



CHESAPEAKE BAY COMMISSION

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Bill Report

Bill Number/Title: HB 1266 / Clean Water Commerce Account – Contracts for the Purchase of Environmental Outcomes
Committee: Environmental and Transportation
Hearing: March 7, 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. 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.

Position

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