



# 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.

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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](mailto: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