

Chapter 367

(Senate Bill 314)

AN ACT concerning

Clean Water Commerce Act of 2017

FOR the purpose of authorizing funds in the Bay Restoration Fund to be used for the costs associated with the purchase of certain nutrient credits load reductions, not to exceed a certain amount per year in certain years; requiring certain regulations to be adopted in a certain manner and in accordance with certain requirements; requiring the Department of the Environment to consult with the Secretary of Agriculture and Transportation, the Secretary of Natural Resources, the Secretary of Commerce, the Secretary of Agriculture, and certain stakeholders when developing certain regulations; requiring the load reductions purchased under this Act to be consistent with certain accounting procedures; requiring the Department to report to the Bay Restoration Fund Advisory Committee annually on the implementation of this Act; requiring the Department, on or before a certain date, to report to certain committees of the General Assembly on the implementation of this Act; authorizing the Department to enter into any contracts under this Act until a certain date; providing that contracts entered into by the Department under this Act may be funded for a certain period of time; providing for the termination of this Act; and generally relating to the use of funds in the Bay Restoration Fund.

BY repealing and reenacting, without amendments,

Article – Environment

Section 9–1605.2(a)(1) and (i)(1)

Annotated Code of Maryland

(2014 Replacement Volume and 2016 Supplement)

BY repealing and reenacting, with amendments,

Article – Environment

Section 9–1605.2(i)(2) and (l)

Annotated Code of Maryland

(2014 Replacement Volume and 2016 Supplement)

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

Article – Environment

9–1605.2.

(a) (1) There is a Bay Restoration Fund.

(i) (1) In this subsection, “eligible costs” means the additional costs that would be attributable to upgrading a wastewater facility from biological nutrient removal to enhanced nutrient removal, as determined by the Department.

(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 an upgrade of 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 for 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 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, 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; [and]

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

(XIII) FOR 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 AND, PHOSPHORUS, OR SEDIMENT LOAD REDUCTIONS NUTRIENT CREDITS IN SUPPORT OF THE STATE'S EFFORTS TO RESTORE THE HEALTH OF THE CHESAPEAKE BAY, 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.

(3) THE NITROGEN, PHOSPHORUS, AND SEDIMENT LOAD REDUCTIONS PURCHASED UNDER SUBPARAGRAPH PARAGRAPH (2)(XIII) OF THIS SUBSECTION:

(I) CANNOT BE FROM THE AGRICULTURAL SECTOR; AND

(II) MUST BE CREATED ON OR AFTER JULY 1, 2017.

(l) (1) [The] 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 AGRICULTURE AND TRANSPORTATION, THE SECRETARY OF NATURAL RESOURCES, THE SECRETARY OF COMMERCE, THE SECRETARY OF AGRICULTURE, AND PUBLIC AND PRIVATE SECTOR STAKEHOLDERS.

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 ~~2.~~ 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 and, at the end of June 30, 2021, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.

Approved by the Governor, May 4, 2017.