

Chesapeake Watershed Restoration Professionals

Senate Bill 348 Conservation Finance Act

Position: FAVORABLE WITH AMENDMENTS

February 16, 2022

Honorable Kumar Barve
Chair, Environment and Transportation Committee

Chairman Barve, Vice-Chair Stein, and Committee Members,

On behalf of the Chesapeake Watershed Restoration Professionals (CWRP), we strongly support HB 653 – Conservation Finance Act with several amendments that we consider strengthen the bill. CWRP was founded in November of 2020 and represents Maryland professionals whose daily work improves the health of Maryland’s waters and our prized Chesapeake Bay. We thank Senator Elfreth for leading the charge on this important issue and the Senate’s tremendous support of advancing policy that protects the Chesapeake Bay.

This bill creates frameworks across several agencies and funds that will allow greater partnership between government and private industry that will collectively have a direct impact on Maryland making measurable growth in protecting our environment and our waters. We have several amendments that are outlined and explained following the written testimony. However, our amendments are briefly described two of our amendments below.

First, we suggest adding an amendment to the Blue and Green Infrastructure fund to include any other best management practice (BMP) approved by the Administration. We believe this amendment ensures that the Maryland Water Infrastructure Financing Administration has the discretion to approve new BMPs without having to return to the Maryland General Assembly to seek such approvals. We suggest a similar amendment related to ecosystem services in the Maryland Environmental Trust.

Second, while CWRP is in strong support of Pay-for-Success contracting as tool for agencies to more efficiently to tackle large-scale environmental procurements, we are concerned that there could be a race-to-the-bottom and the awarding of contracts to the lowest bidder without regard for the qualifications of the awardee. A Pay-for-Success contract would entrust a private entity to work with sensitive natural resources on behalf of the State. CWRP strongly believes that the entity entrusted with such a responsibility should be qualified. CWRP proposes integrating qualifications-based selection (QBS) criteria for Pay-for-Success contracts for services only. As the legislation states, Pay-for-Success contracting shifts the risk of performance to the contractor as payment is not made until achievement of the outcome. Requiring QBS on services contracts ensures the outcomes are reached.

We thank the committee for their consideration of this important legislation and the issues we have raised. We look forward to working with you in the coming years to strengthen Maryland’s environmental laws.

Sincerely,

Liam O’Meara
President
Chesapeake Watershed Restoration Professionals

Amendments to House Bill 653 – Conservation Finance Act

Submitted By:

Chesapeake Watershed Restoration Professionals

Amendment No. 1:

On page 8, line 23: Strike “AND”. In line 24, after “POPULATIONS”, insert, “AND ANY OTHER BEST MANAGEMENT PRACTICE APPROVED BY THE DEPARTMENT”

On page 11, line 9: Strike “AND”. In line 10, after “HARVESTING”, insert, “AND ANY OTHER BEST MANAGEMENT PRACTICE APPROVED BY THE DEPARTMENT”

On page 24, line 13: Strike “AND”. In line 14, after “WETLANDS”, insert, “AND STREAMS; AND ANY OTHER ECOSYSTEM SERVICE APPROVED BY THE DEPARTMENT”

On page 25, line 27: Strike “AND”. In line 28, after “WETLANDS”, insert, “AND STREAMS; AND ANY OTHER ECOSYSTEM SERVICE APPROVED BY THE DEPARTMENT”

Explanation: This ensures that as best management practices and ecosystem services evolve, the responsible department has the discretion to approve new methods without going to the Legislature for approval.

Amendment No. 2:

On page 9, line 27: After “NUTRIENT”, insert “, SEDIMENT.”

On page 27, line 20: After “NUTRIENT”, insert “, SEDIMENT.”

On page 39, line 1: After “NUTRIENT”, insert “, SEDIMENT.”

Explanation: Nutrients and sediments are different, and the law should explicitly recognize the difference. Sediment is its own pollutant and impairment.

Amendment No. 3

On page 27, line 24: After “MEASURES”, insert, “THAT: (1) IS A RECOGNIZED EXPERT IN ECOSYSTEM SERVICES AND THE DESIGN, MONITORING, AND MANAGEMENT OF BLUE AND GREEN INFRASTRUCTURE; AND (2) IS AN INDEPENDENT AND IMPARTIAL PERSON OR GROUP”

On page 39, line 7: After “MEASURES”, insert, “THAT: (1) IS A RECOGNIZED EXPERT IN ECOSYSTEM SERVICES AND THE DESIGN, MONITORING, AND MANAGEMENT OF BLUE AND GREEN INFRASTRUCTURE; AND (2) IS AN INDEPENDENT AND IMPARTIAL PERSON OR GROUP”

Explanation: This amendment adds guardrails to the evaluator to ensure they have the necessary expertise to make such determinations.

Amendment No. 4

On page 37: After line 15, insert: “(H) QUALIFICATIONS-BASED SELECTION CRITERIA MEANS A PROCESS THROUGH WHICH A UNIT UTILIZING A PAY-FOR-SUCCESS CONTRACT FOR SERVICES TAKES INTO CONSIDERATION THE QUALIFICATIONS AND DEMONSTRATED COMPETENCE OF THE ORGANIZATION.”

Explanation: Qualifications-based selection (QBS) in environmental engineering projects ensures that the State avoids race-to-the-bottom bidding for projects when dealing with our complex ecosystems and natural resources. In a pay-for-success environment, an engineering firm can offer the lowest bid and essentially have an unlimited amount of time to complete a project because the payment is not due until a significant portion of the environmental outcome is delivered. Utilizing QBS balances the importance of recognizing environmental outcomes in a timely manner.