

HOUSE BILL 993

M3

11r0087

By: **Chair, Environment and Transportation Committee (By Request –
Departmental – Environment)**

Introduced and read first time: February 5, 2021

Assigned to: Environment and Transportation

A BILL ENTITLED

1 AN ACT concerning

2 **Clean Water Commerce Act of 2021**

3 FOR the purpose of authorizing funds in the Bay Restoration Fund to be used for the costs
4 associated with the purchase of certain nutrient load reductions, not to exceed a
5 certain amount per year in certain years; requiring certain regulations to be adopted
6 in a certain manner and in accordance with certain requirements; requiring the
7 Department of the Environment to consult with the Secretary of Transportation, the
8 Secretary of Natural Resources, the Secretary of Commerce, the Secretary of
9 Agriculture, and certain stakeholders when developing certain regulations;
10 requiring the load reductions purchased under this Act to be consistent with certain
11 accounting procedures and purchased through a certain procurement approach;
12 requiring the Department to report to the Bay Restoration Fund Advisory
13 Committee annually on the implementation of this Act; requiring the Department,
14 on or before a certain date, to report to certain committees of the General Assembly
15 on the implementation of this Act; authorizing the Department to enter into any
16 contracts under this Act until a certain date; providing that contracts entered into
17 by the Department under this Act may be funded for a certain period of time;
18 providing for the effective date of certain provisions of this Act; providing for the
19 termination of certain provisions of this Act; and generally relating to the use of
20 funds in the Bay Restoration Fund.

21 BY repealing and reenacting, without amendments,
22 Article – Environment
23 Section 9–1605.2(a)(1) and (i)(1)
24 Annotated Code of Maryland
25 (2014 Replacement Volume and 2020 Supplement)

26 BY repealing and reenacting, with amendments,
27 Article – Environment
28 Section 9–1605.2(i)(2) and (3) and (l)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2014 Replacement Volume and 2020 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article – Environment
5 Section 9–1605.2(i)(2)(xi) and (xii) and (l)
6 Annotated Code of Maryland
7 (2014 Replacement Volume and 2020 Supplement)
8 (As enacted by Chapters 366 and 367 of the Acts of the General Assembly of 2017)

9 BY adding to
10 Article – Environment
11 Section 9–1605.2(i)(2)(xiii) and (10)
12 Annotated Code of Maryland
13 (2014 Replacement Volume and 2020 Supplement)
14 (As enacted by Chapters 366 and 367 of the Acts of the General Assembly of 2017)

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

17 **Article – Environment**

18 9–1605.2.

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

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

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

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

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

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

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

4 1. For funding the eligible costs to upgrade a wastewater
5 facility to enhanced nutrient removal at wastewater facilities with a design capacity of
6 500,000 gallons or more per day;

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (xiii) After funding any eligible costs identified under item (iv)1 and 2
8 of this paragraph, for costs associated with the purchase of cost-effective nitrogen,
9 phosphorus, or sediment load reductions in support of the State's efforts to restore the
10 health of the Chesapeake Bay, not to exceed \$4,000,000 in fiscal year 2018, \$6,000,000 in
11 fiscal year 2019, and \$10,000,000 per year in fiscal years 2020 [and 2021] **THROUGH 2030,**
12 **INCLUSIVE.**

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

15 (i) Cannot be from the agricultural sector; and

16 (ii) Must] **MUST** be created on or after July 1, 2017.

17 (II) **EXCEPT AS PROVIDED IN SUBPARAGRAPH (III) OF THIS**
18 **PARAGRAPH, OF THE FUNDING FOR THE PURCHASE OF NITROGEN, PHOSPHORUS,**
19 **AND SEDIMENT LOAD REDUCTION UNDER PARAGRAPH (2)(XIII) OF THIS**
20 **SUBSECTION:**

21 1. **AT LEAST 25% SHALL BE USED FOR INNOVATIVE**
22 **PRACTICES, AS DETERMINED BY THE DEPARTMENT;**

23 2. **AT LEAST 25% SHALL BE USED FOR PROJECTS**
24 **LOCATED IN DISADVANTAGED COMMUNITIES, AS DETERMINED BY THE**
25 **DEPARTMENT; AND**

26 3. **NOT MORE THAN 10% MAY BE USED FOR**
27 **WASTEWATER CREDITS.**

28 (III) **THE DEPARTMENT IS NOT REQUIRED TO MEET THE**
29 **FUNDING PERCENTAGES ESTABLISHED UNDER SUBPARAGRAPH (II)1 AND 2 OF THIS**
30 **PARAGRAPH IF THE DEPARTMENT DOES NOT RECEIVE SUFFICIENT APPLICATIONS.**

31 (l) (1) Subject to paragraph (2) of this subsection, the Department shall adopt
32 regulations that are necessary or appropriate to carry out the provisions of this section.

1 (2) Regulations adopted to carry out subsection (i)(2)(xiii) of this section
2 shall:

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

4 (ii) Specify that a load reduction purchased should provide the
5 lowest cost per pound in reduction **BY SECTOR** and be purchased in accordance with a
6 competitive process; [and]

7 **(III) PROVIDE ADDITIONAL CREDIT IN THE APPLICATION**
8 **RANKING PROCESS FOR LOAD REDUCTIONS THAT INCLUDE CO-BENEFITS;**

9 **(IV) REQUIRE THAT THE LOAD REDUCTIONS PURCHASED BE:**

10 **1. DELIVERED LOADS TO THE CHESAPEAKE BAY; AND**

11 **2. CERTIFIED THROUGH THE WATER QUALITY TRADING**
12 **PROGRAM, WHENEVER POSSIBLE; AND**

13 [(iii)] **(V)** Be adopted in consultation with the Secretary of
14 Transportation, the Secretary of Natural Resources, the Secretary of Commerce, the
15 Secretary of Agriculture, and public and private sector stakeholders.

16 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
17 as follows:

18 **Article – Environment**

19 9–1605.2.

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

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

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

26 **(XIII) AFTER FUNDING ANY ELIGIBLE COSTS IDENTIFIED UNDER**
27 **ITEM (IV)1 AND 2 OF THIS PARAGRAPH, FOR COSTS ASSOCIATED WITH THE**
28 **PURCHASE OF COST-EFFECTIVE NITROGEN, PHOSPHORUS, OR SEDIMENT LOAD**
29 **REDUCTIONS IN SUPPORT OF THE STATE’S EFFORTS TO RESTORE THE HEALTH OF**
30 **THE CHESAPEAKE BAY, NOT TO EXCEED \$4,000,000 IN FISCAL YEAR 2018,**
31 **\$6,000,000 IN FISCAL YEAR 2019, AND \$10,000,000 PER YEAR IN FISCAL YEARS 2020**

1 THROUGH 2030, INCLUSIVE.

2 (10) (I) THE NITROGEN, PHOSPHORUS, AND SEDIMENT LOAD
3 REDUCTIONS PURCHASED UNDER PARAGRAPH (2)(XIII) OF THIS SUBSECTION MUST
4 BE CREATED ON OR AFTER JULY 1, 2017.

5 (II) EXCEPT AS PROVIDED IN SUBPARAGRAPH (III) OF THIS
6 PARAGRAPH, OF THE FUNDING FOR THE PURCHASE OF NITROGEN, PHOSPHORUS,
7 AND SEDIMENT LOAD REDUCTIONS UNDER PARAGRAPH (2)(XIII) OF THIS
8 SUBSECTION:

9 1. AT LEAST 25% SHALL BE USED FOR INNOVATIVE
10 PRACTICES, AS DETERMINED BY THE DEPARTMENT;

11 2. AT LEAST 25% SHALL BE USED FOR PROJECTS
12 LOCATED IN DISADVANTAGED COMMUNITIES, AS DETERMINED BY THE
13 DEPARTMENT; AND

14 3. NOT MORE THAN 10% MAY BE USED FOR
15 WASTEWATER CREDITS.

16 (III) THE DEPARTMENT IS NOT REQUIRED TO MEET THE
17 FUNDING PERCENTAGES ESTABLISHED UNDER SUBPARAGRAPH (II)1 AND 2 OF THIS
18 PARAGRAPH IF THE DEPARTMENT DOES NOT RECEIVE SUFFICIENT APPLICATIONS.

19 (I) (1) [The] SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE
20 Department shall adopt regulations that are necessary or appropriate to carry out the
21 provisions of this section.

22 (2) REGULATIONS ADOPTED TO CARRY OUT SUBSECTION (I)(2)(XIII)
23 OF THIS SECTION SHALL:

24 (I) BE ADOPTED BEFORE THE PURCHASE OF ANY LOAD
25 REDUCTIONS;

26 (II) SPECIFY THAT A LOAD REDUCTION PURCHASED SHOULD
27 PROVIDE THE LOWEST COST PER POUND IN REDUCTION BY SECTOR AND BE
28 PURCHASED IN ACCORDANCE WITH A COMPETITIVE PROCESS;

29 (III) PROVIDE ADDITIONAL CREDIT IN THE APPLICATION
30 RANKING PROCESS FOR LOAD REDUCTIONS THAT INCLUDE CO-BENEFITS;

31 (IV) REQUIRE THAT THE LOAD REDUCTIONS PURCHASED BE:

1 **1. DELIVERED LOADS TO THE CHESAPEAKE BAY; AND**

2 **2. CERTIFIED THROUGH THE WATER QUALITY TRADING**
3 **PROGRAM, WHENEVER POSSIBLE; AND**

4 **(v) BE ADOPTED IN CONSULTATION WITH THE SECRETARY OF**
5 **TRANSPORTATION, THE SECRETARY OF NATURAL RESOURCES, THE SECRETARY OF**
6 **COMMERCE, THE SECRETARY OF AGRICULTURE, AND PUBLIC AND PRIVATE SECTOR**
7 **STAKEHOLDERS.**

8 SECTION 3. AND BE IT FURTHER ENACTED, That the nutrient load reductions
9 purchased under § 9–1605.2(i)(2)(xiii) of the Environment Article, as enacted by this Act,
10 must be:

11 (1) consistent with the Chesapeake Bay Program Partnership Accounting
12 Procedures; and

13 (2) purchased through a pay–for–performance procurement approach, with
14 flexibility in payment structures.

15 SECTION 4. AND BE IT FURTHER ENACTED, That:

16 (a) Beginning July 1, 2022, the Department of the Environment shall report each
17 year to the Bay Restoration Fund Advisory Committee on the implementation of this Act.

18 (b) On or before October 1, 2029, the Department of the Environment shall report,
19 in accordance with § 2–1257 of the State Government Article, to the House Environment
20 and Transportation Committee and the Senate Education, Health, and Environmental
21 Affairs Committee on the implementation of this Act.

22 SECTION 5. AND BE IT FURTHER ENACTED, That:

23 (a) The Department of the Environment may enter into any contracts for the
24 purchase of nutrient load reductions under this Act until June 30, 2030.

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

28 SECTION 6. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take
29 effect on the taking effect of the termination provision specified in Section 5 of Chapters
30 366 and 367 of the Acts of the General Assembly of 2017. If that termination provision takes
31 effect, Section 1 of this Act, with no further action required by the General Assembly, shall
32 be abrogated and of no further force and effect. This Act may not be interpreted to have any
33 effect on that termination provision.

1 SECTION 7. AND BE IT FURTHER ENACTED, That, subject to the provisions of
2 Section 6 of this Act, this Act shall take effect July 1, 2021. It shall remain effective for a
3 period of 9 years and, at the end of June 30, 2030, this Act, with no further action required
4 by the General Assembly, shall be abrogated and of no further force and effect.