



Maryland Department of the Environment
Fiscal Year 2024 Capital Budget
Response to Department of Legislative Services Analysis

Senate Budget and Taxation Committee
Capital Budget Subcommittee
Senator Craig J. Zucker, Chair
February 21, 2023

House Appropriation Committee
Capital Budget Subcommittee
Delegate Mark S. Chang, Chair
February 22, 2023

This response addresses the Legislative Analyst's recommended actions and the issues noted for discussion. The department is prepared to discuss the issues and recommended actions as requested.

PAYGO Recommended Actions

1. Recommended Action: Concur with Governor's allowance.

Department Response: The department accepts this recommended action.

GO Bond Recommended Actions

1. Recommended Action: Approve all authorizations and the one fiscal 2025 preauthorization for the Maryland Department of the Environment.

Department Response: The department accepts this recommended action.

Overview

WQRLF: The Department of Legislative Services (DLS) recommends that MDE comment on why so few new loans and grants were encumbered in fiscal 2022 and whether \$10.7 million in loans and grants being reverted in fiscal 2022 is typical.

Department Response: MDE estimates encumbrance levels based on information received from local governments as to what stage, such as planning, design, or construction, their projects are in. There were several projects that were expected to be encumbered in fy22 that will be encumbered in fy23. There can be many reasons for the delays, including competing priorities for local government staff, a limited number of contractors available to perform the work, and economic conditions that increase the costs of projects. Some of the delays may have been related to the increased availability of federal funds, where local governments deferred projects until the federal guidance regarding grant versus loan funding was better defined. MDE continues to work closely with local jurisdictions regarding their project schedules and funding commitments.

In fy22, the reversions were larger than the amount funds encumbered for new loans and grants; in a more typical year, the new encumbrances are greater than the reversions. Reversions are usually based on project close-out when the amount allocated to a project is reconciled with the actual expenditures. The unexpended balance is then made available for other projects.

WQRLF: DLS recommends that MDE comment on when an intended use plan will be submitted to the U.S. Environmental Protection Agency (EPA) for the emerging contaminants allotment of federal IJA funding and when this funding will be realized in MDE's budget.

Department Response: MDE recently completed the solicitation process for both the federal fy22 and fy23 Clean Water PFAs/Emerging Contaminants funding. A draft funding list will be released in Spring 2023, and the Intended Use Plan and grant application will be submitted to the USEPA by July 2023. It is anticipated that the USEPA will award the grant funds in Fall 2023.

Appropriation for federal fy22 CW PFAs/Emerging Contaminants funding was included in state fy23 Supplemental Budget 4 introduced during the 2022 Legislative Session and is available to MDE.

DWRLF: DLS recommends that MDE comment on why so few loans and grants were encumbered in fiscal 2022.

Department Response: Similar to the Drinking Water SRF Program, MDE estimates encumbrance levels based on information received from local governments as to what stage, such as planning, design, or construction, their projects are in. There were several projects that were expected to be encumbered in fy22 that will be encumbered in fy23. There can be many reasons for the delays, including competing priorities for local government staff, a limited number of contractors available to perform the work, and economic conditions that increase the costs of projects. MDE continues to work closely with local jurisdictions regarding their project schedules and funding commitments.

DWRLF: DLS recommends that MDE comment on when an intended use plan will be submitted to EPA for the lead service line replacement, emerging contaminants, and assistance to small and disadvantaged communities' allotments of federal IJA funding and when this funding will be realized in MDE's budget. In addition, DLS recommends that MDE comment on whether it has a plan for addressing the lead service line problem in Maryland using the allotted federal funding.

Department Response: MDE recently completed the solicitation process for both the federal fy22 and fy23 Drinking Water PFAs/Emerging Contaminants, Lead Service Line, and Small/Disadvantaged Communities funding. A draft funding list will be released in Spring 2023, and the Intended Use Plan and grant application will be submitted to the USEPA by July 2023. It is anticipated that the USEPA will award the grant funds in Fall 2023.

Appropriation for federal fy22 DW PFAs/Emerging Contaminants, Lead Service Line, and Small/Disadvantaged Communities funding was included in state fy23 Supplemental Budget 4 introduced during the 2022 Legislative Session and is available to MDE.

MDE does have a lead service line replacement plan. Under the EPA lead and copper rule, all community water systems must complete lead service line inventories by October 2024. MDE's Water Supply Program is working with all community water systems in MD regarding this requirement.

MDE plans to fund lead service line inventory and replacement work with the DW SRF lead service line funding, with projects selected using the scoring system recently updated to include criteria specific to lead service line inventories and replacements. As previously stated, MDE recently completed the solicitation process for this funding, which appears to have yielded sufficient projects to utilize the federal fy22 and fy23 funding.

BRF – Wastewater Projects: DLS recommends that MDE comment on the impact of expert staffing shortages on the performance of wastewater treatment plants that have received BRF funding and what can be done to address this issue.

Department Response: The majority of BRF-funded ENR WWTPs continue to maintain compliance and achieve ENR levels of treatment. Of the 77 major and minor WWTPs that have been fully upgraded to ENR, only 4 of these fully upgraded facilities are currently in significant non-compliance, which is not only due to staffing shortages. MDE does agree that there are staffing shortages that are impacting some of the ENR WWTPs and that there is a workforce issue that needs more attention and resources. MDE is committed to working in partnership with local jurisdictions to help meet these staffing needs. We are currently exploring several options, including new technical assistance offered through EPA's environmental finance centers, existing technical assistance providers such as the Maryland Center for Environmental Training, and Maryland Environmental Service.

MDE administers the Bay Restoration Fund Operation & Maintenance Grant Program, which provides up to \$11 million annually for ENR WWTPs to maintain and exceed ENR levels of treatment. This funding can be utilized for a variety of operating expenses, including addressing staffing issues. Additionally, the Water Quality Revolving Loan Funding that MDE administers can fund automation processes and upgrades at these WWTPs to reduce the staffing burdens associated with running these facilities.

Comprehensive Flood Management Program: DLS recommends approval of the \$3.0 million preauthorization in fiscal 2025 for the Annapolis City Dock Stormwater and Flood Mitigation Phase project in Anne Arundel County.

Department Response: The department accepts this recommended action.