ Policymakers should thus consider including some reimbursement or financial support for institutions when they apply the price preference in their bid process, at least temporarily as agencies are starting to implement the policy. In Rhode Island, the resources currently dedicated to the tax credit for distributors selling to schools (described in *Section II.E.*) could be diverted to provide a more direct incentive for state agencies to purchase locally-grown products.

The law should create a tiered system that provides a preference for all New England as well as Rhode Island producers. As stated above, Rhode Island would benefit from the development of a robust regional food system, and thus institutional purchasers should be encouraged to buy New England products that are not available in Rhode Island. Rhode Island should create a tiered system for the price preference, where New England products receive a smaller price preference than Rhode Island farmers, but are still at an advantage relative to other farmers. As an example of another way to apply a regional preference, Ohio awards bidders from border states the same preference as in-state-bidders, unless that border state applies a preference against Ohio products.¹⁰⁸ If Rhode Island institutes a tiered preference, it may encourage other New England states that have a price preference for in-state foods to provide some smaller preference to Rhode Island products as well, thereby further strengthening both the state economy and regional food system.

3. Set an Aspirational Benchmark

¹⁰⁵ S.C. Code. Ann. § 11-35-1524 (2014); ALASKA STAT. ANN. § 36.30.328 (West 2014), ALASKA STA. ANN. § 36.30.332 (West 2014).

¹⁰⁶ Telephone Interview with Nicole Pollock, *supra* note 14.

¹⁰⁷ Telephone Interview with Nicole Pollock, *supra* note 14.

¹⁰⁸ *Reciprocal Preference: Ohio*, WASHINGTON STATE DEP’T OF ENTERPRISE SERV.,

<http://www.des.wa.gov/services/ContractingPurchasing/Pages/ReciprocalPreference.aspx> (last visited Apr. 25, 2014).

The General Assembly should set a benchmark goal for locally-grown food purchasing that state agencies should aim to achieve within a certain time frame. For example, the statutory language could read:

*It shall be the goal of the State of Rhode Island that 15 percent of all agricultural products purchased by the state purchasing agent responsible for procuring the products on behalf of a state agency shall, by 2020, be products grown or produced using products grown in the State.*¹⁰⁹

Policymakers should consider whether to include regional products grown in New England in the benchmark goal. Given the benefits to the state economy, Rhode Island businesses should get the highest preference, but it could be beneficial to also encourage the purchasing of New England grown food. A more regional approach to the statutory language could read:

*It shall be the goal of the State of Rhode Island that 15% percent of all agricultural products purchased by the state purchasing agent responsible for procuring the products on behalf of a state agency shall, by 2020, be products grown or produced using products grown in the State of Rhode Island and neighboring New England states. By 2020, an additional 10% of agricultural products purchased by a state agency should be products grown or produced using products grown in New England.*¹¹⁰

The benchmark percentage should include interim goals (e.g. by 2017, 10% of all purchased agricultural products will be grown within Rhode Island) to ensure that agencies are on track to reach ultimate targets. State resources should be available to help institutional purchasers incorporate the benchmark provision into their RFPs and contracts with distributors. This law should be passed in tandem with the more robust tracking law described above, as identifying the baseline percentage and continued reporting of agency purchasing will be necessary to measure progress towards the goal.

4. Create a Farm to Institution Coordinator Position

Many of the policies and programs recommended above include time-intensive tracking, technical assistance to institutions, helping to amend contract language, and connecting with local farmers. To successfully implement these policies, it will be important to have a dedicated staff person to serve as a central coordinator and be a much-needed resource to agency purchasers and farmers. As witnessed through the success of Farm to School programs in Rhode Island, it is crucial to have staff that can work with agency purchasers to rework their bidding processes and increase their local food procurement. Thus, the General Assembly should allocate funds for a new Farm to Institution coordinator position. This person could be housed in the Department of Administration, since that agency is in charge of the state budget and coordinating purchases, or within the Department of Agriculture, which actively works with farmers to preserve farmland and increase local markets. Alternately, the position could report to the Interagency Council.

¹⁰⁹ Modeled in part on Illinois' procurement statute. 30 ILL. COMP. STAT. ANN. 595/10 (West 2012).

¹¹⁰ Modeled in part on Illinois' procurement statute. 30 ILL. COMP. STAT. ANN. 595/10 (West 2012).

B. Key Support from Stakeholders

Passing a local food procurement policy is, in many ways, just the beginning of the work. Stakeholders and advocates for increasing local procurement should continue to play an active role during and after the policy-making process to ensure that a local food procurement policy is implemented successfully. The following section describes several ways that stakeholders can get engaged in supporting agencies in procuring more locally-grown food.

1. Changing the culture around institutional meals: Agency purchasers might be resistant to local food procurement laws, and advocates should work to understand the purchasers' concerns. To the extent possible, increasing local food procurement should be a collaborative effort rather than an imposition on agencies. While helping agencies solve any challenges they face to procuring local food, advocates can also educate and discuss with agencies the many benefits of purchasing locally, and help agencies to realize those benefits. For example, purchasing local products could increase clientele purchasing and satisfaction with agency meals. Government employees that eat at cafeterias, hospital patients and families, and families that use childcare and adult care public facilities should be mobilized around encouraging local procurement. Institutions can benefit from increased local procurement by advertising the changes in their purchasing practices, which will appeal to potential employees, patients, and others who are considering using the agencies' services. Becky Bessette, who handles nutrition policy for Rhode Island schools, noted that agencies can promote their successes by reaching out to local media, sending letters to employees and families, and placing the news prominently on the agency's website.¹¹¹

Increasing local food procurement can also lead to increased nutritional quality of agency meals. If agencies increase the amount of fresh fruits and vegetables in their meals, and use fresh meat and dairy to do more scratch-cooking, they will likely be able to prepare healthier meals than if they are using pre-packaged or processed foods. Improving the quality of foods available in the workplace can reduce absenteeism and increase productivity among employees.¹¹² Highlighting these benefits of local food procurement and engaging agency purchasers should be an integral step in raising support for these policy changes.

2. Debunking myths and spurring innovation: There are several pervasive myths that pose challenges to increasing local food procurement. A recent report from the Harvard Food Policy Clinic on food procurement at Massachusetts state colleges and universities proposed creating materials and trainings for agencies that debunk "myths" that are associated with local procurement, such as the inability of local farms to meet food safety requirements.¹¹³ Trainings could help agency purchasers get ideas for how to both purchase locally and save money, such as through purchasing produce at its peak season, and through scratch-cooking and freezing techniques. Trainings for agency purchasers can also focus on the benefits of contract farming, in which the purchasing agent and farmer sign a contract at the

¹¹¹ Telephone Interview with Becky Bessette, *supra* note 55.

¹¹² See Jørgen Dejmgaard Jensen, *Can worksite nutritional interventions improve productivity and firm profitability? A literature review*, PERSPECTIVES IN PUB. HEALTH 131: 184 (2011) (finding that diet-related worksite health promotion interventions reduced absenteeism and presenteeism and increased productivity).

¹¹³ Jonathan Abrams, et al. *supra* note 89, at 35.

beginning of the growing season for the farmer to supply the agency with its products throughout the growing season. Contract farming creates a reliable customer and decreases uncertainty for the farmer, and thus the farmer might be able to offer a lower cost to the agency.

3. Facilitating Commercial Relationships: Stakeholders can help connect local farmers and state agencies. For example, Kids First Rhode Island was able to help schools purchase more local foods while saving money, for example by finding potatoes which were too small to make the grade for market sale but otherwise perfectly edible. Currently, Farm Fresh Rhode Island fills this role for schools by connecting farms and food service staff to make sure there is open communication about what is in season and available for purchase.¹¹⁴ A state-funded Farm to Institution Coordinator could also play this connecting role, but in the absence of this position agencies would benefit from assistance connecting with the Rhode Island agriculture community.

4. Coordinating Farmers: Farmers can work together to reduce the transaction costs for institutions and increase the chances that they will win an agency contract. For example, aggregators or cooperatives that combine products from various farms can help farms earn food safety certifications and compete for more institutional contracts.¹¹⁵ As one Rhode Island farmer noted, aggregating produce helps small farmers fill orders for larger institutions that they would not be able to fill on their own.¹¹⁶ These farmers can also come together to communicate to agency purchasers about the barriers to applying for the current contracts offered by the state agencies. One representative from Rhody Fresh expressed frustration with how state agencies responded to their concerns, expressing that any attempt to encourage the agencies to purchase local produce “falls on deaf ears.”¹¹⁷ Farmers and other supportive stakeholders could organize a conference to connect agencies with farmers and have a collaborative discussion about how to reform current state policies and ordering practices to increase local food procurement.

VI. CONCLUSION

Rhode Island has farmland that could be utilized in providing healthy foods to its young children, inmates, hospital residents, and government employees via state agencies. Yet currently only 1% of food consumed in Rhode Island is being produced in Rhode Island.¹¹⁸ The state has already made some positive steps, with several policies already in effect that are supportive of increasing local procurement. In addition, the Department of Administration has exhibited through its Request for Proposal that it is dedicated to increasing locally purchasing. Yet the state can go much further in supporting local food procurement. This report outlines several types of policy reforms that other states have piloted to increase local procurement, including price preference laws, benchmark laws, and tracking laws. The Rhode Island General Assembly should consider these suggestions and enact a statute that combines these options into one robust local procurement law, including funding for a state-wide coordinator position to make sure the law is implemented successfully. Once the law is enacted, state agencies,

¹¹⁴ *Farm to School*, FARM FRESH RHODE ISLAND, <http://www.farmfreshri.org/about/schools.php> (last visited April 30, 2014).

¹¹⁵ Jonathan Abrams, et al. *supra* note 89, at 36.

¹¹⁶ Telephone Interview with Tess Brown-Lavoie, *supra* note 59.

¹¹⁷ Telephone Interview with Stephen Volpe, *supra* note 39.

¹¹⁸ Telephone Interview with Nicole Pollock, *supra* note 14.

farmers and other stakeholders will have a role to play in implementing the law, including connecting agencies with farmers, amending agency bidding processes and contracts, and ramping up local food production. Combined, and a robust local procurement law and these efforts can strengthen the state economy and improve the health of Rhode Island consumers.