



March 1, 2022

The Honorable Delores Kelley, Chair  
Finance Committee  
Miller Senate Office Building, 3E  
Annapolis, Maryland 21401

**Re: Senate Bill 902 - Dams With Hydroelectric Power Plants - Annual Compensation Fee**

Dear Chair Kelley and Members of the Committee:

The Maryland Department of the Environment (MDE or the Department) has reviewed SB 902, entitled *Dams With Hydroelectric Power Plants – Annual Compensation Fee*, and would like to provide some information regarding this legislation.

SB 902 will require the Maryland Public Service Commission (PSC) to establish an annual compensation fee to be paid by the owner of any hydroelectric power plant with a generating capacity of at least 30 megawatts, which is connected to the electric distribution grid serving Maryland. The bill gives specific direction to the PSC as to how to calculate the annual fee, and prohibits the dam owner from petitioning the PSC to increase the plant's electricity rates as a way to offset the fee. The fee is to be paid to MDE, which must then transfer the funds to the Chesapeake Bay Trust (CBT). CBT must use 25% of the funds received for administering grants for aquatic species restoration, and 75% for grants to "County oyster committees" for acquiring native Chesapeake Bay oyster shells. Both the PSC and MDE are directed to jointly adopt regulations to carry out the objectives of SB 902.

Under the 2019 Settlement Agreement, Exelon is required to make a \$200 million investment in environmental projects and operational enhancements to improve water quality in the Lower Susquehanna River and the Chesapeake Bay. The agreement settled Exelon's legal challenges to the water quality certification issued in 2018 by Maryland under Section 401 of the Clean Water Act, removing the prospect of years of costly litigation and delay, and instead, set the stage for immediate and lasting water quality benefits. This settlement includes:

- \$52 million to implement new requirements for flow control that will create more natural conditions in the Lower Susquehanna River, resulting in enhancements to aquatic life and the downstream ecosystem, and better upstream migratory fish passage;
- \$47 million for climate resiliency projects, including submerged aquatic vegetation, clams, oysters, and restoration of living shorelines;
- \$41 million to significantly increase efforts to remove trash and debris flowing down the Susquehanna River;
- \$25 million for an unprecedented initiative to restore a healthy population of water-filtering mussels in the Susquehanna River, including contribution of land for the construction of a 40,000 square foot, state-of-the-art hatchery;
- \$19 million for other projects to improve water quality in the Chesapeake Bay, including agricultural projects such as cover crops and forest buffers;
- \$12 million to support MDE and the Department of Natural Resources in overseeing and implementing the agreement;
- \$11 million—over and above the commitments already made by Exelon in its 2016 settlement with the U.S. Fish and Wildlife Service—to make upgrades and operational changes to improve the passage of migrating fish and eels;

- \$5 million to conduct chlorophyll A monitoring and reporting;
- \$1 million for eel-related research and projects; and
- \$500,000 to fund a study of dredged material management options.

After consultation and discussion with stakeholders, including representatives of the Clean Chesapeake Coalition, Local and County Governments, the Chesapeake Bay Foundation, The Nature Conservancy, the Susquehanna River Basin Commission, and Waterkeepers Chesapeake, MDE developed a strategy to optimize the benefits of the Exelon settlement funding for Chesapeake Bay restoration.

Some funding was designated in the settlement to fund important efforts such as eel and mussel restoration in the Susquehanna River. These species are directly impacted by the Conowingo Dam, which prevents eels from migrating upriver and has contributed to the loss of freshwater mussel populations in the river. These mussels, like oysters in the bay, help filter pollution. Approximately \$5 million between now and 2025 and \$2.5 million annually thereafter will be divided between projects above the dam and below the dam to reduce nutrients while building resiliency for the bay. Stakeholders suggested that work at and above the dam would likely provide more nutrient reduction for every dollar; therefore there was support for allocating more funds upstream. MDE is proposing to allocate 70% of the funds to fund projects upstream. The remaining 30% of the funding will be used in the mainstem of the Chesapeake, with a particular focus on the upper bay.

MDE envisions that the funding will be administered by two trusted partners: the Susquehanna River Basin Commission and CBT (proposed). Above the dam, the Susquehanna River Basin Commission would oversee the use of funds. There was general agreement among stakeholders that the Commission would be a trusted partner in bay restoration and further, that implementing the [Conowingo Watershed Implementation Plan](#) was the right starting point. Below the dam, the intended partner is the CBT, who already has experience in optimizing funds to help the Chesapeake Bay.

MDE and the many stakeholders and partners working to restore the river and the bay should factor environmental justice and climate resiliency into every project decision. The Department intends to prioritize any proposals that have additional benefits such as working in vulnerable communities with environmental justice concerns, restoring natural shorelines and areas of submerged aquatic vegetation, etc.

Thank you for considering the Department's information regarding this legislation. We will continue to monitor SB 902 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 at [tyler.abbott@maryland.gov](mailto:tyler.abbott@maryland.gov).

Sincerely,



Tyler Abbott

cc: The Honorable Steve Hershey  
Lee Currey, Director, Water and Science Administration