



HB1266 - Clean Water Commerce Account - Contracts for the Purchase of Environmental Outcomes

Hearing Date: March 7, 2024

Position: FAVORABLE

Dear Chair Korman and Members of the Environment & Transportation Committee:

Waterkeepers Chesapeake with the undersigned Waterkeeper groups respectfully requests that this committee give a FAVORABLE report for HB1266 - Clean Water Commerce Account. Waterkeepers Chesapeake is a coalition of Waterkeeper programs across the Chesapeake and Coastal Bays region that work with their communities to protect local waterways. HB1266 seeks to clarify the original objective of the legislation by providing clarifying language related to the payment schedules allowed. 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. Among other benefits, this allows for historically disenfranchised communities and their partners to be applicants to this funding program. A portion of this fund is intended to assist these communities.

The 2021 Clean Water Commerce Account (CWCA) legislation provides flexibility for the Maryland Department of the Environment (MDE) to pay for outcomes as deemed appropriate, and is not tied to annual payments that are dictated by a set \$/lb but upon a "schedule of payments that will be made as environmental outcomes are achieved and verified." This enables MDE to work with diverse applicants to create payment schedules that fit their financial constraints and achieve the objectives of this legislation. However, this is not how MDE has been implementing the program

A "flat rate" payout schedule that MDE has been practicing reduces or eliminates program participants. Creating an annual payment schedule based solely on the pounds reduced times cost per pound has diminished or eliminated the ability of small businesses, non-profit organizations, farmers, county soil conservation districts, and community organizations to apply for funds through the CWCA. This has eliminated historically disenfranchised communities and their partners, such as those in Baltimore, from being applicants to this funding program.

This payment schedule creates a financial burden that only large for-profit companies backed by investors are able to finance over the 10 or 20 year lifespan of the projects to be funded. As the state works at finding more equitable ways to finance projects across the state's diverse communities, such payment schedule limitations exclude the farmers and communities the CWCA intended to assist.

The use of a “flat rate” payout schedule will increase restoration costs to the state. If MDE reimburses participants through a payout schedule where project costs are spread evenly over the lifespan of the project, investors will have to increase the price per pound of nutrient reduction they charge in order to recoup the extended financing costs.

The “flat rate” payout schedule will defeat the purpose of helping implement a fixed natural filter practice or an agriculture ditch management practice. This type of practice is being implemented by non-profit organizations, farmers, and soil conservation districts. These entities cannot absorb the financial liability of a “flat rate” payout schedule. They are not in the business of long-term financing of projects.

The “flat rate” payout schedule will fail to achieve the legislative mandate that at least 20% of the projects shall be in communities disproportionately burdened by environmental harms and risks. These communities are less likely to be able to access the financing needed for a “flat rate” payout schedule.

For these reasons, Waterkeepers Chesapeake and the below signed Waterkeeper groups urge the committee to give a FAVORABLE report for HB1266.

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