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SPEAKER PRO TEM  
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Environment and Transportation  
Committee

*Subcommittees*

Chair, Environment

Natural Resources,  
Agriculture and Open Space



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*The Maryland House of Delegates*  
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**Delegate Stein’s Testimony in Support of HB 1266  
Clean Water Commerce Account – Contracts for the Purchase of  
Environmental Outcomes**

Chairman Feldman, Vice Chairwoman Kagan, and Members of the Education, Energy, and the Environment Committee:

In 2021, the Maryland delegation of the Chesapeake Bay Commission introduced, and the Maryland General Assembly passed, legislation called The Clean Water Commerce Act. The Act’s purpose was to improve upon a program first started in 2017, which facilitated the purchase of pollution reductions by the State to meet the Chesapeake Bay clean-up goals at the lowest possible price point. The intent then, and now, was to achieve the largest “bang for the buck” to meet our obligations under the Bay Total Maximum Daily Load (TMDL). The legislation was developed with a broad group of stakeholders.

However, in implementing the program in 2023, the Maryland Department of the Environment (MDE) has interpreted language in the bill in a manner that’s inconsistent with the original intent of the sponsors, by requiring that payments under any approved contract be paid out equally over the useful life of the project, which could be as long as 20 years. Given that most projects have large up-front, capital costs, such a pay schedule has the effect of *increasing* project costs – the exact opposite of the bill’s purpose. Based on this unintended interpretation, MDE has rejected the most cost-effective proposals it received during the most recent bidding process. MDE may be funding proposals that it deems to be cost-effective, but the most cost-effective ones are not funded.

HB 1266 simply seeks to clarify the original objective of the legislation by providing clarifying language related to the payment schedules allowed and is brought by the Maryland members of the Bay Commission. Senator Guzzone and Senator Elfreth sponsored the cross-file, SB 1144, and Del. Love and Del. Ivey are co-sponsors of the House bill.

The bill is consistent with how pay-for-performance contracts are used in Maryland and throughout the country; substantial payments are made following the initial construction of a project, and a lesser percentage is paid out over the project’s life to ensure ongoing maintenance and performance by the contractor.