

PUTTING A FACE ON OUR FOOD: HOW STATE AND LOCAL FOOD POLICIES
CAN PROMOTE THE NEW AGRICULTURE

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I. INTRODUCTION – CONSIDERING OPPORTUNITIES TO EXAMINE STATE
AND LOCAL FOOD POLICY

Should schools purchase meat and produce directly from local farmers? Do all eligible citizens have access to public food assistance programs without unnecessary barriers and stigma? Do city officials consider the value of preserving local farmland or support opportunities for producers to sell directly to consumers? State and local food policies like these will be critical in determining the future of agriculture in the United States, but the potential for state and local policies to support progressive and necessary changes in America's food system is often overlooked. With all the attention to billion dollar "emergency" farm bailouts and discussion of the 2002 farm bill, it is too easy to assume federal policy is the only factor shaping the future of farming. Clearly the federal government plays a central role in creating the economic environment for much of agriculture, especially commodity production. But for many issues most directly impacting farmers and consumers, state and local actions can be just as important. These actions will need to be a central consideration in the policy debate if we expect to satisfy society's expectations for how well our food and farming system serves its needs.

Consider the issue of sustainable agriculture. Considerable attention has been given to this being a national policy objective, but only limited progress has been made on promoting the goal from a federal level. The one bright exception is the USDA's Sustainable Agriculture Research and Education ("SARE"),¹ but even this valuable program suffers from a serious lack of funding. The reality is much of the actual work building sustainable farming and food systems is taking place at the state and local level, such as the research and promotion programs enacted in Iowa, Minnesota and Pennsylvania² and in the community food security movement.³ Iowa has spent the last fifteen years investing in a more sustainable agricultural and food system for the state. In 1987, as part of Groundwater Protection Act, the legislature created the Leopold Center for Sustainable Agriculture at Iowa State University, and earmarked funds from a tax on nitrogen fertilizers and pesticide registration fees to support research.⁴ The Center's leadership and the state's funding for research under that law, more than \$10 million to date, have helped Iowa become a national leader in this critical area. Among the accomplishments the Center can rightly claim include the fact that over one million head of hogs are now raised in the more than two thousand open bedded hoop house structures Iowa farmers have built in recent years.⁵ Without the Center campaign promoting this low cost, environmentally friendly alternative for pork production, the

1. See SUSTAINABLE AGRICULTURE RESEARCH EDUCATION PROGRAM, SARE 2000 HIGHLIGHTS, available at <http://www.sare.org/2000high/index.htm> (last visited Apr. 6, 2002).

2. In 1994, Pennsylvania enacted the Sustainable Agriculture Act, setting out a series of findings concerning the importance of sustainable agriculture to a state and creating programs to provide loans and grants to farmers implementing eligible sustainable practices on their farms. See 3 PA. CONS. STAT. ANN. §§ 2101-2117 (West Supp. 2001).

3. See DAWN BIEHLER ET AL., CMTY. FOOD SEC. COALITION, GETTING FOOD ON THE TABLE: AN ACTION GUIDE TO LOCAL FOOD POLICY 1 (1999). See also <http://www.foodsecurity.org>. (providing information on the Community Food Security Coalition ("CFSC")).

4. See IOWA CODE § 266.39 (2001) (authorizing creation of the Leopold Center); see generally Neil D. Hamilton, *The Role of Law in Promoting Sustainable Agriculture: Reflections on Ten Years of Experience in the United States*, 3 DRAKE J. AGRIC. L. 423 (1999) (discussing the history and impact of efforts in the United States to promote sustainable agriculture). See also <http://www.leopold.iastate.edu> (the Leopold Center's most recent annual report).

5. See, e.g., LEOPOLD CENTER FOR SUSTAINABLE AGRICULTURE, SWINE SYSTEMS OPTIONS FOR IOWA 1999.

change would not have happened.⁶ Leopold Center research is also helping farmers and landowners place thousands of acres of field buffer strips along our rivers and streams to clean the water and conserve soil.⁷

Five years ago, the Center made a critical decision to begin supporting research initiatives to stimulate consideration of how well community food systems operate in Iowa. The shift resulted, in part, from recognizing that a truly sustainable agriculture will not emerge if only resource issues, like soil and water quality, are considered but the human and social issues of how food is produced and marketed are ignored. This change in thinking requires considering the opportunities farmers have to raise and sell what they grow and the ability of communities, both local and regional, to support farmers. The shift to examine community food system issues has required Leopold Center researchers to study issues such as direct farm marketing, further processing of foods, and supporting "value-added" agriculture as it is often called.⁸ It has also required examining how decisions made by institutions, schools, state government, and businesses affect the market for food products. The most visible example of Leopold Center leadership is the decision to feature Iowa raised food at its events and conferences. The simple act of asking chefs to work with local farmers to feature Iowa food has helped begin a sea change in appreciation for local food.⁹ This example shows why it is important to examine how our food system influences the ability to develop a sustainable agriculture.

The role of state policy can be seen in other important trends in America's food system. Consider organic food production, the fastest growing portion of American agriculture with annual sales increases of over twenty percent for the last ten years.¹⁰ Across the nation, farmers, researchers, food processors, and state officials are leading this dynamic part of agriculture, and are now creating opportunities for farmers, businesses, and consumers.¹¹ New federal rules will be important in creating a uniform

6. The movement of pigs into hoop houses and other alternatives to confinement facilities is more than just a way of addressing the range of environmental problems associated with industrialized hog production. The use of alternative production systems is often directly linked to alternative marketing programs focusing on the quality of the meat produced and the humane standards used to raise the animals. The prime example is the Niman Ranch company of Oakland, California which has earned a reputation as supplying the highest quality fresh meat available in the United States. Bill Niman and his business partners work with committed hog farmers in the Midwest to produce and market premium natural pork. See, e.g., Mark Bittman, *The Master of Meat: Bill Niman Raises Beef and Pork to a Higher Level*, WINE SPECTATOR, Nov. 15, 2000, available at <http://www.winespectator.com/> (under Archives link); Anne Fitzgerald, *Iowa Feeds Upscale Demand*, DES MOINES REG., Jan. 9, 2000, at 4G; Dan Zinkand, *Of Pigs and Prairies*, IOWA ALUMNI MAG., Aug. 2001, at 16-18.

7. See Neil D. Hamilton, *Buffer Strips Protect Water, Wildlife in Story Farm Project*, DES MOINES REG., Aug. 14, 2000, at 7A.

8. See, e.g., Rich Pirog & John Tyndall, *Comparing Apples to Apples: An Iowa Perspective on Apples and Local Food Systems*, available at <http://www.ag.iastate.edu/centers/leopold/pubinfo/papersspeeches/appleindex.html> (last visited May 1, 2002) (examining two apple food systems).

9. See Neil D. Hamilton, *Dinner Is a Tribute to the Work of Iowa Farmers*, DES MOINES REG., Oct. 2, 2001, at 7A.

10. See, e.g., Catherine Greene, *U.S. Organic Agriculture Gaining Ground*, AGRIC. OUTLOOK, Apr. 2000, at 9; Janise Zygmunt, *Organic Markets Offer U.S. Agriculture Current and Future Sales Opportunities*, AGEXPORTER, June 2000, at 4.

11. One organization playing a leading role in this development is the Organic Farming Research Foundation ("OFRF"). The goal of this non-profit organization is to promote the development of markets for organic foods and to improve the information available to farmers, food processors, marketers and consumers. OFRF has conducted important research such as *Searching for the O-Word*, 1997, by Mark Lipson, which examined the miniscule amount of the

national market standard,¹² but states will play a key role in certifying organic farmers and promoting organic markets.¹³

Other emerging issues in state food policy include direct marketing and increasing the institutional use of locally grown foods. One of the most exciting trends in Iowa's food system is the growing local-food movement. Five years ago, a person would have been hard-pressed to find "Iowa grown" food on a menu or in a store. But that is changing as the proliferation of farmers markets and producers diversifying what they raise and how they sell it change Iowa's food system. Menus featuring Iowa-grown food and institutions promoting "all Iowa" meals are other important signs of this trend. Slowly, but steadily, the food culture of Iowa and other states is changing.¹⁴

The local foods movement is nation-wide and it is helping consumers and communities consider where food is grown and how food-buying decisions can support local farmers and businesses.¹⁵ Many consumers and communities are coming to recognize not only that local is better in many ways, such as better taste and quality, but also better for the producers and businesses.¹⁶ Local food is also better for the environment since the food does not travel the 1500 miles it is estimated a typical U.S.

federal agricultural research budget devoted to organic agriculture, and *State of the States: Organic Farming Systems Research at Land Grant Institutions 2000-2001*, compiled by Jane Sooby. OFRF also sponsors a biennial conference on business and regulatory issues shaping the organic food sector. See <http://www.ofrf.org>. (providing information about OFRF).

12. The best source of information about the federal organic program is the website maintained by the USDA for the National Organic Program, at <http://www.ams.usda.gov/nop/>. See also Marian Burros, *U.S. Imposes Standards for Organic-Food Labeling*, N.Y. TIMES, Dec. 21, 2000, at A 22. The growth of the organic food sector in the United States is not free of controversy. Some critics of socially and environmentally sustainable agriculture, such as the Hudson Institute Center for Global Food Issues, believe organic agriculture is a scam and an effort to starve large parts of the world. See e.g., Alex Avery, The Hudson Institute, *Nature's Toxic Tools; The Organic Myth of Pesticide Free Farming*, available at <http://www.hudson.org/files/publications/Natures%20Toxic%20Tools.pdf> (last visited June 5, 2002); Graydon Forrer et al., The Hudson Institute, *Marketing and the Organic Food Industry: A History of Food Fears, Market Manipulation and Misleading Consumers*, available at <http://www.cgfi.org/pdf/iea%2E.pdf> (Sept. 2000). But even more rational and objective scholars have identified serious issues concerning the structure of the organic sector. Perhaps the most insightful analysis in this regard is by Michael Pollan, *The Organic-Industrial Complex: All About the Folks Who Brought You the Organic TV Dinner*, N.Y. TIMES, May 13, 2001, at 30.

13. See, e.g., Suzanne Vaupel, *Advising Producers of Organic Crops*, 2 DRAKE J. AGRIC. L. 137 (1997) (discussing the role of state organic programs). For representative examples of state laws creating organic agriculture promotion and certification programs, see IOWA CODE § 190C (2001); MINN. STAT. § 31.94-31.96 (1998); 3 PA. CONS. STAT. ANN. §§ 5901-09 (West 1995).

14. Neil Hamilton, *Success in Changing Iowa's Food Culture*, DES MOINES REG., Sept. 5, 2001, at 9A.

15. The American most closely identified with the promotion of eating locally grown high quality food is Alice Waters, the owner of Chez Panisse. See, e.g., R. W. Apple, Jr., *On the Left Coast, a 30th to Remember*, N.Y. TIMES, Aug. 29, 2001, at F1. Her leadership, and the efforts of the dozens of leading chefs who have worked with her and the thousands more inspired by her are helping lead a revolution in how America appreciates the source of its food. See also *Alice's Wonderland*, NEWSWEEK, Aug. 27, 2001, at 44 (recognizing Ms. Waters' leadership and discussing the general public's appreciation for this movement toward local foods).

16. See, e.g., W.L. KELLOGG FOUND., FOOD SYS. & RURAL DEV., FOOD FOR THOUGHT: COMMUNITY-BASED FOOD SYSTEM ENTERPRISES (2001) (illustrating the opportunities and justifications supporting locally designed food industries), available at <http://www.wkkf.org/programming/Renderres.asp?ID=3655&CID=4> (last visited Apr. 6, 2002); MICHAEL H. SHUMAN, BAY FRIENDLY CHICKEN: REINVENTING THE DELMARVA POULTRY INDUSTRY (Chesapeake Bay Foundation & Delmarva Poultry Justice Alliance) (2000).

food may move before being consumed.¹⁷ But the local food movement would not have so much energy if the food did not taste great and if consumers did not benefit as well as producers.¹⁸ The quality of food that ends up on the plate is key and locally grown food served fresh and in season has a definite advantage.¹⁹ A challenge for many farmers and states, is finding ways to support the institutional and attitudinal changes needed to build local food systems. Research will play a role, such as on lengthening growing seasons to produce and market local food. But an important part will be putting in place the laws and policies designed to support community food systems and expand the opportunities for farmers and consumers.

Federal farm programs will continue to set the economic environment for large parts of agriculture and will determine rules for conserving resources.²⁰ With a price tag in the billions and the power of federal authority, they should. But the reality is farmers, rural communities, and states cannot simply rely on federal programs to provide a farm and food policy specially designed for their needs.²¹ That is why it is

17. See RICH PIROG, ET AL., LEOPOLD CTR. FOR SUSTAINABLE AGRIC., IOWA STATE UNIV., FOOD, FUEL, AND FREEWAYS: AN IOWA PERSPECTIVE ON HOW FAR FOOD TRAVELS, FUEL USAGE, AND GREENHOUSE GAS EMISSIONS (June 2001), available at http://www.ag.iastate.edu/centers/leopold/pubinfo/papersspeeches/food_mil.pdf (last visited Apr. 6, 2002) (discussing the fascinating issue of “food miles” and the relationship between transportation and energy requirements in the United States food system). See also KEN METER & JON ROSALES, INST. FOR SOC., ECON. & ECOLOGICAL SUSTAINABILITY, UNIV. OF MINN., FINDING FOOD IN FARM COUNTRY: THE ECONOMICS OF FOOD AND FARMING IN SOUTHEAST MINNESOTA (2001), available at <http://www.igc.org/crossroads/ff.pdf> (last visited Apr. 17, 2002).

18. See generally JOAN DYE GUSSOW, THIS ORGANIC LIFE: CONFESSIONS OF A SUBURBAN HOMESTEADER (Chelsea Green 2001) (explaining the values of being part of the local food system).

19. The renewed focus on the quality of food and the relationship between quality and taste involves considering where and how the food was produced. These considerations are components of the emerging appreciation in the United States of the connection between food and culture. While this connection has long been a defining characteristic of other cultures, most notably France and Italy, the appreciation for the connection and the recognition of the opportunities to foster it are a relatively recent phenomenon in the United States. One of the more interesting aspects of this development is the slow food movement which focuses attention on tradition foods and traditional methods of preparation and production. See, for example, *Slow*, the international journal of the slow foods movement, and *The Snail*, a newsletter from Slow Foods USA. For more information visit the web site at <http://www.slowfood.com>. The growth in academic programs focused on “Food Studies” is another component of this process. See, e.g., *Gastronomica*, *The Journal of Food and Culture* (University of California at Berkeley).

20. The current effort before Congress to develop and enact a new Farm Bill presents a series of challenges concerning the appropriate role of federal farm programs, the size and nature of the payments, and the orientation of the efforts. The current debate reflects a choice between continued subsidies for large scale commodity production or a system more oriented to conservation and family farms. See, e.g., Elizabeth Becker, *As House Prepares Farm Bill, Questions of Who Needs Help, and How Much*, N.Y. TIMES, Sept. 9, 2001, at A22 (discussing the debate on the farm bill); Elizabeth Becker, *Treaties May Curb Farmers Subsidies*, N.Y. TIMES, Aug. 31, 2001, at A1 (discussing the conflict between free trade advocates and supporters of farm subsidies); Elizabeth Becker, *Some Who Vote on Farm Subsidies Get Them as Well*, N.Y. TIMES, Sept. 1, 2001, at A10 (noting that five members of agricultural committees in Congress receive farm subsidies).

21. See Henry A. Wallace Center for Agricultural and Environmental Policy at Winrock International, *Making Changes, Turning Local Visions in National Solutions: Agriculture and Rural Development Policy Recommendations*, May 2001, available at <http://www.winrock.org/wallacecenter/makingchanges.pdf> (extremely well written and valuable study documenting the opportunities to use federal policy to support local food system initiatives).

essential to consider the potential role of state and local food policies.²² That is the purpose of this article.

The following discussion is organized into four sections. The discussion begins by considering what is state and local food policy and explaining the value of this perspective. The analysis then identifies several significant food policy topics and considers specific examples of recently enacted or proposed state laws illustrating the issues. Efforts to promote institutional use of locally grown food and state efforts to address hunger and food security are considered. The discussion next examines the use state food policy councils like those in operation in four states and several major cities. The purpose of such councils, how they are created and operate, and their legal authority are addressed. The article concludes by raising the idea of gleaning from various state and local actions to develop a model state law reflecting a comprehensive legislative proposal to improve state and local food policy.

II. THE VALUE OF USING STATE AND LOCAL FOOD POLICY AS AN ORGANIZING THEME

One of the more powerful and promising trends in America's food culture in recent years has been the growing appreciation for locally produced foods and the recognition of the need to support local farms. This trend, the larger consumer's concern for food quality and safety and of the farmer's desire for more income, is reflected in a variety of developments. The growing number of farmers' markets,²³ the strong consumer demand for fresh, seasonal and often organically grown produce, the increasing attention given by leading chefs to local produce, and the growing array of direct farm marketing opportunities such as community supported agriculture ("CSA"),²⁴ all reflect this trend. The human forces driving these developments are powerful, such as the search for high quality safe food, the desire to create more community in an otherwise rapidly industrializing society, and the need to make connections with people, nature, our food, and the land are part of this process.²⁵ These developments, which I describe as the New Agriculture, are creating important opportunities for people and society.²⁶ Farmers are finding new markets and higher

22. See USDA, *Food and Agricultural Policy: Taking Stock for a New Century* (2001), available at <http://www.usda.gov/news/pubs/farmpolicy01/fullreport.pdf> (September 2001 report by the USDA setting out the new Administration's ideas on the future of federal farm programs).

23. See JENNIFER-CLAIRE V. KLOTZ, *FARMER DIRECT MARKETING BIBLIOGRAPHY 2001* at 1 (USDA 2001), available at <http://www.ams.usda.gov/directmarketing/8059usda.pdf> (indicating the number of farmers markets in the United States has rapidly increased, with 2,863 currently in existence). In recent years the USDA acting through the Agricultural Marketing Service ("AMS") and its Wholesale and Alternative Marketing branch has undertaken a range of programs to support and provide information about direct marketing. See *id.*; USDA, *NATIONAL DIRECTORY OF FARMERS MARKET AND DIRECT MARKETING ASSOCIATIONS 2001* at 1 (USDA 2001), available at <http://www.ams.usda.gov/directmarketing/8058usda.pdf>. For additional information, the USDA operates web pages for direct marketing and farmers markets available at <http://www.ams.usda.gov/directmarketing/> and <http://www.ams.usda.gov/farmersmarkets/>.

24. See generally ELIZABETH HENDERSON & ROBYN VAN EN, *SHARING THE HARVEST: A GUIDE TO COMMUNITY-SUPPORTED AGRICULTURE* (Chelsea Green 1999) (thoroughly examining the CSA movement in the United States).

25. Some of the political and social support for promoting an alternative to an industrialized food system finds its base in religious and moral concerns relating to people, animals, and the land. For example, a new education campaign is being conducted by the National Catholic Rural Life Conference. See *Eating Is a Moral Act*, NAT'L CATH. RURAL LIFE CONF. ANNOUNCEMENT (NCRLC, Des Moines, IA).

26. See Neil D. Hamilton, *Tending the Seeds: The Emergence of a New Agriculture in the United States*, 1 *DRAKE J. AGRIC. L.* 7, 9 (1996); see also Neil D. Hamilton, *Greening Our*

prices, consumers are finding better tasting foods in which they can have more confidence, and communities are finding new sources of economic and social activity that can provide support for important goals.²⁷ The premise of this article, state and local food policies, can be important factors in articulating and supporting the goals of the New Agriculture. These goals include:

- creating opportunities to keep farm families on the land and create new farms;
- promoting sustainable farming practices to protect the environment and support profitable farms and communities; and
- building diverse efficient local food systems designed to address local food needs and create opportunities for people at all levels of the food economy.²⁸

To understand why state and local food policy may play such a significant role, it is important to consider what is meant by the term, and how focusing on state and local policy requires a departure from the traditional manner in which agricultural policy is considered or analyzed. The following discussion attempts to do so by considering a series of questions about state and local food policy.

A. *Why Focus on State and Local Food Policy?*

There are a variety of important reasons why state and local food policy deserves to be considered. One of the most important is because of its potential and ability to have an impact on issues important to a state's farmers and consumers. There is immediacy to both the issues and the potential of local governments to respond, which provides the opportunity to focus on the issues unique to a state or locality.

State food policy is timely because it relates to many key issues now shaping American agriculture and food policy, such as direct farm marketing, labeling and food quality, and addressing such environmental issues as water quality and the loss of farmland. In many ways the locus of power and progress on many issues is subtly shifting from Washington, D.C. back to state and local governments. If true, these governments must develop policies and programs tailored to address the issues.

State food policy recognizes that federal law and policy is only one dimension of the discussion, and while federal law may set the framework for action, federal law alone can not provide a localized response. Many examples of innovative state food policies take existing federal laws or programs and build on them. For example, one key

Garden: Public Policies to Support the New Agriculture, 2 DRAKE J. AGRIC. L. 357, 358 (1997).

27. See Jane E. Schukoske, *Community Development Through Gardening: State and Local Policies Transforming Urban Open Space*, 3 N.Y.U. J. LEGIS. & PUB. POL'Y 351 (1999-2000) (scholarly analysis of the role of state and local policy in promoting community gardening, one New Agriculture idea).

28. One of the most important and influential groups leading the effort to bring national attention to the role of local food policy and food systems is the Community Food Security Coalition. This confederation of food system activists brings together anti-hunger movement, community gardeners, sustainable agriculture, small farm advocates, and those working directly in local foods. The Coalition was instrumental in encouraging Congress to provide funding for USDA grants to community food projects, as part of the 1996 Farm Bill. The Coalition has undertaken an ambitious campaign to insure that Congress considers the role of community food security and local initiatives in the 2002 Farm Bill debate. See CMTY. FOOD SEC. COALITION, THE HEALTHY FARMS, FOOD, AND COMMUNITIES ACT: POLICY INITIATIVES FOR THE 2002 FARM BILL AND THE FIRST DECADE OF THE 21ST CENTURY (Aug. 2001), available at http://www.foodsecurity.org/cfsc_report.pdf.

area in state food policy, as discussed later, relates to addressing hunger and food insecurity. Much of the law in this area consists of innovative state and local programs designed to build on federal funding for food assistance to increase the effectiveness or reach of the programs.

Because state and local food policy is developed in local settings, it is typically more accessible to the influence of familiar individuals and institutions. It is not something where one must go to Washington and get permission from the USDA or wait for Congress to act. Instead, state and local food policy capitalizes on the ability of people to control their own destiny by using institutions they control, empowering them to take charge of their future. As this article attempts to demonstrate, state and local food policy offers a rich and flexible set of opportunities for innovative programs. It provides the opportunity to capture the creativity and insight of informed and affected people, who are often excluded from or unable to participate in the development of federal programs.

Finally, state and local food policy is relatively free of constraints, outside the restrictions the Constitution or federal law may provide. It offers a contrast to the assumption federal law and policy is responsible for setting the environment in which agriculture must exist. Many state and local food policy issues supporting the New Agriculture are a response or reaction to limitations presented by current federal policy and by the related rise in the industrialization of agriculture.²⁹ The future evolution of the New Agriculture may be determined by how well it is fostered through state and local innovation and resilience.

B. What is State and Local Food Policy?

State and local food policy consists of the legislative and administrative decisions of state and local governments designed to influence the operation of the food and agricultural system and to create opportunities for farmers, marketers, and consumers. As such, it represents more than just the local implementation of federal laws and requirements. Instead, state and local laws often attempt to address issues most significant to state and local agriculture, such as expanding the use of direct farm marketing or preserving culturally significant farms and farmland. Some issues may by their nature be the domain of state and local governments, such as land use planning, farmland preservation, and even laws relating to property liability, such as addressing the new issue of pollen drift. For these issues there may not be a “federal answer,” but instead resolution will require local action. Not all food policy ideas initiated at the state level may be successful or even wise and some may be reactionary or defensive in nature – such as the example of food disparagement laws.³⁰ But the key element is the

29. The industrialization of agriculture and how it is occurring have been the subject of numerous articles. See, e.g., Neil D. Hamilton, *Reaping What We Have Sown: Public Policy Consequences of Agricultural Industrialization and the Legal Implications of a Changing Production System*, 45 *DRAKE L. REV.* 289 (1997); Neil D. Hamilton, *Agriculture Without Farmers? Is Industrialization Restructuring American Food Production and Threatening the Future of Sustainable Agriculture?*, 14 *N. ILL. U. L. REV.* 613 (1994). See also EMERY N. CASTLE, HENRY A. WALLACE INST. FOR ALTERNATIVE AGRICULTURE, POLICY STUDIES REPORT NO. 11, *AGRICULTURAL INDUSTRIALIZATION IN THE AMERICAN COUNTRYSIDE* (Oct. 1998); RICK WELSH, HENRY A. WALLACE INST. FOR ALTERNATIVE AGRICULTURE, POLICY STUDIES REPORT NO. 7, *REORGANIZING U.S. AGRICULTURE* (Aug. 1997).

30. See generally Julie K. Harders, Note, *The Unconstitutionality of Iowa's Proposed Agricultural Food Products Act and Similar Veggie Libel Laws*, 3 *DRAKE J. AGRIC. L.* 251 (1998) (discussing state food disparagement laws and the constitutional issues they implicate).

governmental action stems from the exercise of authority by state and local bodies, and the actions are designed to meet perceived societal needs.

C. *What are the Limitations on State and Local Food Policy?*

Developing state and local food policy is not free of limitations. In some situations federal law may restrain or even pre-empt the ability of state governments to act. A good example relating to food labeling and the limitations presented by federal policy is reflected in the court decision prohibiting Vermont's attempt to label milk for the presence of bovine growth hormone.³¹ Some issues by their nature are reserved to the federal government such as immigration policy and most trade related issues. While states may develop innovative ways to address local dimensions of these issues, for the most part the topics are preserved for federal action. Other issues may be too large or too costly for states or local governments to address. The best example is the economics of commodity production. This explains why few states have attempted to provide anything similar to federal commodity programs. Instead state efforts on farm economics are more targeted and relate to promotion and marketing. As an alternative, in recent years many states, especially in the Midwest have created initiatives to finance various farmer owned food processing enterprises, often referred to as value-added agriculture.³²

Other topics may be subject to state law, for example, corporate ownership of farmland,³³ but the nature of the issues makes it difficult for states acting alone to be effective. Some state and local efforts to protect environmental resources such as water quality, may fit this category. The lack of uniformity across states, or lack of federal standards set as high as the states desire, may make it possible for companies to choose locations and force states to compete on how their laws affect the business climate. Consider how recent state efforts to enact laws regulating use of production contracts by corporate meat and poultry operations may lead to shifts in production patterns.³⁴

31. See *Int'l Dairy Foods Ass'n v. Amestoy*, 92 F.3d 67, 73-74 (2d Cir. 1996) (holding that Vermont's "strong consumer" interest in enacting the Vermont Labeling Law was "insufficient to justify compromising protected constitutional rights").

32. Some of the more common state agricultural promotion laws are referred to as "linked deposit" programs. See IOWA CODE §§ 12.31-12.43B (2001). Under these laws, the state agrees to deposit state funds in a lending institution if it makes loans of the type being promoted by the law. See *id.* at § 12.41. For example, Texas and Iowa have linked deposit programs to provide financing to farmers diversifying into production and marketing of alternative crops. See *id.*; TEX. AGRIC. CODE ANN. § 44.007 (Vernon 1995 & Supp. 2002).

33. See, e.g., IOWA CODE § 9H (2001); Matthew M. Harbur, *Anti-Corporate, Agricultural Cooperative Laws and the Family Farm*, 4 DRAKE J. AGRIC. L. 385 (1999).

34. In 2000, the Iowa Attorney General's office working through its farm division, and in cooperation with attorneys general in sixteen states, developed a model state Producers Protection Act concerning use of production contracts in agriculture. The Farm Division of the Iowa Attorney General maintains a web library of current production contracts, found at <http://www.state.ia.us/government/ag/farm.htm>. The proposed law was primarily a distillation of laws previously enacted by the states, such as Iowa Code §9H and the 2000 Minnesota law, H.F. No. 3534, amending Minn. Stat. Chapter 17 requiring contracts be written in understandable terms and include a risk disclosure statement. Some version of the model law was introduced in at least twelve states during the 2001 legislative season but so far no state has enacted the legislation. See Mary Clouse, *What Ever Happened to Those Producer Protection Acts Based on the Model Bill from the National Association of Attorneys General?*, available at <http://www.rafiusa.org/action/alert/contractag/fact4.htm> (last visited June 22, 2002).

III. CONSIDERING IMPORTANT EXAMPLES OF STATE AND LOCAL FOOD POLICY ISSUES

The potential for state and local actions to shape the future of American agriculture and our food system becomes more apparent when one examines issues being addressed by state and local governments. In this section, the discussion focuses on a set of issues in the emerging food systems debate and considers how state policies are being used to promote desired objectives. Issues examined and principles considered include:

- Local food systems – increasing local direct farm marketing, harnessing local food buying, and focusing on what the local agriculture-food capacity is to create opportunities for new markets and foods.
- Institutional purchases – examining the role of state and local government to create demand for foods and using public funds to support development of local production, processing, and marketing infrastructure, such as “farm-to-school” marketing efforts.
- Food security and anti-hunger initiatives – creating a context for examining hunger and considering how public and private feeding assistance efforts can be improved.
- Farmland preservation – emphasizing local foods and how a food system approach can create a context to examine loss of farmland and other environmental issues, such as water quality and wildlife habitat.³⁵ Increasing local demand and putting a face on the farms can create recognition of the need to “preserve” local food production.
- Eco-labeling – using market forces and “branding and education” to create an identity for locally produced foods or foods raised using particular practices. These efforts can create a way for consumers and the public to act on their concerns and in so doing can reward changes in farming practices.
- New farmers – focusing on the economic opportunities created by direct marketing and local purchasing, often at a higher value, can help create a context for efforts to support new and beginning farmers, especially those involved in small-scale agriculture or as new or part-time occupations.³⁶ Many potential farmers may be members of immigrant communities now working in food processing sector.

A. State Anti-hunger Initiatives

There is perhaps no more emotional and troubling social issue than the question of hunger. Recent studies indicating hunger and food insecurity continue to exist in our nation are cause for public concern.³⁷ Developing effective initiatives to

35. See David L. Szlanfucht, Note, *How to Save America's Depleting Supply of Farmland*, 4 *DRAKE J. AGRIC. L.* 333 (1999). The issue of the role of states in promoting farmland preservation and related environmental values was the subject of a national conference sponsored by the National Governor's Association in March 2001. See NATIONAL GOVERNORS ASSOCIATION CENTER FOR BEST PRACTICES, *PRIVATE LANDS, PUBLIC BENEFITS: PRINCIPLES FOR ADVANCING WORKING LANDS CONSERVATION* (2001).

36. See, e.g., THE NEW ENGLAND SMALL FARM INSTITUTE, *NORTHEAST NEW FARMER PROGRAMS AND SERVICES DIRECTORY 2001*, at iv (2001) (report compiling information about the various state and local programs designed to fund, train, and support new farmers in the region).

37. See MARK NORD ET AL., *MEASURING FOOD SECURITY IN THE UNITED STATES: PREVALENCE OF FOOD INSECURITY AND HUNGER BY STATE—1996-1998* (USDA 1999).

respond to hunger and address the underlying causes of it continues to challenge both the public and private sectors in our nation.³⁸ Addressing hunger and food assistance is somewhat like the development of farm programs. While the impacts of the problem are experienced by individuals at a local level, the public resources and responsibility for addressing the issues have been primarily assigned to the federal government. The development and funding for food stamps, the WIC program, school lunches, elderly meals, donations of surplus commodities, and similar programs are all done at the federal level.³⁹ The dominant role given federal efforts reflects the issue being a national priority, the magnitude of the expenditures needed, and the need for or value of uniformity in response. The sad truth is that even with over \$35 billion spent each year, combined with significant private efforts, ten percent of households in the nation, about ten million, still experience food insecurity.⁴⁰

It should be no surprise, given the continuing presence of hunger, that a number of states have undertaken additional efforts to address hunger concerns. The state initiatives typically relate to improving the coordination of public anti-hunger programs and improving the performance of the programs that exist – in terms of their coverage and operation.⁴¹ Recent state laws proposed or enacted to address hunger include:

- *Requiring officials to take advantage of eligibility opportunities in federal programs.*

A bill introduced in Rhode Island would require the state to take full advantage of the various categorical eligibility options offered by USDA in food stamp programs.⁴² The effect of this would be to expand the number of families eligible for food stamps and increase the vehicle exemption allowing more access by the working poor. A similar example is a proposed Illinois law to require local school officials to participate in the USDA's school breakfast program.⁴³ The issue addressed by the proposal is that for

38. *See generally* JANET POPPENDIECK, SWEET CHARITY: EMERGENCY FOOD AND THE END OF ENTITLEMENT 20-48 (Penguin Group 1998) (analyzing hunger in America and the challenges facing public and private responses to it).

39. *See generally* ANTONIA DEMAS, HOT LUNCH: A HISTORY OF THE SCHOOL LUNCH PROGRAM (Food Studies Institute, Inc. 2000) (a fascinating historical review of one component of federal feeding programs).

40. *See* MARK NORD ET AL., *supra* note 37, at 1. The USDA defines the term "food insecurity" as meaning "[l]imited or uncertain availability of nutritionally adequate and safe foods or limited or uncertain ability to acquire acceptable foods in socially acceptable ways." *Id.* at 2.

41. The most comprehensive and valuable inventory of these state efforts is an annual report prepared by the Food Research and Action Center ('FRAC') and America's Second Harvest. *See, e.g.*, FOOD RESEARCH AND ACTION CENTER/AMERICA'S SECOND HARVEST, STATE GOVERNMENT RESPONSES TO THE FOOD ASSISTANCE GAP 2000, THIRD ANNUAL REPORT AND 50 STATE SURVEY (2000).

42. *See* H.B. 5444, 2001 Gen. Assem., Jan. Sess., (R.I. 2001). The Rhode Island General Assembly made various amendments to the "Public Assistance Act" including a requirement that the department "is authorized and directed to update vehicle value resource rules for food stamp households." *Id.*

43. *See* H.B. 2394, 92nd Gen. Assem. (Ill. 2001) (amending the Illinois School Breakfast and Lunch Program Act to include section ten, requiring "[a] public school board must apply for federal funds available to schools for school breakfast programs for qualified students." *Id.*).

various reasons, such as cost, local schools may opt not to provide free breakfast to students, even though federal funding is available.⁴⁴

- *Improving state anti-hunger programs by reducing barriers to participation.*

One of the significant issues vexing anti-hunger advocates is the continuing decline in food stamp participation rates even though economic indicators predict increasing numbers of eligible parties.⁴⁵ The reality is a large percent of individuals and households eligible for food stamps do not participate.⁴⁶ One possible obstacle to participation is the length and complexity of application forms and processes. In 2000, the California State Assembly enacted Senate Bill 2013 requiring state officials to work with federal officials to make the food stamp application as simple as possible.⁴⁷ A proposed Illinois law addresses a related issue for food stamp recipients, eligibility for similar public assistance programs.⁴⁸ The bill would require school officials to share information concerning children receiving free school lunches with the state agencies administering the state's children health insurance program, so the information can be used to help identify and enroll children.⁴⁹

- *Outreach and promotion for food stamps.*

The process of spending funds to actively promote their use or recruit eligible beneficiaries. Several states have taken advantage of USDA initiatives to use funds generated by reducing the error rate in providing benefits to conduct outreach programs. A bill introduced in the Rhode Island legislature would appropriate \$250,000 to conduct a food stamp outreach and education campaign.⁵⁰ The proposal was based on reports indicating only one-half of the eligible children in the state were receiving food stamp benefits.⁵¹

Some of the state initiatives relating to hunger address more systemic causes of hunger such as addressing poverty through job training and economic development. Other programs attempt to address factors symptomatic of poverty and contributing to hunger and food insecurity. The issue of food access, most notably the availability of full service grocery stores in inner city neighborhoods, is such an issue. Efforts in a number of states, such as those in Hartford, Connecticut, attempt to address the food access

44. See Elizabeth Becker, *Summer Sponsors Scarce for Free Lunch Programs*, N.Y. TIMES, May 28, 2001, at A7.

45. See Elizabeth Becker, *Millions Eligible for Food Stamps Aren't Applying*, N.Y. TIMES, Feb. 26, 2001, at A1.

46. See *id.* See also *Percentage of Eligible People Who Participated in the Food Stamp Program by State, 1994-98*, NUTRITION WEEK, Feb. 9, 2001, at 6.

47. Under Senate Bill 2013, §18901.8 of the California Welfare and Institutions Code was amended to provide, "[t]o the extent permitted by federal law, and with receipt of necessary federal approvals, the State Department of Social Services, in conjunction with affected stakeholder groups, shall develop and implement, if otherwise feasible, a simplified and shorter application form for non-assistance food stamp cases." Under the law, the department was to report back to the legislature by July 1, 2001, on the results of the effort to simplify California's food stamp application. S.B. 2013, 2000 Leg., 1999-2000 Sess. (Cal. 2000).

48. See H.B. 1050, 92nd Gen. Assem. (Ill. 2001).

49. See Ill. H.B. 1050

50. See H. 5862, 2001 Gen. Assem., Reg. Sess. (R.I. 2001), available at <http://www.rilin.state.ri.us>. The bill notes that a recent study in Rhode Island found that only fifty-two percent of the eligible children under eighteen were receiving food stamp assistance. R.I. H. 5862 § 1(c)

51. R.I. H. 5862, available at <http://www.rilin.state.ri.us>.

and transportation issues contributing to inadequate diets.⁵² In the past, at least one state has funded a state program of anti-hunger grants supporting local initiatives designed to address hunger issues.⁵³ For five years, the state of Wisconsin appropriated \$250,000 annually for the anti-hunger grant program, but it ended in 1999.⁵⁴ In 2000, a bill was introduced in the Rhode Island General Assembly, though not enacted, which would have used state funds to add five dollars per month for the food stamp recipient's benefits.⁵⁵

- *Diet and Nutrition*

Not all state laws concerning public feeding programs relate simply to supply and availability of benefits. In some states the issues of diet and nutrition, in particular as they impact public health, have become the focus of state legislative proposals. There is no better example than the current battle being waged in many states over the sale and availability of soda pop and other "junk foods" in public schools.⁵⁶ The current effort in California to enact a state law prohibiting the sale of soda and other high sugar snack foods in public schools illustrates the conflicting issues in the debate.⁵⁷ The main struggle is between public health advocates and their legislative supporters and representatives of the schools who argue that shortages in public funding have required them to depend on the revenue from vending machines to support school programs.⁵⁸ For their part, the manufacturers of the foods in question respond that there is no such thing as a bad food, just bad diets. The issue of whether schools should be doing more to influence the dietary habits of the nation's youth are highlighted by recent studies which indicate the rate of obesity among the young has more than doubled in the last decade.

B. *State Institutional Purchasing Programs*

One promising opportunity within state food policy concerns expanding institutional use of locally grown food. These programs find their history in state efforts relating to market development, assistance to small farmers and direct marketing, and various agricultural diversification attempts.⁵⁹ Almost every state operates some form

52. See CONNECTICUT FOOD POLICY COUNCIL, MAKING ROOM AT THE TABLE – A GUIDE TO COMMUNITY FOOD SECURITY IN CONNECTICUT (Oct. 1998), available at <http://www.foodpc.state.ct.us/publications.htm> (discussing the efforts in Hartford and other cities to improve food access).

53. See Zy Weinberg, *Wisconsin Anti-Hunger Program Set to Expire*, NUTRITION WEEK, May 28, 1999, at 6 (stating that Wisconsin funded an anti-hunger program until 1999).

54. See *id.*

55. See H. 7408, 2000 Gen. Assem., Reg. Sess. (R.I. 2000).

56. See Greg Winter, *States Try to Limit Sales of Junk Food in School Buildings*, N.Y. TIMES, Sept. 9, 2001, at A1 (analyzing the state efforts in this regard).

57. See S.B. 19, 2001 Leg., 2001-2002 Sess. (Cal. 2001) (bill designed to restrict the sale of candy and soft drinks in California's public schools). Congress has also introduced similar bills. See Better Nutrition for School Children Act of 2001, S. 745 & H.R. 2129, 107th Cong. (2001) (bills introduced to amend the Child Nutrition Act of 1966 to promote better nutrition among school children participating in federally funded breakfast and lunch programs).

58. See *California Lightens up on Competitive Foods in Schools*, NUTRITION WEEK, Sept. 3, 2001, at 3.

59. A prime example of recent state efforts at agricultural diversification are programs designed to encourage the planting of grape vines for wine production and increased tourism. See, e.g., OHIO VINE GRANTS PROGRAM, OHIO GRAPE INDUS. PROGRAM (Dept. of Horticulture & Crop

of state-based identity and promotion campaign, such as “Jersey Fresh,” “Pride of New York,” and “A Taste of Iowa.” The Minnesota program, enacted in 1979, provides for development of a “Minnesota Grown” label and logo.⁶⁰ The law requires people to obtain a license to use the label, and any fees generated from using the logo go into a “Minnesota grown account” to be used for enforcement and promotion.⁶¹ The law provides “[t]he Minnesota grown logo or labeling statement may be used on raw agricultural products only if 80% or more of the agricultural product is produced in this state.”⁶²

I. *Requiring State Institutions to Purchase Local Food*

More recent efforts to promote institutional purchasing of locally grown food take the marketing idea to another level. The premise of an institutional purchasing initiative is if public funds are used to buy food for public institutions, such as hospitals, schools, and correctional facilities, then state and local governments should consider how publicly funded food purchases can support local farming and marketing goals.

The issue of how to expand institutional use of local food has been the subject of several innovative state and local policy developments in recent years. The efforts can be categorized by how the requirement to use local food is stated, with options ranging from mandating local purchases to encouraging such actions. In the 1988 Minnesota law titled “Agricultural Food Products Grown in State,”⁶³ subdivision 1 on “state contracts” provides “[t]he commissioner [of administration] shall encourage and make a reasonable attempt to identify and purchase food products that are grown in this state.”⁶⁴ Subdivision 2 requires the commissioner to submit a report each biennium to the House and Senate Agricultural Committees “on the total food products purchased or contracted for by agencies and the amounts of fruits, vegetables, grains, meats, poultry, and other food products purchased or contracted for that are grown in this state.”⁶⁵

A law designed to mandate such actions is the bill currently under consideration, and expected to pass, in the California State Assembly.⁶⁶ Under this law, state owned or state run institutions will be required to “purchase agricultural products grown in California before those that are grown outside the state” if the bids for California grown produce does not exceed by more than five percent of the lowest bid or price quoted for other products.⁶⁷ Under the law “all California public schools and school districts shall purchase agricultural products grown in California before those that are grown outside the state as long as the price quoted by the California company does not exceed the lowest price of the out-of-state product.”⁶⁸

Science, 2001) (application packet).

60. See MINN. STAT. ANN. § 17.102 (West 1998 & Supp. 2002).

61. See § 17.102(3)-(4)

62. § 17.102(1)

63. MINN. STAT. ANN. § 16B.103 (repealed 1998).

64. § 16B.103(1) (repealed 1998).

65. § 16B.103(2) (repealed 1998).

66. See A.B. 801, 2001 Leg., 2001-2002 Sess. (Cal. 2001) (bill would amend Chapter 7 of the State Food and Agriculture Code by authorizing the Secretary of Food and Agriculture to promote increase purchases of California-grown produce by offering funding to public schools for meals and snacks and offering institutions incentives to purchase California produce).

67. Cal. A.B. 801

68. Cal. A.B. 801

An example of a state effort to promote institutional use of local food, not relying on a mandate, is the recent action by New York officials to alter the state's food procurement rules. Under a program announced in August 2001 by the State Agriculture Commissioner and the Office of General Services, the discretionary purchasing levels for state institutions were increased to allow them to purchase up to \$10,000 of fresh fruits, vegetables, and eggs from New York growers every fifteen days.⁶⁹ Another example of a state action encouraging the use of locally grown food without requiring it is the decision of the Governor of Iowa to form a task force to study opportunities to increase institutional use of locally grown food.⁷⁰ The action came in response to the Iowa Food Policy Council, which identified as its top priority recommendation "the governor set in motion a state initiative to increase institutional purchases of Iowa-produced food products."⁷¹

2. Farm to School Marketing Efforts

The form of institutional purchasing currently receiving the most attention, and perhaps holding the greatest promise for farmers, is the "farm to school" programs underway in many states.⁷² The premise is that by connecting local farms with local schools, more economic activity can be funneled into the local food economy and the food offered to children can be fresher and higher quality.⁷³ In addition, local connections can provide valuable opportunities to educate children about the source of the food and operation of the farming sector. The potential for the programs has led USDA to develop initiatives to support the efforts.⁷⁴ The opportunity to use state law to support such programs is demonstrated by the California proposal discussed above, which will require public schools to purchase California grown produce if the price is competitive.⁷⁵ Another example of state legislation to encourage such efforts is the resolution introduced in the 2001 New Mexico legislature. Under House Joint Memorial 34, the legislature resolved that "the state department of public education and the New Mexico department of agriculture be requested to evaluate opportunities for the public schools to use New Mexico agricultural products in preparing school meals."⁷⁶

69. See *State to Purchase More New York State Farm Products*, NASDA NEWS, Aug. 10, 2001, available at <http://www.nasda.org/news/newsletter109.html> (last visited June 23, 2002). For more information about the program, visit the New York Department of Agriculture's website at <http://www.agmkt.state.ny.us/>.

70. See Exec. Order No. 19, 23 Iowa Admin. Bull. 1940-41 (June 13, 2001); *Vilsack to Push for Iowa Food Purchase*, IOWA FARMER TODAY, May 26, 2001, at 7.

71. *Recommendations of the Iowa Food Policy Council to Governor Thomas J. Vilsack and Lt. Governor Sally Pederson* (Apr. 30, 2001), available at <http://www.iowafoodpolicy.org/finalrecs/finalrecs.htm> (last visited June 23, 2002).

72. See generally ANDREA MISAKO AZUMA & ANDREW FISHER, HEALTHY FARMS, HEALTHY KIDS: EVALUATING THE BARRIERS AND OPPORTUNITIES FOR FARM-TO-SCHOOL PROGRAMS (Community Food Security Coalition, Jan. 2001) (reviewing farm to school marketing efforts).

73. See, e.g., IOWA STATE UNIV. EXTENSION, LOCAL FOOD CONNECTIONS: FROM FARMS TO SCHOOLS, (June 2000) (explaining the value of the efforts and providing marketing strategies for farmers to contact local schools about buying food products).

74. See, e.g., USDA AGRICULTURAL MARKETING SERVICE, INNOVATIVE MARKETING OPPORTUNITIES FOR SMALL FARMERS: LOCAL SCHOOLS AS CUSTOMERS (Feb. 2000); USDA FOOD AND NUTRITION SERVICE, SMALL FARMS/SCHOOL MEALS INITIATIVE – TOWN HALL MEETINGS: A STEP-BY-STEP GUIDE ON HOW TO BRING SMALL FARMS AND LOCAL SCHOOLS TOGETHER (Mar. 2000).

75. See A.B. 801, 2001 Leg., 2001-2002 Sess. (Cal. 2001).

76. H.Jt. Mem'l 34, 45th Leg., 1st Sess. (N.M. 2001).

C. *State Programs to Support Direct Farm Marketing*

Direct farm marketing is the process of creating opportunities for farmers to have personal contact with consumers for the purpose of selling foods and other products produced on the farm. There are many examples of state legislatures enacting programs to support direct farm marketing, with New York and California being two of the best. Many public officials are interested in how state government – generally through the department of food and agriculture – can create new opportunities for farmers to sell directly to consumers. States can do so in a variety of ways, ranging from support for the creation of farmers' markets to providing grants to farmers interested in diversifying into various forms of direct farm marketing.

The California Food and Agricultural Code contains provisions of the law promoting direct farm marketing.⁷⁷ The law provides an excellent set of legislative "findings" concerning the value of direct farm marketing:

The Legislature finds and declares all of the following with regard to the direct marketing of agricultural products:

- (a) Direct marketing of agricultural products benefits the agricultural community and the consumer by, among other things, providing an alternative method for growers to sell their products while benefiting the consumer by supplying quality produce at reasonable prices.
- (b) Direct marketing is a good public relations tool for the agricultural industry which brings farmers face-to-face with consumers.
- (c) The marketing potential of a wide range of California-produced agricultural products should be maximized.
- (d) The department should maintain a direct marketing program and the industry should continue to encourage the sale of California-grown fresh produce.
- (e) A regulatory scheme should be developed that provides the flexibility that will make direct marketing a viable marketing system.
- (f) The department should assist producers in organizing certified farmers' markets and other forms of direct marketing by providing technical advice on marketing methods and in complying with the regulations that affect direct marketing programs.
- (g) The department is encouraged to establish an ad hoc advisory committee to assist the department in establishing regulations affecting direct marketing of products and to advise the secretary in all matters pertaining to direct marketing.⁷⁸

77. See CAL. FOOD & AGRIC. CODE § 47000 (West 2001).

78. See *id.*

The California law is one of the strongest state laws on direct marketing, but New York also has several important laws reflecting the value of direct marketing for farmers and consumers. A New York law on direct marketing, enacted in 1981 provides:

The legislature hereby finds that inflation has caused higher prices in all phases of farm and food production and farm and food products distribution; and that demand, by consumers within the state, for increasing supplies of wholesome, fresh and nutritious farm and food products provides a significant opportunity for the development of alternative marketing structures for food grown within the state by which such products may be supplied directly to the consuming public.

The legislature finds also that encouraging direct sales from farms and other agricultural producers to consumers and other buyers can provide producers with a substantially increased income over that which is currently obtainable through the conventional wholesale marketing system.

It is therefore the intent of the legislature and the purpose of this article to encourage expanded production of farm and food products through providing increased opportunities for farm and food product producers within the state to wholesale and retail their products directly to consumers on a state, regional and local basis; to encourage purchasing opportunities which will lower food costs to consumers; to increase the share of the consumer's food dollar retained by the producers of farm and food products; to make farm and food products more readily available to residents of the state; and to encourage and facilitate the purchase and use of farm and food products produced within the state by public and private institutions and agencies.⁷⁹

State officials interested in promoting direct farm marketing may consider range of possible actions to take. The New York law identifies eight different activities as part of a statewide direct marketing initiative and the law authorizes regional efforts to promote direct marketing.⁸⁰ The eight activities are good examples of the steps states can take to promote direct farm marketing. The New York law provides these activities shall include, but not be limited to:

1. Communications and promotion of direct marketing activities, to include, where appropriate, cooperation with cooperative extension service in the area of education.
2. Development of institutional direct marketing programs to increase the purchase of New York state farm and food products in coordination with the office of general services and the department of education.
3. Development of a technical assistance program for initiating, improving, and expanding direct marketing activities and developing new forms of direct marketing.

79. N.Y. AGRIC. & MKTS. LAW § 281 (McKinney 2001).

80. See N.Y. AGRIC. & MKTS. LAW § 284 (McKinney 2001).

4. Development of guidelines for direct marketing operations that will assist individual producers in reducing costs and improve their financial returns and help assure consumers of high quality food.
5. Assistance to retail food stores in purchasing directly from New York state food producers.
6. Assistance to direct marketing organizations in areas identified as having poor consumer access to high quality and reasonably priced food and farm products.
7. Assistance to producers and consumers to initiate or improve retail and wholesale farmers' markets.
8. Submission of a biannual report to the legislature, which shall include an evaluation of the regional and institutional effect of direct marketing activities.⁸¹

Most states with laws on direct farm marketing place emphasis on supporting creation of farmers' markets and on the operation of roadside stands. For example, New York law makes it the state policy to encourage the creation and use of farmers' markets in promoting agriculture.⁸² The law provides:

The legislature hereby finds and declares that farmers' markets provide a vital and highly effective marketing mechanism for thousands of New York farmers, improve the access of consumers and wholesalers to New York farm products, and contribute to the economic revitalization of the areas in which the markets are located. The legislature further declares that farmers markets provide consumers with access to a wide range of high quality, nutritious, farm fresh and processed New York state agricultural and food products; facilitate expanded wholesale distribution of New York state farm products to retail stores, restaurants, institutions and other wholesale food buyers; provide new and expanded farm and city jobs in agricultural production, marketing, and sales, and in market facilities development and operation; promote consumer awareness of New York state agriculture and agricultural products; and foster economic and social interaction between urban and rural residents of the state.

It is therefore the intent of the legislature and the purpose of this article to encourage farmers markets in the state by providing state assistance to municipalities and public and private agencies interested in developing new markets or expanding or reconstructing existing farm market operations.⁸³

Other state programs support creating roadside stands. Georgia and South Carolina both operate "Roadside Market Incentive Programs" designed to improve the appearance and operation of the markets.⁸⁴ Under Georgia law, the Roadside Market

81. *See id.*

82. *See* N.Y. AGRIC. & MKTS. LAW § 259 (McKinney 2001).

83. *See id.*

84. *See* GA. CODE ANN. § 2-10-130 (2001) (establishing Georgia's Roadside Market

Incentive Program is designed to “improve the quality of roadside markets and to promote fair and sanitary marketing practices throughout the roadside markets” in the state.⁸⁵ The law gives the state Department of Agriculture rule making authority to establish standards for the design and operation of markets.⁸⁶ Roadside markets meeting the guidelines are eligible to post signs designating the markets as state certified.⁸⁷

These examples demonstrate a variety of activities and programs states can take to assist direct farm marketers. One common tool is to publish directories of farms selling food products to consumers.⁸⁸ For example, Maine’s law on direct marketing of agricultural commodities requires the Commissioner of agriculture to prepare information to develop and promote direct marketing, including “[a] list of the names and addresses of all Maine farmers and of the agricultural commodities which each produces.”⁸⁹

D. Supporting the Creation and Diversification of Small Family Farms

One significant challenge facing the nation and states in considering the future of agriculture and the nature of the United States food system is the issue of who will be the farmers in future years. The continuing decline in farm numbers and the shifting demographics of agriculture have resulted in an aging farm population with a declining pool of new farmers.⁹⁰ One attractive aspect of the types of production and marketing associated with the new agriculture is how it presents the opportunity to actually create new farms and attract a new generation of young people into food production.⁹¹ Several features of the type of farming associated with a community foods systems approach to agriculture contribute to this. First, the entry costs associated with intensive fruit and vegetable production on small farms may be lower. Second, the relative low costs of entering the marketplace, such as possible with farmers’ markets and CSAs, also reduce the capital required to become part of the food system. When these features are combined with the potential to set and charge higher prices for quality food, which is possible with direct marketing, the economics of small scale agriculture become more attractive for new entrants. It is because of these reasons that many states in recent years have considered or enacted state programs designed to facilitate the involvement of farmers – and potential farmers – in this type of agriculture.

The ability of states to enact programs to support the development of small farms and direct marketing is illustrated by the recent action of the Washington Legislature. Under House Bill 1884, enacted in the 2001 Regular Session, the state

Incentive Program); S.C. CODE ANN. § 46-19-210 (Law. Co-op. 2001) (establishing South Carolina’s Roadside Market Incentive Program).

85. GA. CODE ANN. § 2-10-130 (2001).

86. See GA. CODE ANN. § 2-10-131 (2001).

87. See GA. CODE ANN. § 2-10-133 (2001).

88. See, e.g., *Farm Fresh 2001: Your Guide to Iowa Grown Products*, IOWA DEPT. OF AGRIC. AND LAND STEWARDSHIP (2001).

89. ME. REV. STAT. ANN. tit. 7, § 412 (West 2002).

90. See DAN LOOKER, *FARMERS FOR THE FUTURE* (Iowa State Univ. Press 1996) (analyzing of the challenges presented to the next generation of American farmers).

91. See Julie Flaherty, *A Dirty Job, But It Seems More People Want to Do It*, N.Y. TIMES, Oct. 14, 2000, at C1 (discussing the recent trend toward young people returning to the land on small-scale direct market farms).

funded a \$100,000 small farm direct marketing assistance initiative in the state department of agriculture.⁹² The findings of the bill include these statements:

- A. Many consumers in this state appreciate and seek out the opportunity to purchase local farm products.
- B. Consumers and small-scale farmers would both benefit from increased opportunities to market farm products locally. Direct marketing provides farmers with the opportunity to realize an increased share of the consumers' food dollars and provides consumers with a greater opportunity to support local agriculture and understand farm operations, farm culture, and the role farmers play in meeting our food needs.
- C. The state would greatly benefit from a focused effort to increase the economic viability and profitability of small farms through increasing their ability to market their products directly to consumers.
- D. Direct marketing opportunities are often not feasible for farms to undertake because of market barriers and the difficulty of obtaining information relating to marketing.
- E. A direct marketing assistance program for small farmers could provide the needed information, technical assistance, and barrier clearing work that is a key to increasing direct marketing of farm products.⁹³

State programs to support small farms can range from initiatives to increase the number and operation of farmer's markets, to funding the operation of small farmer and direct marketing initiatives, to helping farmers absorb some of the costs associated with food production, such as sharing the costs of organic certification.⁹⁴ Other efforts, include providing state financing for farmers diversifying alternative crops, offering subsidies for the costs of crop insurance for raising higher value horticultural crops and special marketing and promotion efforts for locally produced foods.⁹⁵

State efforts to expand the opportunities for farmers to raise specialty crops received a boost from Congress in the summer of 2001, when Congress included over \$150 million in funding for the states in the Emergency Agricultural Appropriations Act.⁹⁶ Under the law, each state received a base grant of \$500,000 plus an additional amount, ranging from \$20,000 for Alaska to \$63.3 million for California, based on the value of the specialty crops historically produced in the state.⁹⁷ The funds were

92. See H.B. 1984, 57th Leg., Reg. Sess. (Wash. 2001) (amending Chapter 15.64 RCW).

93. Wash. H.B. 1984

94. See H.F. 1370, 81st Leg., 1999-2000 Sess. (Minn. 1999) (bill would provide a comprehensive state program to promote organic farming, including providing cost-share payments up to \$200 per farmer for up to five years to cover the costs of organic certification).

95. See William L. Oemichen, Essay, *State Government Service to the Agriculture of Tomorrow*, 2 DRAKE J. AGRIC. L. 247, 256 (1997) (discussing some examples of state programs designed to provide financing to alternative agricultural enterprises).

96. See *Guidance on State Block Grants Expected Soon*, NASDA NEWS, Aug. 17, 2001, available at <http://www.nasda.org/news/newsletter110.html> (last visited June 23, 2002).

97. See Agricultural Producers Supplemental Payments and Assistance, Pub. L. No. 107-25, 115 Stat. 201 (2001) (Section 7(b) lists the grants for all fifty states).

transferred from USDA to the states, with the actual plans for using the money to be coordinated between the Governors and agricultural officials.⁹⁸ The infusion of money, essentially free of restrictions, gives states the opportunity to develop innovative programs to support alternative farming.

One issue within the larger topic of helping support the farmers of the future relates to the opportunity to bring not just a new generation but a new group of people into agriculture. In recent years several states have implemented innovative programs focusing on the potential interest of recent immigrants to the U.S. such as the Hmong from Southeast Asia, and Hispanics from Mexico and Central America to become new farmers.⁹⁹ Most of the farmers identified in these programs are interested in alternative forms of production and marketing, such as vending through farmers markets and directly to chefs.¹⁰⁰ Because many people involved in this component of agriculture are small-scale, non-traditional, or minority farmers, one significant policy challenge will be assisting them in utilizing traditional farm credit sources.

E. *Eco-labels and Using Market Transparency to Create Consumer Support for Quality Food and Better Farming Practices*

American consumers are increasingly indicating their desire to buy foods which have specific traits or values. The rapid growth in demand for organically grown foods – the market has expanded by more than twenty percent annually for eight years – illustrates the potential marketing opportunities which may be available to producers who produce and market the types of fresh wholesome foods consumers desire.¹⁰¹ One interesting method of promoting and marketing foods emerging in the United States which may have a special attraction for direct farm marketers, is known as “eco-labeling.”¹⁰²

Eco-labeling is the process whereby the terms used to describe or market products to consumers inform them about special environmental attributes of the product.¹⁰³ For example, someone concerned about the loss of the rain forest might want to buy wood products certified as being raised on plantations. Perhaps the most common form of eco-labeling is the use of recycled materials.¹⁰⁴ Many consumers make

98. See NASDA NEWS, *supra* note 96, available at <http://www.nasda.org/news/newsletter110.html>.

99. See Andy Newman, *Immigrants Glimpse Greener Acres: A Back-to-the-Country Program for Farmers in a New Country*, N.Y. TIMES, Oct. 7, 2000, at B1.

100. See, e.g., Judith Weinraub, *Coming to America: How Immigrant Farmers Could Become a Chef's New Best Friend*, WASH. POST, Mar. 21, 2001, at F1 (noting that Gus Schumacker, a former Under Secretary at the USDA, is involved in an effort to connect chefs in the Northeast with new immigrant farmers).

101. See Catherine R. Greene, *U.S. Organic Farming Emerges in the 1990s: Adoption of Certified Systems*, (USDA 2001) (discussing the rise of organic farming in the United States during the 1990s), available at <http://www.ers.usda.gov/publications/aib770/aib770.pdf> (last visited May 23, 2002).

102. See Elise Golan et al., *Economics of Food Labeling*, (USDA 2000) (discussing how farmers have a financial incentive to use eco-labeling, and studies have shown that consumers purchase organic products for personal safety and environmental concerns), available at <http://www.ers.usda.gov/publications/aer793/AER793.pdf> (last visited May 23, 2002).

103. See Consumers Union, *The Consumers Union Guide to Environmental Labels* (glossary of eco-labeling terms used on the market), available at <http://www.eco-labels.org/glossary.cfm> (last visited May 22, 2002).

104. See Consumers Union, *The Consumers Union Guide to Environmental Labels* (discussing what constitutes a “recycled” product and the issues surrounding recycled products), available at <http://www.eco-labels.org/ProductIndex.cfm> (last visited May 22, 2002).

a special point of buying goods marked as having been made from recycled materials, out of the belief doing so helps protect the environment. This means eco-labeling is really an effort to use the market place to help support environmental friendly practices. Eco-labeling is a relatively recent development which has been applied to many manufactured goods. However, in recent years there has been an increased interest in using eco-labeling techniques to market food products.

There are many aspects of food production and processing which raise significant environmental or health issues, such as the use of farm chemicals, water quality protection, animal welfare and food safety issues. Many of these environmental or health concerns can be addressed and even minimized depending on how foods are produced or processed. Two of the best examples of eco-label foods already in the marketplace are free-range chickens, which focuses on the birds not being confined but instead allowed to run free outside in the fresh air, and organic foods, meaning the grower did not use synthetic pesticides or fertilizers in raising the foods.¹⁰⁵ The potential benefit of eco-labeling is in how it helps communicate with consumers about the unique or important values of products.¹⁰⁶

A number of groups and institutions are now promoting use of eco-labeling for food products, including environmental groups, such as the World Wildlife Fund ("WWF") and the Sierra Club.¹⁰⁷ The WWF has been a world leader in developing eco-labeling for a variety of products. The main goal of the organization is to encourage manufacturing and production methods which do not destroy or imperil the habitat for wildlife. In 1998, the WWF entered into an arrangement with the Wisconsin Potato Growers to promote an eco-label for potatoes raised with fewer pesticides.¹⁰⁸ Other eco-labeling programs have been the result of state government efforts to expand marketing opportunities for producers. The most significant program is the New York state effort to promote the sale of products raised using "integrated pest management", or IPM, practices.¹⁰⁹

105. See Terence J. Centner & Kyle W. Lathrop, *Differentiating Food Products: Organic Labeling Provisions Facilitate Consumer Choice*, 1 DRAKE J. AGRIC. L. 30 (1996) (discussing the role of the organic label in providing consumers food options).

106. Use of eco-labels is being promoted for some imported food products, as seen in the support Chiquita Brands International has given to the "Better Banana Program" operated by the Rainforest Alliance. See J. Gary Taylor, *No Arthritis in Green Banana Initiative*, ENVTL. FORUM, Jan./Feb. 2001, at 5.

107. The Consumers Union operates a website devoted to providing information about various eco-labeling programs. See Consumers Union, *The Consumers Union Guide to Environmental Labels*, available at <http://www.eco-labels.org> (last visited May 22, 2002).

108. See Emily Redmond, *Group Takes Pro-Environment Tack*, THE PACKER, June 22, 1998, at 2A.

109. The New York state IPM program was started in 1985. It is a partnership between the state department of agriculture, Cornell University, and the Cooperative Extension Service. State and university officials have worked with producers of twenty-five major crops to develop production practices to help reduce the reliance on pesticides while maintaining high quality products. The law creating the IPM program, N.Y. AGRIC. & MKTS. LAW § 148 (McKinney 2002), provides the following definition of what the IPM program includes:

1. There is hereby established an integrated pest management program for the purposes of managing insects, disease, nematodes, weeds and rodents. Such program shall include, but not be limited to programs of instruction, research and development, the purpose of which is to educate the agricultural community and integrate programs of:
 - a. crop management and cultural practices;
 - b. field scouting;
 - c. economic threshold; and
 - d. chemical and biological control.

Other eco-labeling programs for food are cropping up all around the country, as growers groups, food processors and retailers, and others recognize the potential that such marketing programs may provide. In 1998, a new eco-labeling initiative called The Food Alliance ("TFA") was initiated in the Pacific Northwest to promote the marketing of food raised by farmers employing sustainable practices.¹¹⁰ This eco-label is being promoted as an alternative to the organic production, as a seal of approval for "farmers who work to protect the environment and provide safe and fair conditions for their workers."¹¹¹

The materials prepared by The Food Alliance describe their efforts this way:

Who We Are:

We are farmers, consumers, scientists, food processors and distributors, farm worker representatives and environmentalists working together to ensure that our children and grandchildren have good food for a healthy future because we practice sustainable agricultural methods today.

Sustainable Agriculture:

We define sustainable agriculture as a long-term goal to make farming more environmentally sound, economically profitable, and socially responsible. Achieving these goals will help move us toward much needed solutions in agriculture.

-
2. Such programs shall be developed and conducted in such a manner as to encourage:
 - a. expanded research on biological control and cultural pest management technologies, crop and pest resistance technologies;
 - b. use of sampling methods, economic thresholds, monitoring technology, pest forecasting, and the effects of weather on pest and crop parameters;
 - c. development of computer programs and computerized information systems for farmers and extension agents;
 - d. delivery of current and new integrated pest management technology to the agricultural industry through cooperative extension;
 - e. minimized levels of pesticides in feed, food and the environment; and
 - f. minimized economic losses due to crop, animal and stored grain pests.
 3. Such program shall identify and make application for all possible funding sources in addition to those offered by the state.

Development of New York's IPM efforts has been assisted by participation of food retailers in marketing programs featuring foods produced using IPM practices. In New York, Wegmans grocery store chain has been a key player in the promotion and marketing of IPM labeled foods. The company offers an array of fresh products and a line of IPM grown canned and frozen vegetables. See Margaret Haining Cowles, *An IPM Label on Supermarket Vegetables: A First for the Nation*, available at <http://www.nysipm.cornell.edu/labeling/labels.html> (last visited July 1, 2002).

110. See *Alternative to Organic Label Launched in NW*, GROWING FOR MKT., June 1998, at 14.

111. *Id.*

Our Challenge:

Many agricultural practices pose environmental challenges. For example, farms are a major contributor to the degradation of our rivers, lakes, and estuaries. Farmers who modify their practices to address these issues often do so at added expense. Consumers want to support these farmers. However, most of us no longer know the men and women who grow the food we eat, or what methods they use to grow it. This makes it difficult for consumers to vote for positive change with their food dollars. *But a revolution to unite environmentally conscious farmers and consumers has begun.*

Bold Solutions: Leading this revolution is a growing number of farmers who dared to re-imagine agriculture. These innovative farmers have adopted common sense solutions to safeguard our environment while also producing the very best crops the Pacific Northwest has to offer.

The Food Alliance endorses these agricultural leaders and allows their products to bear The Food Alliance seal of approval: "TFA Approved." This seal is featured in grocery stores throughout the Pacific Northwest and alerts consumers to products grown in a way that sustains our environment.¹¹²

In response to the question how a farmer becomes TFA-approved, the materials state:

"Farmers must meet strict eligibility requirements before displaying the TFA-Approved seal. The Food Alliance approves farmers who:

- Limit their use of chemicals - better for you and the environment.
- Conserve soil and water - leaving the land healthy and productive for future generations.
- Provide safe and fair working conditions - supporting the men and women who put food on our tables."¹¹³
- TFA-Approved farmers must submit farm improvement plans, designed to achieve steady progress toward more sustainable farm operations.¹¹⁴

The potential for the concept of eco-labeling to support development of effective state and local food policies is apparent. By creating marketplace identification based on certification of producers, food processors, or foods, and by establishing

112. THE FOOD ALLIANCE, GOOD FOOD FOR A HEALTHY FUTURE (The Food Alliance 1998) (membership pamphlet).

113. *Id.*

114. See THE FOOD ALLIANCE, HOW DO FARMERS EARN TFA APPROVAL? (The Food Alliance 1998) (membership material).

standards or protocols designed to project important values, eco-labeling can provide economic and political support for the local and state food policy goals.¹¹⁵ The range of environmental and social issues which can be made part of an eco-labeling program, depend on the goals and objectives of the parties developing it. They include such concepts as:

- Family-raised, and produced locally,
- On land with a conservation plan,
- Using organic standards or some other form of verifiable reduced chemical usage (e.g. integrated pest management (“IPM”)),
- For livestock, grown subject to requirements such as the successful Niman Ranch marketing program (e.g. no growth hormones, no animal by-products or processed manure in ration, no sub-therapeutic feeding of antibiotics, and non-confinement,
- In compliance with a water quality protection plan or some form of “sustainable system,”
- Locally processed and directly marketed, and
- Meeting fair labor standards for workers.

The value of eco-labels is the ability to enhance market transparency and identification so consumers interested in supporting important policy goals – relating to farming, the environment, and food quality – have a way to act on their desires through food buying decisions. The converse value is the programs provide economic incentives and support for producers interested in farming and producing foods in ways which protect the environment or support the local economy. Because market based eco-labels are experienced throughout the food system, they provide opportunities for other players to be involved. Any entity involved in handling, marketing or preparing food for sale might be interested in participating in such a program, including food processors, marketers and retailers, restaurants and chefs, and institutional purchasers.

There are many questions to consider in relation to exploring state and local support for eco-labels and several policy issues to recognize.¹¹⁶ One issue relates to whether the existing range of eco-labeling programs may be adequate to promote the desired objectives. A second issue concerns the ability of existing state identity food marketing programs, such as the “A Taste of Iowa” administered by the Iowa Department of Economic Development, to address similar issues. The main limitation

115. The State of Minnesota recently announced a form of eco-labeling program known as Minnesota Certified (“MinnCERT”). The program, jointly developed by the Minnesota Department of Agriculture and the University of Minnesota, is a response to growing consumer demand for information about how and where food has been produced. A pilot of the program is being implemented through a grocery chain, Kowalski’s markets, which will be the first retailers to carry food produced under the auspices of the MinnCERT program. *See New Program Gives Minnesota Consumers a Scoop on Their Food*, NASDA NEWS, May 24, 2002, available at <http://www.nasda.org/news/newsletter98.html> (last visited June 23, 2002).

116. There are examples of how state government can consider the opportunity to develop a state based eco-label initiative. *See, e.g.*, GOVERNOR’S STRATEGIC PLANNING COUNCIL, IOWA 2010: THE NEW FACE OF IOWA 19-20 (2000), available at <http://www.iowa2010.state.ia.us/library/finalreport/finalreport.html> (Goal 3 link). This final report includes a recommendation the state “[d]evelop and fund a unique branding and marketing program to enhance consumer desire for Iowa’s agricultural products. An environmental incentive-based and food quality certification program will be developed for all Iowa agricultural producers; a voluntary program that combines the list of disciplines both progressive and practical which, if achieved, qualifies the producer’s products to be sold under a branded label.” *Id.*, available at <http://www.iowa2010.state.ia.us/library/finalreport/finalreport.html> (Goal 3 link).

with most state marketing programs is they contain no environmental dimension, and in some situations may not actually require a food to be grown in a state, as opposed to being processed there.

A final issue is who controls the eco-labeling program. An eco-label could either be a public program and some part of an officially sanctioned system, or it can be a purely private system. For a variety of reasons, principally related to control and values, a private system may be more advisable. However, for any system of eco-labeling to be meaningful and effective, financial resources are necessary to develop, promote, and administer the program. The issue of cost raises the question of how the programs are funded. The two main options are either through certification payments by producers, which is the organic model, or through some tax or fee charged to the food, such as the brand idea. The main difficulty in charging a market-based fee is the private entity doesn't have any way to collect money in connection with food purchases occurring in various private market settings. This is why existing private eco-labeling food programs are typically funded by the organizers, as a way to improve agricultural performance, or are based on charges to participating merchants and vendors who use the label, as the case with The Food Alliance.

IV. FORMATION OF STATE FOOD POLICY COUNCILS

One important opportunity – and challenge – for policy makers and state and local officials is to examine how the forces driving changes in America's food system can be shaped or harnessed to promote desired policy objectives. In recent years several states and cities have created local food policy councils in order to more systematically explore these food policy issues and opportunities. The state of Connecticut was the first to create a state food policy council when legislation was enacted for this purpose in 1997.¹¹⁷ In 2000, the Governor of Iowa created the Iowa Food Policy Council by issuing Executive Order No. 16.¹¹⁸ The commissioners of agriculture in North Carolina

117. See CONN. GEN. STAT. § 22-456 (2002). The law creating the Connecticut Food Policy Council was largely the result of the leadership provided by the non-profit organization, the Hartford Food System. This group, organized primarily to address the serious issues of hunger and food access in the Hartford area, has evolved under the direction of Mark Winne into a national leader on issues of local food security. For example, the Hartford Food System published a manual for use by other state and local groups interested in promoting food systems approaches. See THE HARTFORD FOOD SYSTEM: A GUIDE TO DEVELOPING COMMUNITY FOOD PROGRAMS: REPLICATION MANUAL (Mar. 1999). For more information, see The Hartford System, available at <http://www.hartfordfood.org> (last visited May 23, 2002).

118. Executive Order No. 16, provided in part:
WHEREAS, the economy and social fabric of this state are inextricably linked to food production and food production-related activities; and
WHEREAS, food production accounts for more than twenty-five percent of the state's gross annual product; and
WHEREAS, the expansion of global markets for agricultural products have failed to keep pace with increased agricultural productivity in recent years, leading to a reduction in the amount of income earned by local producers; and
WHEREAS, unacceptable numbers of people from across the state and around the world do not have reliable access to Iowa's abundant food supply; and
WHEREAS, the State of Iowa contains some of the most productive farmland found around the world, and the potential to feed hungry people and generate sustainable income for local producers is virtually unlimited; and
WHEREAS, this administration is confident that the State of Iowa can become a world leader in the new economy by creating an efficient food production infrastructure that links producers, processors, distributors, and marketers to vibrant and sustainable world markets; and

WHEREAS, the development of these linkages will enable this state to establish itself as the Food Capital of the World by creating new opportunities to increase profitability for Iowa producers through product diversification, local processing, enhanced distribution, and direct marketing; and WHEREAS, it is imperative for policy-makers to develop a common working knowledge of Iowa's overall food production system by collecting and analyzing information about the state's food production infrastructure, including consumer patterns, in an effort to improve food policy-related decisions; and

WHEREAS, a state food production policy that is designed to produce a safe, nutritious, and adequate food supply stock for world consumption, must also balance economic, environmental, and social considerations that are important to the people of this state.

NOW, THEREFORE, I, Thomas J. Vilsack, Governor of the State of Iowa, by the power vested in me by the laws of the constitution of the State of Iowa do hereby order the creation of the IOWA FOOD POLICY COUNCIL.

I. Purpose: The Iowa Food Policy Council shall advise this office on all aspects of the food production system in Iowa. The Council's advice shall include, but should not be limited to, a discussion of the following items:

1. the state's baseline agricultural production output (this assessment shall include data on: the amount of food produced annually in this state; the amount of food that is purchased and consumed by state residents; and the extent to which the food produced in Iowa is processed, distributed and marketed by local individuals and businesses);

2. barriers that limit the access of local businesses to production, distribution and consumer markets both inside and outside of the state. This assessment should include, but shall not be limited to, an examination of the manner in which state and local policies may impede the ability of local individuals and businesses to engage in food production, processing, distribution, and marketing activities;

3. barriers that limit the access of hungry consumers to available food stocks;

4. innovative local food system activities, including an assessment of the state's capacity to replicate these activities across Iowa;

5. strategies to expand training and assistance programs for local individuals and businesses, including methods that will link actors at each stage of the local food production infrastructure together in a working system;

6. strategies to improve the participation of state and local governments in the development of a growing local food production infrastructure; and

7. strategies to link consumers to a growing local food production infrastructure.

II. Organization: The Council will be composed of 15-20 members appointed by the governor. Representatives from the Iowa Department of Agriculture and Land Stewardship, the Iowa Department of Economic Development, and Iowa's health and human services agencies shall be appointed to serve as ex-officio members on the Council. The Council's voting membership shall consist of representatives from the following areas of the state's local food production system:

1. local producers also engaged in direct marketing;

2. local food processors;

3. local food distributors;

4. local food retailers;

5. cooperative extension representatives;

6. urban agriculture and education representatives;

7. agricultural policy and legal experts; and

8. hunger prevention and food security experts.

The Council will receive administrative support from the Agricultural Law Center at Drake University. All research, policy development, and publication activities will be coordinated by the Council through Drake University. Funding to support the Council's activities will be received by the Council through private donations, state and federal grant assistance, and institutional support from Drake University.

Exec. Order No. 16, 22 Iowa Admin. Bull. 1550 (Mar. 31, 2000).

and Utah have recently created state food policy councils, under a USDA funded initiative.¹¹⁹ In recent years several major North American cities – Toronto, Los Angeles, and Hartford – created local food policy councils to examine the operation of the local food system and suggest ideas for their improvement.¹²⁰ The example and success of these efforts, is stimulating discussion in other states and cities about the potential for local food policy councils. The goal of this section is to provide background and insight on the operation of state food policy councils and their potential to support development and refinement of effective state and local food policies.

A. *Ten Questions Concerning the Operation of State Food Policy Councils*

The following discussion addresses ten commonly asked questions about the operation of state food policy councils.

1. *What Is a Food Policy Council?*

A food policy council is an officially sanctioned body of representatives from various segments of a state or local food system, and selected public officials, asked to examine the operation of a local food system, and provide ideas or recommendations for how it can be improved. A council initiative tries to engage representatives from all components of the food system – consumers, farmers, grocers, chefs, food processors, distributors, hunger advocates, educators, government, and consumers – in a common discussion to examine how the local food system works.

2. *Why Create a Food Policy Council?*

There are many reasons why state or local officials might want to create a council. The most significant may be a desire to broaden the discussion of issues beyond simply agricultural production to involve a more comprehensive, food system wide examination. The opportunity to use a food systems approach to examining local issues offers an inclusive process which can bring a broader array of interested parties to the table. Creation of a council can provide an opportunity for a focused examination of how state and local government actions shape the food system. It can also create a forum in which people involved in all different parts of the food system and government can meet to learn more about what each does – and to consider how their individual actions impact other parts of the food system.

3. *What Exactly Is a Food Policy?*

The issue of what is meant by the term “state or local food policy” was addressed previously. A shorthand definition of the term is “any decision made by a

119. See Iowa Food Policy Council, *Drake Announces Agreement with USDA to Support State Food Policy Councils*, available at <http://www.iowafoodpolicy.org/> (available under News link) (last visited May 24, 2002). (concerning Drake and RMA entering cooperative agreement to support state food policy councils).

120. An example of a city ordinance to create a local food policy is available on the website for the Hartford Food System. See The Hartford Food System, available at <http://www.hartfordfood.org> (last visited May 23, 2002). Information about the Toronto Food Policy Council is available at City of Toronto, *Food Policy*, available at http://www.city.toronto.on.ca/health/tfpc_index.htm (last visited May 24, 2002).

government institution which shapes the type of foods used or available – as well as their cost, or which influences the opportunities for farmers and employees, or effects the food choices available to consumers.” Examples of food policies include: decisions by school officials to purchase foods raised by local farmers; eligibility standards for who may participate in food assistance programs; regulatory requirements for anyone desiring to open a food based business; and food purchasing decisions of institutional buyers.

4. *What Can a Food Policy Council Do That Is Not Already Being Done by Governments?*

There are many ways in which the existence of a food policy council can improve the manner in which state and local policy is developed and designed. For example, a food policy council can bring to the table a broader array of interests and voices, including those not typically asked to be involved when agricultural policy is discussed. A food policy council can also ask the type of questions that often do not get asked when the parties typically involved in developing farming and agricultural policies meet. As a result, a food policy council can examine issues which often go unexamined, such as the effectiveness of food assistance programs and the causes of hunger in a society. Finally, a food policy council can employ a more comprehensive food systems approach to analyzing issues, which recognizes the inter-relation between different parts of the food system and the need for coordination and integration of actions if policy goals are to be achieved. For example, if a key policy objective is to increase markets for locally produced food, a council can be a vehicle for considering how decisions at all levels of a food system, not just farmers or government officials, but also food buyers, wholesalers, and retailers must be considered.

5. *What Are Some of the Food and Agricultural Policy Questions that Do Not Get Asked?*

As you examine how a state or local food system operates there are a number of basic issues that can serve as points of inquiry for identifying possible improvements. Once these questions are addressed the answers can provide fertile opportunities for designing policy responses. By considering the type of questions not typically addressed in agricultural policy discussions, food policy councils can expand the range of issues which are examined when food, farming, and agricultural issues are on the table. Examples of the questions that may not typically be considered, include:

- Where does the food we eat come from?
- How much of the food consumed in a state or region was grown there or nearby?
- Does the state (or institution) make any effort to buy food that is produced locally?
- Does the state or city have a “food policy” and if so what is it?
- Do the various state or local officials working on agricultural and food issues, such as food assistance and economic development, or food safety, know each other and attempt to coordinate their efforts?
- Are there hungry people and children in the state or city, i.e. are we food secure?

Experience with food policy councils demonstrates that once questions such as these are articulated council members find great value and satisfaction in designing policy responses and answers to them.

6. *Why Don't We Utilize a Food System Approach to Policy Development?*

There are many reasons why a food system approach has not been more commonly used at the state or local level (or federal for that matter) of policy development. The reasons may include:

- Current development of agriculture and food policy is dominated by a small set of powerful economic and political groups, namely the farm and commodity organizations, the food manufacturers and the agricultural input suppliers. Other components of the food system may be less organized and have less political power.
- Groups in control of agricultural policy may not be interested in sharing power.
- Each component of the food system is fairly self-contained and focused internally on its own issues, and as a result does not look for connections with other sectors.
- There has not been an economic or political impetus to take a more comprehensive view and there are few political leaders in a position to take such a broader vision.
- Individual groups in the food system may not be interested in any type of systematic review of the food system occurring because it may serve to expose issues or inequities which presently benefit them.

The reality of current farm policy may be that many of the issues associated with a “food systems” analytical approach, such as hunger, food security, and direct farm marketing, are seen by the conventional agricultural and food system as marginal or not central to the success of the food system. These issues are certainly less powerful within the context of agricultural policy debates, as seen in the relative amount of attention given to the federal food stamp program as opposed to commodity programs. This is true even though food stamps reach more people and use a larger portion of the agricultural budget.

7. *Who Has Food Policy Councils and how Did They Come into Existence?*

Currently the states of Connecticut and Iowa have official state food policy councils, and North Carolina and Utah are in the process of creating them. The council in Connecticut emerged from efforts led by the non-profit Hartford Food System organization to examine the causes and solutions to hunger in the city. These efforts led to the development of a legislative proposal which was enacted in 1997 and which continues to provide modest annual state funding for the council. In Iowa, the state food policy council grew out of efforts to focus more attention on the use of local food and the need to diversify and expand Iowa's food system. This effort led to the formation of a Local Foods Task Force by the state secretary of agriculture. In its recommendations, the task force included the formation of a food policy council. This recommendation provided the basis for the Governor's Executive Order. The actions to create state food policy councils in North Carolina and Utah are part of a cooperative effort between the states, USDA Risk Management Agency, and the Drake University Agricultural Law Center to examine how state food policy councils can improve the functioning of state food systems. The initiative is also examining how such councils can provide opportunities for promoting USDA efforts to help farmers and states reduce and mitigate risk. In addition, efforts have begun in several other states, including Kentucky, Massachusetts, Michigan, New Mexico, Oklahoma, and Oregon, to explore how such councils can be created.

8. *Who Typically Serves on a Food Policy Council?*

Membership on a state or local food policy council is determined by the official or instrument responsible for forming it. The goal is to have as broad of representation of issues and interests and people and institutions as possible from across the food system. Typical representatives might include: farmers involved in direct marketing of food, consumers, anti-hunger advocates and food bank managers, labor representatives, members of the faith community, food processors, food wholesalers and distributors, food retailers and grocers, chefs and restaurant owners, officials from farm organizations, community gardeners, and academics involved in food policy and law. In addition, the state or local government officials involved with the council typically include representatives from the state departments of agriculture, economic development, inspections, education, health, human services, and transportation. State legislators and local officials may be involved as well as other stake holders in the food system.

9. *How Is a Council Created and Administered?*

A council is typically created through some official government action, such as the passage of a law, the issuance of an executive order, or a proclamation. A council can either be administered as an official part of the state government, or can be administered by a non-profit or educational institution as an advisory body. In Connecticut, the non-profit Hartford Food System organization helps administer the council in cooperation with the state department of agriculture. In Iowa, the Agricultural Law Center at Drake University administers the council in cooperation with the Office of the Governor. Funding for the operation of the council may come from private sources, foundation or government grants, or state appropriations. In North Carolina and Utah, the councils will function as bodies of the state departments of agriculture.

10. *What Are Some Examples of Actions Food Policy Councils Have Taken?*

State food policy councils have been responsible for making a number of recommendations and initiatives to improve local food systems. In Connecticut, the Food Policy Council published the study *Making Room at the Table*, which documented the impact of various local initiatives improving the access of citizens to food and improving the markets for the state's farmers.¹²¹ The Connecticut council created a state food security report card to provide an annual assessment of the functioning of the state's food system.¹²² The council is also extensively involved in local efforts to preserve farmland. In Iowa, the council helped support creation of the state's senior citizens farmers' market nutrition coupon program, and made a series of specific policy recommendations to the Governor and state agencies for improving delivery of state programs. The recommendations led to the creation of two inter-agency task forces within state government, one to examine food security and hunger, and the other to support increased institutional purchasing of Iowa grown foods.

121. News Release, The Food Policy Council, Food First: Making Room at Connecticut's Table (May 2001) (on file with author) (examination of indicators for food security in Connecticut).

122. See, e.g., CONN. DEPT. OF AGRIC., FOOD SECURITY IN CONNECTICUT: THE 2000 ANNUAL REPORT OF THE CONNECTICUT FOOD POLICY COUNCIL (2001).

B. *Considering the Iowa Food Policy Council Experience*

I. *Benefits of Creating the Iowa Food Policy Council*

The Iowa Food Policy Council, at the time of this writing, has been in existence for eighteen months. While this is a relatively brief existence, it has provided sufficient time to demonstrate the value of the effort. The most significant benefits which have emerged from the work of the Council, include the following developments.

- It created a forum for a broad-based set of issues, people, and institutions to come together to address the issue of food policy. Many of the questions considered had never really been addressed in our state and many of the parties and interests represented in the discussions had never been asked either to work together or to consider their issues in the context of a larger food system approach.
- The creation of the Council provided the opportunity to ask the questions, “What is Iowa’s food policy?” and “What is our food system vision for the state?” These questions had never been addressed in an organized or public setting.
- The initiation of the discussions gave the Council the opportunity to begin to articulate what could be or should be the food policy of the state and allowed for the identification of four central principles for that policy.
- The creation of the Council created a forum for representatives of various state agencies with some involvement in food issues to come together and to learn what was happening in the other parts of state government. Most of the state officials participating in the Council had never met or worked with their counterparts in the other agencies. One of the most significant indirect benefits of the Council has been the communication and network created between these various state officials. The potential importance of this increased awareness and communication is part of the idea behind the recommendations for creating two additional inter-agency task forces to address issues of food security and institutional purchasing.
- The discussions of the Council created the environment in which a series of new ideas surfaced concerning actions state government could take to improve Iowa’s food system. Before the existence of the Council, there had not been a forum in which these discussions could take place and there was no incentive for inter-agency work.
- The existence of the Council and the political support from the Governor’s Office created the opportunity for direct communication with the Governor concerning the work and recommendations of the Council. During the first year, the Council presented two sets of recommendations to the Governor, a preliminary report in October 2000 at his request, and the first annual report provided on April 30, 2001, as required under the terms of the Executive Order. The ability to communicate directly with the Governor gave the Council the opportunity to insure that food system issues were at least brought to his attention for possible action. The direct communication also created a way to rise above the agency level politics that in some situations may limit or filter the information that

makes it to the Governor. In that regard the Council created an indirect method for the Governor to learn about what was happening in the agencies.

- As a result of the report, the Governor acted on several Council recommendations, by issuing a second executive order in May 2001 to renew the Council's term, and to authorize creation of two interagency task forces – on food security and institutional buying, and to study recommendations of the Council.¹²³

2. *Significant Limitations on the Initial Work of the Council*

While the operation of the Council has yielded some progress, the experience has illustrated some of the challenges to developing effective state and local food policies. The most significant limitation on the Council's work has been:

- The lack of staff and funding in the first year limited the ability to aggressively pursue various policy ideas. However, the limited staffing required the Council to be expeditious and focus its work on the most significant issues relating to food policy. This limitation created

123. See Exec. Order No. 19, 23 Iowa Admin. Bull. 1940 (May 20, 2001), which provides in part:

WHEREAS, EXECUTIVE ORDER NUMBER SIXTEEN directed the newly-formed Council to advise this office on all aspects of the food production system in Iowa; and

WHEREAS, Council members organized the group into the following six subcommittees, upon the commencement of Council activities: food security subcommittee; consumer awareness subcommittee; environmental sustainability subcommittee; economic development and diversity subcommittee; production subcommittee; and marketing subcommittee; and

WHEREAS, the Council presented a preliminary set of recommendations to this office, which resulted in the following executive actions being taken: (1) the designation of a Washington, D.C. office to serve as a liaison in the food stamp re-authorization process; (2) the delivery of state financial support to fund a seniors farmers market nutrition program; and (3) the issuance of a directive to the Iowa Department of Economic Development to improve its communication with constituencies interested in the implementation of the A Taste of Iowa® program; and

WHEREAS, on April 30, 2001, the Council submitted its year-end report to this office, which contained over thirty specific recommendations for improving the food production policy of this state; and

WHEREAS, the Council has determined that further review is necessary before a comprehensive food production policy proposal for the State of Iowa can be finalized; and

WHEREAS, the State of Iowa will benefit from the continued activities of the Council:

NOW, THEREFORE, I, Thomas J. Vilsack, Governor of the State of Iowa, by the power vested in me by the laws and the Constitution of the State of Iowa, do hereby order the continuation of the IOWA FOOD POLICY COUNCIL.

The provisions outlined in EXECUTIVE ORDER NUMBER SIXTEEN shall continue to govern the activities of the Council, with the following amendments:

1. The Council will be composed of 18-24 members appointed by the Governor.
2. The Council shall create two "inter-agency task forces," composed of representatives from various state agencies, to recommend improvements in state activities as they relate to food security, and the promotion of Iowa grown food products. Each task force shall report its findings and conclusions to the Council before the Council submits its final report to this office for review.
3. The Council shall examine ways to improve the opportunities of Iowa farmers and the state to mitigate the risks associated with food production and marketing, in a manner consistent with the support received from the United States Department of Agriculture Risk Assessment Agency.

the pressure to seek additional support, such as that now being provided by a cooperative agreement with the USDA Risk Management Agency to provide operation support for the four state food policy councils now in operation.

- The lack of threshold data or information on a variety of issues, such as the amount of Iowa raised food consumed in the state, or the purchases of Iowa food made by state agencies, created uncertainty about the starting point and the potential for action relating to some Council priorities.
- The lack of relation to the Legislature made the Council part of the Governor's administration and limited the ability to take policy ideas directly to the General Assembly, and gave a possible partisan political cast to the work of the Council.
- The voluntary – and in some situations political – nature of the original appointments to the Council meant there was some variation both in the commitment of members to the work of the Council and in their understanding of the idea or purpose of the Council.

V. CONCLUSION: A MODEL STATE AND LOCAL FOOD POLICY IMPROVEMENT ACT

This final section sets out a proposed outline for drafting a comprehensive State Food Policy Act that could be introduced for consideration in a state legislature or general assembly. The basic idea is to identify and propose a comprehensive package of ideas relating to the state's food system, rather than just offering ideas on a piecemeal basis. The focus is on a state food system within the context of larger national agricultural policy and on addressing issues that have for the most part not been considered. For those reasons the emphasis is not on traditional commodities or existing farm related programs such as funded for value-added initiatives.

Many of the ideas included in the package have been enacted or considered in some state. The existence of state models provides legislative language for possible guidance in developing legislation. One of the underlying goals of the Act is to create a vehicle for making more permanent the State Food Policy Council approach and in so doing providing a context and administrative structure within state government for addressing food policy issues. This is addressed in Section I in connection with the Office of Food Policy, the inter-agency task force, and the permanent authorization of the Council. A second goal is to create an annual reporting mechanism that can used to determine and then measure a state's progress at improving the operation of the food system. This is addressed through creation of a state Food Security Report Card presented in Section II.

The idea of proposing a comprehensive bill is to create a mechanism for developing a package of programs and a price tag for improving a state's food system. This will help give some focus to the debate and will provide a "cost" for advancing the idea. For example, the current proposal could be implemented for a price tag of less than \$5 million per year. But it is important to recognize much of the funding which comes into a state relating to food policy, especially for food assistance, is federal. The proposed new spending would be in addition to existing state and federal programs. Of course, a number of the legislative ideas do not have a "cost", but instead simply involve changes in legal authority. Part of the value of approaching state food policy through an omnibus legislative approach is that it may provide the opportunity to set broad overarching goals to express a state's intentions. In that regard the legislative proposal could be focused around one or more "big ideas" such as "Ending Hunger in Our State";

“Increasing the Number of Farms;” or “Increasing the Percent of Locally Grown Food Consumed to 10%.” The following is an outline of a possible legislative proposal:

The 2002 State Food Policy Improvement Act

I. Administration and Outreach

- A. Authorize the state Food Policy Council
- B. Create an inter-agency task force to address food and nutrition issues
- C. Create the Office of Food Policy

II. Reports and Information

- A. Authorize preparation of an annual state Food Security Report Card, including data on: hunger, farm numbers, food consumption, farmland preservation, and state based food processing and production.
- B. Prepare an annual report on developments in the state’s food system.

III. Food Access and Hunger Assistance

- A. Provide state hunger assistance grants to communities and non-profit organizations.
- B. Coordinate food assistance outreach and eligibility determinations between agencies.
- C. Provide state funding for a Seniors Farmers’ Market Nutrition Program.
- D. Offer a twenty-five dollar monthly minimum Food Stamp benefit for elderly and handicapped.
- E. Increase summer school breakfast funding.
- F. Create tax deductions for private food donations.

IV. Communities and Local Food Systems

- A. Provide incentives for creating local food policy councils
- B. Offer food access grants to communities (transportation and community based stores).
- C. Create a state community food security grant program to encourage local production and marketing.
- D. Promote community gardening incentives, and the local “tool shed” idea.
- E. Create incentives for urban agriculture and reclaiming “brown field” sites.

V. Promoting Use of Locally Grown Food

- A. Authorize the Local Foods Task Force in the state department of agriculture.
- B. Fund a local food coordinator and institutional purchasing promotion.
- C. Create a state grown purchasing priority for state and local institutions.
- D. Fund creation of the annual state Food Awards program.

VI. Preserving Farms and Farmland

- A. Integrate beginning farm lending and farmland preservation.
- B. Provide tax incentives to encourage leasing farmland to beginning farmers.
- C. Authorize farm transition planning grants.
- D. Amend local land use laws to protect direct marketing and farm based food businesses.

VII. Food Processing and Marketing

- A. Establish outreach and education on food licensing.
- B. Increase the number of poultry covered by “on-farm” processing exemption.
- C. Authorize voluntary on-farm “informed” sales of raw milk products.
- D. Fund community shared-use kitchen grants.

VIII. Producing and Marketing Locally Grown Foods

- A. Commission a “State Eco-label” based on food quality and environmental factors.
- B. Provide business planning assistance for small farmers and food based businesses.
- C. Fund vine planting grants and wine industry promotion by dedicating part of a wine tax.
- D. Promote organic production and marketing and offer producer certification grants

IX. Education

- A. Fund school gardens and curricular development and training
- B. Promote use of locally grown food in school feeding programs

X. The New Homestead Act

- A. Offer state funding for grants and loans for new small scale – food farmers.
- B. Create tax incentives for making land available in the State Homestead Act.