

January 26, 2021

The Honorable Paul Pinsky
Chair, Education, Health and Environmental Affairs Committee
2 West Miller Senate Office Building
Annapolis, Maryland 21401

The Honorable Cheryl C. Kagan
Vice Chair, Education, Health and Environmental Affairs Committee
2 West Miller Senate Office Building
Annapolis, Maryland 21401

RE: Comments in support of Senate Bill 119, the Clean Water Commerce Act of 2021

Dear Chair Pinsky, Vice Chair Kagan, and members of the Education, Health and Environmental Affairs Committee:

Maryland is the first state in the country with a program like the Clean Water Commerce Act (passed in 2017) which pays for projects only after they deliver verified outcomes. The Chesapeake and Coastal Bays Trust Fund also funds projects only after they are successfully completed. The proposed Clean Water Commerce Act of 2021 revisions will make this program stronger and even more of a model for other states to follow.

The bill is noteworthy because it creates a definition of environmental outcomes focused on measured or modelled environmental progress. This approach should be more broadly used under other state programs. Programs that pay for outcomes instead of activities, labor, and materials reduce risk to taxpayers, incentivize strong performance, simplify administrative paperwork, and typically deliver significant cost savings compared to grant or reimbursable cost-based approaches. This contract or procurement mechanism has become known, authorized, and used in other states as “pay for success procurement”. It would be helpful to have even more language in statute to ensure that contracting procedures are as tailored as possible to this procurement approach. However, if the legislature passes this bill, as we hope you will, we expect it will help Maryland find and discover lower cost ways to keep nitrogen pollution out of the Bay, more innovative ways to achieve those reductions, and reduce staff burdens of program administration.

We also strongly support the expanded eligibility for agricultural and forest lands – the exclusion of these lands was a deficit in the 2017 legislation that has hamstrung the program for three years.

We commend the sponsors of the bill and the Chesapeake Bay Commission for championing the role of private conservation finance that this proposed version of the program will depend upon.

Private conservation finance is one of the most rapidly growing areas of environmental funding in either of two ways. Private dollars can finance projects before being paid back by a public agency (as in this case). These Pay for Success approaches were first championed by the Obama Administration but are growing more rapidly in state policies across the country. Private funding can also finance projects that are paid back by other non-government sources. For example, higher prices for certified timber or

that produce voluntary carbon credits, voluntary water quality credits, or habitat or nutrient offset requirements paid for by private businesses or organizations. We believe the bill will increase the level of this private investment in Maryland and help deliver a flow of competitively priced outcomes for the program to purchase.

We support the bill without condition but are sharing a few ideas that would also make the program even stronger.

The first is to allow the state to use models in addition to the Chesapeake Bay Program model to quantify and verify outcomes if the model is pre-approved by the state. Why is this important? Because there are lots of state and federal programs that can already pay for every activity approved by the Bay model. Allowing MDE to approve additional models on which to base payments under this program would allow it to capture new approaches that can deliver efficient water pollution reductions.

Secondly, we agree that nitrogen is the most important nutrient to focus on, but we encourage you to include “nitrogen, phosphorus, or sediment load reduction” in the definition of environmental outcome, as all three contribute to pollution in the Bay. Language already in section 9-1605.4 (o) requires MDE to prioritize nitrogen pollution reductions. Doing so allows MDE to prioritize nitrogen pollution reductions but to secondarily try to maximize phosphorus or sediment load reductions.

Our last suggestion is related to language that could hurt its applicability and relevance to Maryland farmers. The bill requires that load reductions purchased by the program must be in addition to those required by “federal, state, or local law, regulation, or permit.” Although EPA has determined that non-point source nutrient runoff from agricultural land is not regulated, state and local policy is less clear, and a baseline of conservation actions is sometimes considered a requirement. While a limitation like this may make sense in Maryland’ nutrient trading program, the Commerce Act is an entirely different program. This program is not in any way like the state’s trading program. It is simply a way for the state to gain efficient outcomes to contribute to the TMDL, just like MACs cover crop cost share and several other programs. There is no trading. Thus, we do not believe it makes sense to impose baseline requirements on farmers who would participate in the Commerce Act program.

Sincerely,



Joel Dunn
President & CEO
Chesapeake Conservancy



Timothy Male
Executive Director
Environmental Policy Innovation Center