

Chesapeake Bay Cabinet
Fiscal Year 2025 Operating Budget
Response to the Department of Legislative Services Analysis

Senate Budget and Taxation Committee
Public Safety, Transportation, and Environment Subcommittee
Senator Sarah K. Elfreth, Chair
January 25, 2024

House Appropriations Committee
Transportation and Environment Subcommittee
Delegate Courtney Watson, Chair
January 24, 2024

DLS Recommendation #1 Pg. 25

The Department of Legislative Services (DLS) recommends the adoption of committee narrative requesting 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 operating budget analysis K00A – DNR. In addition, DLS recommends the adoption of committee narrative requesting that DNR comply with statute and provide the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund annual report at the time of the fiscal 2026 budget submission.

Administration 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 2026 Allowance.

DLS Recommendation #2 Pg. 27

DLS recommends that committee narrative be adopted requesting a similar report from the agencies for the fiscal 2026 budget submission on updated historical and projected Chesapeake Bay 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 how the loads associated with the Conowingo Dam infill, population growth for both people and animals, and climate change will be addressed; the status of staffing and preventive maintenance at the 67 major WWTPs; the status of the Soil Conservation District field positions in terms of Soil and Water Quality Conservation Plan development and BMP implementation; and the long-term plans for reducing loading from the stormwater sector. For administrative purposes, this committee narrative will appear in the operating budget analysis K00A – DNR.

Administration Response: The Administration agrees that it is appropriate and is very willing to submit a report to DLS summarizing Maryland’s Chesapeake Bay funding and restoration progress to date, current status, and future plans by December 1, 2024. However, the Administration respectfully requests that the scope of the requested report be scaled back from what has historically been requested. The current scope of the report requires a tremendous amount of staff time to compile and it is unclear how much of it is useful to the committees. The Administration is willing to work with DLS to identify a more appropriate scope.

DLS Recommendation #3 Pg. 29

DLS recommends that the Administration comment how the fiscal 2025 budget reflects the new policy direction being taken to address the shortcomings noted in the *Achieving Water Quality Goals in the Chesapeake Bay: A Comprehensive Evaluation of System Response*, in particular the need for a pay-for-success outcomes-based model of funding and the need to target funding to the areas with the greatest possible nutrient and sediment reductions and living resource improvements.

Administration Response: The “Comprehensive Evaluation of System Response” (CESR) report represents the most exhaustive and peer reviewed evaluation to date of the 40 year effort to restore Chesapeake Bay. The report presents 4 major “Findings” and 5 major “Policy implications”. In general, the Findings and Policy Implications are that, while significant progress has been made, current practices are insufficient to realize progress necessary to meet the TMDL. The CESR report recommends increased focus and progress is necessary on realizing greater nonpoint source pollution reductions, and suggests that greater attention be paid to improving shallow-water habitat and resulting improvements in living resources. The CESR report is careful to emphasize that this recommended change is not to suggest abandoning the traditional TMDL goal of achieving the reductions in nutrient and sediment pollution necessary to achieve water quality criteria in the deep trench of the bay, but rather to perhaps take a more targeted and “tiered” approach that recognizes the reality that first achieving improvements in shallow water habitat will realize meaningful results that connect more citizens with the benefits of a restored Chesapeake Bay.

The Administration has embraced the CESR Report through Governor Moore’s Executive Order, a revitalized “Bays Watershed Council” and several meetings and discussions with CESR authors on how to best implement CESR’s findings in Maryland. The Bays Watershed Council is currently working through a process on how to best apply those recommendations in Maryland using our existing resources. At the same time, the Administration recognizes that we cannot achieve a restored bay unilaterally and that we must work closely with our partners throughout the watershed. To that end, the Administration is embracing Governor Moore’s election as Chair of the Chesapeake Bay Program’s Executive Council and Secretary Kurtz’s appointment as Chair of the Chesapeake Bay Program’s Principals’ Staff Committee to lead the partnership in that effort. The Bays Watershed Council is meeting individually with each of our PSC representatives in the other watershed jurisdictions to better understand each other’s perspectives in order to craft a scientifically sound approach going forward based on CESR.

Implementation of Pay For Success:

Department of Natural Resources: The Conservation Finance Act (CFA) passed in 2022 laid the groundwork for funding sources and programs across the bay agencies to incorporate desirable co-benefits, such as equity, climate impacts, habitat and carbon sequestration, into funding decisions. This has led to DNR working with the Trust Fund Scientific Advisory Panel to identify data layers to incorporate into the existing water quality data layer (SPARROW v4). The new [co-benefit targeting map](#) used for the Chesapeake and Coastal Grants Gateway includes five (5) co-benefits that can be spatially represented, including the Coastal Resiliency Assessment, Maryland EJ Screen and Targeted Ecological Areas among others. This map will continue to be fine tuned with updated data as available.

The CFA also addressed procurement law to make environmental outcomes a commodity that the state can purchase through pay for success contracts and provides clarity and authority to more efficiently meet our goals and incentivize private sector investment. The Department of Natural Resources has taken this groundwork to explore best opportunities to incorporate these new funding mechanisms into existing funding programs, which includes a departmental bill to make pay for success contracts for environmental outcomes exempt from standard procurement. The goal of the departmental bill is to maintain the same timeline and process for funding regardless of award mechanism, ensuring all funds are issued through competitive processes that consider all proposals in a given year to maximize cost effectiveness and co benefit implementation, key objectives of the Trust Fund and the Conservation Finance Act. Further, the exemption allows DNR to award projects and issue funds on timelines that align with funding availability as well as restoration limitations for planting vegetation, time of year restrictions and other natural resources considerations that are critical when implementing ecological restoration. The subsection of the State Finance and Procurement article where the exemption resides requires that MBE goals apply to that subsection. The department maintains its commitment to MBE goals and will ensure that these contracts abide by state MBE rules.

Department of the Environment: MDE is currently taking a pay-for-success approach with two of its funding programs. MDE's Clean Water Commerce Program is a pay-for-success outcomes-based model of funding. The initial pilot program ran for FY18-20 and awarded more than \$24M in funding to purchase nitrogen, phosphorus, and sediment reductions. The Program was reauthorized in 2021 to purchase environmental outcomes (nitrogen load reductions that can be directly measured or modeled using the Chesapeake Bay Program Models). The Act provides \$20 million a year for purchasing environmental outcomes, with the goal of improving the health of Maryland's waterways in a cost-effective manner. The Act includes specific carve-outs for certain sectors – agricultural projects, environmental justice projects, and non-agricultural landscape projects. The program also includes priority for projects with co-benefits such as climate mitigation and resilience, alleviating harms and risks in environmental justice communities, improving local water quality, and phosphorus and sediment reductions. MDE only makes payments after the projects are constructed and nitrogen reductions are verified. The duration of the contract may be between 10 and 20 years. MDE makes annual payments over the contract length after annual verification. There has been a great deal of interest in the program. During the initial solicitation MDE received 36

applications for more than \$90M in requested funding. The cost per pound of nitrogen ranged from just over \$16 to more than \$1500. In total 31 of 36 proposals meet MDE cost-effectiveness criteria of less than \$150 per pound of nitrogen.

The Conowingo pay-for-success program is similar to MDE's Clean Water Commerce Program, in which MDE is partnering with the Susquehanna River Basin Commission and the Environmental Policy Innovation Center. The program includes \$25 million in funding for the purchase of nitrogen reductions to help Maryland meet its Conowingo WIP load allocation. The program will use a reverse auction where proposed restoration projects with measured and validated nitrogen reductions propose a cost per pound of reduction in the application process. Projects will be selected based on the cost effectiveness of the proposals, with additional weight for projects located in Maryland's portion of the Susquehanna watershed or projects located in a most effective basin developed by the CWIP planning committee. Applicants will include a schedule describing how much funding they will request each year and the total amount of funding requested to cover all costs. These rates must be tied to verified pounds of nitrogen being prevented each year. No funds will be provided until outcomes have been produced and verified. The RFP for the initial round of projects closed on January 22, 2024. MDE does not anticipate needing additional funds in the FY25 budget since the existing \$25-million should carry the program through FY2025. However, we plan to review program status in 2025 and pursue any needed funding increases in FY26.

In addition, the Department of the Environment's omnibus fee bill (HB0245) will help ensure MDE has the resources needed to implement regulatory water programs that help protect the Bay. MDE is looking forward to working with our legislative colleagues to ensure this bill is signed into law. MDE is also evaluating fees that can be changed by regulation to make sure those are keeping up with inflation and help to fully fund our water programs.

DLS Recommendation #4 Pg. 30

DLS recommends that the Administration comment on the capacity of the Envision the Choptank partnership to reverse the lack of Chesapeake Bay restoration progress in the Choptank River watershed. In addition, DLS recommends that the Administration comment on how targeting technical assistance and funding could help in the Choptank River watershed.

Administration Response: Maryland DNR and MDE are active members of the Envision the Choptank partnership. Both agencies have contributed resources, human and monetary, to the Envision partnership. The Departments are helping the partnership expand its capacity to provide additional services to Choptank communities. This includes being able to develop community ambassadors, deliver technical assistance, provide environmental training to residents of the watershed, and completing restoration projects.

The state agencies direct Federal EPA Clean Water Act Section 319 (h) and NOAA funding to the Chesapeake Bay Foundation to support a technical assistance "Circuit Rider" that is tasked with helping communities identify areas where they can implement new restoration projects, with a focus on environmental justice and climate resilience. In addition, 3-5 years

of funding to the Chesapeake Bay Trust Capacity Building Initiative supports community ambassadors, which are volunteers within DEIJ communities trained to understand and champion projects in their neighborhoods. Through the Watershed Assistance Collaborative, the UMD Sea Grant Extension Regional Watershed Specialist (a type of circuit rider for the Upper Shore, one of five around the state) works closely with the Envision group on local government and community capacity building and technical assistance/ outreach efforts. DNR serves on the Backbone and Steering committees to provide direction, recommendations, and overall support of the Envision effort. MDE was also able to provide money to Caroline County to install practices on a number of private properties to mitigate impacts from persistent storm flooding, including stormwater mitigation efforts at Denton Elementary School.

The DLS analysis mentions the Envision the Choptank nutrient success story. Envision the Choptank was nominated by MDE staff, and selected by the New England Interstate Water Pollution Control Commission (NEIWPCC) and EPA, as a national nutrient success story. The focus of the story is the partnership, with representatives from over 40 nonprofit, government, scientific, and community organizations, along with the Circuit Rider approach to technical assistance. The partnership, circuit rider, and funding provide a model for increasing Bay restoration progress in other similar watersheds. With this collaborative effort, Envision the Choptank has the ability, knowledge and partnerships to improve the watershed by looking at long term and large scale protection and restoration measures.

DLS Recommendation #5 Pg. 31

DLS recommends that the Administration comment on the value of growth management and strategic land conservation for Chesapeake Bay restoration and the role that each of these strategies plays in its future plans for Chesapeake Bay restoration.

Administration Response: We strongly agree with the USGS findings from running its CBLC model that a growth management scenario limits the growth of impervious and pervious surfaces as well as septic land use, while minimizing the loss of both natural and agricultural land, and results in the lowest level of nutrient and sediment pollution. We also agree with the CBLC model findings that growth management practices will not ensure the protection of forest and farmlands without concurrent strategic land conservation.

Regarding the value of growth management, the CESR report notes that “existing implementation actions to reduce nonpoint sources of nutrients are insufficient to achieve the TMDL”. An important policy implication of this finding is that Maryland should do all it can to limit the amount of new nonpoint source pollution resulting from development of all kinds (residential, solar, data center, etc.) by limiting new impervious cover and ensuring a higher amount of development is redevelopment and served by ENR WWTPs, which generate the lowest amount of nutrients per household, instead of by new septic systems.

The MDP Maryland State Data Center completed a preliminary forecast in December 2022 that estimates that Maryland's population will grow by 792,910 people between 2025 and 2050, equivalent to a new city the size of Seattle. The locations where population growth occurs in Maryland (for example, within existing population centers versus greenfields) as well as how new development occurs (for example, as redevelopment, mixed-use development, transit-oriented development, or adding accessory dwelling units versus large lot development) will be critical to minimizing new sources of nonpoint pollution.

Strategic land conservation is a pollution prevention strategy. Lands and shorelines in natural cover, such as forests, shrubland, meadows, and marsh, are the most cost effective BMPs for preventing further degradation and are critical for maintaining the Bay's living resources, Marylanders' drinking water and the economies and communities that depend on them. The conservation of rural forested and agricultural landscapes offer opportunities to couple conservation with restoration in perpetuity. Conserving coastal and floodplain lands that provide important climate resilience benefits for living resources, water quality and communities continues to be a factor and is now being rolled out as a priority in DNR's easement programs. Land and coastline conservation can be considered a restoration practice allowing conservation, restoration and management to exist simultaneously in locations that are necessary for meeting our restoration goals.

The agencies cannot say too much yet about "the role that each of these strategies plays in its future plans for Chesapeake Bay restoration" because the Bays Watershed Council is currently developing its 2024 Bays Watershed plan for submission to Governor Moore in March 2024.

The Smart Growth Subcabinet, chaired by MDP Secretary Rebecca Flora, is committed to promoting sustainable and equitable development by coordinating growth management and land conservation strategies, policies and programs among the state agencies. Recent examples of this coordinated approach includes the development of the legislatively mandated Maryland the Beautiful Plan, due on July 1, 2024, to preserve 30% of Maryland's land by 2030 and 40% by 2040; the coordination of inter-agency review process for transit-oriented development (TOD) designations and TOD financial assistance; and recommendations on the preservation and reuse of historic complexes. Additionally, MDP is also keeping the Subcabinet informed on the work of the Accessory Dwelling Unit Policy Task Force, which MDP is staffing. It is anticipated that the Subcabinet agencies will be instrumental in implementing some of the task force recommendations.

DLS Recommendation #6 Pg. 35

DLS recommends that the Administration comment on, in general, the Conowingo Dam WIP RFP, why the deadline was extended twice, what is known about the responses received so far, and how the crediting of nutrient reductions will be handled. In addition, DLS recommends that the Administration comment on the next steps for Conowingo Dam water quality certification,

relicensing, and the settlement agreement between MDE and Constellation Energy that requires Constellation Energy to invest more than \$200 million in environmental projects and operational enhancements to improve water quality over the 50-year license term. Finally, DLS recommends that the Administration comment on the next steps for dredging the Conowingo Dam and the status of the Conowingo dredging expert panel.

Administration Response:

- Conowingo WIP RFP: There was only a single extension of the application deadline. We granted this to give more time for proposal development over the holiday period and because interested applicants requested a longer application period. The application period just closed on January 22nd.

Nutrient credits will be determined up front using the Chesapeake Bay Program's Chesapeake Assessment Scenario Tool (CAST) and will have to be verified by a third party as implemented and performing as designed before they can be funded. Only Chesapeake Bay Program approved best management practices are eligible for funding and they will need to be re-verified annually to continue to receive funding. Projects will be selected primarily based upon their cost-effectiveness in reducing nitrogen.

- Conowingo Dam Water Quality Certification (WQC): MDE is currently undergoing a WQC reconsideration process in light of new information and science that has become available since the 2018 WQC. We also included a public process to solicit new information and data. Staff are also working to implement a mediation process with the parties that litigated the WQC and that includes this new information. The hope is that mediation will result in a durable WQC that results in timely and robust water quality and ecological improvements rather than a protracted and uncertain litigation. At this time, the settlement agreement payments have been paused while the parties pursue mediation. However, the settlement agreement monies that have been collected to date are being used to restore freshwater mussels and further the science for Conowingo dredging.
- Conowingo Dredging Next Steps: MDE is negotiating a cost-share contract with the US Army Corps of Engineers Baltimore District to develop a model for Conowingo Reservoir that is needed to assess dredging effectiveness for nitrogen reduction. The additional sediment data collected from Maryland's dredging and reuse pilot will inform the model. Once that agreement is in place, the expert panel will reconvene to help oversee model development and ensure it meets the Bay Program requirements. The goal is to complete the model by the end of 2025.

DLS Recommendation #7 Pg. 38

DLS recommends that the Administration comment, in general, on the status of implementation of the work to be performed as part of the Back River and Patapsco WWTP consent decree, and in

particular on the prognosis for meeting future permit limits and the required staffing reports and plans.

Administration Response: On November 15, 2023, the Department, Blue Water Baltimore, Inc., and the Mayor and City Council of Baltimore, Maryland entered into a Consent Decree 24-C-22-000386 (CD) that resolved violations at Back River and Patapsco WWTPs from 2019 through present and established a schedule to get the facilities back into full compliance. The Consent Decree included a penalty settlement of \$4.75 million with \$1.9 million going toward Supplemental Environment Projects.

The CD requires that Baltimore City DPW continue to repair, rehab, or install certain pieces of equipment to gain full compliance with the permit conditions. The CD also required that at least 8 Primary Settling Tanks (PSTs) be completed by January 1, 2024. On December 20, 2023, Baltimore City reported to MDE that Back River has six (6) fully functional PSTs but requested to extend the deadline in completing repairs to certain PSTs from January 1, 2024 to March 31, 2024.

Both facilities have been meeting their NPDES Permits effluent limits and operating at ENR nutrient concentration levels or better - since June 2022 for Back River and April 2023 for Patapsco. There has been only one effluent violation since January 2023 at Back River. A staffing report for both facilities was submitted to MDE on December 22, 2023 that includes both short and long term strategies for recruitment, retention and training. MDE is reviewing this information to determine appropriate next steps. Meeting future permit requirements will require a continued commitment by Baltimore City to staffing and maintenance.

DLS Recommendation #8 Pg. 39

DLS recommends that the Administration comment on its ability to identify and target Cover Crop Program, the Maryland Agricultural Cost-Share Program, and other funding sources to farm or even field level high-loss nonpoint nutrient and sediment agricultural areas.

Administration Response: The Maryland Department of Agriculture concurs with the DLS assessment of the Comprehensive Evaluation of System Response report noting that 5% to 20% of the land area may generate 50% to 90% of runoff and nonpoint source loads. Further the report recognizes that while Chesapeake Assessment Scenario Tool (CAST) can identify high-loading areas at a coarse spatial scale it cannot reflect localized high-loss areas at field or farm scale. Likewise, the MDA does not currently have the ability to accurately quantify high-loss areas at those scales as well.

Since the inception of the USDA Soil Conservation Service in the mid 1930's, local Soil Conservation District professionals have been working with individual landowners to identify and recommend conservation measures to address a variety of resource concerns. These Soil Conservation and Water Quality Plans have served as the backbone of agricultural conservation. Beginning in 2021, the Maryland Agricultural Cost-Share Program began incentivizing conservation plan implementation by offering 100% cost-share assistance to applicants on 20 high-priority conservation practices to assist Maryland in meeting Phase III WIP goals by 2025.

In order to receive the 100% cost-share, as opposed to the traditional 87.5%, the practices are required to be implemented as part of a current Soil Conservation and Water Quality Plan developed by a local soil conservation district. As a result of this, coupled with the additional MDA staff in each SCD Office, approximately 78% of the agricultural land is currently being managed under a conservation plan in Maryland.

As reported previously, the Department evaluates and adjusts policies, requirements, and payment structure annually to ensure efficient and effective management of the Cover Crop Program. The Program currently targets implementation based on agronomic criteria. Incentive payment options include encouraging early planting, high nutrient uptake species such as rye , as well as planting methods that promote the best seed to soil contact. Further, implementation is limited to those fields which have the greatest nutrient loss risk potential, such as those planted to certain row crops or vegetables.

DLS Recommendation #9 Pg. 40

DLS recommends that the Administration comment on the implications of the settlement agreement for Maryland’s Chesapeake Bay restoration work and the ability to meet the overall 2025 TMDL deadline.

Administration Response: The settlement requires EPA to, among other things, identify sources of agricultural and stormwater runoff in Pennsylvania that are potentially subject to federal permitting, prioritizing those areas that contribute the most pollution to local waterways. EPA also agreed to increase compliance and enforcement efforts, especially in those priority areas, and develop ways to reduce the number of permits issued by the Pennsylvania Department of Environmental Protection that are administratively extended.

EPA has reported that they have directed additional inspections and compliance assurance activities toward NPDES-permitted facilities within several Counties within the Chesapeake Bay, including regulated wastewater facilities, stormwater facilities, municipal separate storm sewer systems (MS4s), and concentrated animal feeding operations (CAFOs). These compliance assurance activities are intended to assess whether NPDES-permitted facilities are in compliance with their permits. EPA stated that they plan to continue to focus its efforts, as resources allow, in these geographic areas and NPDES-permitted sectors in order to ensure that water quality is being protected.

The settlement addresses some of the most severe agricultural pollution problems by targeting efforts toward Pennsylvania counties where the need is greatest. But Pennsylvania, by the account of the federal government and neighboring states, has consistently lagged behind and its Phase III WIP does not meet its EPA assigned reduction targets. It is unclear that the actions taken by EPA as described in the settlement will be enough for PA to meet its 2025 obligations. Maryland and the broader Bay Program partnership will be closely monitoring progress.

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