

Chesapeake Bay Cabinet  
Fiscal Year 2023 Operating Budget  
Response to the Department of Legislative Services Analysis

Senate Budget and Taxation Committee  
Public Safety, Transportation, and Environment Subcommittee  
Senator Cory McCray, Chair  
January 27, 2022

House Appropriations Committee  
Transportation and the Environment Subcommittee  
Delegate Marc Korman, Chair  
January 31, 2022

**Issues**

**1. Administration Signals Support for Pay-for-performance Plans and Private Conservation Financing:** The Department of Legislative Services (DLS) recommends that the Administration discuss the possibility of an outcome-based payments system for the Cover Crop Program.

Response: The Administration is currently evaluating potential enhancements to the Maryland Cover Crop Program to further support agricultural sustainability in Maryland. MDA continues to support the Soil Health Advisory Committee and looks forward to receiving formal recommendations from the Committee following their January 24, 2022 meeting, including those related to cover crops. In addition, MDA is currently evaluating the existing Cover Crop Program, including a potential offering of a multi-year Program to support soil health. MDA anticipates presenting potential changes to the Cover Crop Technical Advisory Committee for their concurrence this Spring.

**2. Overall Chesapeake Bay Restoration Funding:** DLS recommends the addition of committee narrative 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. For administrative purposes, this recommendation will appear in the DNR operating budget analysis. In addition, DLS recommends that budget bill language be added to DNR's budget to request that the Administration provide the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund annual report at the time of the fiscal 2024 budget submission.

Response: The Administration will continue to provide the requested data, including the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund Annual Report, with the Governor's fiscal 2024 Allowance.

**3. Historical and Projected Chesapeake Bay Restoration Spending Report:** DLS recommends that the Administration comment on how it plans to deal with the short-term impacts of the Patapsco and Back River wastewater treatment plant failures and Conowingo Dam WIP implementation and the long-term impacts of growth in stormwater and septic sector nutrient and sediment loadings and climate change. DLS also recommends that language be included requesting a similar report from the agencies for the

**fiscal 2024 budget submission 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 BMPs in place to meet water quality standards for restoring the Chesapeake Bay. The report should include updated information on the Phase III WIP implementation and how the loads associated with the Conowingo Dam infill, growth of people and animals, and climate change will be addressed.**

Response: The Administration will continue to provide the requested data and reporting, including information responsive to any future DLS reporting requests.

Regarding Patapsco and Back River Wastewater Treatment plants, Maryland is taking legal action against Baltimore City, using the full force of a judicial complaint to stop discharges of pollutants from the plants that are not authorized by an MDE permit and requiring the city to take all steps necessary to come into permanent and consistent compliance with the applicable environmental law. The judicial complaint would result in a consent decree that will include civil penalties, which could include supplemental environmental projects that benefit locally impacted communities. MDE has reviewed and provided feedback on the city's proposed compliance plans and will continue efforts to accelerate the plans' timelines for necessary improvements and coordinate with local nongovernmental organizations.

For Conowingo, MDE is currently engaging the public on plans to use Exelon settlement agreement funds toward Conowingo WIP implementation. MDE is also helping lead an implementation team with the other state jurisdictions (PA, NY) in the Conowingo WIP geography to accelerate implementation progress and funding.

Regarding growth, the projected growth out to 2025 is included in Maryland's 2025 Plan and is also included in annual progress reports so that we can track trends and adapt accordingly. Maryland Phase III WIP factors in, to the extent EPA models will allow, pollution reduction and minimization programs, land conservation and land preservation programs already in place such as Environmental Site Design stormwater management requirements for new development and redevelopment, Priority Funding Areas, Program Open space, Forest Conservation, critical area requirements, wastewater capacity management and protections for high quality waters.

A separate Phase III WIP Climate Change Addendum describes how Maryland plans to achieve the additional reductions assigned to Maryland as a result of the Chesapeake Bay Program factoring in 2025 climate change conditions. Additional reductions were included in Maryland Phase III WIP, and the addendum describes how optimizing performance at wastewater treatment plants can provide the necessary short-term reductions that are needed.

**4. Conowingo Dam Relicensing, WIP, and Sediment Study: DLS recommends that the Administration comment on the likelihood that the Chesapeake Bay partners will contribute funding to the CWIP; the status of Conowingo Dam relicensing, including legal challenges; and any preliminary findings from the pilot dredging and sediment characterization studies.**

Response: Chesapeake Bay jurisdictions are already providing a portion of their federal Chesapeake Bay restoration funds to the CWIP effort. Through the CWIP implementation team and related milestones, Maryland is helping to lead, develop and implement funding strategies and partnerships.

The Administration understands that there are multiple petitions by outside entities for FERC to rehear/review their Conowingo Dam relicensing decision and that those decisions are still pending.

Preliminary findings from the pilot dredging and sediment characterization studies include the following:

- Estimated 253 million total cubic yards in the Maryland portion of Conowingo Reservoir.
- Coal sand and fine particles were found at higher concentrations than observed in prior investigations.
- Some metals (arsenic, manganese, and thallium) and PAHs may influence certain end uses. Maryland's natural sediments are higher in these metals, and the higher PAH levels are most likely due to coal.
- The dredging pilot was completed successfully, and the material dredged was transported to a quarry for different end use testing. Those testing results will be provided in the final reporting expected later this spring.

**5. Lawsuits Filed Against the U.S Environmental Protection Agency: DLS recommends that the Administration comment on President Joseph R. Biden, Jr. Administration's plans for regulatory oversight of the Chesapeake Bay TMDL.**

Response: It is premature to comment on how the U.S. EPA will enforce the Chesapeake Bay TMDL. It is anticipated that the federal approach will become clear as EPA responds to, and addresses concerns identified in the joint litigation effort. In a January 25, 2021 Maryland Legislative Summit, the U.S. EPA Region 3 Administrator said that the 2025 Chesapeake Bay goals are a commitment and that he will use every power that he has in this role to make sure that all the states and municipalities are doing what needs to be done.

**Recommended Actions:**

**1. Add budget bill language on historical and projected Chesapeake Bay restoration funding, including \$1,000,000 in restricted funding pending submission of the report by December 1, 2022.**

Response: The Administration will continue to provide the annual report on Chesapeake Bay restoration funding. The Administration respectfully disagrees with the \$1,000,000 funding restriction pending submission of the report.