

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1266

(Delegate Stein)

Environment and Transportation and
Appropriations

Education, Energy, and the Environment and
Budget and Taxation

Clean Water Commerce Account - Contracts for the Purchase of Environmental
Outcomes

This bill requires the Maryland Department of the Environment (MDE), on request, when entering into a contract for the purchase of environmental outcomes under the Clean Water Commerce Account (CWCA) for a project that includes construction, reconstruction, or rehabilitation, to allow nonuniform payment schedules that allow for a cost-per-pound of nitrogen reduced that varies with the achievement of performance milestones, as agreed upon by both parties to the contract. The first performance milestone may not occur before the construction, reconstruction, or rehabilitation is complete. Further, in order to ensure the achievement of environmental outcomes agreed to in a CWCA contract, MDE may require (1) a minimum final payment and (2) for a contract award that is more than \$500,000, additional financial protections, including a letter of credit, an insurance instrument, or a performance bond. **The bill takes effect July 1, 2024.**

Fiscal Summary

State Effect: Special fund administrative expenditures for MDE increase by an unknown but likely modest amount beginning in FY 2025. Overall finances of CWCA are unaffected; however, the structure of affected contracts for environmental outcomes is likely changed under the bill to provide nonuniform payments instead of level payments.

Local Effect: Local government finances are potentially significantly affected, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Current Law:

Clean Water Commerce Account

Chapters 694 and 695 of 2021 created CWCA. MDE is required to transfer \$20.0 million each fiscal year from the Bay Restoration Fund (BRF) into the account to be used by MDE to purchase environmental outcomes to help the State achieve water quality goals. “Environmental outcomes” are nitrogen load reductions that can be directly measured or modeled using the Chesapeake Bay Program Models.

Specified percentages of the funding must be used to procure environmental outcomes from certain types of practices or projects, and any unencumbered funds not used to purchase environmental outcomes according to the percentages are no longer subject to the percentage requirements and available for use consistent with the CWCA statute in subsequent fiscal years.

MDE must (1) use a competitive process to invite funding proposals from interested persons, as specified, for the provision of environmental outcomes; (2) develop and use a scoring system to evaluate a submitted funding proposal; (3) provide each person that submits a funding proposal with a copy of the scoring system, as specified; and (4) publicly announce a request for proposals or otherwise initiate a procurement process for environmental outcomes to be funded under CWCA at least once per year.

When evaluating proposals, MDE must prioritize specified factors, with the first priority being the dollar cost per unit of environmental outcome, followed by certain co-benefits. MDE must use consistent standards and processes for verifying environmental outcomes through the confirmation of modeling results, the confirmation of installations, or, where appropriate, the measurement of outcomes during or after the initiation of a project or practice. None of these requirements are altered by the bill.

A contract entered into by MDE may be funded for the extended life of the project or practice yielding the environmental outcome, not to exceed 20 years. A contract must:

- require the owner of the project or practice to periodically submit status updates in accordance with the quantification plan for the environmental outcomes of the project or practice;
- require that payment for environmental outcomes be conditioned on the achievement and verification of the environmental outcomes in accordance with the quantification plan;

- include a schedule of payments that will be made as environmental outcomes are achieved and verified; and
- require reporting on the amount of nitrogen and, to the extent that it can be feasibly determined without significant expense, phosphorus and sediment that are removed annually by the project or practice.

An environmental outcome that is funded entirely with public funds is not eligible to be purchased with funds from CWCA. Subject to verification by MDE, if an environmental outcome is partially funded with public funds, CWCA may be used to purchase the remaining portion of the environmental outcome that is not funded with public funds.

Provisions related to CWCA terminate June 30, 2030.

State Fiscal Effect: The bill does not affect the overall finances of CWCA. MDE will continue to approve the purchase of up to \$20 million in environmental outcomes each fiscal year through fiscal 2030 and transfer \$20 million from BRF to CWCA to pay for the outcomes. However, the structure of affected contracts for environmental outcomes is likely changed under the bill to provide nonuniform payments instead of level payments.

MDE advises that it experiences additional administrative costs beginning in fiscal 2025, which are funded through the BRF Wastewater Account, due to increased complexity related to the administration of the program to allow for nonuniform payment schedules. MDE did not provide further detail on the potential amount of such costs but agrees that they are likely modest. Accordingly, special fund administrative expenditures for MDE increase by an unknown but modest amount beginning in fiscal 2025.

Local/Small Business Effect: Local governments and small businesses are potential recipients of CWCA funding and benefit from the ability to enter into contracts for projects that allow nonuniform payment schedules on request (and as agreed upon by both parties to the contract). However, MDE advises that proposals that include long-term financing will be considered less competitive compared to entities that, under the bill, do not include long-term financing. In addition, under the bill, MDE may require a minimum final payment and, for contract awards greater than \$500,000, additional financial protections. Therefore, the effect on any particular local government or small business is unknown but could be significant (in the case of local governments) or meaningful (in the case of small businesses).

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 1144 (Senators Guzzone and Elfreth) - Education, Energy, and the Environment and Budget and Taxation.

Information Source(s): Maryland Department of the Environment; Department of Natural Resources; Maryland Department of Agriculture; Maryland Environmental Service; Anne Arundel and Worcester counties; Maryland Municipal League; Department of Legislative Services.

Fiscal Note History: First Reader - March 6, 2024
js/lgc Third Reader - March 21, 2024
Revised - Amendment(s) - March 21, 2024
Revised - Clarification - March 21, 2024

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