



Clean Water Commerce Act - Meeting information

When: Friday, November 6, 2020 at 1 pm

Zoom Link:

Topic: CWCA Workgroup

Time: Nov 6, 2020 01:00 PM Eastern Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/85354451813>

Meeting ID: 853 5445 1813

One tap mobile

+16465588656,,85354451813# US (New York)

Dial by your location

+1 301 715 8592 US (Germantown)

+1 646 558 8656 US (New York)

+1 312 626 6799 US (Chicago)

+1 346 248 7799 US (Houston)

+1 669 900 9128 US (San Jose)

+1 253 215 8782 US (Tacoma)

Meeting ID: 853 5445 1813

Find your local number: <https://us02web.zoom.us/u/kdxux2EpaC>

Public will be invited to comment at end of meeting.



Clean Water Commerce Act Workgroup

Objective

- Receive member input on the provisions to be included in the “Clean Water Commerce Act of 2021” to be introduced by the legislative members of the Maryland Delegation of the Commission.
- The goal is, to the extent possible, develop consensus. That said, the final decision as to the contents of the bill is up to the legislative members, and it is understood that serving on workgroup does not require that an organization will support the final legislation.

Member Responsibilities

- Be engaged, review material in advance, respond to timelines.
- We understand that many reps have to go back to legislative policy committees, etc., to take formal positions on legislation. That is fine. We are simply looking for the best input and ideas from your perspective and that of your organization.
- NOTE: During the meetings it is critical that each organization represented on the Workgroup speak with one voice. Hence, only a single member of each group will be allowed to contribute. Any other members of the same organization need to coordinate through there designated primary contact. Let Mark Hoffman if you want to change your primary contact for this purpose.

Process/Meetings

- 10/26 - Distribute five documents to workgroup members: a) workgroup guidelines/operational policy; b) member roster; c) briefing document on draft legislation; d) draft legislation; and e) CWCA Comment Sheet. Request each member/organization to review and provide via email comments to Mark Hoffman (mhoffman@chesbay.us) by 11/3 using the CWCA Comment Sheet.
- 11/3 - Workgroup members provide written comments to CBC. CBC staff prepare a summary, looking for common themes, etc. Please provide comments by “Item number” using the attached “CWCA Comment Worksheet”.
- 11/6 (1-3 pm) - Zoom call among workgroup to review summarized comments and have an open discussion on draft legislation.
- 11/18 - Revised draft legislation provided to Workgroup members for their review.
- 11/23 (1-3 pm) - Zoom call among workgroup members to review and comment on revised draft.

Open Meetings Requirements

- The Commission is a public body and all its meetings are subject to Maryland Open Meetings Law. We will provide announcements on our web-site and the zoom links. Opportunity will be provided at the end of each meeting for public comment.

CBC Clean Water Commerce Act Workgroup

Role	Organization	Rep	Email	Alternates
Chair	Chesapeake Bay Commission	Mac Middleton		
Staff	Chesapeake Bay Commission	Mark Hoffman	mhoffman@chesbay.us	Ann Swanson (aswanson@chesbay.us)
Counsel	Chesapeake Legal Alliance	Evan Issacson	evan@chesapeakelegal.org	Ridge Hall (ridgehall@gmail.com)
Members	Bespoke Mitigation Partners	George Kelly	gkelly@bespoke-mp.com	
	BRF Advisory Committee	Chris Murphy	pwmurp21@aacounty.org	
	Chesapeake Bay Foundation	Doug Myers	dmyers@cbf.org	Erik Fisher (efisher@cbf.org) Robin Clark Eilenberg (reilenberg@cbf.org)
	Chesapeake Conservancy	Tim Male	tmale@policyinnovation.org	John Griffin (jgriffin@chesapeakeconservation.org)
	MD Association of Counties	Steve Lafferty	slafferty@baltimorecountymd.gov	Alex Butler (abutler@mdcounties.org)
	MD Association of Municipal Wastewater Agencies	Chris Pomeroy	chris@aqualaw.com	
	MD Department of Natural Resources	James McKittrick	jamesw.mckittrick@maryland.gov	Dave Goshorn (david.goshorn@maryland.gov)
	MD Department of the Environment	Jeff Fretwell (pending)	jeffrey.fretwell@maryland.gov	
	MD Farm Bureau	Colby Ferguson	cferguson@marylandfb.org	
	MD Grain Producers Association	Lindsay Thompson	lindsay.mdag@gmail.com	
	MD League of Conservation Voters	Ben Alexandro	balexandro@mdlcv.org	Kim Coble (kcoble@mdlcv.org) Kristen Harbeson (kharbeson@mdlcv.org)
	ShoreRivers	Isabel Hardesty	ihardesty@shorerivers.org	
	The Nature Conservancy	Josh Kurtz	jkurtz@tnc.org	Mark Bryer (mbryer@tnc.org)
	Waterkeepers Chesapeake	Morgan Johnson	morgan@waterkeeperschesapeake.org	Betsy Nicholas (betsy@waterkeeperschesapeake.org)



Clean Water Commerce Act – Detailed Legislative Proposal Outline

The Act

The “Clean Water Commerce Act” (CWCA) (Chapters 366/367, Acts of 2017) expanded the authorized uses of the Bay Restoration Fund’s (BRF) Wastewater Account to include the purchase of cost-effective nitrogen, phosphorus, or sediment load reductions in support of the State’s efforts to restore the health of the Chesapeake Bay. The bill authorized up to \$4 million in fiscal 2018, \$6 million in fiscal 2019, and \$10 million per year in fiscal 2020 and 2021 for this purpose. The nitrogen, phosphorus, and sediment load reductions cannot be from the agricultural sector and must be created on or after July 1, 2017. The legislation also required MDE to adopt specified implementing regulations and established reporting requirements. The provisions sunset at the end of FY 2021.

Prior Implementation

MDE established a stakeholder group to develop the implementing regulations; the Commission was a member. The group met three times during the fall of 2017. Regulations were developed and formally adopted effective April 9, 2018. The regulations define: 1) the broad administrative requirements of the program; 2) the scoring criteria to be used to evaluate projects; and 3) the “baseline” loads depending on the type of project. This is important, as the load reductions to be bought must only be those “above the baseline” reductions normally expected.

MDE has conducted multiple rounds of solicitation for projects to be funded pursuant to this legislation. Results are as follows:

FY 2018

- No funding was allocated because the regulations were not completed in time.

FY 2019

- Tributaries to Winters Run Stream Restoration by HGS LLC (a RES Company) for up to \$4,409,300.

FY 2020

- Little Patuxent Water Reclamation Plant Advanced Process Instrumentation and Control System (Howard County) for up to \$1,818,450.
- Anne Arundel County Municipal Discharge at Broadneck and Annapolis Water Reclamation Facilities (Anne Arundel County) for up to \$8,181,550.

FY 2021 (pending BPW approval)

- Patuxent and Cox Creek Water Reclamation Facilities \$9,498,475
- Tributaries to Winters Run Stream Restoration by HGS LLC \$501,525

Moving Forward

With the CWCA sunseting on June 30, 2021, the General Assembly needs to take action during its 2021 session if the program is to continue as is, or in a modified form. Due to the sharply declining efficiency of traditional BRF-funded wastewater treatment plant upgrades, the CWCA's goal was to provide an alternative model for pollution reduction, the purchase of pollution reductions at the lowest cost, which would help generate innovation and provide the benefits of competitive procurement. This fundamental case for the program remains – to provide a means to reduce pollution fluxes into the Bay at the most efficient price point. Revenue to the BRF Wastewater Account was about \$107 million in FY 2019.

The Maryland legislative members of the Commission have agreed that more time and resources be allocated to continuing to evaluate this model, albeit with significant reform, given the scope of the challenge of reaching our 2025 Chesapeake Bay pollution reduction targets. With a few simple reforms, this fund can dramatically scale up the most cost-effective practices needed to accelerate Bay restoration progress, while also addressing other important goals embodied in the Chesapeake Bay Watershed Agreement.

Commission Workgroup

To advance this policy initiative, the legislative members of the Maryland Delegation of the Commission have agreed to create a "Clean Water Commerce Act Workgroup," comprised of a diverse group of stakeholders to develop consensus on policy options for introduction into the 2021 session of the Maryland General Assembly. Citizen member Senator Thomas "Mac" Middleton has agreed to chair the Workgroup. Members have been selected to represent the breath of interest in this arena – local governments, agriculture, environmental, restoration, etc.

As a starting point, the Delegation has agreed upon certain core principles to incorporate into a first formal draft of the legislative proposal, to help frame and define the areas that need to be addressed. The following, more detailed rationale, incorporates those principles as well as a number of "house-keeping" items that need to be addressed in such legislation.

Legislative Proposal (*cross-referenced to draft bill*)

1) Define certain key terms

Rationale: Define certain terms used in the legislation for clarity of meaning - Aggregator, Chesapeake Bay TMDL, Clean Water Commerce Fund, Environmental Outcome, Non-agricultural Landscape Restoration Project, and Quantification Plan.

2) Create a distinct Clean Water Commerce Fund, provide funding of \$20M annually from the BRF, and establish a fund balance cap of \$20 million

Rationale: Creating a distinct Clean Water Commerce Fund provides for the functionality to track fund revenue, expenditures, etc. towards the objectives of the legislation.

It is critical to maximize the expenditure of funds on projects that (1) accelerate nutrient reduction progress on the time-scale needed to meet Maryland's Phase III WIP targets by 2025 and beyond; (2) are consistent with the goals of the 2014 Chesapeake Bay Agreement; and (3) might not otherwise be funded without amendment of the BRF statute to authorize the needed funds. To this end, we believe it would be prudent to allocate \$20 million of the BRF as possible for these important purposes *as* this allocation would not unduly interfere with high priority needs that would otherwise be met through the existing uses of the BRF following the sunset of the CWCA. At the same time, the fund balance would be capped at \$20 million to ensure a large fund balance does not accumulate.

3) Remove the exclusion of any sector from CWCA project ranking.

Rationale: Because Maryland must achieve a major reduction in nutrient discharges by 2025 and the agricultural sector offers one of the most cost-effective menus of BMPs, the existing exclusion of this sector from CWCA funding should be removed.

4) Formally add the Chesapeake Bay Commission as a member of the BRF Advisory Committee.

Rationale: For 40 years, the Commission has played a key role in advancing State legislative action and policy to advance watershed restoration. Given the significance of the BRF to this work in Maryland, it is appropriate to have the Commission's voice represented, and this complements the existing legislative members, who would be provided staffing assistance by the Commission's staff.

5) Incorporate needed "boiler plate" language consistent with the establishment of a new special fund and specific fund purpose

Rationale: Most of this is standard language needed when a new special fund is established. The purpose of the Fund is effectively unchanged from current law: "purchase of cost-effective environmental outcomes in support of the State's efforts to achieve the Chesapeake Bay TMDL".

6) Implement sector-based set-asides to ensure a diversity of restoration practices and locations.

Rationale: There are many ways to establish rules that ensure a sufficiently wide distribution of CWCA funds. Whereas an explicit geographic segmentation of the fund may be awkward and invite an overemphasis on political calculations, a sector-based framework can achieve similar results with a more scientifically valid approach.

The cost-effective nature of agriculture BMPs is well-documented. It is proposed at least 35% of the funds available for any fiscal year shall be used to procure environmental outcomes from projects on agricultural lands. This sector also has ambitious goals in the Phase III WIP. It is also proposed that at least 20% of the funds available for any fiscal year shall be used to procure environmental outcomes from projects established in disadvantaged communities impacted by environmental justice concerns; there is focused concern to take purposeful action to address these disparities. Finally, it is proposed that at least 10% of the funds available for any fiscal year shall be used to procure

environmental outcomes from non-agricultural landscape restoration projects, such as stream restoration, buffers, etc.

7) Require that environmental outcomes purchased through the CWCA cannot be resold or transferred to any other person or entity.

Rationale: The fundamental purpose of the CWCA is to purchase distinct new load reductions. Also, if they could be sold to another entity, the purchasing entity is likely to use them to offset a legal obligation to reduce pollution, with the result that the benefit of this purchase by MDE would be largely or completely negated.

8) Ensure the sector producing the load reduction gets “credit” for it in the WIP.

Rationale: Source sectors are very sensitive to the demands implicit in the Phase III WIP and the considerable work needed to achieve the 2025 goals. It is imperative that each sector view the CWCA as an additive benefit, not a program potentially competing with the achievement of sector-based targets.

9) Specify various key components of the project solicitation process.

Rationale: In general, the Department has wide authority to conduct the CWCA procurements in accord with State procurement law. These provisions establish a baseline for the process. Important is to have a procurement event at least once a year.

10) Make cost per unit of environmental outcome the main driver of project selection, but include evaluation of project proposals for benefits related to climate change, environmental justice and local water-quality impairment.

Rationale: Fundamentally, the concept of the CWCA has been, and will continue to be, a program to purchase environmental outcomes at the lowest price point. That said, three other critical co-benefits are identified that could help determine project scoring – climate change, DEIJ and local waterway impairment. To be successful, projects should not just be resilient to climate change, but also help ameliorate its impacts. Additionally, each proposal needs to be viewed through an EJ lens to address impacts of the long-term neglect of the environment in disadvantaged communities and, as possible, address the impairment of local waterways.

11) Require verification of all environmental outcomes.

Rationale: Verification is critical to ensure that each load reduction that is proposed, and paid for the state, is in fact successfully implemented in practice.

12) Explicitly require that load reductions purchased via the CWCA are “additional” and consistent with Chesapeake Bay Accounting Protocol.

Rationale: It is critical that applicant has to demonstrate in its application exactly what new and additional measures will be used above baseline (not from existing funds or to satisfy current obligations) and that any load reductions count towards the achievement of the TMDL.

13) Cap funded project life at 15 years.

Rationale: It is prudent to have a maximum time-horizon for projects funded under the CWCA. Although benefits may exceed 15 years, that is a common standard for environmental restoration projects.

14) Encourage the use a pay for success procurement approach, with potential flexibility in payment structures to incentivize participation. Collectively, these policy enhancements will allow a robust evaluation of the approach versus more narrowly prescribed models.

Rationale: Pay-for-success models ensure taxpayers are truly reaping the benefits that come from each dollar spent. The goal is pollution reduction, not simply project completion. Environmental restoration projects can be fraught with challenges and this helps ensure only strong and substantial projects are funded. But fostering a fully competitive market may also necessitate flexibility in the payment rules, including, potentially, allowance for a portion of project costs to be paid up-front.

15) Require the Department to track and make publicly available information on funded projects.

Rationale: There will be ongoing interest from all stakeholders in the progress of this program.

16) Allow for partial funding of projects with pro-rated benefits.

Rationale: Many environmental restoration projects have multiple funding sources. This allows the CWCA to provide such support, but only a pro-rated portion of the environmental outcomes would be used in project evaluation. This funding restriction also prevents a person from being paid twice for the same load reduction.

17) Allow the Department the ability to promulgate regulations related to the CWCA.

Rationale: This is existing language moved from §1506-2. Standard for any such program.

18) Require certain reporting requirements.

Rationale: Current reporting requirements are in uncodified language. This moves them into the body of the law, and specifies the need for annual reports, etc.

19) Provisions related to investment income are boiler plate,

Rationale: Investment income to the BRF is currently retained by the fund, and hence this should remain consistent with that.

20) Sections of uncodified language in the prior bill will be removed and their content incorporated into codified language in the new section related to the CWCA.

Rationale: This is house-keeping to move the uncodified language as needed, into the body of the legislation.

21) Extend the sunset provision to June 30, 2030.

Rationale: Under current law, the fee structure of the BRF reverts to its original formula (i.e., generally one-half of current revenues) on July 1, 2030. If the fixed allocation to the CWCA provisions were to remain unchanged beyond that date, it would have effect of doubling its proportional share of BRF funds, arguably an unintended consequence. Having this provision would give an ample time frame to truly evaluate the benefit of this approach and allow a fully informed decision as to the program's future and funding level.

Also, June 1, 2021 effective date is important, so that legislation takes effect prior to sunseting of existing law (June 30, 2021).

By:

Introduced and read first time:

Assigned to:

A BILL ENTITLED

AN ACT concerning

Clean Water Commerce Act of 2021

FOR the purpose of ...

BY repealing

Article – Environment

Section 9–1605.2(i)(3) and (l)(2)

Annotated Code of Maryland

(2014 Replacement Volume and 2020 Supplement)

BY renumbering

Article – Environment

Section 9–1601(c)-(i), (j-n), (o-dd), (ee), (ff-kk), and 9-1605.2(i)(4-9) respectively

to be Section 9–1601(d-j), (m-q), (s-hh), (jj), (ll-qq), and 9-1605.2(i)(3-8) respectively

Annotated Code of Maryland

(2014 Replacement Volume and 2020 Supplement)

BY adding to

Article – Environment

Section 9-1601(c), (k), (l), (r), (ii), (kk) and 1605.4

Annotated Code of Maryland

(2014 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, without amendments,

Article – Environment

Section 9-1601(a)

Annotated Code of Maryland

(2014 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, with amendments,

Article – Environment

Section 9–1605.2(i)(2), (j)(2), and (l)(1)

Annotated Code of Maryland

(2014 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, without amendments,

Article – State Finance and Procurement

Section 6–226(a)(2)(i)

Annotated Code of Maryland
(2015 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 6–226(a)(2)(ii)122. and 123.
Annotated Code of Maryland
(2015 Replacement Volume and 2020 Supplement)

BY adding to
Article – State Finance and Procurement
Section 6–226(a)(2)(ii)124.
Annotated Code of Maryland
(2015 Replacement Volume and 2020 Supplement)

BY repealing
Chapters 366 and 367 of the Acts of the General Assembly of 2017
Sections 2, 3 and 4

BY repealing and reenacting, with amendments,
Chapters 366 and 367 of the Acts of the General Assembly of 2017
Sections 5

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

Article – Environment

9-1601

(a) Unless the context clearly requires otherwise, in this subtitle the following words have the meanings indicated.

(c) "Aggregator" means a person that facilitates or coordinates the establishment of practices or projects implemented by themselves or other persons and that produce a quantifiable environmental outcome, that are registered or otherwise documented by that person, and that may be made available for purchase by the Department under this subsection.

(k) "Chesapeake Bay TMDL" means the total maximum daily load adopted by the United States Environmental Protection Agency (EPA) under the federal Clean Water Act for the Chesapeake Bay.

(l) "Clean Water Commerce Fund" means the Clean Water Commerce Fund as established under § 9–1605.4 of this subtitle.

(r) "Environmental outcome" means any of the following quantitative outcomes that can be directly measured or modeled at the edge of tide using the Chesapeake Bay Program Watershed Model or any other method or model in a Quantification Plan:

- (1) Nitrogen load reduction;
- (2) Phosphorus load reduction; and
- (3) Sediment load reduction.

(ii) "Non-agricultural Landscape Restoration Project" means a project installed on non-agricultural lands with an intended lifespan of not less than 15 years and is estimated by the Chesapeake Bay Program Chesapeake Assessment Scenario Tool to provide environmental outcomes.

(kk) "Quantification plan" means a plan approved by the Department which describes:

- (1) The method that will be used to measure or model environmental outcomes;
- (2) The required compliance monitoring that shall occur to ensure that the actions proposed were taken;
- (3) Any verification steps that may be carried out by the Department to confirm the model results or accurate measurement of outcomes; and
- (4) The timeline for proposed payments under a contract with the Department.

9-1605.2.

(i) (2) Funds in the Bay Restoration Fund shall be used only:

(i) To award grants for up to 100% of eligible costs of projects relating to planning, design, construction, and upgrade of a wastewater facility for flows up to the design capacity of the wastewater facility, as approved by the Department, to achieve enhanced nutrient removal in accordance with paragraph (3) of this subsection;

(ii) In fiscal years 2016 and thereafter, for up to 87.5% of the total cost of projects, as approved by the Department, relating to combined sewer overflows abatement, rehabilitation of existing sewers, and upgrading conveyance systems, including pumping stations;

(iii) In fiscal years 2010 and thereafter, for a portion of the operation and maintenance costs related to the enhanced nutrient removal technology, which may not exceed 10% of the total restoration fee collected from users of wastewater facilities under this section by the Comptroller annually;

(iv) In fiscal years 2018 and thereafter, after payment of outstanding bonds and the allocation of funds to other required uses of the Bay Restoration Fund for funding in the following order of priority:

1. For funding the eligible costs to upgrade a wastewater facility to enhanced nutrient removal at wastewater facilities with a design capacity of 500,000 gallons or more per day;

2. For funding the eligible costs of the most cost-effective enhanced nutrient removal upgrades at wastewater facilities with a design capacity of less than 500,000 gallons per day; and

3. As determined by the Department and based on water quality, climate resiliency, flood control, and public health benefits, for the following:

A. For costs identified under item (ii) of this paragraph;

B. For costs identified under subsection (h)(2)(i)1 of this section; and

C. With respect to a local government that has enacted and implemented a system of charges to fully fund the implementation of a stormwater management program, for grants to the local government for a portion of the costs of the most cost-effective and efficient stormwater control measures, including stormwater measures relating to water quality, climate resiliency, or flood control, as determined and approved by the Department, from the restoration fees collected annually by the Comptroller from users of wastewater facilities under this section;

(v) As a source of revenue or security for the payment of principal and interest on bonds issued by the Administration if the proceeds of the sale of the bonds will be deposited in the Bay Restoration Fund;

(vi) To earn interest on Bay Restoration Fund accounts;

(vii) For the reasonable costs of administering the Bay Restoration Fund, which may not exceed 1.5% of the total restoration fees imposed on users of wastewater facilities that are collected by the Comptroller annually;

(viii) For the reasonable administrative costs incurred by a local government or a billing authority for a water or wastewater facility collecting the restoration fees, in an amount not to exceed 5% of the total restoration fees collected by that local government or billing authority;

(ix) For future upgrades of wastewater facilities to achieve additional nutrient removal or water quality improvement, in accordance with paragraphs (6) and (7) of this subsection;

(x) For costs associated with the issuance of bonds;

(xi) Subject to the allocation of funds and the conditions under subsection (h) of this section, for projects related to the removal of nitrogen from on-site sewage disposal systems and cover crop activities;

(xii) For costs associated with the implementation of alternate compliance plans authorized in § 4-202.1(k)(3) of this article; and

(xiii) After funding any eligible costs identified under item (iv)1 and 2 of this paragraph, for costs associated with the purchase of cost-effective [nitrogen, phosphorus, or sediment load reductions] **environmental outcomes** in support of the State's efforts to restore the health of the Chesapeake Bay **and achieve the Chesapeake Bay TMDL**, [not to exceed \$4,000,000 in fiscal year 2018,

\$6,000,000 in fiscal year 2019, and \$10,000,000 per year in fiscal years 2020 and 2021] **\$20,000,000 per year shall be transferred to the Clean Water Commerce Fund as provided for in § 1605-4 of this subtitle, provide that any money in excess of \$20,000,000 in the Clean Water Commerce Fund at end of a fiscal year that is not encumbered for the purchase of environmental outcomes shall revert to the Bay Restoration Fund.**

[(3) The nitrogen, phosphorus, and sediment load reductions purchased under paragraph (2)(xiii) of this subsection:

- (i) Cannot be from the agricultural sector; and
- (ii) Must be created on or after July 1, 2017.]
- (j) (1) There is a Bay Restoration Fund Advisory Committee.
- (2) The Committee consists of the following members:
 - (i) The Secretaries of the Environment, Agriculture, Planning, Natural Resources, and Budget and Management, or their designees;
 - (ii) One member of the Senate, appointed by the President of the Senate;
 - (iii) One member of the House of Delegates, appointed by the Speaker of the House of Delegates;
 - (iv) Two individuals representing publicly owned wastewater facilities, appointed by the Governor;
 - (v) Two individuals representing environmental organizations, appointed by the Governor;
 - (vi) One individual each from the Maryland Association of Counties and the Maryland Municipal League, appointed by the Governor;
 - (vii) Two individuals representing the business community, appointed by the Governor;
 - (viii) Two individuals representing local health departments who have expertise in on-site sewage disposal systems, appointed by the Governor; [and]
 - (ix) One individual representing a university or research institute who has expertise in nutrient pollution, appointed by the Governor; and
 - (x) One individual representing Chesapeake Bay Commission, appointed by the Chair of the Maryland Delegation to the Commission.**
- (l) [(1) Subject to paragraph (2) of this subsection,] the Department shall adopt regulations that are necessary or appropriate to carry out the provisions of this section.

[(2) Regulations adopted to carry out subsection (I)(2)(XIII) of this section shall be:

(I) Be adopted before the purchase of any load reductions;

(II) Specify that a load reduction purchased should provide the lowest cost per pound in reduction and be purchased in accordance with a competitive process; and

(III) Be adopted in consultation with the Secretary of Transportation, the Secretary of Natural Resources, the Secretary of Commerce, the Secretary of Agriculture, and public and private sector stakeholders.]

9-1605.4

(a) In this section, “Fund” means the Clean Water Commerce Fund.

(b) There is a Clean Water Commerce Fund.

(c) The purpose of the Fund is to purchase environmental outcomes in support of the State’s efforts to achieve the Chesapeake Bay TMDL to restore the health of the Chesapeake Bay.

(d) The Secretary shall administer the Fund.

(e) (1) The Fund is a special, nonlapsing Fund that is not subject to § 7–302 of the State Finance and Procurement Article.

(2) The Treasurer shall hold the Fund separately, and the Comptroller shall account for the Fund.

(f) The Fund consists of:

(1) Revenue distributed to the Fund under § 9–1605.2 of this subtitle;

(2) Money appropriated in the State budget to the Fund;

(4) Investment earnings; and

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

(g) The Fund may be used only for purchase of cost-effective environmental outcomes in support of the State’s efforts to achieve the Chesapeake Bay TMDL subject to the following:

(1) At least 35% of the funds available for any fiscal year shall be used to procure environmental outcomes from projects on agricultural lands;

(2) At least 20% of the funds available for any fiscal year shall be used to procure environmental outcomes from projects established in disadvantaged communities impacted by environmental justice concerns as defined by the Department, in consultation with the Commission on Environmental Justice and Sustainable Communities;

(3) At least 10% of the funds available for any fiscal year shall be used to procure environmental outcomes from non-agricultural landscape restoration projects; and

(4) Any unencumbered funds not used to procure environmental outcomes as described in this subsection do not remain subject to the allocation restrictions described in this subsection and shall be available for use consistent with the provisions of this section during subsequent fiscal years.

(h) (1) The State Treasurer shall invest the money of the Fund in the same manner as other State money may be invested.

(2) Any investment earnings of the Clean Water Commerce Fund shall be credited to the Fund.

(l) Expenditures from the Fund may be made only in accordance with the State Budget.

(j) The Administration may establish accounts and subaccounts within the Fund as may be deemed desirable to effectuate the purposes of this section.

(k) The environmental outcomes purchased under the provisions of this section shall not be resold or transferred to any other person or entity.

(l) In calculating pollution reductions under the Chesapeake Bay TMDL by various major source sectors recognized in the state Watershed Implementation Plan, credit for any reductions funded under this section shall be attributed to the sector of the source that makes the reductions.

(m) (1) A competitive process shall be used to invite the provision of environmental outcomes by any person, aggregator, or other entity that will contribute toward the achievement of the Chesapeake Bay TMDL.

(2) A publicly announced request for proposals or comparable initiation of the procurement process shall be conducted by the Department at least once during each calendar year.

(n) The following elements shall be included with each proposal for funding:

(1) A description of the projects or practices to be used or implemented to achieve the environmental outcomes;

(2) The location where they will be used or implemented;

(3) A proposed quantification plan and verification procedure;

(4) Implementation timetable;

(5) Proposed cost and payment schedule;

(6) If the submittal seeks to qualify for any of the provisions in subsection (g) of this section; and

7

8

9

(7) Any other information required by the Department.

(o) The criteria for the evaluation of responses to the competitive process shall be provided as part of the competitive process, and shall be prioritized in the following order:

(1) The dollar cost per unit of environmental outcomes; and

(2) The co-benefits of enhanced resiliency to anticipated adverse effects from climate change, local community benefits in the areas of diversity, equity or environmental justice, and importance toward attainment of water quality standards in a locally impaired watershed.

(p) (1) The Department shall establish and implement a process for the verification of environmental outcomes for which funding is provided; and

(2) Use consistent standards or processes through which environmental outcomes can be verified through confirmation of modeling results, confirmation of installation, and, where appropriate, measurement of outcomes during or after a project's initiation.

(q) Any environmental outcome funded under this section shall:

(1) Result from a new project or practice designed and established following the selection of proposals and execution of a contract in accordance with this section; and

(2) Be in addition to any load reduction required by any federal, state or local law, regulation, policy or permit, including but not limited to any applicable total maximum daily load;

(3) Be consistent with the Chesapeake Bay Program Partnership Accounting Procedures, so as to ensure the load reductions will count against the Chesapeake Bay TMDL.

(r) Any contract entered into by the Department under this Act may be funded for the expected life of the best management practice resulting from an environmental outcome, not to exceed 15 years.

(s) Provisions for payments shall be either as:

(1) Annual or less frequent payments over the duration of a contract following verification of environmental outcomes; or

(2) (i) Full or substantial payment under a pay for success contract for long-term environmental outcomes, after completion of construction, when environmental outcomes are verified and then payment is made; and

(ii) Initial and incremental payments may be made under this provision where the financial resources of the applicant, the nature of the project, and other relevant circumstances warrant.

10

11

12

13

14

(t) The Department shall maintenance of a registry, including spatial information, for acquired environmental outcomes and provisions to ensure that ownership of purchased outcomes is tracked. This registry shall be made publicly available on the Department’s web site.

15

(u) If a percentage of environmental outcomes are funded partially by other state financing, the percentage of the remaining environmental outcomes that is eligible to be purchased by the Department under this subsection shall be proportional with the percentage of the environment outcomes that are not provided by public financing.

16

(v) The Department may adopt regulations that are necessary or appropriate to carry out the provisions of this section.

17

(w) By December 31 each year, the Department of the Environment shall provide an annual report for the prior fiscal year, in accordance with § 2–1246 of the State Government Article, to the House Environment and Transportation Committee and the Senate Education, Health, and Environmental Affairs Committee, and the Bay Restoration Fund Advisory Committee, that includes:

18

(1) The total amount expended and encumbered under the program the prior fiscal year and since the program’s inception;

(2) The amount and type of environmental outcomes purchased and types of projects or practices that produced the outcomes, including information on the cost per unit of nitrogen, phosphorus or sediment reduced or removed, and relative contribution toward closing any gaps in achieving the nutrient and sediment targets of the Chesapeake Bay TMDL;

(3) The type and value of any additional co-benefits;

(4) Comparative information on how the cost of environmental outcomes compares to other approaches to deliver nitrogen, phosphorus, and sediment reductions; and

(5) In the annual report for fiscal year 2025, the Department shall make a recommendation about the possible amendment of the provisions of this section to reflect historic and projected demand for funding from the Bay Restoration and Clean Water Commerce Funds.

Article – State Finance and Procurement

6–226.

(a) (2) (i) Notwithstanding any other provision of law, and unless inconsistent with a federal law, grant agreement, or other federal requirement or with the terms of a gift or settlement agreement, net interest on all State money allocated by the State Treasurer under this section to special funds or accounts, and otherwise entitled to receive interest earnings, as accounted for by the Comptroller, shall accrue to the General Fund of the State.

19

(ii) The provisions of subparagraph (i) of this paragraph do not apply to the following funds:

122. the Racing and Community Development Financing Fund; [and]

123. the Racing and Community Development Facilities Fund; AND

124. THE CLEAN WATER COMMERCE FUND.

SECTION 2. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Chapter 366 and 367 of the Acts of 2017

[SECTION 2. AND BE IT FURTHER ENACTED, That the nutrient load reductions purchased under § 9–1605.2(i)(2)(xiii) of the Environment Article, as enacted by Section 1 of this Act, must be consistent with the Chesapeake Bay Program Partnership Accounting Procedures.

SECTION 3. AND BE IT FURTHER ENACTED, That:

(a) Beginning July 1, 2018, the Department of the Environment shall report each year to the Bay Restoration Fund Advisory Committee on the implementation of this Act.

(b) On or before October 1, 2020, the Department of the Environment shall report, in accordance with § 2–1246 of the State Government Article, to the House Environment and Transportation Committee and the Senate Education, Health, and Environmental Affairs Committee on the implementation of this Act.

SECTION 4. AND BE IT FURTHER ENACTED, That:

(a) The Department of the Environment may enter into any contracts for the purchase of nutrient load reductions under this Act until June 30, 2021.

(b) Any contract entered into by the Department of the Environment under this Act may be funded for the expected life of the best management practice resulting from a nutrient load reduction.]

SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2017. It shall remain effective for a period of [4 years] **13 YEARS** and, at the end of June 30, [2021] **2030**, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2021. It shall remain effective for a period of 9 years and, at the end of June 30, 2030, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.