



Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor
Jeannie Haddaway-Riccio, Secretary
Allan Fisher, Deputy Secretary

Bill Number: HB 653

Short Title: Conservation Finance Act

Department's Position: Support with Amendments

Explanation of Department's Position

The Maryland Department of Natural Resources supports HB 653 with amendments.

In 2009, Maryland's General Assembly passed creation of the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund (Trust Fund) within the Department of Natural Resources (DNR) to fund non-point source Chesapeake Bay restoration projects. In 2010, the U.S. Environmental Protection Agency (EPA) established the Total Maximum Daily Loads (TMDL or "pollution diet"), which Maryland and the other Chesapeake Bay watershed jurisdictions must meet by 2025. In the years since those two events, our scientific understanding of the bay has evolved, the number and types of Best Management Practices (BMPs) approved by EPA to meet our TMDL have increased greatly, and we have learned many lessons on how to best work with local governments, non-government agencies, and private partners in our collective efforts to restore the Chesapeake and Coastal bays.

The Conservation Finance Act (CFA) moves Maryland forward in realizing our bay restoration goals by applying many of those scientific developments, new tools, and lessons learned to our programs, and policies.

There are several statutory changes in the CFA that would benefit our department:

1. **Pay-for-success contracting:** Changes to the Procurement and Natural Resources articles permit the state to enter into contracts for environmental restoration in which the state pays the contractor only after the project has been certified to achieve the desired environmental outcomes. This is important in environmental restoration as projects may not always perform as anticipated, allows the contractor greater flexibility to adapt a project to address unexpected conditions, and better ensures that state funds are used to realize the desired result.
2. **Consideration of environmental and social co-benefits in awarding of grants:** While nutrient and sediment reductions remain the primary considerations in awarding of Trust Fund grants, the CFA identifies other "ecosystem services" (ex. oyster reefs, climate resilience, wildlife habitat), which DNR may also take into consideration when awarding

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grants. Also identified for consideration are social benefits such as local employment and environmental justice.

3. **Encouragement of aggregated, landscape-level projects:** As we make progress in our bay restoration efforts, there are fewer opportunities to fund large, single practice projects. Smaller and more diverse projects are generally less cost effective for the state to administer. The CFA defines, recognizes, and permits the state to contract with private companies that bundle numerous smaller projects (aggregators) and others that certify the environmental benefits of those projects (evaluators). Working with these private companies is not only more efficient for the state, but also promotes growth of these small businesses.
4. **Authority to fund projects across state lines:** Scientific models recognize that the effectiveness with which a particular BMP improves bay water quality may vary significantly depending on its location in the watershed. Some of the most efficient locations and greatest opportunities for implementing BMPs to reduce pollution are in other jurisdictions. HB 653 recognizes that by authorizing DNR to invest in projects that represent the most cost effective ways to meet Maryland's TMDL.
5. **Independent retrospective review and lessons learned:** The CFA calls for the independent BayStat Scientific Advisory Panel to conduct a review of the effectiveness of the past 13 years of Trust Fund implementation, and make recommendations for the future based on lessons learned.

Furthermore, there are two provisions in the bill intended to incentivize private participation in carbon and other environmental markets. DNR supports these provisions as currently drafted in the bill, and notes that they will require monitoring to ensure they are implemented as intended.

- **Use of state lands to support private forest carbon credit transactions:** Language on page 25, lines 2-8 aids the development of private carbon markets by authorizing use of new state land plantings required by the Forest Conservation Act to provide additional carbon credits to buffer against risk of project failure. Existing DNR regulatory authority can be used to define conditions to make the tracking and reporting feasible for state agencies and avoid other conflicts with state participation in carbon markets.
- **Grantee authority to receive compensation from alternative environmental markets:** Language on page 27, lines 1-8 prohibits DNR from restricting grant recipients from participating in markets and programs that provide compensation to the grant recipient for environmental outcomes in addition to those funded through the DNR program. DNR does not currently prohibit this type of participation. To the contrary, it is the Department's hope that applicants will design projects that may take advantage of these markets in order to realize greater co-benefits to Maryland's environment and to reduce costs requested of the Department. However, DNR also needs to be careful that grantees do not take undue advantage of these opportunities by requesting and receiving state funding to fully implement projects from which they later expect to receive financial benefit. It is the Department's hope that grantees will apply a reasonable amount of the expected compensation to reduce the costs that they are requesting from the state. This is not a problem to date, but DNR will monitor the situation and work with the General Assembly as appropriate in the future if that becomes the case.

The Department respectfully submits the following three amendments for the committee's consideration:

Amendment #1: Timing for use of Trust Fund to procure environmental outcomes.

As currently written, the CFA allows the Trust Fund to procure an expanded list of outcomes beyond only nutrient and sediment reductions for projects achieved "before January 1, 2021," which would be retroactive to the date that the bill takes effect. DNR recommends amending the implementation date as follows to be consistent with the implementation date of the bill and to be consistent with the cycle for grant awards which aligns with the fiscal year.

Page 33, Line 12

FUNDS FROM THE TRUST FUND MAY NOT BE USED TO PROCURE ENVIRONMENTAL OUTCOMES ACHIEVED BEFORE ~~JANUARY 1, 2021~~ JULY 1, 2022.

Amendment #2: Due date of Scientific Advisory Panel's retrospective analysis.

As currently written, the CFA calls for the BayStat Program's Scientific Advisory Panel to conduct a retrospective analysis of the cost effectiveness of FY12 – FY23 fund distributions from the Trust Fund and submit a report by January 31, 2023. DNR supports the analysis, but believes that the due date is aspirational and might not be achievable given the time allotted.

DNR recommends amending the date to January 31, 2024.

Page 35, Line 20

ON OR BEFORE JANUARY 31, 2023~~4~~:

Amendment #3: Cost and timing of digital tool study.

Uncodified language at the end of the CFA (Page 47, Line 26 – Page 48, Line 17) calls for DNR, in consultation with the BayStat Subcabinet, to conduct a study of digital tools and platforms for Chesapeake Bay restoration and climate solutions, and submit it by December 1, 2023. The required study references and is modeled after the federal "Digital Climate Solutions Report" required by the Infrastructure Investment and Jobs Act.

The BayStat Subcabinet agencies do not have the expertise to conduct this study and, therefore, would need to hire a consultant or a contractor. DNR also conferred with the Maryland Department of Information Technology, who similarly replied that they do not have the in-house expertise to conduct the study. The bill calls for DNR to fund the study through "funding received through State or federal grant programs." No such grant

funding is currently available. DNR has reached out to the University of Maryland (UMD) for a cost estimate to carry out the study. **UMD's initial estimate is \$1 million, which DNR has submitted as part of the fiscal note.**

In order to reduce the fiscal impact on state resources, DNR recommends:

1. Amend the current report due date to provide an additional year (from December 1, 2023 to December 1, 2024) to give the agencies sufficient time after the federal study is submitted (due Nov. 15, 2022) to identify funding sources, apply for that funding if it exists, and conduct the Maryland study as appropriate subject to appropriation or receipt of grant funding , and

Page 48, Line 15.

On or before December 1, 202~~3~~⁴

2. Amend the current language to clarify that the study should be conducted only with whatever external funding is realized. The extent of the study will be reflective of the degree of external funding realized.

Page 47, Line 28

experts and ~~using funding received~~ subject to receipt of sufficient funding through State and federal grant programs, the

For these reasons, the Maryland Department of Natural Resources respectfully requests the committee to grant HB 653 a favorable report with amendments.