

# **Stein Testimony HB 1266 - Senate.pdf**

Uploaded by: Dana Stein

Position: FAV

DANA M. STEIN  
Legislative District 11B  
Baltimore County

—  
SPEAKER PRO TEM  
—

Environment and Transportation  
Committee

*Subcommittees*

Chair, Environment

Natural Resources,  
Agriculture and Open Space



The Maryland House of Delegates  
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*The Maryland House of Delegates*  
ANNAPOLIS, MARYLAND 21401

**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 Elfretth 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.

# **Arundel Rivers Testimony Clean Water Commerce Cros**

Uploaded by: Elle Bassett

Position: FAV



PO Box 760 Edgewater, MD  
21037

410-224-3802  
[www.arundelrivers.org](http://www.arundelrivers.org)

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**Testimony in SUPPORT of HB1266 Clean Water Commerce Account – Contracts for the  
Purchase of Environmental Outcomes**

Education, Energy, and the Environment Committee  
March 26, 2024

Dear Chair Feldman and members of the Committee,

Thank you for the opportunity to submit testimony in **SUPPORT OF HB1266**, on behalf of Arundel Rivers Federation. Arundel Rivers is a non-profit organization dedicated to the protection, preservation, and restoration of the South, West and Rhode Rivers with over 3,500 supporters. Our mission is to work with local communities to achieve clean, fishable, and swimmable waterways for present and future generations.

House Bill 1266 will provide a much-needed update to the Clean Water Commerce Act of 2021(SB119/HB507), a program designed to meet our Total Maximum Daily Load (TMDL) through restoration opportunities. Currently, the Department of the Environment requires any approved contract through the program be paid out equally over the useful life of the project, which could be as long as 20 years. Many ground-breaking restoration projects include costly up-front payments, which is at odds with MDE's current payment schedule through the program.

HB1266 will clarify the original objective of the legislation by allowing non-uniform payment schedules. This will allow for more small businesses, nonprofits, farmers, and community organizations to apply for and utilize these funds, making the program more equitable and effective.

Arundel Rivers Federation strongly supports restoring our local waterways and meeting our TMDL goals in an equitable and cost-effective way and we respectfully request a **FAVORABLE REPORT on HB1266.**

Sincerely,

A handwritten signature in cursive script that reads "Elle Bassett".

Elle Bassett  
South, West and Rhode Riverkeeper  
Arundel Rivers Federation

# **CWCA Schedule Letter - Senate.pdf**

Uploaded by: Harry Huntley

Position: FAV

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

# **CF Support - Written - HB1266 - Clean Water Commer**

Uploaded by: Kristen Harbeson

Position: FAV





Kim Coble  
Executive Director

2024 Board of  
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The Hon. Nancy Kopp,  
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Patrick Miller  
Bonnie L. Norman  
Katherine (Kitty)  
Thomas

March 26, 2024

**Support - Written - HB1266 - Clean Water Commerce Account - Contracts for the Purpose of Environmental Outcomes**

Chairman Feldman and Members of the Committee:

Maryland LCV supports HB1266 - Clean Water Commerce Account - Contracts for the Purpose of Environmental Outcomes and we thank Del. Stein for sponsoring this legislation.

In the 2021 legislative session, Maryland LCV supported the passage of the Clean Water Commerce Act of 2021. This bill was intended to support projects that reduce pollution into the Chesapeake Bay. The legislation was crafted to provide direct funding to cost-effective pollution reduction practices, especially those with the ability to reduce nitrogen entering the Chesapeake Bay.

In interpreting the bill's language for implementation, the Maryland Department of the Environment (MDE) required payments to approved contracts be paid out equally over the life of the project, rather than a larger portion up front. This has had the unintended consequence of making the project costs higher, thus undermining a main intent of the original legislation.

This bill clarifies the payment schedule to be consistent with common practice with pay-for-performance contracts throughout the country and will allow MDE to accept the most cost-effective proposals. This will bring implementation of the Clean Water Commerce Act back in line with its intended purpose.

For this reason, Maryland LCV urges a favorable report on HB1266.

**24 MGPA\_HB1266 CWCA.pdf**

Uploaded by: Lindsay Thompson

Position: FAV



Maryland Grain Producers Association  
118 Dundee Ave, Chester, MD 21619  
Lindsay.mdag@gmail.com (p) 443-262-8491  
www.marylandgrain.com

Date: March 26, 2024

House Bill 1266 - Clean Water Commerce Account - Contracts for the Purchase of Environmental Outcomes

Committee: Education, Energy and Environment

MGPA Position: Support

The Maryland Grain Producers Association (MGPA) serves as the voice of grain farmers growing corn, wheat, barley and sorghum across the state. MGPA supports House Bill 1266 which would require the Maryland Department of Environment to all for non-uniform payment schedules and include pay-for-performance incentive payments.

MGPA was supportive of the initial authorizing legislation for the Clean Water Commerce Fund and advocated for a carve out of 35% for agricultural projects as a cost-effective option for nutrient reduction. Many of these large scale agricultural conservation implementation projects, while cost effective in terms of dollar per pound of nutrient reduced, require large upfront investments in construction. Allowing for a payment schedule that would allow a modified payment schedule to provide a substantial payment following completion of construction and then a smaller amount paid out over the project's life based on performance, and ongoing maintenance for the lifetime of the project.

Our understanding is that many of the most cost-effective proposals were not funded during the most recent funding round of Clean Water Commerce Fund awards due to their request for this alternative funding arrangement. This is contrary to the purpose of the fund, to achieve the most cost-effective nutrient reductions. Allowing for these types of payment contracts would benefit Maryland's water quality in the long term with cost effective solutions and we urge your favorable report.

# **HB 1266 CBC Bill Report.pdf**

Uploaded by: Mark Hoffman

Position: FAV



# CHESAPEAKE BAY COMMISSION

*Policy for the Bay* • [www.chesbay.us](http://www.chesbay.us)

## Bill Report

Bill Number/Title: HB 1266 / Clean Water Commerce Account – Contracts for the Purchase of Environmental Outcomes  
Committee: Education, Energy, and the Environment Committee  
Hearing: March 26, 2024  
Position: Support

### Background

During the 2021 session of the General Assembly, the Maryland legislative members of the Chesapeake Bay Commission led the passage of SB 119/HB 507 (The Clean Water Commerce Act of 2021). Its 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 Department of the Environment (MDE) has interpreted language in the bill 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 payment 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.

HB 1266 simply seeks to clarify the original objective of the legislation by providing clarifying language related to the payment schedules allowed, while maintaining safeguards to protect State investments. This 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.

The amendments adopted in the House (HB 1266) were negotiated among the Commission, advocates and MDE and help clarify and strengthen the original intent of the legislation.

### Position

The Maryland Legislative members of the Commission support HB 1266 as amended. This bill simply clarifies the original intent of the Commission members who lead the passage of the Clean Water Commerce Act of 2021.

**HB1266\_Ecotone Support Letter\_Final\_senate.pdf**

Uploaded by: Matthew Hubbard

Position: FAV

March 25, 2024

Chairman and Members of the Committee.

RE: Testimony in SUPPORT of HB1266

Page | 1



March 25, 2024

Dear Chairman and Members of the Committee:

On behalf of Ecotone, LLC (“Ecotone”), thank you for the opportunity to submit testimony in support of House Bill 1266. Ecotone is a fully integrated environmental restoration company serving the Mid-Atlantic region—designing and building sustainable ecosystems in urban and rural landscapes. For more than 25 years, we have collaborated with public and private clients throughout Maryland to implement sustainable environmental restoration projects—restoring function to degraded, impaired, or damaged ecosystems. As a fully integrated company, Ecotone provides all the in-house services needed to plan and implement resilient ecological restoration projects, water quality improvements, and stormwater management solutions, in particular, those subject to HB1266 requiring fully integrated solutions.

I have been an ecological restoration practitioner in Maryland for over twenty years. I led planting of the first large cell on Poplar Island; worked on the permitting and mitigation for the Intercounty Connector (ICC); provided independent environmental monitoring for bog turtles during the construction of the Hampstead Bypass; and have performed numerous environmental assessments and/or restoration work in all twenty-three counties in Maryland.

Ecotone supports this bill because it clarifies the original objective of the Clean Water Commerce Act (CWCA) of 2021, by providing language specifically allowing for non-uniform payment schedules to ensure the most cost-effective projects are selected. Applicant/Contractor financing of structural practices or bringing in investment partners typically increases the price per pound of nitrogen by approximately 45% for a 20-year project payment schedule.

The 2021 CWCA was passed with the intention of accelerating the Chesapeake Bay cleanup effort by purchasing nitrogen outcomes at the lowest possible price point, while also focusing on projects that provide co-benefits. Funding is categorized to specifically fund projects on farms and in underserved communities; there is also a funding category for land conversion practices. Ecotone and similar firms that provide structural practices or land conversion practices that have significant upfront costs, will have no incentive to make a private investment under a linear payment schedule of ten or twenty years without increasing costs by approximately 45%. That substantial 45% price increase makes these practices much more expensive and less competitive than annual practices; and since these practices require a large upfront investment in order to develop and submit a proposal, a linear payment schedule will deter competition and interest from firms that do structural practices restoration work. By limiting

March 5, 2024

Chairman Marc A. Korman, Esq.

RE: Testimony in SUPPORT of HB1266

Page | 2



the competition to annual practices, the CWCA will filter out opportunities to provide cost-effective funding for projects in underserved communities and for land conversion practices. The legislation will therefore fail to meet its stated intention of funding the lowest price per pound opportunities and serving the sectors it is designated to serve.

#### HB 1266 Reduces Cost and Speeds up Bay Restoration

The proposed legislation HB 1266 Reduces Risk of Bay Degradation and Effectively Uses Taxpayer Money. Currently, the Maryland Department of the Environment (MDE) interpretation of CWCA legislation is that payments for all practices must follow a linear payment schedule with equal payment amounts in each year over twenty years. This approach increases cost for all Best Management Practices (BMPs) that require upfront construction or planting costs, by requiring businesses to finance the cost of the project and their working capital over a 10- or 20-year payment schedule. Current industry lenders are quoting project financing at 12-15% return on investment. In this scenario, almost half of the funding for Chesapeake Bay restoration goes to financing costs for any structural practice. The best way to get the lowest price per pound is to pass HB 1266. Twice as many projects with more co-benefits can be implemented by passing HB 1266, which would meet the original legislative intent to get the best price per pound of nitrogen and speed up Chesapeake Bay restoration.

#### Reduce Risk By Keeping Structural Practices in Play

The use of a linear payment schedule increases the state's risk profile by relying solely on annual practices. These practices typically include self-verification/reporting and require annual implementation that are subject to a myriad of risk factors including but not limited to weather, land holdings, and landowner cooperation. By using a non-linear payment schedule that allows structural practices and land conversion practices to be competitive, the state will reduce its risk and get a much better cost per pound of nitrogen reduced. Moreover, most structural BMPs are permitted projects and require five years of post-construction permit monitoring with annual monitoring reports being provided to MDE and the United States Army Corps of Engineers (USACE), to verify project success, which greatly reduces risk and ensures projects are implemented and performing.

Structural practice projects require significant upfront investment and vetting just to get to the proposal development/submission stage. If the payment schedule remains linear, there will be little to no incentive for most private firms to develop projects and submit proposals, reducing the program to annual practices that will compete with other state programs and drive the price point up for these practices.

#### Promote Projects that Provide Co-Benefits and Projects in Environmental Justice Locations.

Structural practices have the most co-benefits and are the most likely types of projects to be implemented in Environmental Justice communities. The co-benefits generated from these funds will be greatly reduced if there is no competition from companies to provide structural practices. Furthermore, the cost increase to finance project costs reduces funding access to only those companies with strong



March 5, 2024

Chairman Marc A. Korman, Esq.

RE: Testimony in SUPPORT of HB1266

Page | 3



financial capacity required to get capital investment at a competitive rate. Moreover, there may not be any projects proposed in Environmental Justice communities if HB 1266 is not passed.

Consider Lower Cost Alternatives than financing/payment schedule to reduce risk and protect taxpayer investment.

MDE has indicated that the current payment schedule is the most effective way to reduce risk, even though they acknowledge the costs associated with financing the project. A performance bond which guarantees the contractual obligations are met would be a much more cost-effective approach to reducing risk if the state believes project delivery is at risk if the funds are paid at non-linear payment schedule. Again, promoting structural practices that are permitted, as-built, and monitored according to permit conditions and Chesapeake Bay Program expert panel documents greatly reduces risks versus annual practices.

Bay Restoration is being delayed and this legislation is needed.

Ecotone partnered to provide project development, design, and construction on the highest scoring project from the FY 2023 CWCA, scoring 100 points. We have prepared the design and submitted the Joint Permit Application (JPA) for this project, as we have been awaiting a contract from MDE, in accordance with the proposed payment schedule we submitted with our original proposal and in accordance with the directions stated in the RFP, to supply a proposed payment schedule. This payment schedule was developed to initiate payments at as-built approval, to ensure compliance that no payment is received from the state until the project is completed and the as-built is certified by a licensed engineer and land surveyor. Additional payments were modeled to match milestones within the post-construction monitoring, in accordance with the Chesapeake Bay expert panel guidance documents that are approved by the Water Quality Implementation team and the Executive Committee of the Chesapeake Bay Program.

Ecotone is the prime applicant of the second highest scoring project for the FY 2023 CWCA, scoring 99 points. Again, we have prepared the design and submitted the JPA for this project, as we have been awaiting a contract from MDE, in accordance with the proposed payment schedule we submitted with our original proposal and in accordance with the directions stated in the RFP to supply a proposed payment schedule. This payment schedule was developed to initiate payments at as-built approval, to ensure compliance that no payment is received from the state until the project is completed and the as-built is certified by a licensed engineer and land surveyor. Additional payments were modeled to match milestones within the post-construction monitoring, in accordance with the Chesapeake Bay expert panel guidance documents that are approved by the Water Quality Implementation team and the Executive Committee of the Chesapeake Bay Program.

Neither of our two projects — the most highly ranked among those awarded — is moving forward, because they are based on non-uniform payment schedules, which MDE is currently not allowing.

March 5, 2024

Chairman Marc A. Korman, Esq.

RE: Testimony in SUPPORT of HB1266

Page | 4



The most cost-effective way to ensure the CWCA bill accelerates Chesapeake Bay restoration efforts as originally intended is to pass HB 1266. Risk is mitigated through existing permit requirements and can further be mitigated with performance bonds. MDE would receive twice as many projects that have more impactful co-benefits for the environment and/or underserved communities for the same funding. Moreover, legislation is not forcing taxpayers money's towards large financial institutions for project financing and using it to meet Bay restoration goals.

Should you have any questions regarding this testimony, I can be reached at 443-699-3799.

Sincerely,

Ecotone, LLC

A handwritten signature in black ink, appearing to read "Matthew Hubbard".

Matthew Hubbard

Director- Technical Solutions Manager

# **HB 1266 Clean Water Commerce Account - Contracts f**

Uploaded by: Michelle Dietz

Position: FAV

**Tuesday, March 26, 2024**

**TO:** Brian Feldman, Chair of the Senate Education, Energy and the Environment Committee, Guy Guzzone, Chair of the Senate Budget and Taxation Committee, and Committee Members

**FROM:** Michelle Dietz, The Nature Conservancy, Director of Government Relations; Cait Kerr, The Nature Conservancy, State Policy Manager

**POSITION:** Support HB 1266 Clean Water Commerce Account - Contracts for the Purchase of Environmental Outcomes

The Nature Conservancy (TNC) supports HB 1266 as amended, offered by Delegate Stein. In 2021, the General Assembly passed the Clean Water Commerce Act, which included the creation of a new Clean Water Commerce Account. This account was intended to be used to support environmental projects that reduce nutrient and sediment loads and support the achievement of Maryland's clean water goals. TNC supported the passage of this legislation.

One key feature of the Clean Water Commerce Act was a pay-for-success model, to be used by the Maryland Department of the Environment (MDE). The goal of this model was to require payments to approved contracts to be paid out equally over the life of the project rather than a more significant portion upfront. This has had the unintended consequence of increasing project costs, thus undermining the legislation's original intent.

HB 1266 will work to fix this issue. The legislation clarifies project payment schedules to align with common practices for pay-for-performance contracts. It will also allow MDE to make decisions to accept project proposals that are the most cost-effective. These adjustments to the Clean Water Commerce Act will allow for the implementation of the legislation to align with its intended purpose and outcomes.

TNC is dedicated to investing in practices that provide long-term nutrient reduction in Maryland. These practices not only reduce nutrients effectively but also provide critical co-benefits such as improved wildlife habitat, flood risk reduction, enhanced climate resilience, and real economic benefits to communities that rely upon the Bay. TNC has experience in Maryland and worldwide working with private finance to implement urgent conservation projects. HB 1266 will ensure that the contract process for the Clean Water Commerce Act will align with the intended goals of accelerating nutrient reduction and enhancing the participation of private finance to help meet Maryland's water quality goals.

TNC commends Delegate Stein for proposing these changes to the Clean Water Commerce Act and revitalizing the policy to incentivize innovative, cost-effective, equitable projects to help Maryland meet our Chesapeake Bay water quality goals.

**Therefore, we urge a favorable report on HB 1266.**

**ShoreRivers\_Senate\_Favorable\_HB1266.pdf**

Uploaded by: Timothy Rosen

Position: FAV



## Testimony in **SUPPORT** of HB1266

March 25, 2024

Dear Chairman Feldman and Members of the Committee,

Thank you for this opportunity to submit testimony in **SUPPORT of HB1266** on behalf of ShoreRivers. ShoreRivers is a river protection nonprofit on Maryland's Eastern Shore with more than 2,500 members. Our mission is to protect and restore our Eastern Shore waterways through science-based advocacy, restoration, and education.

The Clean Water Commerce Act of 2021 was passed with the intention of accelerating the Chesapeake Bay cleanup effort by purchasing nitrogen outcomes—at the lowest possible price point—with a focus on projects from the agricultural sector and in communities disproportionately burdened by environmental harm and risks.

ShoreRivers was selected in FY23 to implement two projects by Maryland Department Environment (MDE) in the first round of the Clean Water Commerce Account, giving our organization first-hand experience with how the Clean Water Commerce Act of 2021 is currently being interpreted by department. **Neither of our two projects, the most highly ranked among those awarded, is moving forward, because they are based on non-uniform payment schedules, which MDE is not currently allowing.** The position of ShoreRivers is that MDE should not restrict contracts to be paid out only on an equal payment schedule (also called uniform, flat rate or linear) over the life of the project.

**ShoreRivers supports this bill because it clarifies the original objective of the Clean Water Commerce Act of 2021 by providing language specifically allowing for non-uniform payment schedules to ensure the most cost-effective projects are selected.** Non-uniform payment schedules that take into account the upfront cost to initially generate the nitrogen reduction outcome is critical to the success of the original legislation as intended. Here's why:

1. **Non-uniform payment schedules will ensure the largest “bang for the buck” and reduce the cost to the state.**
  - a. MDE is currently mandating uniform payment schedules that have equal payments over the contract length. This has caused applicants to increase the price per pound of nitrogen to recoup their upfront capital costs in a timelier manner. In the end, the state is paying more to banks and lining the pockets of investors rather than paying for the reduction of nitrogen at the most cost-effective price—**essentially paying more and getting less in return.** **HB1266**, which explicitly allows for non-uniform payment schedules, will fix this problem. Two project scenarios from ShoreRivers' FY24 CWCA applications are provided at the end of this document showing \$7,000,000 and \$900,000 cost savings by using non-uniform payment schedules. *Please see Scenarios 1 and 2.*
2. **Non-uniform payment schedules ensure diverse program participants who work or live in the communities the legislation is intended to benefit.**

### ShoreRivers

Isabel Hardesty, Executive Director  
Annie Richards, Chester Riverkeeper | Matt Pluta, Choptank Riverkeeper  
Ben Ford, Miles Wye Riverkeeper | Zack Kelleher, Sassafras Riverkeeper

- a. Non-uniform payment schedules will allow for small businesses, nonprofit organizations, farmers, county soil conservation districts, and community organizations to apply for CWCA funds and ensure projects go into historically disenfranchised communities, as the original legislation intended. At present, the uniform payment schedule MDE is mandating only caters to large, for-profit companies who can take on the financing burden over the long contract length. **HB1266** will ensure the CWCA includes the communities the legislation is intended to assist.
- 3. The most cost-effective project and the three highest ranked projects for FY23 CWCA all included non-uniform payment schedules.** *Please refer to Table 1, which lists all the agricultural projects selected for MDE funding.*
- a. Two top ranked projects (100 points each) both proposed non-uniform payment schedules. The next highest point project (99 points) also had a non-uniform payment schedule.
  - b. The most cost-effective project (\$16.31/lbs. N) used a non-uniform payment schedule.
  - c. The only projects that proposed uniform payment schedules were either annually implemented practices (crops, oyster harvesting, or nutrient management) with small annual costs that need no financing or had inflated cost/lbs. to recoup investment costs and were not selected for funding.
  - d. Projects originally selected by MDE that requested **non-uniform** payment schedules averaged **\$46.75/lbs. N**, while projects that requested **uniform** payments averaged **\$80.07/lbs. N**.
- 4. Non-uniform payment schedules do not increase financial risk to the state.**
- a. Projects proposed for funding under the CWCA are inherently low risk because they are approved best management practices and have clear standards and specifications developed to greatly reduce risk of failure.
  - b. **HB1266** still ensures payments are tied to verification and quantification over the contract period and are proportional to the risk associated with the projects.
  - c. Uniform payment schedules will misuse taxpayer dollars to reduce risk that does not exist.

ShoreRivers is a proponent of pay for performance and believes it is a critical financing mechanism that will help the state achieve its clean water goals. **HB1266** ensures that the Clean Water Commerce Act of 2021 attains its legislative intent of selecting the most cost-effective projects with a focus on projects from the agricultural sector and in communities disproportionately burdened by environmental harm and risks. ShoreRivers supports **HB1266** and urges the Committee to adopt a **FAVORABLE** report.

Sincerely,

*Timothy Rosen*

Timothy Rosen  
Director of Agriculture and Restoration

**Scenario 1. Stream Restoration with Riparian Buffer Plantings and Wetland Creation**

ShoreRivers 2024 McDonald Farm Application to CWCA using a Uniform (equal) payment schedule				Cost savings for the same project if non-uniform payment schedules were allowed			
Year	Nitrogen Reduction (lbs)	Price per lb	Total Payment Amount	Year	Nitrogen Reduction (lbs)	Price per lb	Total Payment Amount
1	36,000.00	\$24.00	\$864,000.00	1	36,000.00	\$141.67	\$5,100,250.00
2	36,000.00	\$24.00	\$864,000.00	2	36,000.00	\$7.08	\$255,012.50
3	36,000.00	\$24.00	\$864,000.00	3	36,000.00	\$7.08	\$255,012.50
4	36,000.00	\$24.00	\$864,000.00	4	36,000.00	\$7.08	\$255,012.50
5	36,000.00	\$24.00	\$864,000.00	5	36,000.00	\$28.33	\$1,020,050.00
6	36,000.00	\$24.00	\$864,000.00	6	36,000.00	\$26.92	\$969,047.50
7	36,000.00	\$24.00	\$864,000.00	7	36,000.00	\$2.83	\$102,005.00
8	36,000.00	\$24.00	\$864,000.00	8	36,000.00	\$2.83	\$102,005.00
9	36,000.00	\$24.00	\$864,000.00	9	36,000.00	\$2.83	\$102,005.00
10	36,000.00	\$24.00	\$864,000.00	10	36,000.00	\$2.83	\$102,005.00
11	36,000.00	\$24.00	\$864,000.00	11	36,000.00	\$2.83	\$102,005.00
12	36,000.00	\$24.00	\$864,000.00	12	36,000.00	\$2.83	\$102,005.00
13	36,000.00	\$24.00	\$864,000.00	13	36,000.00	\$2.83	\$102,005.00
14	36,000.00	\$24.00	\$864,000.00	14	36,000.00	\$2.83	\$102,005.00
15	36,000.00	\$24.00	\$864,000.00	15	36,000.00	\$2.83	\$102,005.00
16	36,000.00	\$24.00	\$864,000.00	16	36,000.00	\$2.83	\$102,005.00
17	36,000.00	\$24.00	\$864,000.00	17	36,000.00	\$2.83	\$102,005.00
18	36,000.00	\$24.00	\$864,000.00	18	36,000.00	\$2.83	\$102,005.00
19	36,000.00	\$24.00	\$864,000.00	19	36,000.00	\$2.83	\$102,005.00
20	36,000.00	\$24.00	\$864,000.00	20	36,000.00	\$28.33	\$1,020,050.00
<b>Uniform Payment Scenario</b>	<b>Total Lbs. N Reduced</b>	<b>Price per Lbs.N</b>	<b>Total Payment Amount</b>	<b>Non-Uniform Payment Scenario</b>	<b>Total Lbs. N Reduced</b>	<b>Price per Lbs.N</b>	<b>Total Payment Amount</b>
	720,000.00	\$24.00	\$17,280,000.00		720,000.00	\$14.17	\$10,200,500.00
						<b>\$9.83</b>	<b>\$7,079,500.00</b>
				<b>Cost savings by using a non-uniform payment schedule</b>			



**Scenario 2. Agricultural Ditch Management Practice**

ShoreRivers 2024 Finchville Farm Application to CWCA using a Uniform (equal) payment schedule				Cost savings for the same project if non-uniform payment schedules were allowed			
Year	Nitrogen Reduction	Price per lb	Total Payment Amount	Year	Nitrogen Reduction	Price per lb	Total Payment Amount
1	1,518.95	\$93.49	\$142,006.64	1	1,518.95	\$168.27	\$255,593.72
2	1,518.95	\$93.49	\$142,006.64	2	1,518.95	\$70.11	\$106,493.58
3	1,518.95	\$93.49	\$142,006.64	3	1,518.95	\$12.27	\$18,637.52
4	1,518.95	\$93.49	\$142,006.64	4	1,518.95	\$12.27	\$18,637.52
5	1,518.95	\$93.49	\$142,006.64	5	1,518.95	\$12.27	\$18,637.52
6	1,518.95	\$93.49	\$142,006.64	6	1,518.95	\$12.27	\$18,637.52
7	1,518.95	\$93.49	\$142,006.64	7	1,518.95	\$12.27	\$18,637.52
8	1,518.95	\$93.49	\$142,006.64	8	1,518.95	\$12.27	\$18,637.52
9	1,518.95	\$93.49	\$142,006.64	9	1,518.95	\$12.27	\$18,637.52
10	1,518.95	\$93.49	\$142,006.64	10	1,518.95	\$12.27	\$18,637.52
Uniform Payment Scenario	Total Lbs. N Reduced	Average Price per Lbs.N	Total Payment Amount	Non-Uniform Payment Scenario	Total Lbs. N Reduced	Average Price per Lbs.N	Total Payment Amount
	15,189.50	\$93.49	\$1,420,066.36		15,189.50	\$33.65	\$511,187.43
				Cost savings by using a non-uniform payment schedule		\$59.84	\$908,878.92

**Table 1. FY23 CWCA proposed agricultural projects less than \$150/lbs. N (MDE cost effective threshold).**

Annual or Structural	Non-uniform or uniform	Applicant Name	Practice	Years	Cost/lb	Total Points	Amount Requested	Selected for Funding
Structural	Non-Uniform	ShoreRivers, LLC	Stream Restoration/Wetland Creation	20	\$ 16.31	100	\$8,280,000	YES
Structural	Non-Uniform	ShoreRivers, LLC	Drainage Water Mgmt (NRCS 554)	10	\$ 44.38	100	\$ 395,503	YES
Structural	Non-Uniform	Ecotone, LLC	Shoreline Mgmt	20	\$ 29.45	99	\$3,949,245	YES
Annual	Uniform	Conservation Innovation Fund	Alternate Crop	10	\$ 19.38	88	\$5,172,520	YES
Annual	Uniform	The Mill	DAS Advanced Nitrogen Mgmt	10	\$ 19.50	85	\$5,000,000	NO
Structural	Uniform	Agricultural Restoration Services, LLC	Denitrifying Bioreactor	20	\$ 90.00	35	\$2,340,000	NO
Structural	Uniform	Agricultural Restoration Services, LLC	Denitrifying Bioreactor	20	\$ 90.00	35	\$2,160,000	NO
Structural	Uniform	Agricultural Restoration Services, LLC	Denitrifying Bioreactor	20	\$ 90.00	35	\$2,160,000	NO
Structural	Uniform	Agricultural Restoration Services, LLC	Denitrifying Bioreactor	20	\$ 90.00	35	\$2,160,000	NO
Structural	Non-Uniform	EIP IV Credit Co, LLC	Wetland NRCS Code 656	10	\$ 148.21	33	\$2,070,000	NO
Annual	Uniform	Blue Oyster Environmental, LLC	Oyster Aquaculture	10	\$ 149.00	22	\$3,725,000	NO