



# CHESAPEAKE BAY COMMISSION

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## Written Testimony

Bill Number/Title: SB 119 / Clean Water Commerce Act of 2021  
Committee: Education, Health, and Environmental Affairs  
Hearing: January 28, 2021  
Position: Support with Sponsor Amendments

The Chesapeake Bay Commission is a tri-state legislative commission created by law in Maryland, Pennsylvania, and Virginia to advise the members of the three general assemblies on matters of watershed-wide concern. Its fundamental purpose is to assist each assembly and the U.S. Congress to develop legislation and policies that foster the collaborative and practical restoration of the Chesapeake Bay and its watershed.

The Commission has a long history of engagement on policy issues related to the financing of Chesapeake Bay restoration, including issuing multiple reports on the most cost-effective means to restore the watershed. Its Maryland Delegation members played a strong role in negotiating the Clean Water Commerce Act, first introduced in 2017.

### Position

The Commission supports SB 119 with the amendments offered by the sponsor.

### Background

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 provisions sunset at the end of FY 2021.

### Moving Forward

With the CWCA sunsetting on June 30, 2021, the General Assembly needs to act during its 2021 session if the program is to continue as is, or in a modified form. The Commission believes that it should be updated to support cost-effective efforts that will ensure Maryland achieves clean water before its Federal regulatory deadline of 2025.

The CWCA was established in direct response to this goal. As opportunities to upgrade Maryland’s wastewater treatment plant declined (most enhancements had been made or were in the pipeline), the general assembly created an alternative model for pollution reduction – one that would purchase pollution reductions at the lowest cost, generate innovation and provide the benefits of competitive procurement. It was intended to provide a means to reduce pollution fluxes into the Bay at the most efficient price point.

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The Maryland legislative members of the Commission (Senators Guy Guzzone and Sarah Elfreth and Delegates Dana Stein, Tony Bridges and Sara Love) agree that more time and resources should be allocated to continue the CWCA, albeit with significant reform. The scope of the challenge of reaching our Chesapeake Bay pollution reduction targets by 2025 demands continued focus and strategic investment. 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.

#### Clean Water Commerce Act Workgroup

To advance this policy initiative, the Maryland Delegation established 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 agreed to chair the Workgroup. Members were selected to represent the breath of interest in this arena – local governments, agriculture, environmental, restoration, finance, etc.

#### Pre-file

The legislation as introduced contains the following key points to address the goals of the Commission members:

- Extend the sunset provision to June 30, 2030, synchronous to when the BRF reverts to its previous fee structure.
- Increase CWCA funding to \$20M annually.
- Explicitly remove the exclusion of any sector, practice, or geography from CWCA project ranking.
- Implement a sector-based set-aside to ensure a diversity of restoration practices and locations.
- Ensure the sector producing the load reduction gets “credit” for it in the WIP.
- Explicitly require that load reductions purchased via the CWCA are “additional.”
- Use a pay for performance approach to ensure achievement of environmental outcomes.
- Add the Chesapeake Bay Commission as a member of the BRF Advisory Committee.

#### Amendments

As a result of the Workgroup effort, the following adjustments are included in the sponsor amendments:

- Add a representative from the EJ community to the BRF Advisory Committee.
- Focus “Environmental Outcomes” on nitrogen reductions – phosphorus and sediment reductions treated as co-benefits.
- Include afforestation and reforestation in definition of natural landscape practices.
- For the ag set-aside, make “fixed natural filter” and ditch management projects the priority.
- For the EJ set-aside, specifically mention stormwater and green infrastructure projects as eligible.
- For the non-ag set aside, specifically mention consideration of upstream conditions.
- Require all projects have an expected beneficial life of 10 years.
- Allow for projects to include components from all three set-asides (“blending”).
- Change the information to be included with each proposal, such as details on co-benefits and outside funding.
- Expand co-benefits to include climate mitigation.
- Encourage third-party (non-public) funding to achieve project goals.
- Allow MDE to use existing registry for public notice.
- Require evaluation of set-aside percentages as part of 2025 annual report.