



2022 Conservation Finance Act

Maryland’s legislature passed the Conservation Finance Act ([SB0348](#)/[HB0653](#)) with overwhelming bipartisan support. The legislation is centered around a set of changes that do not increase taxpayer costs yet are designed to help the state attract at least \$100 million/year in private investment for conservation. The following provides a detailed section-by-section analysis of changes the legislation makes to authorities and programs of the Departments of Environment, Natural Resources, Transportation, and Agriculture and to Maryland’s finance and procurement code. The overwhelming focus of the bill is on actions that improve water quality, but the changes will also advance environmental justice and public health, expand initiatives around forest and agricultural soil carbon sequestration, and reward projects that deliver co-benefits like local jobs, flood risk reduction, or climate resilience.

DEPARTMENT OF AGRICULTURE

EXPANDING OPTIONS FOR CARBON CREDITS FROM AGRICULTURE

- Allows the Department to negotiate partnerships with experienced organizations who can work with the state to assist private landowners with voluntary participation in carbon offset markets. A separate provision ensures that existing cost share agreements between the state and private landowners do not interfere with their ability to get compensation from carbon credit or soil health markets.

MARYLAND DEPARTMENT OF ENVIRONMENT

ONE STEP TOWARD A HUMAN RIGHT TO WATER

- California has adopted a ‘human right’ to affordable, clean water in its state law, and in 2021, New York voters approved the establishment of a right to clean water in the state constitution. This provision of the bill asks the Commission on Environmental Justice & Sustainable Communities to make recommendations that would create progress toward a right to safe, clean, and affordable water in Maryland.

DIRECTING FINANCING TO HAZARDOUS DAM REMOVAL AND RENEWABLE POWER GENERATION

- Like all states, Maryland has old, often-abandoned dams that experts believe could fail and therefore create significant risk to lives and property, but there is little or no funding to address the problem. This language encourages private financing for hazardous dam removal, including by making clear that the restored habitat created by dam removal can be used to mitigate impacts caused by other projects to water resources, just like federal policy. It also directs the Department to notify the Maryland Industrial Development Financing Authority of its priorities so that they may be consider helping to finance projects. The language gives first priority to dam removals for fish passage or other ecological benefits before identifying hazardous structures that could be retrofitted to generate small scale hydropower.

GREEN INFRASTRUCTURE FINANCING FOR WATERSHEDS

- Makes Maryland the second state (after California) to put green and blue infrastructure on par with gray infrastructure by explicitly stating that they can be financed in the exact same manner as gray infrastructure.

DEFINING GREEN INFRASTRUCTURE AND BLUE INFRASTRUCTURE

- Makes Maryland the first state to define blue infrastructure, and creates definitions of both green and blue infrastructure that include flood risk reduction and carbon sequestration as primary goals.

EXPANDING OPTIONS FOR WATER QUALITY LOAN AND FINANCING PROGRAM

- The following changes are made to the Water Quality Revolving Loan Fund based on innovative and effective uses of these federally-backed funds in other states.
- Using linked deposit authority, allows banks and others preapproved by MDE to offer discounted loans for restoration of forests or forest conservation by fee or easement.
 - Allows MDE to provide loans for the protection of source water areas through property acquisition or easements.
 - Using sponsorship authority, allows a local government to serve as the primary borrower and receive a loan for a publicly owned treatment works project at a reduced interest rate if the loan also includes a grant to pay for a green or blue infrastructure project carried out by nonprofits or others.
 - Allows MDE to issue green or blue infrastructure loans for projects carried out in the Susquehanna River watershed that improve Maryland’s water quality and are proposed by a regional or inter-state entity; requires consultation with host state and allocation of total daily maximum load credits.
 - Allows loans to fund master-lease purchase agreements whereby DNR agencies contract with private companies or nonprofits to do work to enhance water quality on state-owned lands.



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| | <ul style="list-style-type: none"> • Requires MDE to prioritize funding for projects that also involve funding authorized under the Bay Trust Fund (DNR), under climate disaster risk mitigation funds, or from private or philanthropic sources. • New federal legislation allows states to set aside money to use as grants to provide technical assistance to small drinking water systems, including disadvantaged communities. The bill directs MDE to place these funds in a special subaccount with the purpose of making it clearer to potential applicants that money is available for this purpose. • Requires MDE to provide an annual report to the legislature on the specific kinds of green and blue infrastructure projects that revolving loan funds are supporting. |
| <p>EXPANDING USES OF THE DRINKING WATER REVOLVING FUND</p> | <p>The following changes are made to the Drinking Water Revolving Loan Fund based on innovative and effective uses of these federally-backed funds in other states.</p> <ul style="list-style-type: none"> • Includes similar new authorities to the Water Quality Revolving Loan Fund (above), including replication of language around pay for success and green bonds that was added by HB94 to the water quality revolving fund last year. • Creates a new priority for environmental justice through the annual intended use plan (i.e. list of loan priorities) with a particular emphasis on toxic lead pipe removal, small water utility consolidation, and green infrastructure installation to mitigate environmental and health hazards in environmental justice communities. • New federal legislation allows states to set aside money to use as grants to provide technical assistance to small drinking water systems, including ones serving disadvantaged communities. The bill directs MDE to place these funds in a special subaccount with the purpose of making it clearer to potential applicants that money is available for this purpose. |
| <p>COMMISSION ON GREEN AND BLUE INFRASTRUCTURE AND RESTORATION POLICY</p> | <ul style="list-style-type: none"> • Establishes a Green and Blue Infrastructure Policy Advisory Commission for 3 years, whose membership includes state agencies, local government, restoration businesses, conservation nonprofits, and others. The purpose of the Commission is to make recommendations on how to promote ecological restoration through green and blue infrastructure practices, including by looking at overlapping local, state, and federal requirements that may hinder climate resilience or ecological restoration projects. |



DEPARTMENT OF NATURAL RESOURCES

HELPING LANDOWNERS PARTICIPATE IN CARBON MARKETS

- Allows the Department to negotiate partnerships with experienced organizations to create statewide or regional partnerships on private and public lands and to assist private landowners with the aggregation of projects, so they can participate in carbon offset markets.

MARYLAND ENVIRONMENTAL TRUST AND DNR FOREST EASEMENTS

- Ensures that existing easements between the trust or DNR and private landowners do not interfere with landowners' ability to get compensation from carbon credit or other ecosystem service markets; also defines ecosystem services to include carbon sequestration, climate resilience, forest health and other services; elsewhere the bill also ensures that any contract or agreement with a private landowner cannot prevent them from participating in voluntary carbon markets if the participation is tied to delivering additional environmental outcomes.

CARBON MARKETS AND AFFORESTATION OF STATE LANDS

- Allows the state to pay for the afforestation of state lands after July 2022 by permitting private landowners to pay for it and thereby be able to count those acres to satisfy buffer or insurance requirements of private carbon credits.
- Directs the agency to initiate within a year at least one forest carbon project on state lands and one blue carbon project in state waters.

SUSQUEHANNA WATERSHED CONSERVATION FINANCE

- Allows Maryland to purchase environmental outcomes from long-term or permanent green or blue infrastructure projects in the Susquehanna River watershed that provide water quality benefits to Maryland; requires Maryland to consult with the host state for their support and agreement as to which watershed implementation plan would be credited for the purchased outcomes.

IMPROVING PRIVATE INVESTMENT IN BAY TRUST FUND GOALS

- The Chesapeake and Coastal Bays 2010 Trust Fund is among Maryland's best funded conservation programs, providing millions in annual grant support. The bill expands the program authority by allowing DNR to use Pay for Success contracts with non-profit or for-profit organizations to achieve trust fund goals. The text provides definitions of environmental outcomes, aggregators, quantification plans, and other features that are necessary to make effective use of Pay for Success contracts.
- Additional language requires the department to look beyond water quality benefits and also prioritize other co-benefits,



including but not limited to, restoration of marine or aquatic resources such as oyster restoration, climate resilience, carbon sequestration, wildlife habitat, local employment, recreation, and environmental justice.

- The bill requires DNR to prioritize funding for projects that also have or are seeking support from other programs including MDE revolving loan funds, climate disaster risk mitigation funds, or from private or philanthropic sources.
- New technology from startup, blue tech, climate tech or mainstream companies has the potential to transform the effectiveness of Bay conservation and climate efforts. The bill directs DNR to use grant moneys to study the potential for distributed sensors, the Internet of Things, blockchain technology, and similar innovations to help Maryland’s efforts to address climate change and clean up the Bay. The language is modelled on a study by the federal Department of Energy that will be completed 1 year earlier.

DEPARTMENT OF TRANSPORTATION

GREEN AND BLUE INFRASTRUCTURE PARTNERSHIPS

- DOT has a public private partnership authority created by the legislature. The bill incorporates green and blue infrastructure into the definition of “public infrastructure asset” thus allowing the Department to create partnerships that are expressly focused on delivery of these types of environmentally beneficial infrastructure. One thing that is different than other kinds of public private partnerships is that green or blue infrastructure rarely generates any revenue so a partnership like this is more likely to be valuable to DOT because it creates efficiencies around working with private landowners, managing multiple small projects, or maintaining projects over a long period of time.

STATEWIDE PROCUREMENT CODE

PUTTING PAY FOR SUCCESS CONTRACTS IN MARYLAND PROCUREMENT CODE

- One of the most important sections of the bill for private investment is language that adds Pay for Success contracts as an 11th acceptable form of state contract under state procurement law. Pay for Success contracts have been a bipartisan initiative in states and at the federal level that shift payments and risks in contracts or that have contractors develop, build, or implement projects at their risk, only being paid when projects deliver the outcomes established in a contract.
- A new subsection is added that defines many of the criteria or requirements of Pay for Success contracts and authorizes it to



be used by agencies that undertake environmental restoration and conservation including the Department of Agriculture, Department of the Environment, Department of Natural Resources, Department of Transportation, and the Department of General Services.

- Creates a definition of “environmental outcome” as a commodity that is modeled or directly measured as a single, quantifiable, and certified unit of improvement to the environment, including nutrient and carbon benefits, allowing simpler forms of contracting.
- Gives separate authority for the Maryland Environmental Service to use Pay for Success contracts and directs them to carry out a review every three years of previously completed Pay for Success contracts to document what is or is not working through this approach.

UNCODIFIED SECTION

CREATION OF A TASK FORCE ON BEST ACCOUNTING PRACTICES FOR NATURAL CAPITAL

- This section creates a temporary task force, primarily of state and local government officials, that make recommendations on changes to take advantage of new federal accounting standards regarding nature’s economic benefits, on public accounting practices that could account for those benefits, and on potential ways to engage land trusts and others in using these natural assets to create equity and climate resilience in disadvantaged communities.

