

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Joint Resolution 4 (Senator Hershey, *et al.*)
 Rules

Conowingo Dam - Pollution Cleanup - Costs

This joint resolution states that, in the view of the General Assembly, Exelon Generation Company, LLC, the owner of the Conowingo Dam, must pay a portion of the cleanup costs associated with the dam’s federal certification pursuant to Section 401 of the Federal Water Pollution Control Act, and at least 25% of the costs associated with the Susquehanna River’s Watershed Implementation Plan (WIP), as specified.

Fiscal Summary

State Effect: *Under one set of assumptions*, compliance with this joint resolution increases general fund revenues by approximately \$10.8 million in FY 2019 and by approximately \$43.1 million annually thereafter due to payments of specified costs from Exelon.

(\$ in millions)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
GF Revenue	\$10.8	\$43.1	\$43.1	\$43.1	\$43.1
Expenditure	0	0	0	0	0
Net Effect	\$10.8	\$43.1	\$43.1	\$43.1	\$43.1

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill does not directly affect local government finances.

Small Business Effect: None.

Analysis

Current Law/Background:

Chesapeake Bay Restoration and the Total Maximum Daily Load

In December 2010, the U.S. Environmental Protection Agency established a Chesapeake Bay Total Maximum Daily Load (TMDL), as required under the federal Clean Water Act and in response to consent decrees in Virginia and the District of Columbia. The TMDL sets the maximum amount of nutrient and sediment pollution the bay can receive and still attain water quality standards. It also identifies specific pollution reduction requirements; all reduction measures must be in place by 2025, with at least 60% of the actions completed by 2017.

As part of the Chesapeake Bay TMDL, bay jurisdictions must develop WIPs that identify the measures being put in place to reduce pollution and restore the bay. WIPs (1) identify pollution load reductions to be achieved by various source sectors and in different geographic areas and (2) help to provide reasonable assurance that sources of pollution will be cleaned up, which is a basic requirement of all TMDLs.

MDE notes that there is no Susquehanna Watershed WIP. However, the Conowingo Dam has its own WIP, as discussed below.

The Conowingo Dam and Permitting

The Conowingo Dam – a peaking hydroelectric facility that uses reservoir storage to generate electricity during peak electricity demand periods – has been described as the biggest best management practice on the Susquehanna River because it collects sediment and phosphorus that would otherwise flow into the bay. However, the Conowingo Dam, owned by Exelon Corporation, has reached an end state in terms of sediment storage capacity. The Conowingo Dam officially has its own target of 6.0 million pounds of nitrogen and 260,000 pounds of phosphorus under a separate WIP to be managed by a third party contracted for this purpose.

In addition, the Conowingo Dam is in the midst of relicensing by the Federal Energy Regulatory Commission (FERC); its license expired on September 1, 2014, and it will receive automatic one-year renewals until it is relicensed. FERC cannot act on an application for licensing unless a Clean Water Act – Section 401 water quality certification – is issued by the Maryland Department of the Environment (MDE). MDE issued the water quality certification with special conditions on April 27, 2018, which requires Exelon annually to reduce 6.0 million pounds of nitrogen and 260,000 pounds of phosphorus. Exelon has filed an administrative appeal with MDE and lawsuits in federal and State court

alleging that the water quality certification imposes on it the sole responsibility to remove from the Susquehanna River pollutants that Exelon did not introduce into the river but that flow through the Conowingo Dam. On October 11, 2018, a Baltimore circuit court judge rejected one of Exelon's lawsuits on the basis that Exelon had not yet exhausted its options under the State administrative appeals process. The other actions are still pending.

MDE advises that the water quality certification contains a suite of conditions (nutrient reductions to meet dissolved oxygen in the bay, flow management for habitat, trash and debris, fish passage and migration, *etc.*) to mitigate the water quality impacts from the Conowingo Dam. The WIP specifically addresses the increase in sediments and the associated nutrients as a result of infill behind the dam. The Conowingo WIP was developed because the federal Environmental Protection Agency and the states in the bay watershed realized that the Chesapeake Bay TMDL goal for 2025 could not be met if the 6.0 million pounds of nitrogen and 260,000 pounds of phosphorus continued coming into the bay from the dam.

State Revenues: MDE advises that the Section 401 water quality certification issued to Exelon for the Conowingo Dam states that, if the company chooses to pay a fee in lieu of reducing nutrients directly, the rate is \$17 per pound of nitrogen and \$270 per pound of phosphorus. As stated earlier, MDE issued the water quality certification with special conditions, which requires Exelon annually to reduce 6.0 million pounds of nitrogen and 260,000 pounds of phosphorus. These required reductions mirror the nutrient reductions under the dam's WIP. One way that Exelon could pay for 25% of the cleanup costs associated with the WIP and a portion of the costs of the water quality certification (to meet the intent of this joint resolution) would be to pay a fee in lieu of actual reductions for 25% of the required nitrogen and phosphorus reductions. Under this scenario, Exelon would need to pay \$10.8 million in fiscal 2019 (which assumes that the joint resolution is signed on April 1, 2019) and \$43.1 million annually thereafter. This estimate reflects Exelon paying \$17 per pound of nitrogen (for 1.5 million pounds) and \$270 per pound of phosphorus (for 65,000 pounds).

Additional Information

Prior Introductions: None.

Cross File: HJ 8 (Delegate Jacobs, *et al.*) - Rules and Executive Nominations.

Information Source(s): Maryland Department of the Environment; Department of Legislative Services

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md/lgc

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