

Chapter 502

(House Bill 1266)

AN ACT concerning

Clean Water Commerce Account – Contracts for the Purchase of Environmental Outcomes

FOR the purpose of requiring, in entering into a certain contract under the Clean Water Commerce Account for the purchase of a certain environmental outcome, the Department of the Environment to allow certain nonuniform payment schedules ~~and include certain financial incentives~~ for certain purposes; authorizing the Department to require a certain payment or certain financial protections for contracts of a certain size to ensure certain outcomes; and generally relating to the Clean Water Commerce Account.

BY repealing and reenacting, without amendments,

Article – Environment

Section 9–1605.4(a)(1), (2), and (6), (b), (c), (f)(1), (m), and (n)

Annotated Code of Maryland

(2014 Replacement Volume and 2023 Supplement)

BY repealing and reenacting, with amendments,

Article – Environment

Section 9–1605.4(o)

Annotated Code of Maryland

(2014 Replacement Volume and 2023 Supplement)

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

Article – Environment

9–1605.4.

(a) (1) In this section the following words have the meanings indicated.

(2) “Account” means the Clean Water Commerce Account.

(6) “Environmental outcome” means nitrogen load reductions that can be directly measured or modeled using the Chesapeake Bay Program Models.

(b) There is a Clean Water Commerce Account.

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

(f) (1) Subject to the provisions of this subsection, the Account may be used only for the purchase of cost-effective environmental outcomes that:

(i) Support the State's efforts to achieve the Chesapeake Bay TMDL; and

(ii) Have an expected life of at least 10 years.

(m) An environmental outcome purchased under this section shall:

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

(2) Be in addition to any load reduction required by any federal, State, or local law, regulation, policy, or permit, including any applicable total maximum daily load; and

(3) Be consistent with the Chesapeake Bay Program Models so as to ensure the load reductions will count toward the achievement of the Chesapeake Bay TMDL.

(n) A contract entered into by the Department under this section may be funded for the expected life of the project or practice yielding the environmental outcome, not to exceed 20 years.

(o) **(1) [A] SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION,** A contract entered into by the Department under this section shall:

[(1)] (I) Require the owner of the project or practice to periodically submit status updates in accordance with the quantification plan for the environmental outcomes of the project or practice;

[(2)] (II) Require that payment for environmental outcomes be conditioned on the achievement and verification of the environmental outcomes in accordance with the quantification plan;

[(3)] (III) Include a schedule of payments that will be made as environmental outcomes are achieved and verified; and

[(4)] (IV) Require reporting on the amount of nitrogen and, to the extent that it can be feasibly determined without significant expense, phosphorus and sediment that are removed annually by the project or practice.

(2) (I) IN ENTERING INTO A CONTRACT FOR A PROJECT THAT INCLUDES CONSTRUCTION, RECONSTRUCTION, OR REHABILITATION, ON REQUEST, UNDER THIS SECTION, THE DEPARTMENT SHALL:

~~(I) FOR THE PURPOSE OF REDUCING FINANCING COSTS FOR THE OWNER OF A PROJECT OR PRACTICE AND THE STATE, ALLOW NONUNIFORM PAYMENT SCHEDULES THAT TAKE INTO ACCOUNT THE UPFRONT CAPITAL INVESTMENT NEEDED IN ORDER TO GENERATE THE INITIAL ENVIRONMENTAL OUTCOMES OF A PROJECT OR PRACTICE; AND~~ THAT ALLOW FOR A COST-PER-POUND OF NITROGEN REDUCED THAT VARIES WITH THE ACHIEVEMENT OF PERFORMANCE MILESTONES, AS AGREED UPON BY BOTH PARTIES TO THE CONTRACT.

(II) THE FIRST PERFORMANCE MILESTONE MAY NOT OCCUR EARLIER THAN THE TIME THAT THE CONSTRUCTION, RECONSTRUCTION, OR REHABILITATION IS COMPLETE.

~~(II) INCLUDE FINANCIAL INCENTIVES TO ENSURE THE OWNER'S COMMITMENT TO THE OPERATION AND MAINTENANCE OF THE PROJECT OR PRACTICE FOR ITS PROPOSED EXPECTED LIFE.~~

(3) IN ORDER TO ENSURE THE ACHIEVEMENT OF ENVIRONMENTAL OUTCOMES AGREED TO IN A CONTRACT, THE DEPARTMENT MAY REQUIRE:

(I) A MINIMUM FINAL PAYMENT; AND

(II) FOR A CONTRACT AWARD GREATER THAN \$500,000, ADDITIONAL FINANCIAL PROTECTIONS, INCLUDING A LETTER OF CREDIT, INSURANCE INSTRUMENT, OR PERFORMANCE BOND.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2024.

Approved by the Governor, May 9, 2024.