

SB 119 Clean Water Commerce Act of 2021 Support MD

Uploaded by: Coble, Kim

Position: FAV



MARYLAND LEAGUE OF CONSERVATION VOTERS



Senate Bill 119

Clean Water Commerce Act of 2021

To: Senate Education, Health, and Environmental Affairs Committee
Senate Budget and Taxation Committee

Position: **Support**

From: Kim Coble, Executive Director, Maryland League of Conservation Voters
Jenn Aiosa, Executive Director, Blue Water Baltimore
Robin Clark, Maryland Staff Attorney, Chesapeake Bay Foundation

Date: Jan. 28, 2020

The Maryland League of Conservation Voters, Blue Water Baltimore, and the Chesapeake Bay Foundation **SUPPORT** SB 119 which re-authorizes the Clean Water Commerce Act through an annual allocation from the Bay Restoration Fund for projects that reduce pollution into the Chesapeake Bay.

The 2017 Midpoint Assessment of Maryland’s progress on pollution reduction found the State needs to do more in order to meet established pollution reduction targets from stormwater runoff in developed areas and agricultural runoff from farmland. Municipal Separate Storm Sewer System (MS4) permit annual reports from our largest counties and Baltimore City indicate that most of our most populous jurisdictions are not achieving the nutrient and sediment reductions necessary to meet urban water quality targets.

The State is at a critical point in the Bay’s recovery. The clock is ticking until the Chesapeake Bay Blueprint’s goals come due in 2025. Much of the progress up to this point has been through wastewater treatment facility upgrades, infrastructure under state and municipal control. The years ahead require pollution reductions from agricultural lands in private ownership, and through stormwater management in developed areas. At the same time, climate change will make progress more difficult, demanding additional reductions in nitrogen load. The Bay Restoration Fund – the central source of State support for water quality improvements – must be spent wisely.

Through participation in a work group considering the reauthorization of the Clean Water Commerce Act, which expires this year, the Maryland League of Conservation Voters, Blue Water Baltimore, and the Chesapeake Bay Foundation recommended that the Clean Water Commerce Act reauthorization tailor its project funding to address the areas of pollution reduction most needed to meet the State’s Phase III Watershed Improvements Plan. We also advised the work group to prioritize the equitable distribution of the State’s resources for water quality through delineations of specific funding categories. We appreciate the amendments, introduced by the bill sponsor, to take steps toward those aims.

SB 119 seeks to ensure all Marylanders share in the State’s progress on water-quality

This legislation adds an individual representing communities disproportionately burdened by environmental harms and subject to climate risks to the Bay Restoration Fund Advisory Committee. The legislation requires 20% of Clean Water Commerce Act funding is provided to communities disproportionately burdened by pollution and environmental inequities. In addition, it identifies green stormwater infrastructure as a practice that may be employed in these communities. Green infrastructure, including tree plantings in urban areas, can reduce urban heat island effect, improve air quality, clean local waterways, and improve quality of life in urban neighborhoods.

SB 199 aims to direct funding to the most cost-effective pollution reduction practices

This legislation, as amended, focuses on environmental outcomes that reduce nitrogen loads to state waterways. It requires that projects have an expected beneficial life of at least 10 years. The priority for funding fixed natural filters, such as tree plantings on agricultural land. These forested buffers are some of the most cost-effective practices for reducing agricultural runoff.

SB 199 requires environmental considerations for non-agricultural landscape restoration projects and mandates an assessment of project funding in 2025

As amended, the Clean Water Commerce Act will require that non-agricultural landscape restoration projects consider the ecological suitability of the project, such as hydrological conditions and other physical characteristics. This requirement will hopefully promote the installation of large-scale practices, like stream restoration, only in areas where such practices can truly reduce stormwater volumes and reestablish healthy riparian function. The legislation also requires an assessment of minimum project funding percentages in 2025 so that the amount spent on these non-agricultural landscape restorations may be reviewed.

With the friendly sponsor amendments, our organizations urge the Committee’s FAVORABLE report on SB 119.

Forever MD- SB119 Support - Jan 26 2021- FINAL.pdf

Uploaded by: Hastings, Josh

Position: FAV



FOREVER

MARYLAND

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Grants Coordinator

Date: January 25, 2021

Bill Number: SB 119 - Clean Water Commerce Act of 2021

Committee: Senate Education, Health, and Environmental Affairs

Position: Support

The Forever Maryland Foundation supports, **SB 119 - Clean Water Commerce Act of 2021** for the purpose of establishing the Clean Water Commerce Fund and enhancing the outcomes of Maryland's Bay Restoration Fund.

The bill, as drafted, authorizes the creation of the Clean Water Commerce Fund and mandates an annual transfer of \$20,000,000 from the Bay Restoration Fund (BRF) to the fund, to be used for activities to decrease Nitrogen, Phosphorous or sediment pollution to the Chesapeake Bay and its tributaries. This bill would specify that any unencumbered balance in excess of \$20,000,000 would stay within the BRF and that the allotted funds would have a minimum disbursement of 35% to agricultural projects, 20% to disadvantaged communities impacted by environmental justice issues, and at least 10% to non-agricultural landscape restoration.

This bill states that all projects funded under the Clean Water Commerce Fund would be tied to and tracked for Chesapeake Total Maximum Daily Load (TMDL) water quality outcomes. Funds shall not be provided for existing or currently mandated Federal, State, or local projects.

The Forever Maryland Foundation is dedicated to the conservation of our state's land, water, wildlife, and other natural values. If further information is requested, please contact the organization's Program and Policy Director, Josh Hastings, at 443-640-1034 Ex. 1267 or Josh@ForeverMaryland.org.

Thank you for your time and consideration.

We respectfully request a favorable report.

FOREVER MARYLAND FOUNDATION

2331 Rock Spring Road | Forest Hill, MD 21050 | 443-640-1034 | www.ForeverMaryland.org

SB 0199 Chesapeake Bay Commission Written Testimon

Uploaded by: Hoffman, Mark

Position: FAV



CHESAPEAKE BAY COMMISSION

Policy for the Bay • www.chesbay.us

Written Testimony

Bill Number/Title: SB 199 / Clean Water Commerce Act of 2021
Committee: Environment and Transportation
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 199 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 BRF 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.

WKC_Clean_Water_Commerce_Act_Testimony.pdf

Uploaded by: Johnson, Esq., Morgan

Position: FAV



Senate Bill 119 (Guzzone) Clean Water Commerce Act of 2021

Chairman Pinsky and Members of the Committee:

January 28, 2021

Thank you for this opportunity to submit written testimony in support of Senate Bill 119 on behalf of Waterkeepers Chesapeake, a coalition of seventeen Waterkeepers, Riverkeepers, and Coastkeepers working to make the waters of the Chesapeake and Coastal Bays swimmable and fishable.

We support this bill as amended, which re-authorizes the Clean Water Commerce Act through an annual allocation from the Bay Restoration Fund. This fund will support projects that reduce pollution into the Chesapeake Bay. After participating in four, broadly representative stakeholder group meetings, we agree with other advocates that the Clean Water Commerce Act reauthorization should tailor project funding to address the areas of pollution reduction most needed to meet the State's Phase III WIP. We also agree that delineations of specific funding categories should be made, ensuring equitable distribution of the State's resources for water quality through. Amendments to this effect have been introduced by the bill sponsor, which we appreciate and support.

It is critical that we meet our pollution reduction targets by 2025 and beyond—and the Bay Restoration Fund should be spent in a way that meets our targets. Maryland is already struggling to meet our pollution diet goals and practices funded by the Fund must support our efforts to rapidly address pollution. As amended, this bill (1) focuses on environmental outcomes that reduce nitrogen loads in our waterways, (2) requires that projects funded have a beneficial life of at least 10 years, and (3) prioritizes funding for fixed natural filters like tree plantings on agricultural land. Furthermore, the bill requires that non-agricultural landscape restoration projects consider the ecological impact of the project, promoting installation of stream restorations and other large-scale practices—only in areas where these practices demonstrate potential to reduce stormwater volume and healthy riparian function. Finally, the legislation requires an assessment of minimum project funding percentages in 2025 so that expenditures on these restorations may be reviewed.

We also support the equity and environmental justice aims of SB 119. First, this bill ensures that an individual representing overburdened communities will be added to the Bay Restoration Fund Advisory Committee. Second, this bill requires that 20% of Clean Water Commerce Act funding would be provided to communities that are overburdened by pollution and environmental injustices. Finally, this bill identifies green infrastructure as a practice that may be employed in these communities. These practices, such as tree plantings in urban areas can reduce urban heat

island effect, improve air quality, clean local waterways, and improve quality of life in urban neighborhoods.

We urge a favorable report on this bill.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M.A. Johnson". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Morgan A. Johnson, Esq.
Staff Attorney
Waterkeepers Chesapeake

RES Comment Letter CWCA_v2 (003).pdf

Uploaded by: Kelly, George

Position: FAV



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January 26, 2021

Senate Bill 119
Clean Water Commerce Act 2021
Date: January 26, 2020
Position: Support

Resource Environmental Solutions (RES) recommends a favorable report from the Senate Education, Health and Environmental Affairs (EHEA) Committee on Senate Bill 119 (Clean Water Commerce Act (CWCA)). The legislation, if enacted, would provide needed changes to facilitate more cost effective and performance-based ecological restoration projects.

RES

As the nation's leading provider of ecological restoration and water resources solutions, with dedicated operations in Maryland, we appreciate the opportunity to lend our voice in support of the programs and policies in discussion for inclusion in the CWCA. In reviewing the draft legislative text, we believe the Bill will make critical adjustments to the current program by: providing a dedicated and consistent source of long-term funding; advancing policies and programs that will create enabling conditions for delivering cost effective projects at scale for nutrient reductions; enhancing the participation of agricultural practices and projects in disadvantaged communities; promoting projects with secondary co-benefits; and providing flexible payment schedules tied to performance.

Critical Adjustments to Current Version of Law

The CWCA was originally enacted in 2017 with the intention of setting aside a portion of the Bay Restoration Fund to primarily fund non-point restoration actions to reduce nutrient loadings. The concept was to promote new innovative best management practices with secondary co-benefits. Agricultural practices were excluded from the original law. While the original law was well intended, the law was implemented in a narrow fashion with harsh payment schedules. The award recipients under the 2017 law were primarily wastewater treatment plants that had already been funded under BRF. Senate Bill 119 seeks to address some of the recognized flaws in the current version.

Dedicated \$20m Per Year until 2030

By providing a dedicated and consistent source of funding, the Bill allows project proponents the opportunity to pursue projects at scale and to rely on a consistent source of annual funding for nutrient reduction projects.

Creates Enabling Conditions for Scaling Outcome-Based Non-Point Source Solutions

The CWCA bolsters the current law by clarifying that it will fund innovative and cost-effective Environmental Outcomes. Outcome-based procurement will provide a high integrity and cost-effective mechanism for developing projects and practices that provide long-term benefits and that meet current standards under applicable Chesapeake Bay models. This also allows the State to partner with the private sector to implement projects and to make payments over time consistent with achieving performance standards. This will result in the added benefit of leveraging funds with private financing, while promoting greater efficiencies through a competitive solicitation process.

Increased Investment in Agricultural Practices and Disadvantaged Communities

Additionally, provisions related to CWCA will increase and require investment in agricultural practices and disadvantaged communities, among other areas. It is well recognized that the most need for improvement under the WIP III is in the agricultural sector. Also, the Bill seeks to address some equity issues through minimum investments in disadvantaged communities.



Provides Clarity on Co-Benefits

The Bill provides for an added bonus for projects and practices that achieve secondary co-benefits. It makes explicit that projects with secondary co-benefits, including enhanced resiliency, local water quality benefits and benefits to environmentally burdened communities, will receive a bonus during evaluation. By explicitly setting forth the bonus for co-benefits, it overcomes flaws in the original law that allowed the co-benefits to be ignored in practice.

More Flexible Payment Schedules Based on Performance

Contracts will be awarded to successful bidders based on “pay for performance” milestones to ensure achievement of the “environmental outcomes.” This eliminates the problems with the current law that requires pro rata payments on an annual basis without recognition that certain performance and project costs occur earlier in a project life span.

The passage of the CWCA legislation will provide a consistent and dedicated source of funding for cost-effective and innovative restoration projects in support of the state’s nutrient reduction goals. This also will promote new environmental enterprises and investments in the restoration sector. RES fully supports the CWCA and urges the Legislature to pass this bill. Thank you for your consideration of this critical legislation.

Sincerely,

Travis Cooke
Client Solutions Manager
410-568-2752
RES | res.us

SB 119 Clean Water Commerce Act of 2021 (Favorable

Uploaded by: Kerr, Cait

Position: FAV

Thursday January 28, 2021

TO: Paul Pinsky, Chair of Senate Education, Health and Environmental Affairs Committee; Guy Guzzone, Chair of Senate Budget and Taxation Committee; and Committee Members

FROM: Caitlin Kerr, The Nature Conservancy, Conservation & Climate Policy Analyst; and Mark Bryer, The Nature Conservancy, Chesapeake Bay Program Director

POSITION: Support SB 119 Clean Water Commerce Act of 2021

The Nature Conservancy (the Conservancy) supports SB 119 offered by Senators Guzzone and Elfreth. SB 119 would extend the state's existing Clean Water Commerce Act, which sunsets June 1st, 2021, through 2030. This legislation would also provide \$20 million annually from the Bay Restoration Fund, to be managed in a new 'Clean Water Commerce Fund.' This fund is intended to be used to purchase environmental outcomes that reduce nutrient and sediment loads and support achievement of Maryland's clean water goals. The application process to access these funds would use a publicly transparent and competitive procurement process; there is no exclusions of sectors, anyone can compete. Specifically, the bill allocates at least 35% to agricultural lands, 20% to frontline environmental justice communities, and 10% to nonagricultural landscape restoration projects. All nutrient and sediment reductions that qualify for funding must be verifiable and have a life expectancy of at least ten years.

We have challenging water quality problems to solve in the Chesapeake Bay. Maryland has invested significant resources to date to tackle these challenges, and yet there is still more work to do, especially in the face of climate change. With nutrient loads to the Bay increasing due to more frequent and intense storm events, we need more durable, cost-effective solutions. This bill will help realize those solutions across multiple sectors – the 'Pay for Success' model outlined in the bill drives down costs and provides incentives for nature-based practices that deliver environmental benefits to Maryland's citizens and its ecosystems for many years.

The Conservancy is dedicated to investing in practices that provide long-term nutrient reduction both in Maryland and also across the globe. Our experience has shown that these practices not only reduce nutrients effectively, but also provide critical co-benefits such as improved wildlife habitat, flood risk reduction, enhanced climate resilience, and real economic benefits to communities that rely upon the Bay. Furthermore, we have significant experience here in Maryland and around the world working with private finance to implement urgent conservation projects. This bill creates a unique opportunity to engage with and enhance the participation of private finance to help meet our water quality goals. We strongly believe that realizing this opportunity will both accelerate nutrient reductions and reduce the costs of those reductions.

The Conservancy commends Senator Guzzone and Senator Elfreth for recognizing the importance of the Clean Water Commerce Act and revitalizing the policy to incentivize innovative, cost-effective, equitable projects that will help Maryland meet our Chesapeake Bay water quality goals.

Therefore, we urge a favorable report on SB 119.

ShoreRivers Testimony SB119.pdf

Uploaded by: Richards, Annie

Position: FAV



Testimony in SUPPORT of SB119- Clean Water Commerce Act of 2021

January 26, 2021

Dear Chairman Pinsky and Members of the Committee,

Thank you for this opportunity to submit testimony in **SUPPORT** of **SB119** – *The Clean Water Commerce Act of 2021* - on behalf of ShoreRivers. ShoreRivers is a river protection group on Maryland's Eastern Shore with 3,500 members. Our mission is to protect and restore our Eastern Shore waterways through science-based advocacy, restoration and education. ShoreRivers believes that diversity, equity, inclusion, and justice in our staff, board, supporters, and programs is critical to achieving our mission of clean water.

A key strategy in our efforts towards cleaner rivers on the Eastern Shore is collaboration with farmers to install and maintain as many best management practices as possible – 111 agriculture BMP projects to date. These BMPs are also paramount in achieving the Eastern Shore's share (1/3) of nitrogen reductions required by the State under the Watershed Implementation Plan (WIP). **The establishment of the Clean Water Commerce Fund in SB119 will secure \$20 million for important Chesapeake restoration efforts with a 35% set aside for agriculture- providing financial aid to critical, cost effective initiatives.** Between 2015-2020, ShoreRivers total ag-project cost was \$12.4 million with a return in nitrogen reductions equaling 109,193 pounds per year, totaling \$113 per pound of nitrogen. This is incredibly cost effective compared to the estimated \$1000+ per pound found in urban stormwater retrofits.

ShoreRivers is also energized to endorse the CWCF's **20% set aside for Diversity, Equity, Inclusion and Justice (DEIJ) initiatives- which protects funding for communities that disproportionately experience the negative effects of pollution, runoff, and outdated stormwater management solutions.** These efforts align with our organization's values, and help to engage and reinforce many communities as the effects of Climate Change progress and intensify.

The Clean Water Commerce Act allows municipalities, farmers, and advocacy organizations to continue making advances in pollution reductions, further aids communities that are disproportionately burdened by environmental harm, and helps to bolster the resiliency of rural Eastern Shore communities in the face of Climate Change. For these reasons stated above, ShoreRivers urges the Committee to adopt a **FAVORABLE** report on **SB119**.

Sincerely,

Annie Richards, Chester Riverkeeper on behalf of:

ShoreRivers

Isabel Hardesty, Executive Director

Annie Richards, Chester Riverkeeper | Matt Pluta, Choptank Riverkeeper
Elle Bassett, Miles-Wye Riverkeeper | Zack Kelleher, Sassafras Riverkeeper

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SB119 - Clean Water Commerce Act - EHEA - Guzzone

Uploaded by: Tulkin, Josh

Position: FAV



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Committee: Education, Health and Environmental Affairs
Testimony on: SB119 – “Clean Water Commerce Act of 2021”
Position: Favorable
Hearing Date: January 28, 2021

The Maryland Sierra Club strongly supports SB119 and urges a favorable report. This bill would extend the existing Clean Water Commerce Act until 2030. The Clean Water Commerce Act enables the State to more cost-effectively meet the nitrogen reduction goals of the Chesapeake Bay Agreement while also achieving significant co-benefits for climate mitigation and resilience as well as water quality. This program would be funded by transferring \$20,000 a year from the Bay Restoration Fund into a new and dedicated Clean Water Commerce Fund. Without this bill, the current Clean Water Commerce Act would sunset in June of this year.

Under this legislation, more cost-effective reduction of nitrogen pollution would be achieved through a competitive procurement process to be used to acquire environmental outcomes that consist of lasting and verifiable reductions that have significant co-benefits. These co-benefits would involve set-asides of 35% for agricultural practices, 20% for communities disproportionately burdened by environmental harm (which may support green infrastructure stormwater management projects), and 10% for non-agricultural landscape restoration. In addition, a modest bonus would be provided for projects that have co-benefits for climate mitigation and resiliency, water quality improvements for locally impaired waters, and reductions of phosphorus and sediment.

These projects would need to have a life expectancy of at least ten years and must be retired rather than being resold or reused. They could occur in any of the sectors that have allocated responsibilities for nutrient reduction and would be credited toward meeting the share of nitrogen reduction obligations of the sector in which they are generated. Benefits also would be ensured through payment for performance, once milestones towards environmental outcomes have been verified.

This bill would take a critically important step toward meeting the challenge of financing water quality improvements and meeting the State’s obligations for clean-up of the Chesapeake Bay, which go beyond the upgrades of wastewater treatment plants for which the Chesapeake Bay Restoration Fund was originally established. We urge the Committee to issue a favorable report.

Sylvia S. Tognetti
Water Issue Lead
Sylvia.Tognetti@MDSierra.org

Josh Tulkin
Chapter Director
Josh.Tulkin@MDSierra.org

Founded in 1892, the Sierra Club is America’s oldest and largest grassroots environmental organization. The Maryland Chapter has over 70,000 members and supporters, and the Sierra Club nationwide has approximately 800,000 members.

sb119_MDE_FWA.pdf

Uploaded by: abbott, tyler

Position: FWA



Maryland

Department of the Environment

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor

Ben Grumbles, Secretary
Horacio Tablada, Deputy Secretary

January 28, 2021

The Honorable Paul G. Pinsky, Chair
Education, Health, and Environmental Affairs Committee
2 West, Miller Senate Office Building
Annapolis, Maryland 21401

Re: Senate Bill 119 – Clean Water Commerce Act of 2021

Dear Chairman Pinsky and Members of the Committee:

The Maryland Department of the Environment (MDE) has reviewed Senate Bill 119, entitled *Clean Water Commerce Act of 2021* and would like to offer our support with amendments for this bill.

This legislation reauthorizes an amended version of the Clean Water Commerce Act (CWCA) through June 30, 2030 (FY30). In fiscal year 2022 and each year thereafter, the legislation would authorize \$20 million per year to be transferred from the Bay Restoration Fund (BRF) to the newly established Clean Water Commerce Fund for the purchase of environmental outcomes. Environmental outcomes purchased through the Clean Water Commerce Fund must be spent in the following fashion:

- At least 35% for projects on agricultural lands;
- At least 20% for projects in disadvantaged communities impacted by environmental justice concerns;
- At least 10% for nonagricultural landscape restoration projects

If the unencumbered balance of the Clean Water Commerce Fund exceeds \$20,000,000 at the end of a fiscal year, any money in excess of \$20,000,000 is required to revert to the Bay Restoration Fund. The Department is required to use a competitive public process to procure environmental outcomes.

MDE strongly supports the reauthorization of this legislation as it builds on the successful legislation sponsored by Governor Hogan in 2017 that established the Clean Water Commerce Program (CH366/367 Clean Water Commerce Act). That legislation expanded the uses of the Bay Restoration Fund to include the costs associated with the purchase of nitrogen, phosphorous, and sediment load reductions. The initial legislation and program was a four-year pilot that sought to establish a pay-for-success program within the Bay Restoration Fund in an effort to drive down the costs and bring additional innovation into the Chesapeake Bay restoration effort. That four-year pilot has proven to be a success, as the number of applications to the program has been steadily increasing and the cost per pound of reduction purchased under the program has been steadily decreasing. In total, MDE was able to purchase 315,940lbs of nitrogen, 49,493lbs of phosphorous, and 22,085lbs of sediment reductions, directly benefiting the health of the Chesapeake Bay.

The Honorable Paul G. Pinsky, Chair

Page 2

MDE is requesting three amendments to the legislation that we believe will improve the bill by adding greater flexibility. These amendments are:

- The environmental outcomes that can be purchased under the legislation should include Nitrogen, Phosphorous, and Sediment. While Nitrogen is the pollutant that the State needs to make the most progress on to meet the 2025 Bay TMDL, it would be prudent to maintain flexibility to purchase reductions from the other two pollutants to give the Department the flexibility, if needed, based on any updates to the Chesapeake Bay model or to further prioritize local impairments, especially in the urban sector.
- The new Clean Water Commerce Fund established in the bill should be eliminated. The Clean Water Commerce Program can be managed appropriately by establishing a new account (Clean Water Commerce Account) within the Bay Restoration Fund. This will ensure the accountability desired by the Sponsors, while giving the Department needed flexibility in managing BRF cash flows and project schedules.
- The start date of the Clean Water Commerce Program should be moved to FY23. The Governor's proposed Capital Budget already includes BRF capital projects for FY22. Any FY22 funding for the Clean Water Commerce Program would result in the BRF being over-obligated for FY22 and potentially require the Department to cancel projects in the proposed FY22 Capital Budget.

With these amendments, the Department is supportive of SB119. The Department is appreciative of the work of the Chesapeake Bay Commission staff and members, along with all of the stakeholders that participated in Commission's stakeholder meetings throughout the fall of 2020, to put this legislation together. The Department believes that with the changes included in this legislation along with our suggested amendments, the Clean Water Commerce Program can be even more successful in helping the State to meet its requirements to restore the Chesapeake Bay in an innovative and cost-effective manner.

Thank you for your consideration. We will continue to monitor Senate Bill 119 during the Committee's deliberations, and I am available to answer any questions you may have. Please feel free to contact me at 410-260-6301 or by email at tyler.abbott@maryland.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Tyler Abbott", written over a horizontal line.

Tyler Abbott

cc: The Honorable Guy Guzzone

SB0119-EHE_MACo_SWA.pdf

Uploaded by: Butler, Alex

Position: FWA



MARYLAND
Association of
COUNTIES

Senate Bill 119

Clean Water Commerce Act of 2021

MACo Position: **SUPPORT**
WITH AMENDMENTS

To: Education, Health, and Environmental Affairs
and Budget and Taxation Committees

Date: January 28, 2021

From: Alex Butler

The Maryland Association of Counties (MACo) **SUPPORTS SB 119 WITH AMENDMENTS**. The bill extends the Clean Water Commerce Act that was set to sunset, preserving a funding tool that can assist both the State and counties in meeting their Chesapeake Bay Total Maximum Daily Load (TMDL) requirements. **MACo supports a set of multi-stakeholder amendments to clarify its effects, and to avoid an unwanted depletion of other priorities.**

With the amendments proposed by the workgroup, SB 119 would allow the Maryland Department of the Environment (the Department) to use up to \$20 million a year from the Bay Restoration Fund (BRF) to purchase nitrogen, phosphorus, and sediment practices in support of restoring the Chesapeake Bay. According to the Department, this does not impair the availability of other BRF funding. Investments will need to prioritize cost-effectiveness and longevity of benefits. MACo believes that investments should continue to be made in rural areas, where funding is especially limited.

MACo has always been supportive of having as many “tools in the toolbox” as possible to help meet our Bay TMDL goals. This bill gives MACo a continued role in helping to guide investments through a representative on the BRF Advisory Committee. With the workgroup amendments, SB 119 would maintain a useful and flexible tool that could assist both the State and counties in meeting our Chesapeake Bay restoration targets while protecting key local uses of the BRF and continuing appropriate oversight.

Accordingly, MACo urges the Committee to issue a report of **SUPPORT WITH AMENDMENTS** for SB 119.

Support With Amendment of SB 119 - Clean Water Com

Uploaded by: Ferguson, Colby

Position: FWA



Maryland Farm Bureau, Inc.

3358 Davidsonville Road • Davidsonville, MD 21035 • (410) 922-3426

January 28, 2021

To: Senate Education, Health & Environmental Affairs Committee

From: Maryland Farm Bureau, Inc.

Re: Support of SB 119 - Clean Water Commerce Act of 2021

On behalf of our member families, I submit this written testimony in support of SB 119, legislation that addresses the sunset of the pilot program and establishes the Clean Water Commerce Fund as a special, nonlapsing fund. It requires the Department of the Environment to transfer \$20,000,000 from the Bay Restoration Fund to the Clean Water Commerce Fund beginning in fiscal year 2022. The bill alters the authorized uses of the Bay Restoration Fund and repeals the authorization to use funds in the Bay Restoration Fund for costs associated with nutrient or sediment load reductions.

MDFB was involved in the workgroup to review and amend this bill over the last two months. **Therefore, we support the sponsor amendments being offered.**

MDFB Policy: We support voluntary mechanisms for nutrient reduction that allow farmers to receive fair compensation for nutrient removal and/or reductions.

MARYLAND FARM BUREAU SUPPORTS SB 119 WITH SPONSOR AMENDMENTS.

A handwritten signature in black ink, appearing to read 'Colby Ferguson'.

Colby Ferguson
Director of Government Relations

For more information contact Colby Ferguson at (240) 578-0396

Clean Water Commerce Act Letter of Support final T

Uploaded by: Perry, Reed

Position: FWA

January 26, 2021

The Honorable Paul Pinsky
Chair, Education, Health and Environmental Affairs Committee
2 West Miller Senate Office Building
Annapolis, Maryland 21401

The Honorable Cheryl C. Kagan
Vice Chair, Education, Health and Environmental Affairs Committee
2 West Miller Senate Office Building
Annapolis, Maryland 21401

RE: Comments in support of Senate Bill 119, the Clean Water Commerce Act of 2021

Dear Chair Pinsky, Vice Chair Kagan, and members of the Education, Health and Environmental Affairs Committee:

Maryland is the first state in the country with a program like the Clean Water Commerce Act (passed in 2017) which pays for projects only after they deliver verified outcomes. The Chesapeake and Coastal Bays Trust Fund also funds projects only after they are successfully completed. The proposed Clean Water Commerce Act of 2021 revisions will make this program stronger and even more of a model for other states to follow.

The bill is noteworthy because it creates a definition of environmental outcomes focused on measured or modelled environmental progress. This approach should be more broadly used under other state programs. Programs that pay for outcomes instead of activities, labor, and materials reduce risk to taxpayers, incentivize strong performance, simplify administrative paperwork, and typically deliver significant cost savings compared to grant or reimbursable cost-based approaches. This contract or procurement mechanism has become known, authorized, and used in other states as “pay for success procurement”. It would be helpful to have even more language in statute to ensure that contracting procedures are as tailored as possible to this procurement approach. However, if the legislature passes this bill, as we hope you will, we expect it will help Maryland find and discover lower cost ways to keep nitrogen pollution out of the Bay, more innovative ways to achieve those reductions, and reduce staff burdens of program administration.

We also strongly support the expanded eligibility for agricultural and forest lands – the exclusion of these lands was a deficit in the 2017 legislation that has hamstrung the program for three years.

We commend the sponsors of the bill and the Chesapeake Bay Commission for championing the role of private conservation finance that this proposed version of the program will depend upon.

Private conservation finance is one of the most rapidly growing areas of environmental funding in either of two ways. Private dollars can finance projects before being paid back by a public agency (as in this case). These Pay for Success approaches were first championed by the Obama Administration but are growing more rapidly in state policies across the country. Private funding can also finance projects that are paid back by other non-government sources. For example, higher prices for certified timber or

that produce voluntary carbon credits, voluntary water quality credits, or habitat or nutrient offset requirements paid for by private businesses or organizations. We believe the bill will increase the level of this private investment in Maryland and help deliver a flow of competitively priced outcomes for the program to purchase.

We support the bill without condition but are sharing a few ideas that would also make the program even stronger.

The first is to allow the state to use models in addition to the Chesapeake Bay Program model to quantify and verify outcomes if the model is pre-approved by the state. Why is this important? Because there are lots of state and federal programs that can already pay for every activity approved by the Bay model. Allowing MDE to approve additional models on which to base payments under this program would allow it to capture new approaches that can deliver efficient water pollution reductions.

Secondly, we agree that nitrogen is the most important nutrient to focus on, but we encourage you to include “nitrogen, phosphorus, or sediment load reduction” in the definition of environmental outcome, as all three contribute to pollution in the Bay. Language already in section 9-1605.4 (o) requires MDE to prioritize nitrogen pollution reductions. Doing so allows MDE to prioritize nitrogen pollution reductions but to secondarily try to maximize phosphorus or sediment load reductions.

Our last suggestion is related to language that could hurt its applicability and relevance to Maryland farmers. The bill requires that load reductions purchased by the program must be in addition to those required by “federal, state, or local law, regulation, or permit.” Although EPA has determined that non-point source nutrient runoff from agricultural land is not regulated, state and local policy is less clear, and a baseline of conservation actions is sometimes considered a requirement. While a limitation like this may make sense in Maryland’ nutrient trading program, the Commerce Act is an entirely different program. This program is not in any way like the state’s trading program. It is simply a way for the state to gain efficient outcomes to contribute to the TMDL, just like MACs cover crop cost share and several other programs. There is no trading. Thus, we do not believe it makes sense to impose baseline requirements on farmers who would participate in the Commerce Act program.

Sincerely,



Joel Dunn
President & CEO
Chesapeake Conservancy



Timothy Male
Executive Director
Environmental Policy Innovation Center

2021 SB119 Clean Water Commerce Act.pdf

Uploaded by: Porter, Holly

Position: FWA



Educate. Advocate. Innovate.

Date: January 26, 2021
To: Members of the Senate Education, Health & Environmental Affairs
From: Holly Porter, Executive Director
Re: SB 119 – Clean Water Commerce Act of 2021 – Support with Amendments

Delmarva Chicken Association (formerly Delmarva Poultry Industry, Inc.), the 1,600-member trade association representing the meat-chicken growers, processing companies and allied business members on the Eastern Shore of Maryland, the Eastern Shore of Virginia, and Delaware supports SB 119 with the sponsor amendments and asks for a favorable committee report.

SB 119 transfers funds from the Bay Restoration Fund to the Clean Water Commerce Fund and sets parameters on how those funds will be used in order to help meet Maryland's Chesapeake Bay Program Total Maximum Daily Loads.

Farmers have already made great strides in reducing nitrogen and phosphorous loads from the Chesapeake Bay and local waterways. Our farmers truly are the first environmentalists, and will continue to do all they can to protect water quality. However, they cannot do it alone, especially as some of the best management practices that benefit water quality have little or negative economic impact on the farm (replacing crops with trees). Farms can only remain as farms if they are economically sustainable. We also know that while farmers may be the largest private landowners, that all Maryland citizens have a responsibility for water quality, including those within urban and suburban areas.

We support SB 119 as it outlines that a minimum of 35% of the Clean Water Commerce Fund shall be used for projects on agricultural lands. But we also support SB 119 as it requires a minimum of 10% of the funds to be used on nonagricultural lands – emphasizing the need for more than agriculture to help with water quality.

With the bill sponsor amendments, we urge **a favorable** committee report on SB 119.

Should you have any additional questions, please feel free to contact me at porter@dcachicken.com or 302-222-4069 or Nick Manis, Manis Canning & Associates, 410-263-7882.

SB 119 LOS.pdf

Uploaded by: Shockley , Jordan

Position: FWA



SENATE BILL 119

Clean Water Commerce Act of 2021

DATE: January 28, 2021

POSITION: SUPPORT WITH AMENDMENTS

Blue Oyster Environmental **recommends a favorable report with sponsor amendments from the Senate Education, Health and Environmental Affairs (EHEA) Committee on Senate Bill 119.**

This legislation, if enacted with what we understand the sponsor amendments to be, would provide refreshed direction for the use of Clean Water Commerce (CWC) funds for performance-based nitrogen pollution reductions and incentivize ecosystem restoration markets.

Oyster Aquaculture

It was over 200 years ago that we, as a country, began using the oyster as a natural resource to establish an economic foundation in the development of the Chesapeake Bay region and our great nation. Indeed, in 1885, 20 million bushels were harvested annually on the Chesapeake Bay, employing 50,000 people, and supporting an industry worth \$50 million. That same industry would be worth \$1.3 billion in 2020 dollars.

Purchasing performance-based nutrient reductions achieved through oyster aquaculture could accelerate the development of a major sustainable oyster aquaculture industry by selling 'environmental outcomes' generated by the oysters themselves as an added value to the product. Technical guidance from the US EPA Chesapeake Bay Program's Oyster Best Management Practice (BMP) Expert panel, combined with regulations in the State of Maryland, shows that oyster aquaculture precisely quantifies the ecosystem services produced by oysters grown to reduce nutrient (nitrogen and phosphorus) pollution on an annual basis.

The Issue Is Not New

Many of the Chesapeake Bay Program's Best Management Practices (BMPs) that would be authorized to receive funding under this legislation are effective at reducing nitrogen pollution to the Chesapeake Bay. Oysters have a known ecological and environmental benefit within their habitats, which are the same waterways that many people live on and use for recreational activities. Oysters filter up to 50 gallons of water per day, leading to an increase in water quality and clarity. They directly filter out the harmful pollutants, nitrogen, and phosphorus, that come from chemical fertilizers and livestock manure within the agricultural sector, as well as sewage and stormwater within the industrial and municipal sectors. Adding additional oysters into the water, whether utilizing aquaculture gear or directly on a submerged land lease, can function much like a natural



oyster reef, providing protection from dangerous storm waves and reducing shoreline erosion. This can help protect many investments that the general public has in shoreside infrastructure, such as homes, businesses, and roads.

With additional funds provided by the sale of environmental outcomes, oyster growers will be able to expand their farms, putting more oysters into the Chesapeake Bay, and its respective tributaries. Oyster aquaculture has been proven to create and enhance habitats for marine life, including fish, crabs, and other bottom dwelling organisms. This has been proven especially with the blue crab population and would be a significant benefit for that fishery both commercially and recreationally.

FOR THESE REASONS, BLUE OYSTER ENVIRONMENTAL RECOMMENDS A FAVORABLE REPORT WITH SPONSOR AMENDMENTS ON SB 119.

About Blue Oyster Environmental

Blue Oyster Environmental, LLC is a for-profit company that seeks to be the leader in the Chesapeake region in re-establishing the Eastern Oyster as the cornerstone of the Chesapeake Bay ecosystem. Located on Maryland's Eastern Shore, in the heart of Dorchester County, Blue Oyster Environmental values the heritage that transformed many seaside villages into thriving communities and is committed to championing the Chesapeake Bay Watermen once again.

Blue Oyster aggregates nutrient credits (i.e., "environmental outcomes") generated by oysters grown by farmers and through our Co-op program and sell them to individuals, municipalities, and corporations. The revenue generated through this program will provide added value back into the established oyster aquaculture industry and will provide startup capital for individuals interested in becoming oyster farmers.

Please contact Jordan Shockley, CEO, at jshockley@blueoysterenv.com or (443) 225-6860, with any questions you may have.

MBIA SB 119 Testimony final.pdf

Uploaded by: Graf, Lori

Position: INFO

January 21, 2021

The Honorable Paul G. Pinsky
Senate Education, Health & Environmental Affairs Committee
Miller Senate Office Building,
2 West Wing 11 Bladen St.,
Annapolis, MD, 21401

RE: SB119 (Clean Water Commerce Act)

Dear Chairman Pinsky:

The Maryland Building Industry Association, representing 1,100 member firms statewide, appreciates the opportunity to participate in **the discussion surrounding SB 119**(Clean Water Commerce Act of 2021). MBIA **Supports** the Act, but has some concerns.

This bill would transfers \$20,000,000 dollars from the Chesapeake Bay restoration fund which was established in 2004 to improve infrastructure, air quality, the overall environmental health of the Chesapeake Bay. MBIA is concerned about the reallocation of those funds for any other purpose since the initial fund was put in place for a purpose that has not yet been fulfilled. We also have some concerns about the shift of money away from the Urban sector to other sectors with out getting any credits for those reductions.

For these reasons, MBIA respectfully requests the Committee give this measure an favorable report however take our concerns in to consideration. Thank you for your consideration.

For more information about this position, please contact Lori Graf at 410-800-7327 or lgraf@marylandbuilders.org.

cc: Senate Education, Health & Environmental Affairs Committee