

Chesapeake Bay
Fiscal 2018 Budget Overview
Response to the Department of Legislative Services

Issues

1. Overall Chesapeake Bay Restoration Funding: The Department of Legislative Services (DLS) recommends the addition of budget bill language to request that the Administration continue to publish the overall Chesapeake Bay restoration data in the Governor's budget books and provide the electronic data separately.

Response: The Administration will continue to provide the requested data.

2. New Bay Restoration Financing Ideas Are Being Explored: DLS recommends that the Administration comment on how nutrient and sediment reductions will be guaranteed in pay for performance agreements, what formal policy will be adopted to address reductions that exceed the original contract amount, and the Environmental Finance Symposium Report Action Team's thoughts on how the three financing ideas it is considering could be implemented in Maryland. In addition, DLS recommends again that the agencies submit information on updated historical spending and projected Chesapeake Bay restoration spending and associated impacts and the overall framework to meet the calendar 2025 requirement of having all best management practices in place to meet water quality standards for restoring the Chesapeake Bay. It is requested that the report include an analysis by the University of Maryland Environmental Finance Center on how cost-effective the existing State funding sources – such as the Bay Restoration Fund, Chesapeake and Atlantic Coastal Bays 2010 Trust Fund, and Water Quality Revolving Loan Fund among others – are being used for Chesapeake Bay restoration purposes.

Response: Pursuant to an analysis of the Chesapeake & Atlantic Coastal Bays Trust Fund by University of Maryland's Environmental Finance Center in April 2014, the State has taken strategic, measurable steps to achieve a "pay for performance" model working within current state procurement policy. The State has changed the manner in which they evaluate and award restoration projects, focusing awards on the cost of the delivered pollution reduction (i.e. pound reduced per dollar invested) instead of soliciting for prescribed practices. This shift to performance financing has allowed the Trust Fund to better invest limited financial resources on the most cost-effective, efficient practices in geographically targeted areas of the state. The State is also working with several public-private ventures to reduce State risk of investment and incentivize private capital to invest in restoration activities.

The Governor's Clean Water Commerce Act (SB 314), which allows for the use of a portion of the Bay Restoration Fund (up to \$10M/yr) to purchase cost-efficient nutrients, is consistent with the Environmental Finance Center symposium report recommendations regarding:

- Advancing Chesapeake Bay Restoration Economic Development Efforts
- Pilot Pay-For-Success Investment Models
- Advancing Public-Private Partnerships, where appropriate.

The Administration will continue to submit information on historical and projected Chesapeake Bay restoration spending, associated impacts and the overall framework to meet the calendar 2025 requirement of having all best management practices in place as requested. The Administration is requesting a revision to the proposed language.

3. Stormwater Financial Assurance Plans Filed But Many Rely on Trading: DLS recommends that the Administration comment on the impact of the MS4 jurisdictions relying on nutrient trading to meet their financial assurance plan requirements.

Response: The Administration supports the option of using nutrient trading to meet part of the MS4 reductions specified in the Bay TMDL and further characterized in the State's Watershed Implementation Plan. Nutrient trading creates an opportunity to expand partnerships within a watershed to achieve more cost-effective water quality benefits. Safeguards need to be put in place that address items such as eligibility rules for point and nonpoint sources, baselines, geographies, mechanisms of exchange, rules for verification and assurance. The Maryland Bay agencies, in coordination with the Water Quality Trading Advisory Committee, are working on the details that are necessary to provide adequate safeguards.

4. Nutrient Trading and Aligning for Growth: DLS recommends that the Administration comment on its plans for authorizing MS4 nutrient trading, the expansion of the use of the Bay Restoration Fund for nutrient trading, and the next steps for Aligning for Growth.

Response: Authorization of nutrient trading requires completion of the trading policy manual, promulgating regulations and modifying the MS4 permits. The Administration intends to complete the trading policy manual and draft regulations in 2017.

The Clean Water Commerce Act provides the Maryland Department of the Environment (MDE) the authority to use up to \$10M/yr for the purchase of cost-effective nitrogen and phosphorus nutrient credits in support of the state's efforts to restore the health of the Chesapeake Bay. MDE would purchase credits in a manner that promotes cost-effectiveness, incentivizes investment by the private sector and safeguards State and ratepayer financial interests.

This Act is expected to improve Bay Restoration spending cost effectiveness by providing approaches that focus on measurable environmental outcomes. This approach can also assist the state in evaluating its current cost effectiveness threshold while informing geographically where and what type of cost effective nutrient reduction practices exist.

Under the Bay TMDL, EPA requires Maryland to manage new or increased loadings of nitrogen, phosphorus, and sediment. More specifically, EPA expects any increases will be offset by loading reductions and credits generated by other sources. MDE is currently working with the Trading Advisory Committee on the aligning for growth policy and is developing a policy paper based on advisory committee input. The Administration anticipates having the policy completed in 2017 for use in support of the Phase III WIP development.

5. Conowingo Dam Loading Adds to Overall Need: DLS recommends that the Administration discuss the magnitude of the increased nutrient and sediment loadings associated with the Conowingo Dam study, the State’s likely responsibility for additional load reductions and their timing, the likely cost associated with the proposed action, and how this cost will be borne.

Response: The Chesapeake Bay Partnership, which consists of the six states (Maryland, Virginia, Pennsylvania, Delaware, New York and West Virginia), the District of Columbia, the Chesapeake Bay Commission and the US Environmental Protection Agency, initiated discussions on the above topics in December 2016. Senior officials have scheduled a meeting for May 2017, with the goal to reach a decision regarding the responsibility for additional reductions, the allocation rules to assign reductions and also the timing for meeting the reductions.

Reliable planning costs to address the additional reductions will be developed later in 2017, using update modeling tools. However, it is important to note that the Bay Partnership has also agreed to consider the “least cost” option to offset the additional loads resulting from the Conowingo infill. This option will be developed by the Bay Partnership and will consider opportunities upstream, within the reservoir, and downstream.

Recommended Actions

1. Add budget bill language on a Chesapeake Bay restoration framework.

Response: The Administration has concerns regarding Section XX (5) and would like to request additional language. This Section requires an analysis by the University of Maryland Environmental Finance Center on how cost-effective the existing State funding sources – such as the Bay Restoration Fund, Chesapeake and Atlantic Coastal Bays 2010 Trust Fund, and Water Quality Revolving Loan Fund among others – are being used for Chesapeake Bay restoration purposes. The Administration requests that the following language:

"To the extent practicable and within funding availability, the report should include:"

be added to the end of the introductory paragraph as shown on page 35 of the analysis.

2. Add budget bill language on two Chesapeake Bay restoration reports.

Response: The Administration accepts this recommended action.