

March 26, 2024

The Honorable Brian Feldman, Chair, and
The Honorable Cheryl Kagan, Vice Chair
Maryland Senate Education, Energy, and Environment Committee
2 West, Miller Senate Office Building
Annapolis, Maryland 21401

RE: HB1266 Favorable

Dear Chair Feldman, Vice Chair Kagan, and members of the Committee,

I'm writing to express the Environmental Policy Innovation Center (EPIC)'s strong support for HB1266 to allow flexible payment schedules for the Clean Water Commerce Program.

The Clean Water Commerce Program is a remarkable achievement that legislators and the Maryland Department of Environment should feel very proud of. It is the first example—not just in the watershed, but—in the country of a state-appropriated program buying environmental outcomes after they are generated and has spawned quite a few replications, including in Pennsylvania.

EPIC has been involved with this program for more than five years now, from serving as a technical advisor on the 2021 bill language to providing suggestions on the scoring system that selected projects; we've also parlayed these state dollars into a \$2.7 million grant from the USDA.

My colleagues and I are some of the foremost experts on paying directly for environmental outcomes. We help state and local governments all across the country set up programs similar to this one, and I spend much of my time working to improve important intricacies like the payment schedules this bill deals with.

The risk to the public of these changes is very, very small. The kinds of practices that will be funded have been successfully completed hundreds or thousands of times under grants. The goal of this program as legislators originally envisioned it was mostly to decrease costs, in addition to decreasing risk. If the bill is passed, the Clean Water Commerce program will still present less risk to taxpayers than grant programs which provide all of the funding up-front or at construction.

But if the bill isn't passed, we risk wasting a lot of money and slowing down progress, according to some rough calculations. MDE's analysis shows that their interpretation of current statute increases costs by \$15 per pound of nitrogen. But in 2021, the watershed remained 40 million pounds short of its nitrogen reduction goals. An additional \$15/lb leads to the staggering increase of \$600 million dollars per year to reach Bay goals—on top of what it would otherwise cost.

In contrast, the situation could look quite different if the bill passes. Anne Arundel County has been using pay for success contracts for years to satisfy its stormwater requirements. The unit purchased is “impervious acres treated” rather than “pounds of nitrogen prevented”, but the practices are very similar.

By switching to pay for success, they have slashed their costs by over 80%, and they’ve never had a project fail, despite paying 80% at construction. By holding back some of the payment until all outcomes are achieved, they’ve ensured that maintenance and any repairs have been completed every time—with no additional cost to the county.

In another example, the most mature environmental market in the country is wetland banking. For decades, it’s been workshopped and argued over in 36 different Army Corps districts across the country. Not a single one of those districts uses payment schedules that are completely flat or over such a long period of time as the Clean Water Commerce statute is currently being interpreted.

The typical schedule for wetland mitigation banking is to provide 50% of payment at verified construction and the other 50% released over the maintenance and monitoring period of about 5 years. Why would we not make these changes to follow successful best practices?

We encourage you to support HB1266 to clarify the original intent of this excellent program.

Sincerely,

A handwritten signature in black ink, appearing to read 'HMH', with a horizontal line crossing through the middle of the letters.

Harry M Huntley
Senior Agriculture Policy Analyst
Environmental Policy Innovation Center