

# HOUSE BILL 1311

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By: **Delegates Mautz, Adams, Arentz, Buckel, Hornberger, Jacobs, Krebs, McComas, Morgan, Otto, Pippy, Reilly, and Shoemaker**

Introduced and read first time: February 11, 2022

Assigned to: Appropriations and Environment and Transportation

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## A BILL ENTITLED

1 AN ACT concerning

2 **Chesapeake Bay Restoration Fund – Authorized Uses**  
3 **(Chesapeake Bay Restoration Fund Lockbox Act of 2022)**

4 FOR the purpose of restricting the use of the Chesapeake Bay Restoration Fund to certain  
5 purposes directly related to addressing pollution from wastewater treatment  
6 facilities, on-site sewage disposal systems, sewer systems, and stormwater  
7 management systems; repealing provisions of law requiring certain amounts to be  
8 transferred from the Chesapeake Bay Restoration Fund to the Clean Water  
9 Commerce Account, the Chesapeake Bay Trust, the Chesapeake and Atlantic  
10 Coastal Bays 2010 Trust Fund, and the Department of Agriculture; redesignating  
11 the Clean Water Commerce Account as a special, nonlapsing fund called the Clean  
12 Water Commerce Fund; and generally relating to the Chesapeake Bay Restoration  
13 Fund.

14 BY repealing and reenacting, with amendments,  
15 Article – Agriculture  
16 Section 8–706  
17 Annotated Code of Maryland  
18 (2016 Replacement Volume and 2021 Supplement)

19 BY repealing and reenacting, with amendments,  
20 Article – Environment  
21 Section 9–1605.2(a) and (i) and 9–1605.4(a) through (e), (f)(1), (g), (h), (q)(2), and (r)  
22 Annotated Code of Maryland  
23 (2014 Replacement Volume and 2021 Supplement)

24 BY repealing and reenacting, without amendments,  
25 Article – Natural Resources  
26 Section 8–1911(b) and (h)  
27 Annotated Code of Maryland

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2012 Replacement Volume and 2021 Supplement)

BY repealing and reenacting, with amendments,  
Article – Natural Resources  
Section 8–1911(e)  
Annotated Code of Maryland  
(2012 Replacement Volume and 2021 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
That the Laws of Maryland read as follows:

### Article – Agriculture

8–706.

(a) To maximize participation in the Conservation Reserve Enhancement Program, in fiscal years 2023 through 2031, inclusive, a landowner who enrolls land planted with a forested streamside buffer shall receive a one-time signing bonus of up to \$1,000 per acre of land enrolled.

(b) Signing bonuses provided under this section shall be funded with[:

(1) Money] MONEY appropriated under subsection (c) of this section[; and

(2) The amount specified in § 9–1605.2(i)(11)(i) of the Environment Article].

(c) (1) For fiscal years 2024 through 2031, in each year the Governor shall appropriate \$2,500,000 in the annual State budget to fund tree planting under this section and other tree planting programs on agricultural land.

(2) Money appropriated under this subsection is supplemental to and may not take the place of funding that would otherwise be appropriated for tree plantings under this section and other tree planting programs on agricultural land.

### Article – Environment

9–1605.2.

(a) (1) There is a Bay Restoration Fund.

(2) It is the intent of the General Assembly that the Bay Restoration Fund be:

(i) Used, in part, to provide the funding necessary to upgrade any of the wastewater treatment facilities that are located in the State or used by citizens of the State in order to achieve enhanced nutrient removal where it is cost-effective to do so; [and]

1 (ii) Available for treatment facilities discharging into the Atlantic  
2 Coastal Bays or other waters of the State, but that priority be given to treatment facilities  
3 discharging into the Chesapeake Bay; AND

4 (iii) USED ONLY FOR PURPOSES DIRECTLY RELATED TO  
5 ADDRESSING POLLUTION FROM WASTEWATER TREATMENT FACILITIES, ON-SITE  
6 SEWAGE DISPOSAL SYSTEMS, SEWER SYSTEMS, AND STORMWATER MANAGEMENT  
7 SYSTEMS.

8 (3) The Bay Restoration Fund shall be maintained and administered by the  
9 Administration in accordance with the provisions of this section and any rules or program  
10 directives as the Secretary or the Board may prescribe.

11 (4) There is established a Bay Restoration Fee to be paid by any user of a  
12 wastewater facility, an on-site sewage disposal system, or a holding tank that:

13 (i) Is located in the State; or

14 (ii) Serves a Maryland user and is eligible for funding under this  
15 subtitle.

16 (i) (1) (i) In this subsection the following words have the meanings  
17 indicated.

18 (ii) "Eligible costs" means the additional costs that would be  
19 attributable to upgrading a wastewater facility to enhanced nutrient removal, as  
20 determined by the Department.

21 (iii) "Privately owned wastewater facility" means a wastewater  
22 facility that is owned by a private entity.

23 (iv) "Publicly owned wastewater facility" means a wastewater facility  
24 that is owned by this State or a political subdivision, municipal corporation, or other public  
25 entity.

26 (2) Funds in the Bay Restoration Fund shall be used only:

27 (i) 1. To award grants for up to 100% of eligible costs of projects  
28 relating to planning, design, construction, and upgrade of a publicly owned wastewater  
29 facility for flows up to the design capacity of the wastewater facility, as approved by the  
30 Department, to achieve enhanced nutrient removal in accordance with paragraph (3) of this  
31 subsection; and

32 2. To award grants for up to 50% of eligible costs of projects  
33 relating to planning, design, construction, and upgrade of a privately owned wastewater

1 facility for flows up to the design capacity of the wastewater facility, as approved by the  
2 Department, to achieve enhanced nutrient removal in accordance with paragraph (3) of this  
3 subsection;

4 (ii) In fiscal years 2016 and thereafter, for up to 87.5% of the total  
5 cost of projects, as approved by the Department, relating to combined sewer overflows  
6 abatement, rehabilitation of existing sewers, and upgrading conveyance systems, including  
7 pumping stations;

8 (iii) In fiscal years 2010 and thereafter, for a portion of the operation  
9 and maintenance costs related to the enhanced nutrient removal technology, which may  
10 not exceed 10% of the total restoration fee collected from users of wastewater facilities  
11 under this section by the Comptroller annually;

12 (iv) In fiscal years 2018 and thereafter, after payment of outstanding  
13 bonds and the allocation of funds to other required uses of the Bay Restoration Fund for  
14 funding in the following order of priority:

15 1. For funding the eligible costs to upgrade a wastewater  
16 facility to enhanced nutrient removal at wastewater facilities with a design capacity of  
17 500,000 gallons or more per day;

18 2. For funding the eligible costs of the most cost-effective  
19 enhanced nutrient removal upgrades at wastewater facilities with a design capacity of less  
20 than 500,000 gallons per day; and

21 3. As determined by the Department and based on water  
22 quality, climate resiliency, flood control, and public health benefits, for the following:

23 A. For costs identified under item (ii) of this paragraph;

24 B. For costs identified under subsection (h)(2)(i)1 of this  
25 section; and

26 C. With respect to a local government that has enacted and  
27 implemented a system of charges to fully fund the implementation of a stormwater  
28 management program, for grants to the local government for a portion of the costs of the  
29 most cost-effective and efficient stormwater control measures, including stormwater  
30 measures relating to water quality, climate resiliency, or flood control, as determined and  
31 approved by the Department, from the restoration fees collected annually by the  
32 Comptroller from users of wastewater facilities under this section;

33 (v) As a source of revenue or security for the payment of principal  
34 and interest on bonds issued by the Administration if the proceeds of the sale of the bonds  
35 will be deposited in the Bay Restoration Fund;

36 (vi) To earn interest on Bay Restoration Fund accounts;

1 (vii) For the reasonable costs of administering the Bay Restoration  
2 Fund, which may not exceed 1.5% of the total restoration fees imposed on users of  
3 wastewater facilities that are collected by the Comptroller annually;

4 (viii) For the reasonable administrative costs incurred by a local  
5 government or a billing authority for a water or wastewater facility collecting the  
6 restoration fees, in an amount not to exceed 5% of the total restoration fees collected by  
7 that local government or billing authority;

8 (ix) For future upgrades of wastewater facilities to achieve additional  
9 nutrient removal or water quality improvement, in accordance with paragraphs (6) and (7)  
10 of this subsection;

11 (x) For costs associated with the issuance of bonds;

12 (xi) Subject to the allocation of funds and the conditions under  
13 subsection (h) of this section, for projects related to the removal of nitrogen from on-site  
14 sewage disposal systems and cover crop activities; **AND**

15 (xii) For costs associated with the implementation of alternate  
16 compliance plans authorized in § 4-202.1(k)(3) of this article[;

17 (xiii) After funding any eligible costs identified under item (iv)1 and 2  
18 of this paragraph, for transfers to the Clean Water Commerce Account in accordance with  
19 paragraph (3) of this subsection; and

20 (xiv) After funding any eligible costs identified under item (iv)1 and 2  
21 of this paragraph, for the transfers required under paragraph (11) of this subsection].

22 [(3) In fiscal year 2022 and each fiscal year thereafter, the Department shall  
23 transfer \$20,000,000 from the Bay Restoration Fund to the Clean Water Commerce  
24 Account established under § 9-1605.4 of this subtitle, to be used for the purposes specified  
25 in § 9-1605.4 of this subtitle.]

26 [(4) (3) The grant agreement and State discharge permit, if applicable,  
27 shall require an owner of a wastewater facility to operate the enhanced nutrient removal  
28 facility in a manner that optimizes the nutrient removal capability of the facility in order  
29 to achieve enhanced nutrient removal performance levels.

30 [(5) (4) The grant agreement shall require a grantee to demonstrate, to  
31 the satisfaction of the Department, that steps were taken to include small business  
32 enterprises, minority business enterprises, and women's business enterprises by:

33 (i) Placing qualified small business enterprises, minority business  
34 enterprises, and women's business enterprises on solicitation lists;

1 (ii) Assuring that small business enterprises, minority business  
2 enterprises, and women's business enterprises are solicited whenever they are potential  
3 sources;

4 (iii) Dividing total requirements, when economically feasible, into  
5 small tasks or quantities to permit maximum participation of small business enterprises,  
6 minority business enterprises, and women's business enterprises;

7 (iv) Establishing delivery schedules, where the requirement permits,  
8 that encourage participation by small business enterprises, minority business enterprises,  
9 and women's business enterprises; and

10 (v) Using the services and assistance of the Maryland Department  
11 of Transportation and the Governor's Office of Small, Minority, and Women Business  
12 Affairs in identifying and soliciting small business enterprises, minority business  
13 enterprises, and women's business enterprises.

14 **[(6)] (5)** If the steps required under paragraph **[(5)] (4)** of this subsection  
15 are not demonstrated to the satisfaction of the Department, the Department may withhold  
16 financial assistance for the project.

17 **[(7)] (6)** (i) All wastewater facilities serving Maryland users that have  
18 contributed to the Bay Restoration Fund are eligible for grants under this section, including  
19 the Blue Plains Wastewater Treatment Plant in the District of Columbia.

20 (ii) Grants issued under paragraph (2)(i) of this subsection for  
21 upgrades to the Blue Plains Wastewater Treatment Plant may be awarded only if each  
22 party to the Blue Plains Intermunicipal Agreement of 1985 contributes a proportional share  
23 of the upgrade costs in accordance with the Blue Plains Intermunicipal Agreement of 1985,  
24 as revised and updated.

25 **[(8)] (7)** Priority for funding an upgrade of a wastewater facility shall be  
26 given to enhanced nutrient removal upgrades at wastewater facilities with a design  
27 capacity of 500,000 gallons or more per day.

28 **[(9)] (8)** (i) The eligibility and priority ranking of a project shall be  
29 determined by the Department based on criteria established in regulations adopted by the  
30 Department, in accordance with subsection (l) of this section.

31 (ii) The criteria adopted by the Department shall include, as  
32 appropriate, consideration of:

- 33 1. The cost-effectiveness in providing water quality benefit;
- 34 2. The water quality benefit to a body of water identified by  
35 the Department as impaired under Section 303(d) of the Clean Water Act;

1 3. The readiness of a wastewater facility to proceed to  
2 construction; and

3 4. The nitrogen and phosphorus loads discharged by a  
4 wastewater facility.

5 [(10)] (9) A wastewater facility that has not been offered or has not  
6 received funds from the Department under this section or from any other fund in the  
7 Department may not be required to upgrade to enhanced nutrient removal levels, except  
8 as otherwise required under federal or State law.

9 [(11)] (i) In fiscal year 2023 the Department shall transfer from the Bay  
10 Restoration Fund:

11 1. \$10,000,000 to the Chesapeake Bay Trust for the Urban  
12 Trees Program established under § 8–1911 of the Natural Resources Article;

13 2. \$2,500,000 to the Chesapeake and Atlantic Coastal Bays  
14 2010 Trust Fund in the Department of Natural Resources, to be used, subject to the  
15 requirements of subparagraph (ii) of this paragraph, for tree planting on public and private  
16 land; and

17 3. \$2,500,000 to the Maryland Department of Agriculture to  
18 fund tree plantings under the Conservation Reserve Enhancement Program in accordance  
19 with § 8–706 of the Agriculture Article and other tree-planting programs on agricultural  
20 land.

21 (ii) Funds transferred to the Chesapeake and Atlantic Coastal Bays  
22 2010 Trust Fund under subparagraph (i)2 of this paragraph:

23 1. May be distributed in accordance with § 8–2A–04(c)(2) of  
24 the Natural Resources Article;

25 2. May be used to cover the costs of:

26 A. Site preparation, labor, and materials for tree-planting  
27 projects;

28 B. Maintaining trees following a tree-planting project; and

29 C. Landowner incentive payments or signing bonuses of up  
30 to \$1,000 per acre of trees planted;

31 3. May not be used to plant trees intended for timber harvest;  
32 and

1                   4.     May be used only for tree plantings on private land if the  
2 landowner enters into a binding legal agreement to maintain the planted area in tree cover  
3 for at least 15 years.

4                   (iii)   Funds transferred from the Bay Restoration Fund under this  
5 paragraph are supplemental to and may not take the place of funding that otherwise would  
6 be appropriated for the programs and initiatives specified in subparagraph (i) of this  
7 paragraph.]

8 9–1605.4.

9           (a)   (1)   In this section the following words have the meanings indicated.

10                   (2)   [“Account” means the Clean Water Commerce Account.

11                   (3)] “Aggregator” means a person that facilitates or coordinates the  
12 establishment of practices or projects that:

13                           (i)   Are implemented by the person or by others;

14                           (ii)   Produce a quantifiable environmental outcome;

15                           (iii)   Are registered by the person; and

16                           (iv)   Are made available for purchase by the Department under this  
17 section.

18                   [(4)] (3)   (i)   “Agricultural practice” means a best management practice  
19 that is:

20                           1.    Approved by the Chesapeake Bay Program Partnership;  
21 and

22                           2.    Implemented on land or water that is used for the  
23 production or processing of an agricultural crop.

24                           (ii)   “Agricultural practice” includes agricultural, horticultural,  
25 silvicultural, and aquacultural operations.

26                   [(5)] (4)   “Chesapeake Bay TMDL” means the total maximum daily load  
27 approved by the U.S. Environmental Protection Agency under the Clean Water Act for the  
28 Chesapeake Bay.

29                   [(6)] (5)   “Environmental outcome” means nitrogen load reductions that  
30 can be directly measured or modeled using the Chesapeake Bay Program Models.



1           **(6) “FUND” MEANS THE CLEAN WATER COMMERCE FUND.**

2           (7) (i) “Nonagricultural landscape restoration project” means a project  
3 that:

- 4                           1. Is installed on nonagricultural lands;  
5                           2. Has an intended lifespan of at least 10 years; and  
6                           3. Provides environmental outcomes.

7                           (ii) “Nonagricultural landscape restoration project” includes a  
8 project that returns land to native or natural land cover, such as afforestation or  
9 reforestation projects.

10           (8) “Quantification plan” means a plan approved by the Department that  
11 describes:

12                           (i) The method that will be used to measure or model environmental  
13 outcomes;

14                           (ii) The required compliance monitoring that will occur to ensure  
15 that the proposed actions were taken;

16                           (iii) Any verification steps that may be carried out by the Department  
17 or the owner of a project or practice to confirm environmental outcomes; and

18                           (iv) The timeline for proposed payments under a contract with the  
19 Department.

20           (b) **(1) There is a Clean Water Commerce [Account] FUND.**

21                           **(2) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT**  
22 **SUBJECT TO § 7–302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.**

23                           **(3) THE STATE TREASURER SHALL HOLD THE FUND SEPARATELY,**  
24 **AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.**

25           (c) The purpose of the [Account] FUND is to purchase environmental outcomes  
26 in support of the State’s efforts to achieve the Chesapeake Bay TMDL.

27           (d) The Secretary shall administer the [Account] FUND.

28           (e) The [Account] FUND consists of[:

1 (1) Revenue transferred to the Account under § 9–1605.2(i)(2)(xiii) of this  
2 subtitle; and

3 (2) Any other] ANY money from any [other sources] SOURCE accepted for  
4 the benefit of the [Account] FUND.

5 (f) (1) Subject to the provisions of this subsection, the [Account] FUND may  
6 be used only for the purchase of cost-effective environmental outcomes that:

7 (i) Support the State’s efforts to achieve the Chesapeake Bay  
8 TMDL; and

9 (ii) Have an expected life of at least 10 years.

10 (g) Expenditures from the [Account] FUND may be made only in accordance with  
11 the State budget.

12 (h) The Department may establish subaccounts within the [Account] FUND to  
13 carry out the purposes of this section.

14 (q) (2) (i) An environmental outcome that is funded entirely with public  
15 funds is not eligible to be purchased with funds from the [Account] FUND.

16 (ii) If an environmental outcome is partially funded with public  
17 funds and is verified under subsection (l) of this section, funds from the [Account] FUND  
18 may be used to purchase the remaining portion of the environmental outcome that is not  
19 funded with public funds.

20 (r) [In conjunction with the report required under § 9–1605.2(j)(6) of this subtitle,  
21 on] ON or before December 31 each year, the [Bay Restoration Fund Advisory Committee]  
22 DEPARTMENT shall report, in accordance with § 2–1257 of the State Government Article,  
23 to the Senate Education, Health, and Environmental Affairs Committee and the House  
24 Environment and Transportation Committee on:

25 (1) The total amount expended and encumbered under this section:

26 (i) During the immediately preceding fiscal year; and

27 (ii) Since July 1, 2022;

28 (2) The amount and type of environmental outcomes purchased under this  
29 section and the types of projects or practices that produced those outcomes, including  
30 information on:

31 (i) The cost per unit of nitrogen reduced or removed; and

1 (ii) The relative contribution of each environmental outcome toward  
2 closing any gaps in achieving the nutrient and sediment targets of the Chesapeake Bay  
3 TMDL;

4 (3) The type and value of any co-benefits provided by projects or practices  
5 funded under this section; **AND**

6 (4) The cost-effectiveness of environmental outcomes purchased under this  
7 section as compared with other approaches to reducing nitrogen[; and

8 (5) For fiscal year 2025 only, any amendments to this section necessary to  
9 reflect historic and projected demand for funding from the Account and the Bay Restoration  
10 Fund, including an assessment and recommendation on possible changes to the  
11 percentages specified under subsection (f) of this section].

## 12 Article – Natural Resources

13 8–1911.

14 (b) There is an Urban Trees Program administered by the Trust.

15 (e) (1) The Program shall be funded with:

16 (i) The amount specified in [§ 9–1605.2(i)(11)(i) of the Environment  
17 Article] **SUBSECTION (H) OF THIS SECTION**; and

18 (ii) Any additional funds that may be allocated by the Trust through  
19 its annual budget process.

20 (2) The Trust shall seek federal funds and grants and donations from  
21 private sources to be made to the Trust for the purpose of the Program.

22 (h) (1) For fiscal years 2024 through 2031, in each year the Governor shall  
23 include in the annual State budget an appropriation of \$10,000,000 for the Program.

24 (2) Money appropriated under this subsection is supplemental to and may  
25 not take the place of funding that otherwise would be appropriated for the Program.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
27 1, 2022.