Chesapeake Bay Fiscal 2026 Budget Overview

Department of Legislative Services Office of Policy Analysis Annapolis, Maryland

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Executive Summary

Past efforts to restore the Chesapeake Bay watershed, which includes parts of Delaware, the District of Columbia, Maryland, New York, Pennsylvania, Virginia, and West Virginia, have resulted in insufficient progress and continued poor water quality. However, a regional restoration initiative, required by the federal government and characterized by accountability measures and shorter-term program evaluation, is underway.

In December 2010, the U.S. Environmental Protection Agency (EPA) established a Chesapeake Bay Total Maximum Daily Load (TMDL) as required under the federal Clean Water Act (CWA) and in response to consent decrees in the District of Columbia and Virginia. This TMDL sets the maximum amount of nutrient and sediment pollution that 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 calendar 2025, with measures in place to achieve at least 60% of pollution reductions by calendar 2017.

\$1,200 \$1,000 \$800 \$600 \$400 \$200					
\$0	Actual 2024	Approp. 2025	Allowance 2026	\$ Change 2025-2026	% Change 2025-2026
Total	\$1,119.6	\$1,025.6	\$942.6	-\$83.0	-8.1%
□ MDOT	255.2	336.0	237.6	-98.4	-29.3%
■ MDE	409.8	368.3	353.1	-15.1	-4.1%
■ POS, Rural Legacy, MALPF	237.2	72.5	66.1	-6.3	-8.8%
■ MDP	6.7	8.9	7.2	-1.7	-19.3%
■ MDA	65.8	63.7	63.7	-0.1	-0.1%
■ MSDE	0.7	0.7	0.7	0.0	0.0%
DNR	113.4	139.2	146.4	7.1	5.1%
■ Higher Education	30.8	36.2	67.7	31.5	86.9%

Fiscal 2026 Budget Decreases \$83.0 Million, or 8.1%, to \$942.6 Million (\$ in Millions)

DNR: Department of Natural Resources MALPF: Maryland Agricultural Land Preservation Foundation MDA: Maryland Department of Agriculture MDE: Maryland Department of the Environment MDOT: Maryland Department of Transportation MDP: Maryland Department of Planning MSDE: Maryland State Department of Education POS: Program Open Space

Note: This presentation only includes State agency programs that have over 50% of their activities directly related to Chesapeake Bay restoration. In addition, funding related to salaries and fringe benefits does not reflect health insurance or increment adjustments.

Source: Department of Budget and Management; Department of Legislative Services

Key Observations

- *Maryland's Progress:* In order to meet the statewide pollution reduction goal for nitrogen as part of the Phase III Watershed Implementation Plan (WIP), the State must further reduce nitrogen loading to the bay by an additional 2.8 million pounds per year relative to the calendar 2023 level to meet the calendar 2025 target of 45.8 million pounds of nitrogen per year. Maryland intends to reduce nitrogen to 44.7 million pounds per year to account for unforeseen circumstances, but recent analysis indicates that Maryland's WIP may only reduce nitrogen loads to 47.0 million pounds per year, although 1.5 million related to climate change can be addressed after the 2025 Chesapeake Bay restoration deadline.
- Chesapeake Bay in "Moderate Ecosystem Health": The health of the bay, as measured by the University of Maryland Center for Environmental Science's (UMCES) Chesapeake Bay and Watershed Report Card, has generally remained the same since calendar 2003. The overall health of the bay improved by 4 percentage points in calendar 2023, receiving an overall score of C+ (55%), indicating that the bay is in moderate ecosystem health. In addition, the Chesapeake Bay watershed's health scored 52% (C) in calendar 2023, which is not comparable to 2022 due to indicator changes in calendar 2023.
- Overall Chesapeake Bay Restoration Funding: Chesapeake Bay restoration funding decreases by a net \$83.0 million between fiscal 2025 and 2026. The major changes are reductions of \$80.4 million for Purple Line activities in the Maryland Department of Transportation (MDOT) and \$10.0 million for Bay Restoration Fund projects in the Maryland Department of the Environment (MDE) The largest increase is \$31.5 million in higher education, primarily due to an increase of \$32.9 million for electrification of the University of Maryland, College Park's (UMCP) shuttle fleet.
- Chesapeake and Atlantic Coastal Bays 2010 Trust Fund: The appropriation from the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund increases \$13.5 million in fiscal 2026. The use of the fiscal 2026 funding largely remains the same as fiscal 2025, with the exception of the \$5.0 million budgeted for the Whole Watershed Fund per Chapters 558 and 559 of 2024 (Whole Watershed Act) and the net increase of \$8.0 million to support cost containment, contingent on corresponding provisions being enacted in HB 352/SB 321, the Budget Reconciliation and Financing Act (BRFA) of 2025. In the long term, the fund's expenditures exceeding its revenues will reduce the available fund balance and, thus, the fund will not be able to sustain its role in cost containment.
- Whole Watershed Act Implementation: Chapters 558 and 559 establish the Whole Watershed Restoration Partnership to accelerate restoration of the Chesapeake and Atlantic Coastal Bays and their watersheds. The partnership provides grants and technical assistance to eligible projects over a period of five years chosen by a State management team established to administer the Whole Watershed Restoration Partnership. A request for

proposals (RFP) ended on December 3, 2024, and the selection of projects in five different watersheds is required by March 1, 2025. The fiscal 2026 budget includes \$10.0 million for the purposes of the Act.

- *Historical and Projected Chesapeake Bay Restoration Spending:* The spending report notes that there is a shift in focus toward shallow-water habitat restoration as well as the implementation of a new stormwater permit intended to mitigate nutrient and sediment loads from development growth. MDE has implemented a new wastewater permitting and compliance framework in an effort to improve the restorative outcomes for water clarity, chlorophyll a, and water temperature. For the agriculture sector, the Maryland Agricultural Water Quality Cost-Share Program is not funded in fiscal 2026 due to sufficient available balance; an agriculture climate vulnerability study is in progress. Agencies are focusing more on environmental justice, and oyster water quality credits have been approved. Infrastructure Investment and Jobs Act (IIJA) funding has been allocated for the Most Effective Basins program. The Water Quality Trading Program certified 1,362,854 pounds of nitrogen, 499,158 pounds of phosphorus, and 41,425,185 pounds of sediment reduction credits as of July 2024.
- **Review of "A Critical Path Forward for the Chesapeake Bay Program Beyond 2025"** and Next Steps: At is December 2024 annual meeting, the Chesapeake Bay Program's Chesapeake Executive Council tasked the Principals' Staff Committee to recommend outcome revisions to the 2014 Chesapeake Bay Watershed Agreement and methods to simplify and streamline the Chesapeake Bay restoration partnership process.
- Conowingo Dam WIP, Relicensing, and Settlement Agreement and Impact of Federal Energy Regulatory Commission (FERC) on Relicensing: Maryland budgeted \$25.0 million for the Conowingo Dam WIP in fiscal 2023. The Susquehanna River Basin Commission - the fiscal agent selected for the project - initiated an RFP on October 24, 2023, which closed on January 22, 2024. On August 15, 2024, the Susquehanna River Basin Commission announced \$11.4 million in projects. The commission announced a round 2 RFP on September 18, 2024, with a December 16, 2024 closing. FERC published a rule on November 21, 2024, clarifying that the reasonable period of time for reviewing a water quality certification request is one year. Of note, more than one year has elapsed since Constellation Energy submitted its water quality certification request to MDE. Once again, the future of 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 remains unclear. MDE noted last year that the settlement agreement payments were paused while mediation was pursued.
- New Maryland Leadership in Environmentally Engaged Farming Program and Other Omnibus Legislation Modifications: SB 428/HB 506 (Chesapeake Bay Legacy Act) are Administration bills that affect the following policy areas: the new Maryland Leadership in Environmentally Engaged Farming Program; healthy soils; fisheries; a Department of

Natural Resources (DNR) water quality monitoring program; agricultural leases on DNR land; the Whole Watershed Act; and oysters. The fiscal 2026 budget includes \$0.9 million for the new Maryland Leadership in Environmentally Engaged Farming Program, but there is no spending plan, and the budgeted amount appears to be in conflict with a provision in the BRFA of 2025.

Operating Budget Recommended Actions

1. Nonbudgeted.

Overview

Past efforts to restore the Chesapeake Bay watershed, which includes parts of Delaware, the District of Columbia, Maryland, New York, Pennsylvania, Virginia, and West Virginia, have resulted in insufficient progress and continued poor water quality. However, a regional restoration initiative, required by the federal government and characterized by accountability measures and shorter-term program evaluation, is underway. The current bay restoration policy framework is described in the following.

The Overarching Goal: Chesapeake Bay TMDL

In December 2010, EPA established a Chesapeake Bay TMDL as required under the federal CWA and in response to consent decrees in the District of Columbia and Virginia. This TMDL sets the maximum amount of nutrient and sediment pollution that 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 calendar 2025, with measures in place to achieve at least 60% of pollution reductions by calendar 2017.

To ensure that nutrient and sediment reductions are met, EPA developed an accountability framework that includes WIPs; two-year milestones; federal review to track and assess progress; and as necessary, specific federal actions if the bay jurisdictions do not meet their commitments.

Achieving the Goal: An Accountability Framework for Jurisdictions in the Bay Watershed

WIPs

As part of the Chesapeake Bay TMDL, the bay jurisdictions must develop WIPs that identify the measures installed to reduce pollution and restore the bay. WIPs are submitted to EPA for review and evaluation to (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. In calendar 2010, each bay jurisdiction submitted a Phase I WIP that details how the jurisdiction plans to achieve its pollution reduction goals under the TMDL. In calendar 2012, the bay jurisdictions submitted Phase II WIPs that establish more detailed strategies to achieve the bay TMDL on a geographically smaller scale. A Phase III WIP was submitted in final form to EPA on August 23, 2019, and is intended to ensure that all measures are in place by calendar 2025 so that restoration goals can be met. Most recently, Maryland submitted a climate change addendum to its Phase III WIP in January 2022 to address additional load reductions associated with climate change.

The final target pollution loads for the five major basins in Maryland are shown in **Exhibit 1**.

Exhibit 1 Final Target Pollution Loads for Maryland's Major Basins (in Million Pounds Per Year)

<u>Major Basin</u>	Nitrogen <u>Pollution</u>	Phosphorus <u>Pollution</u>	Sediment <u>Pollution</u>
Susquehanna	1.6	0.1	113.8
Eastern Shore	15.6	1.3	2,903.4
Western Shore	9.6	0.9	2,959.9
Patuxent	3.2	0.3	437.7
Potomac	15.8	1.1	1,928.0
Total	45.8	3.7	8,342.9

Note: Numbers may not sum due to rounding.

Source: Chesapeake Bay Program - Chesapeake Assessment and Scenario Tool

Two-year Milestones

President Barack H. Obama issued an executive order in May 2009 that directed the federal government to lead a renewed effort to restore and protect the bay and its watershed. At the same time, the bay jurisdictions committed to achieving specific, short-term bay restoration milestones to assess progress toward achieving nitrogen, phosphorus, and sediment reduction goals. Generally, milestones are goals to be reached in two-year increments; they include implementation actions, best management practices (BMP), and program enhancement actions. As a part of this effort, bay jurisdictions must submit pollution reduction progress and program action information to EPA. Although the bay jurisdictions developed the milestones prior to the establishment of the TMDL, the milestones have been incorporated into the TMDL process as a series of checkpoints for assessing progress toward achieving the pollution reduction goals.

Federal Review and Contingency Actions

EPA reviews each jurisdiction's progress toward its two-year milestones. If a jurisdiction's plans are inadequate or its progress is insufficient, EPA may take action to ensure pollution reductions, including increased oversight of State-issued pollution permits, requiring additional pollution reductions, prohibiting new or expanded pollution discharges, redirecting federal grants, and revising water quality standards to better protect local and downstream waters.

Chesapeake Bay Program Funding

The Chesapeake Bay Program directs bay restoration and operates as a partnership between federal and state agencies, local governments, nonprofit organizations, and academic institutions. In October 2020, the U.S. Congress passed America's Conservation Enhancement Act, which reauthorized the program for another five years and provides up to \$92.0 million annually by federal fiscal 2025 to fully fund bay water quality monitoring and coordination activities between the bay jurisdictions. Under recent continuing resolutions passed by the U.S. Congress, Chesapeake Bay Program funding remains at \$92.0 million.

The U.S. Congress passed the IIJA on November 5, 2021. In addition to providing funding for an array of infrastructure investments, the Act increases funding for the program by \$238 million for grants and technical assistance over five years (an additional \$47.6 million a year) spread across the Chesapeake Bay watershed.

On January 20, 2025, President Donald J. Trump issued a number of executive orders, at least three of which appear to affect the Chesapeake Bay restoration effort. The orders affect the restoration effort through changes to programs and policies in the energy, transportation, and mining sectors. The executive orders declare an energy emergency, remove the United States from the Paris Agreement under the United Nations Framework Convention on Climate Change, and eliminate the electric vehicle mandate, among other actions. The executive orders impact the Chesapeake Bay restoration largely by potentially increasing the amount of nitrogen oxides emitted by motor vehicles that are deposited into the Chesapeake Bay. One of the executive orders includes language terminating the Joseph R. Biden Administration's Green New Deal and pauses federal funding through the IIJA and Inflation Reduction Act for this purpose, but it remains to be seen whether this will impact the Chesapeake Bay restoration effort.

Reaching the Goal: Progress to Date

The 2017 Midpoint Assessment

On July 27, 2018, EPA released its midpoint assessment of the progress made by the bay jurisdictions toward meeting the 2017 goal of having measures in place to achieve 60% of the necessary pollution reductions. This 2017 midpoint assessment found that the bay jurisdictions exceeded the 2017 pollution reduction goals for phosphorus and sediment but did not achieve the reduction goal for nitrogen. To achieve the necessary nitrogen reductions by calendar 2025, the bay jurisdictions must reduce an additional 48.4 million pounds of nitrogen, resulting in the need to reduce more than twice as much nitrogen in the next eight years in comparison to the nitrogen reductions achieved during the previous eight years.

For illustrative purposes, **Exhibit 2** reflects (1) the predominant nitrogen loading source in calendar 2019 for each land river segment – the smallest available geographic area for which data is available; (2) the calendar 2019 percentage progress toward the Phase III WIP implementation

loading level for each land river segment; and (3) the loading reduction remaining to meet Phase III WIP full implementation. The progress toward the TMDL shown in the maps is based on the Phase III WIP planning targets that were approved in July 2018. Some of the large-scale patterns shown in the exhibit are as follows:

- **Predominance:** agriculture is the predominant loading source by land river segment in the Chesapeake Bay watershed with wastewater and stormwater concentrated in urban areas and septic systems in exurban areas;
- **Progress:** progress toward reducing nitrogen loading is piecemeal throughout the watershed, with few land river segments meeting or exceeding their targets, and a substantial number of land river segments reflecting no or negative progress; and
- *Remaining:* nitrogen loading remaining is concentrated in the predominantly agricultural Lancaster region of Pennsylvania, the Delmarva Peninsula of Maryland and Delaware, and the Shenandoah River valley of Virginia as well as in urban areas serviced by wastewater treatment plants (WWTP).

Exhibit 2 Bay Restoration Maps – Nitrogen Pollution (Loading) Calendar 2009-2019



Esri, HERE, Garmin, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, Garmin, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, Garmin, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, Garmin, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, Garmin, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, Garmin, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, Garmin, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, Garmin, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, Garmin, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, Garmin, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, Garmin, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, Garmin, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, Garmin, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, Garmin, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, Garmin, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, Garmin, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, Garmin, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, Garmin, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, Garmin, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, Garmin, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, Garmin, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, GARMIN, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, GARMIN, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, GARMIN, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, GARMIN, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, GARMIN, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, GARMIN, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, GARMIN, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, GARMIN, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, GARMIN, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, GARMIN, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, GARMIN, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, GARMIN, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, GARMIN, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, GARMIN, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, GARMIN, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, GARMIN, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, GARMIN, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, GARMIN, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, GARMIN, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, GARMIN, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, GARMIN, FAO, NOAA, USGS, EPA, NPS | Esri, HERE, GARMIN, FAO, NOAA,

TMDL: Total Maximum Daily Load

Note: Land river segments are the smallest geographic areas for which nitrogen, phosphorus, and sediment loading are estimated by the Chesapeake Bay Program's Phase 6 Model. Natural loading sources include forest and other natural areas. State basins consist of the individual states' portion of each of the major watersheds within the Chesapeake Bay watershed. Predominant loading sectors are responsible for at least 50% of the loading in the land river segment, and the next highest loading sector is not closer than 10 percentage points. (Mixed means no sector meets that definition.) The predominant loading sector shown for each land river segment does not necessarily indicate the predominant land use in that land river segment, especially because natural loading sources are excluded.

Source: Chesapeake Bay Program; U.S. Census Bureau; Department of Legislative Services

Targeting Maps

The Chesapeake Assessment and Scenario Tool is a web-based nitrogen, phosphorus, and sediment load estimator tool. BMP targeting maps are a relatively recent addition to the tool. By land river segment – unit for dividing up the bay watershed – and sector – wastewater, agriculture, urban/stormwater/developed, forest/natural, and septic – the maps capture the nitrogen, phosphorous, and sediment loading – pounds or tons of nutrients and sediment – and delivery factor – likelihood of reaching the Chesapeake Bay. Areas with high loading and high delivery factors are best suited for BMP targeting because this is where BMPs will be most effective at reducing nutrients and sediment. **Exhibit 3** shows the Maryland land river segments most effective for reducing agricultural nitrogen. In turn, **Exhibit 4** shows the Maryland land river segments most effective for reducing urban/stormwater nitrogen.





BMP: best management practice

Source: Chesapeake Bay Program - Chesapeake Assessment and Scenario Tool





BMP: best management practice

Source: Chesapeake Bay Program - Chesapeake Assessment and Scenario Tool

2018 Oversight Status

EPA primarily evaluates progress toward meeting the TMDL by reviewing a jurisdiction's combined pollution reductions among four pollution sectors: agriculture; urban/suburban; wastewater; and trading/offsets. As of calendar 2018, EPA used a ranking system, as shown in **Exhibit 5**, to identify sector-specific milestone achievements and shortfalls. At the time, EPA downgraded Maryland's urban/suburban stormwater sector to an enhanced level of EPA oversight due to the lack of progress on the following: tentative determinations for Phase II stormwater permits; approval of any Phase I stormwater restoration plans; and nutrient and sediment reductions. EPA has not updated its oversight status information since calendar 2018.

Exhibit 5 EPA Oversight Status for Bay Jurisdictions Calendar 2018

<u>Jurisdiction</u>	<u>Agriculture</u>	<u>Urban/Suburban</u>	<u>Wastewater</u>	Trading/Offsets
Delaware	Enhanced Oversight	Ongoing Oversight	Ongoing Oversight	Ongoing Oversight
District of Columbia	n/a	Ongoing Oversight	Ongoing Oversight	Ongoing Oversight
Maryland	Ongoing Oversight	Enhanced Oversight	Ongoing Oversight	Ongoing Oversight
New York	Ongoing Oversight	Ongoing Oversight	Enhanced Oversight	Ongoing Oversight
Pennsylvania	Backstop Action Levels	Backstop Action Levels	Ongoing Oversight	Enhanced Oversight
Virginia	Ongoing Oversight	Ongoing Oversight	Ongoing Oversight	Ongoing Oversight
West Virginia	Ongoing Oversight	Ongoing Oversight	Ongoing Oversight	Ongoing Oversight

EPA: U.S. Environmental Protection Agency

Note: Ongoing oversight means that EPA will continue to monitor progress; enhanced oversight means that EPA may, after identifying specific concerns with a jurisdiction's implementation of strategies to meet Total Maximum Daily Load (TMDL) goals, take additional federal actions to ensure that the jurisdiction stays on track; and backstop actions level means that EPA has, after identifying substantial concerns with a jurisdiction's actions to meet TMDL goals, taken federal actions to help the jurisdiction get back on track.

Source: U.S. Environmental Protection Agency

Maryland's Progress

In its July 2018 midpoint assessment, EPA concluded that the bay jurisdictions exceeded the 60% goal for reducing phosphorus and sediment but did not achieve the goal for reducing nitrogen. To achieve the necessary reductions by calendar 2025, the bay jurisdictions must reduce an additional 48.4 million pounds of nitrogen, which is more than twice the reductions achieved by the bay jurisdictions between calendar 2009 and 2017. Pennsylvania and Maryland are responsible for most of the remaining nitrogen reductions (70.6% and 17.4%, respectively). Pennsylvania is responsible for reducing an additional 34.1 million pounds of nitrogen, or

6.3 times its reductions between calendar 2009 and 2017, and Maryland is responsible for reducing an additional 8.4 million pounds of nitrogen, or 2.5 times its reductions between calendar 2009 and 2017.

Maryland's Phase III WIP originally anticipated that the State would achieve and possibly exceed statewide nutrient and sediment pollution reduction goals by calendar 2025, although more recent modeling suggests that these goals may be more difficult to meet than first anticipated. Maryland's strategy relies on accelerated pollution load reductions from the agricultural sector to achieve a majority of the necessary reductions. The State estimates that on an idealized nitrogen reduction path, it will meet its 2025 pollution reduction goals, but it does not appear to be fully on track to meet its goals. Previous concerns raised by EPA are (1) whether Maryland's Phase III WIP includes sufficient detail regarding the actions that must be taken to achieve pollution reduction goals; (2) the feasibility of continued reliance on the wastewater sector to meet pollution reduction goals when other sectors fall short; and (3) whether adequate resources are available to implement necessary agricultural practices. In addition, Maryland's Phase III WIP acknowledges that pollution loading resulting from climate change, population growth, and the Conowingo Dam may impact the achievement and sustainability of restoration beyond calendar 2025.

In its August 2024 evaluation of Maryland's 2022-2023 completed and 2024-2025 projected milestones, EPA noted that Maryland did not achieve its 2023 target for nitrogen but did achieve its target for phosphorus and sediment. The evaluation specifically notes, as areas for improvement, (1) the State's implementation of BMPs for agriculture and urban and suburban stormwater management and (2) the State's reporting of milestone progress that has resulted from activities relating to investments under the federal IIJA and the federal Bipartisan Infrastructure Law. Delaware, New York, Pennsylvania, and Virginia also fell short on their projected milestones, prompting EPA to note that it remains prepared to assist each of the watershed jurisdictions in implementing the 2024-2025 milestones. EPA oversight and assistance activities to support the implementation efforts of bay jurisdictions could include funding, technical assistance and analysis, training, and regulatory reviews.

To meet the statewide pollution reduction goal for nitrogen as part of the Phase III WIP, the State must further reduce nitrogen loading to the bay by an additional 2.8 million pounds per year relative to the calendar 2023 level to meet the 2025 target of 45.8 million pounds of nitrogen per year. **Exhibit 6** shows Maryland's nitrogen pollution loads by sector for calendar 2009, 2021, 2022 and 2023; the target load for 2025 using the Phase 6 model (2025 Target); the official Maryland Phase III WIP using the 2023 version of the Chesapeake Assessment and Scenario Tool (2025 WIP Goal (2023)), which shows the 2023 version of where the State would be if it implemented everything in its Phase III WIP; and the Maryland Phase III WIP using the 2017 version of the Chesapeake Assessment and Scenario Tool (2025 WIP Goal Official), which shows the 2017 version of where the State would be if it implemented everything in the State would be if it implemented everything in a state would be if it implemented everything in a state would be if it implemented everything in a state would be if it implemented everything in a state would be if it implemented everything in the State would be if it implemented everything in the State would be if it implemented everything in the State would be if it implemented everything in the State would be if it implemented everything in the State would be if it implemented everything in the State would be if it implemented everything in the State would be if it implemented everything in the Phase III WIP. A couple of observations are as follows:





WIP: Watershed Implementation Plan

Note: The 2025 Target is not broken down by sector in order to give the states flexibility in how they meet their load reductions.

Source: Chesapeake Bay Program - Chesapeake Assessment and Scenario Tool

- **Progress:** Maryland decreased loading by 3.5 million pounds of nitrogen between calendar 2022 and 2023, largely due to the full operational return of the Back River and Patapsco WWTPs;
- *Targeted Missed:* the 2023 version of the Chesapeake Assessment and Scenario Tool indicates that the loading under Maryland's 2025 WIP Goal will be closer to 47.0 million pounds per year, which means that Maryland is anticipated to be over the 2025 target, although 1.5 million pounds related to climate change can be addressed after the 2025 deadline; and
- *Percent Changes:* Maryland needs to maintain the pace of progress relative to the overall 2009 through 2023 period to meet the 2025 target, but the pace of progress in the agriculture sector will need to increase.

Another way to evaluate Maryland's progress is to look at nitrogen loads by major basin. **Exhibit 7** reflects that Maryland's Eastern Shore basin – predominated by the agricultural sector – will have to reduce the highest percentage of its load at 14.2% compared to the other basins, and that this 14.2% reduction represents a substantial increase in activity relative to the 6.9% reduced in the 2009 through 2023 period. This is a change from the 2022 data when the Western Shore basin – predominated by the wastewater and developed sectors – had to reduce the highest percentage of its load. This was due to the failures at the Back River and Patapsco WWTPs, which have been addressed, and thus the Western Shore basin only needs to reduce 4.9% of its load as opposed to the 25.6% from last year. The Susquehanna River basin will need to reduce 12.3% of its load, which is higher than the 8.2% it needed to reduce last year. Of note, the Patuxent River basin's loading increase from 3,178,488 pounds of nitrogen to 3,182,723 pounds, or by 4,233 pounds, this would be a worrying trend if the Patuxent River basin were to continue increasing its load.



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0	2009 Actual	2021 Actual	2022 Actual	2023 Actual	2025 Target	2025 WIP Goal (2023)	2025 WIP Goal (Official)	2009-2023 Percent Change	2023-2025 Official Percent Change
Total	57.9	52.2	52.2	48.7	45.8	47.0	44.7	-16.0%	-8.1%
□Eastern Shore	19.3	18.6	18.3	18.0	15.6	16.6	15.4	-6.9%	-14.2%
Susquehanna River	1.8	1.8	1.8	1.8	1.6	1.7	1.6	0.6%	-12.3%
■ Western Shore	14.7	11.2	12.2	9.4	9.6	9.1	9.0	-35.8%	-4.9%
■Potomac River	18.6	17.3	16.7	16.3	15.8	16.4	15.6	-12.5%	-3.8%
Patuxent River	3.5	3.3	3.2	3.2	3.2	3.2	3.1	-9.7%	-3.1%

WIP: Watershed Implementation Plan

Source: Chesapeake Bay Program - Chesapeake Assessment and Scenario Tool

CHESBAY – Chesapeake Bay – Fiscal 2026 Budget Overview

Lastly, there is the Chesapeake Bay watershed nitrogen pollution loading as a whole, which is reflected in **Exhibit 8**. As shown, although Delaware has the greatest percentage reduction needed between calendar 2023 and 2025, Pennsylvania, which contributes the largest amount of nitrogen pollution loading, has the largest magnitude of reductions, and must substantially increase its load reductions by 2025, from the 5.7% between 2009 and 2023 to 22.0% between 2023 and 2025. Overall, the Chesapeake Bay watershed states will need to increase reductions from the 11.1% between calendar 2009 and 2023 to 15.5% between calendar 2023 and 2025. This is a significant factor for the pessimism of meeting the 2025 TMDL.



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200						******			
150									
100									
50									
0									
0	2009 Actual	2020 Actual	2021 Actual	2022 Actual	2025 Target	2025 WIP Goal (2019)	2025 WIP Goal (Official)	2009-2022 Percent Change	2022-2025 Official Percent Change
Total	270.1	247.8	247.2	240.1	199.3	212.6	202.9	-11.1%	-15.5%
Delaware	6.6	6.7	6.9	7.3	4.6	5.6	4.5	10.3%	-38.7%
Pennsylvania	112.4	109.0	108.9	106.0	73.5	86.5	82.7	-5.7%	-22.0%
New York	14.4	13.6	13.8	13.5	11.8	12.6	11.6	-6.7%	-13.6%
Virginia	68.0	56.9	55.9	55.2	53.0	50.8	49.6	-18.7%	-10.2%
Maryland	57.9	52.2	52.2	48.7	45.8	47.0	44.7	-16.0%	-8.1%
West Virginia	8.0	7.8	7.8	7.8	8.2	7.7	7.5	-2.6%	-4.2%
District of Columbia	2.8	1.7	1.6	1.6	2.4	2.3	2.3	-43.3%	

WIP: Watershed Implementation Plan

Note: The District of Columbia has exceeded its 2025 goal.

300

Source: Chesapeake Bay Program - Chesapeake Assessment and Scenario Tool

Health

The results of implementing BMPs are reflected in UMCES' Chesapeake Bay and Watershed Report Card, which is comprised of separate scores for the Chesapeake Bay itself and the surrounding watershed – the fifth year of reporting for the watershed, although the inclusion of new economic indicators in calendar 2021, a fish community indicator in calendar 2022, and a breakout of water quality indicators in 2023 means that the 2023 score is not directly comparable to prior years. The 2023 version of UMCES' Chesapeake and Bay and Watershed Report Card includes the environmental justice index, which was a new addition to the 2022 Report Card, but it does not appear to have been updated.

- Chesapeake Bay Health Score: The Chesapeake Bay health score compares seven indicators dissolved oxygen, nitrogen, phosphorus, chlorophyll a, water clarity, aquatic grasses, and benthic community to scientific goals. Striped bass, bay anchovy, and blue crab are part of a separate fisheries index, which is not included in the bay health score. The health of the Chesapeake Bay itself, as measured by the report card, has generally remained the same since calendar 2003. The overall health of the bay improved by 4 percentage points in calendar 2023, receiving an overall score of C+ (55%), indicating that the bay is in moderate ecosystem health. The highest-scoring region was the Lower Bay again (staying the same at 69%, a B), which is the part of the bay closest to the Atlantic Ocean. The lowest-scoring region was the Patapsco and Back Rivers (D-, or 23%). The region with the greatest improvement is the Choptank River, which increased from D, or 36%, to C, or 51%. Of note, this is a significant turnaround for the Choptank River, which had the greatest decline between 2021 and 2022. The region with the greatest decline is the Upper Western Shore, which decreased from C, or 52%, to C-, or 47%.
- *Chesapeake Bay Watershed Health Score:* The Chesapeake Bay watershed health score has changed, as noted previously. The current version of the watershed health score includes three categories comprised of 15 indicators, as follows: ecological nitrogen, phosphorus, turbidity, water quality (previously combined the indicators for nitrogen, phosphorus, and turbidity), stream benthic community, protected lands, and fish community; societal stewardship, walkability, heat vulnerability index, and social index; and economic housing affordability, income inequality, jobs growth, and median income. These indicators are compared to scientific and administrative goals. The health of the Chesapeake Bay watershed has only been scored for five years, and the changes to the 2022 and 2023 reports mean there is no long-term trend. The Chesapeake Bay watershed scored 52% (C) in 2023. The highest-scoring region was the Upper James (B-, or 63%). The lowest-scoring region was the Choptank River in Maryland (D+, or 39%).
- **Environmental Justice Index:** The environmental justice index reflects data from the U.S. Centers for Disease Control and Prevention's Environmental Justice Index. The index is comprised of three modules and submetrics as follows: social vulnerability racial/ethnic minority status, socioeconomic status, household characteristics, and housing type; environmental burden air pollution, potentially hazardous and toxic sites, built

environment, transportation infrastructure, and water pollution; and health vulnerability – preexisting chronic disease burden. Overall, UMCES notes that the map shows cities and rural areas have higher relative environmental justice impacts compared to suburban areas.

Transportation Stormwater Management

Funding for stormwater management sector improvements associated with State transportation infrastructure, across MDOT and including operational expenditures related to BMPs and the anticipation of future requirements, represents approximately \$0.7 billion, which is down from the original expectation of \$1.5 billion. The State Highway Administration (SHA) owns more than 2,500 stormwater management facilities and nearly 17,000 lane miles of roadway throughout the State. The Transportation Trust Fund is authorized as the fund source for the mandated cost of complying with the WIP.

Exhibit 9 reflects the most recent SHA WIP funding estimate of \$684.5 million, which includes \$522.7 million expended prior to fiscal 2025 and \$32.4 million added in fiscal 2030. The \$14.5 million increase in total estimated costs from last year's estimate of \$670.0 million is due to the addition of fiscal 2030 funding and an increase in fiscal 2028 estimated spending, partially offset by reductions in the estimated funding needed between fiscal 2025 and 2027 and in fiscal 2029.

Exhibit 9 SHA Watershed Implementation Plan Funding Fiscal 2025-2030 (\$ in Thousands)

	Prior Auth.	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>	<u>2029</u>	<u>2030</u>	<u>Total</u>
Source								
Special Funds	\$340,862	\$6,908	\$7,228	\$21,567	\$13,057	\$13,785	\$9,895	\$413,302
Federal Funds	136,828	11,749	12,807	5,753	23,052	13,590	22,459	226,238
GO Bonds	45,000	0	0	0	0	0	0	45,000
Total	\$522,690	\$18,657	\$20,035	\$27,320	\$36,109	\$27,375	\$32,354	\$684,540
Use								
Planning	\$33,524	\$2,900	\$2,000	\$2,375	\$2,500	\$2,500	\$2,500	\$48,299
Engineering	148,094	2,980	3,000	3,021	4,500	4,500	4,500	170,595
Right-of-way	5,958	0	500	0	1,000	1,000	1,000	9,458
Utilities	35	0	0	0	0	0	0	35
Construction	335,079	12,777	14,535	21,924	28,109	19,375	24,354	456,153
Total	\$522,690	\$18,657	\$20,035	\$27,320	\$36,109	\$27,375	\$32,354	\$684,540

GO: general obligation

SHA: State Highway Administration

Note: The GO bond funding was set up through the Secretary's Office; SHA spent its own funds and then was reimbursed by the Secretary's Office. However, the GO bond funding is reflected here in order to account for the funding for the Maryland Department of Transportation as a whole. For the prior authorization, \$6.5 million in special funds are budgeted in the Secretary's Office capital program for an innovative stormwater pond management pilot program, and the remaining funds are budgeted in the SHA capital program.

Source: Maryland Department of Transportation; Fiscal 2025-2030 Consolidated Transportation Program

SHA has received a final determination from MDE on the pollutant reduction credits and particularly the pollutant reduction credits from stream restoration that are two to three times the expected credit, depending on the watershed where the work is completed. In addition, SHA is expecting efficiencies from the use of a new smart pond technology being piloted that improves stormwater pond operations with the use of sensors and software that monitor real-time conditions, such as water level and storage volume. This is reflected as \$6.5 million in the prior authorization. Overall, as noted previously, SHA estimates that it will be able to comply with the Phase I municipal separate storm sewer system (MS4) permit for less than \$1.0 billion.

Special funds comprise the largest share of the projected fund sources, accounting for 60% of the planned funding, followed by federal funds (33%) and general obligation (GO) bonds (7%). SHA has noted in the past that federal funds are difficult to use because stormwater work related to the TMDL program does not have a dedicated funding source under the U.S. Department of Transportation and thus the use of any federal funds for the TMDL program would be drawing funding away from the same funding sources needed to support the safe and efficient movement of people and goods in Maryland.

Issues

1. Overall Chesapeake Bay Restoration Funding

The current state of Chesapeake Bay restoration funding may be reviewed at three levels (two of which are discussed in the following):

- *Overall Chesapeake Bay Restoration:* environmental education, land preservation, transit projects, and nutrient and sediment reduction, among others;
- *Two-year Milestones:* nutrient and sediment reduction only; and
- *Chesapeake and Atlantic Coastal Bays 2010 Trust Fund:* nutrient and sediment reduction from nonpoint sources only using certain revenues.

Overall Chesapeake Bay Restoration

The 2024 *Joint Chairmen's Report* (JCR) expressed the General Assembly's intent that DNR, the Department of Budget and Management (DBM), and MDE submit a report on overall Chesapeake Bay restoration expenditures. The report was requested to include operating and capital expenditures by agency, fund type, and particular fund source based on programs that have over 50% of their activities directly related to Chesapeake Bay restoration for the fiscal 2024 actual, the fiscal 2025 working appropriation, and the fiscal 2026 allowance.

The purpose of the Chesapeake Bay restoration expenditures exhibit is to understand the overall scope of restoration funding. **Exhibit 10** illustrates the change in funding by State agency. The full funding detail by agency, fund source, and spending category is provided in **Appendix 1**.

Exhibit 10
Overview of Maryland's Funding for Chesapeake Bay Restoration
Fiscal 2024-2026 Allowance

\$1,200 \$1,000 \$800 \$600 \$400 \$200 \$0					
ΦΟ	Actual 2024	Approp. 2025	Allowance 2026	\$ Change 2025-2026	% Change 2025-2026
Total	\$1,119.6	\$1,025.6	\$942.6	-\$83.0	-8.1%
□ MDOT	255.2	336.0	237.6	-98.4	-29.3%
■ MDE	409.8	368.3	353.1	-15.1	-4.1%
■ POS, Rural Legacy, MALPF	237.2	72.5	66.1	-6.3	-8.8%
■ MDP	6.7	8.9	7.2	-1.7	-19.3%
■ MDA	65.8	63.7	63.7	-0.1	-0.1%
■ MSDE	0.7	0.7	0.7	0.0	0.0%
DNR	113.4	139.2	146.4	7.1	5.1%
Higher Education	30.8	36.2	67.7	31.5	86.9%

DNR: Department of Natural Resources

MALPF: Maryland Agricultural Land Preservation Foundation MDA: Maryland Department of Agriculture MDE: Maryland Department of the Environment MDOT: Maryland Department of Transportation MDP: Maryland Department of Planning MSDE: Maryland State Department of Education POS: Program Open Space

Note: This presentation only includes State agency programs that have over 50% of their activities directly related to Chesapeake Bay restoration. In addition, funding related to salaries and fringe benefits does not reflect health insurance or increment adjustments.

Source: Department of Budget and Management; Department of Legislative Services

Overall Chesapeake Bay restoration spending decreases by \$83.0 million, or 8.1%, between the fiscal 2025 working appropriation and the fiscal 2026 allowance. The major changes are as follows.

• *MDOT:* Decreases by \$98.4 million primarily due to a decrease of \$80.4 million for Purple Line activities. There are also decreases of \$4.0 million for the Bikeways Program, \$2.8 million for the Eastern Bus electric vehicle conversion, \$2.5 million for the Cox Creek

Expansion – Mitigation and Swan Creek Nature Trail, \$2.3 million for a TMDL program, \$2.2 million for the Baltimore Street Access project, \$1.8 million for Segment 2 of the Maryland and Pennsylvania Connector Trail, \$1.4 million for light rail damage repairs, \$1.2 million for the Eccleston Mitigation project, \$1.2 million for Chrome Ore Processing Residue remediation at the port, \$1.0 million for various stormwater management projects, and \$1.0 million for the North Branch Hiker Biker Trail. The larger increases include \$2.0 million for the Casselman River Bridge Rehabilitation, \$2.0 million for the Riverside Heavy Maintenance Stormwater Management project, \$1.4 million for drainage outfall remediation at various locations in Anne Arundel County, and \$1.2 million for shoreline restoration at the Maryland Transportation Authority Police Headquarters.

- *MDE:* Decreases by \$15.1 million, primarily due to a decrease of \$10.0 million for Bay Restoration Fund projects. Other decreases include \$3.0 million in general funds in the Wetlands and Waterways program, \$2.2 million in federal Water Quality Revolving Loan Fund (WQRLF) funding, \$2.2 million in Water Quality Administrative Fees special funds in the Engineering and Capital Projects program, \$1.9 million in Maryland Clean Water Fund special funds in the Compliance program, \$1.7 million in Water Quality Administrative Fees special funds in the Wetlands and Waterways Program, \$1.5 million in reimbursable funds from DNR in the Wetlands and Waterways Program, and \$1.4 million in Maryland Clean Water Fund funding also in the Wetlands and Waterways Program. The larger increases include \$5.0 million in federal funds from EPA's Regional Wetland Program Development Grants, \$2.1 million in EPA's Performance Partnership Grants, and \$1.6 million in special funds for WQRLF projects,
- **Program Open Space (POS), Rural Legacy, and Maryland Agricultural Land Preservation Foundation (MALPF):** Decreases by \$6.3 million primarily as a result of a reduction in transfer tax special funds of \$2.8 million for MALPF, \$2.6 million for POS State, and \$0.9 million for the Rural Legacy Program due to a reduced transfer tax revenue estimate in fiscal 2026 and an underattainment of revenue from fiscal 2024 that is applied to fiscal 2026.
- *Higher Education:* Increases by \$31.5 million, primarily as a result of an increase of \$32.9 million for electrification of UMCP's shuttle fleet. The largest decreases are also in UMCP's budget, and include \$0.8 million for bikeway infrastructure enhancements and \$0.3 million for license plate recognition technology that obviated the need for electronic parking permit registration.
- **DNR:** Increases by \$7.1 million, which primarily reflects an increase of \$5.5 million in Chesapeake and Atlantic Coastal Bays 2010 Trust Fund special funds. Other increases include \$1.5 million in Oyster Tax special funds in the Public Oyster Fishery program, \$1.1 million in reimbursable funds from DNR's Chesapeake and Coastal Services program, \$0.9 million in federal EPA Chesapeake Bay Program funding, and \$0.9 million in federal Forestry Contracts funding. The largest decreases include \$2.5 million in Forest or Park Reserve fund special funds, \$1.9 million in general funds in the Coastal and

Estuarine Geology program, and \$1.2 million in federal U.S. Department of Agriculture – Forest Service's Cooperative Forestry Assistance funding.

Chesapeake and Atlantic Coastal Bays 2010 Trust Fund

The Chesapeake and Atlantic Coastal Bays 2010 Trust Fund was established to implement the State's tributary strategy. The fund is financed with a portion of existing revenues from the motor fuel tax and the sales and use tax on short-term vehicle rentals.

The COVID-19 pandemic reduced revenues for the fund, particularly from the sales and use tax on short-term vehicle rentals. As a result of the revenue shortfalls, the fiscal 2023 budget included a \$10.7 million fiscal 2022 deficiency, which supported a number of projects that otherwise would have been canceled or delayed until fiscal 2023. Since the end of the pandemic, revenues have rebounded. As a result, the fund had a \$45.1 million fiscal 2024 closing balance and currently is estimated to have a closing balance of \$36.6 million for fiscal 2025. However, the closing balance is estimated to drop to \$12.2 million in fiscal 2026 as a result of the \$13.5 million increase in the appropriation in fiscal 2026 and a decrease of \$2.0 million in the estimated revenues for fiscal 2026 relative to fiscal 2025.

The fund allocations for the fiscal 2025 working appropriation and the fiscal 2026 allowance are shown in **Exhibit 11**, although final decisions on allocations typically are made by the BayStat agencies after the final funding levels have been determined. The exhibit reflects the following:

- *Funding:* There is a \$13.5 million increase in the funding between the two years. As noted previously, this reflects the availability of a substantial balance and an approximately \$0.1 million decrease in the retail sales and use tax and \$2.2 million in the estimated revenue base for the sales and use tax on short-term vehicle rentals. In the long term, this level of funding is not sustainable due to the declining fund balance and the flat or slightly declining revenues.
- *Allocation:* The fiscal 2026 funding largely remains the same as fiscal 2025 funding except for the \$5.0 million budgeted for the Whole Watershed Fund per Chapters 558 and 559 (Whole Watershed Act), discussed further, and the net increase of \$8.0 million to support cost containment. The fiscal 2025 budget includes contingent cost containment actions totaling \$2.6 million in fiscal 2025 in DNR's Chesapeake and Coastal Service and \$10.5 million in fiscal 2026, comprised of \$8.4 million in DNR's Office of the Secretary and \$2.1 million in Chesapeake and Coastal Service. The cost containment actions are contingent on corresponding provisions being enacted in HB 352/SB 321, the BRFA of 2025.

Exhibit 11 Chesapeake and Atlantic Coastal Bays 2010 Trust Fund Planned Expenditures Fiscal 2025-2026 (\$ in Millions)

<u>Category/Activity</u>	Agency	<u>2025</u>	<u>2026</u>	Difference 2025-2026
Accountability, Verification, and Management				
Strategic Monitoring and Assessment	DNR	\$0.4	\$0.6	\$0.2
Implementation Tracking	DNR/DoIT	0.2	0.2	0.0
Administration and Management (1.5%)	DNR	1.1	1.3	0.2
Subtotal		\$1.7	\$2.1	\$0.4
Accelerating Restoration Through Research and Development				
Innovative Technology Fund	DNR/UM	\$1.0	\$1.0	\$0.0
Targeted Pooled Monitoring (Formerly Restoration Research Grant Program)	DNR	0.3	0.3	0.0
Subtotal		\$1.3	\$1.3	\$0.0
Implementation Technical Assistance				
Agricultural Technical Assistance	MDA	\$6.3	\$6.6	\$0.3
Stormwater Management Permit Expediters	MDE	0.9	0.9	0.0
Field Restoration Specialists	DNR	0.9	0.9	0.0
Tree Solutions Now Coordinator	MDE	0.2	0.2	0.0
Subtotal		\$8.2	\$8.5	\$0.3
Nonpoint Source Pollution Control Projects				
Cover Crop Program	MDA	\$11.3	\$11.3	\$0.0
Conservation Reserve Enhancement Program Bonus Payments	MDA	0.5	0.5	0.0
Grants to Farmers	MDA	3.0	3.0	0.0
Manure Transport Program	MDA	1.8	1.8	0.0
Competitive Grant Program	DNR	35.9	35.7	-0.2
Natural Filters on Public Lands	DNR	6.0	6.0	0.0
Tree Solutions Now Act Tree Plantings	DNR	2.5	2.5	0.0
Tree Solutions Now Forest Service Staffing	DNR	1.0	1.0	0.0
Adaptive Management & Maintenance (2%)	DNR	1.4	1.6	0.1
Subtotal		\$63.3	\$63.3	-\$0.1

Category/Activity	Agency	<u>2025</u>	<u>2026</u>	Difference 2025-2026
Additional Allocations				
Whole Watershed Fund per Whole Watershed Act	DNR	\$0.0	\$5.0	\$5.0
DNR Administrative Operating Expenses General Fund Swap (BRFA)	DNR	0.0	8.4	8.4
DNR Chesapeake and Coastal Service General Fund Swap (BRFA)	DNR	2.6	2.1	-0.4
Subtotal		\$2.6	\$15.5	\$12.9
Total		\$77.1	\$90.7	\$13.5
DNR Total		\$53.2	\$66.5	\$13.2
MDA Total		\$22.8	\$23.1	\$0.3
MDE Total		\$1.1	\$1.1	\$0.0

BRFA: Budget Reconciliation and Financing Act DNR: Department of Natural Resources DoIT: Department of Information Technology MDA: Maryland Department of Agriculture MDE: Maryland Department of the Environment UM: University of Maryland

Note: Under Additional Allocations, the administrative operating expenses and Chesapeake and Coastal Service general fund swaps are both contingent on the BRFA of 2025 authorizing the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund to be used for this purpose. In addition, the Chesapeake and Coastal Service swap has both fiscal 2025 deficiency and fiscal 2026 allowance components.

Source: Department of Budget and Management

The Department of Legislative Services (DLS) recommends that the Administration comment on the long-term plan for the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund in general, and in particular for supporting cost containment, given that the revenues are steady or declining, that \$10.5 million is being used in fiscal 2026 for cost containment, and that the estimated closing balance is down from \$36.6 million in fiscal 2025 to \$12.2 million in fiscal 2026.

DLS also 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. Finally, 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. This recommendation also will appear in the operating budget analysis for K00A – DNR.

2. Whole Watershed Act Implementation

Chapters 558 and 559 (Whole Watershed Act) establish the Whole Watershed Restoration Partnership to accelerate restoration of the Chesapeake and Atlantic Coastal Bays and their watersheds. The partnership provides grants and technical assistance to eligible projects over a period of five years chosen by a State management team established to administer the partnership. The Whole Watershed Fund is established in DNR to provide funding for approved projects and is generally authorized to receive funding from specified State agricultural and environmental special funds, although there are annual mandated distributions from the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund for fiscal 2026 through 2030.

The Whole Watershed Act requires the State management team to issue an RFP for projects by October 1, 2024, and every five years thereafter that meet specified criteria for location in a watershed that can see the greatest improvements, cost effectiveness, and support by local government policies. By March 1, 2025, and every five years thereafter, the State management team may approve up to five projects to receive assistance. The State management team issued an RFP in fall 2024 with a deadline of December 3, 2024. The Administration has decided to implement the Whole Watershed Act as selecting one project in each of five Maryland watersheds.

The Whole Watershed Fund consists of revenue distributed from six programs or sources. The fiscal 2025 budget included \$200,000 in general funds and 2 positions for DNR contingent on the enactment of the Whole Watershed Act. The total amount provided in fiscal 2026 is \$10.0 million but is reflected in individual programs or sources as opposed to being reflected in the Whole Watershed Fund. The programs or sources and the funding allocated in fiscal 2026 are as follows.

- Chesapeake and Atlantic Coastal Bays 2010 Trust Fund (DNR): Receives funding from the motor fuel tax and the sales and use tax on short-term vehicle rentals. The funding is primarily for nonpoint source pollution control projects to help meet Chesapeake Bay restoration goals and to improve the health of the Atlantic Coastal Bays and their tributaries. Chapters 558 and 559 mandate in each fiscal year from 2026 through 2030 that up to \$100,000 from the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund be used to fund operations grants at a rate of \$20,000 per project sponsor each fiscal year. There is \$5.0 million budgeted in DNR for the Whole Watershed Act in fiscal 2026.
- **Bay Restoration Fund (MDE):** Receives funding from water and WWTP users the Wastewater Account and may be used only after funding eligible costs for WWTPs under the account each year. The pay-as-you-go (PAYGO) funding is used for WWTP upgrades and other water quality improvement practices as well as a mandated transfer of \$20.0 million to the Clean Water Commerce Account. There is \$5.0 million budgeted in MDE for Whole Watershed Act implementation in fiscal 2026.

- *Clean Water Commerce Account (MDE):* receives funding from the Bay Restoration Fund Wastewater Account. The operating funding is used to purchase environmental outcomes to help the State achieve water quality goals. No funding is explicitly budgeted for the Whole Watershed Act in fiscal 2026.
- *Maryland Agricultural Land Preservation Fund (Maryland Department of Agriculture (MDA)):* Receives funding from the State property transfer tax allocated through the POS formula and from county matching funding through the Maryland Agricultural Land Preservation Program. The PAYGO funding is used to preserve productive agricultural land and woodland, limit the extent of urban development, and protect agricultural land and woodland as open space. No funding is explicitly budgeted for the Whole Watershed Fund in fiscal 2026.
- *Maryland Agricultural Water Quality Cost-Share Program:* Receives GO bond funding in the capital budget. The capital budget funding is used to provide financial assistance to farmers for the installation of BMPs that control and reduce pollution caused by agricultural activities. No funding is budgeted for the Maryland Agricultural Water Quality Cost-Share program in fiscal 2026 and thus no funding is allocated for the Whole Watershed Act.
- Waterway Improvement Fund: Receives 5.0% of the excise tax paid on the sale of motorized vessels within the State and 0.5% of the motor vehicle fuel tax. The funding is used for operating expenses within DNR and to finances projects and activities that promote, develop, and maintain Maryland's waterways for the benefit of the boating public through the PAYGO Waterway Improvement Program. No funding is explicitly budgeted for the Whole Watershed Act in fiscal 2026.

DLS recommends that the Administration comment on the outcome of the fall 2024 RFP that closed on December 3, 2024; why one project will be chosen in each of five Maryland watersheds; why the Whole Watershed Fund is not reflected as a special fund in the fiscal 2026 budget; the amount of funding budgeted for the Whole Watershed Act in fiscal 2026 if it is different from the \$10.0 million noted previously; how the funding will support the proposals to be selected; and how the Whole Watershed Act project outcomes are anticipated to be different from the outcomes for the programs and sources funding the Act.

DLS also recommends that DNR, in cooperation with its partner BayStat agencies, submit a report with the fiscal 2027 allowance describing the Whole Watershed Act funding by amount and source; the projects selected by March 1, 2025, and the status of each project; use of the fiscal 2027 funding since the RFP is every five years; how projects will be funded over multiple years assuming uncertain appropriations to the Whole Watershed Fund each fiscal year; and preliminary outcomes of the projects selected, including State support provided to project sponsors and nutrient and sediment reductions.

3. Historical and Projected Chesapeake Bay Restoration Spending Report

The committees requested that the Maryland Department of Planning, DNR, MDA, MDE, and DBM provide a report by December 1, 2024, on recent 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.

Some of the highlights from the submitted report are as follows.

- *Focus Shift:* Maryland is shifting its bay restoration efforts from the nutrient and sediment reduction projects focused largely on dissolved outcomes in the deepest parts of the Chesapeake Bay to a landscape-level ecosystem restoration strategy that not only reduces nutrients and sediments but also improves shallow-water habitat and promotes multiple cobenefits (*e.g.*, public health, sustainability, soil health, equity, and climate resiliency).
- *Mitigation of Loads from Growth:* To address loads from new growth, Generation 5 of the Phase I large and medium jurisdiction MS4 permit includes an average 11% impervious acre statewide retrofit goal for the urban/stormwater/developed sector. Phase I permit holders have completed 47% of their five-year permit impervious surface restoration requirement, or 9,069 acres. This does not include MDOT SHA's permit since it is being updated. The Phase II smaller jurisdictions permit holders have completed 10,815 acres over their five-year permit. The report notes that it is unable to keep up with stormwater BMP verification due to the large number of practices, and thus is working with local jurisdictions on standardized reporting to show whether BMPs were accepted into the model, and if not, then why not.
- *Increasing Difficulty:* Climate change, new data, population growth, and model updates have increased nutrient and sediment loading and the work that needs to be done. That said, the 1.5 million pounds of additional loads per the 2023 Chesapeake Bay model update will not need to be offset until after the 2025 Chesapeake Bay restoration deadline.
- Water Quality Monitoring: Monitoring data from 1999 through 2023, using a flow-adjusted method, demonstrates reductions in nitrogen concentrations at 70%, phosphorus at 52%, and sediment concentrations at 31% of stations. Western Shore practices are more associated with WWTPs and have delivered more immediate water quality responses than the more agricultural practices implemented on the Eastern Shore due to the lag time associated with agricultural practice outcomes. The outcomes of the nutrient and reductions are more muted (reflected as the percentage of water quality monitoring stations): water clarity (12% improved, 21% degraded, and 67% stayed the same); chlorphyll a (11% improved, 26% degraded, and 63% stayed the same), and water temperature (0% cooling, 91% warming, and 9% stayed the same). The majority, or 60%, of the stations measuring temperature are between 1 and less than 2 degrees Fahrenheit warmer.

- Wastewater Permitting and Compliance Framework Update: MDE tracks WWTP performance and publishes summaries on its website. In addition, MDE published a report dated March 24, 2024, and titled *Reinvigorated Strategies to Reduce Nutrients in Wastewater*. The key strategies noted in the permitting and compliance framework are (1) enhanced permit conditions new requirements for facility evaluations and independent engineering evaluations for noncompliance; (2) compliance and enforcement actions more frequent inspections and early detection of noncompliance; (3) funding Bay Restoration Fund operation and maintenance grants; (4) backstop measures legal orders/directives and permit and water and sewer plan modifications; and (5) other strategies operator certification and workforce development, enhanced nutrient reduction needs assessment, and cybersecurity vulnerabilities reduction.
- *Maryland Agricultural Water Quality Cost-Share Program:* MDA's Maryland Agricultural Water Quality Cost-Share program continues to experience strong demand. The distribution of financial assistance is connected to the technical assistance provided by Maryland's 23 soil conservation districts. Of note, there is no funding in the fiscal 2026 capital budget for the Maryland Agricultural Water Quality Cost-Share program despite \$8.0 million being programmed for fiscal 2026 in the 2024 *Capital Improvement Program.* In addition, the fiscal 2025 authorization as introduced was reduced by the General Assembly from \$8.0 million to \$5.0 million. The reason cited for the lack of funding for fiscal 2026 is that Maryland Agricultural Water Quality Cost-Share program has a sufficient fund balance to cover planned projects encumbrances in fiscal 2026.
- *Maryland Agriculture Climate Vulnerability:* The report notes that the Harry R. Hughes Center for Agro-Ecology is completing a *Climate Vulnerability Assessment for Maryland Agriculture.* However, the timeline for the release of the study is unclear.
- **Oyster Water Quality Credits:** Oyster filtration of bay water is now recognized as a water quality improvement practice. MDE and DNR are working on an oyster harvest verification process that will incentivize oyster aquaculture industry growth by allowing the industry to participate in the Water Quality Trading Program and receive Clean Water Commerce Act funding. Commercial harvest of wild oysters, presumably after the oyster reefs are seeded with oyster spat, and oyster reef restoration have also been verified as water quality improvement practices, although no practices have been approved to date.
- *IIJA Funding:* Maryland received \$2,848,404 in fiscal 2025 from the federal IIJA funding through EPA's Most Effective Basins program. The funding has supported 14 projects across Maryland.
- *Water Quality Trading:* The Water Quality Trading Program certified for fiscal 2023 1,362,854 pounds of nitrogen reduction credits, 499,158 pounds of phosphorus reduction credits, and 41,425,185 pounds of sediment reduction credits as of July 2024.

DLS recommends that committee narrative be adopted requesting a similar report from the agencies for the fiscal 2027 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 for K00A – DNR.

4. Review of A Critical Path Forward for the Chesapeake Bay Program Beyond 2025 and Next Steps

At its 2022 meeting, the Chesapeake Executive Council directed the Principals' Staff Committee – the policy advisors to the Chesapeake Executive Council – to recommend a critical path forward that prioritizes and outlines the next steps for meeting the goals and outcomes of the Watershed Agreement leading up to and beyond 2025, with specific consideration for science, restoration, and partnership policies.

To advise in the development of recommendations, the Chesapeake Bay Program formed the Beyond 2025 Steering Committee, and on July 1, 2024, the steering committee issued its final report – *A Critical Path Forward for the Chesapeake Bay Program Beyond 2025* – regarding a path forward for the Chesapeake Bay Program beyond 2025. The report includes recommendations for affirming a continued commitment to meeting the goals of the Watershed Agreement and strengthening the Chesapeake Bay Program by simplifying and streamlining the Chesapeake Bay Program's structure and processes. The report further recommends that by the end of 2025 the Principals' Staff Committee propose amendments to the Watershed Agreement, which should reflect recent scientific reports and highlight continued emphasis on achieving water quality goals, the importance of conservation in addition to restoration, shallow water habitats, the impacts of climate change, changes to land use, and population growth, and benefits to the people who live, work, and recreate in the watershed.

Finally, the report includes additional recommendations for Chesapeake Bay Program consideration across the areas of science, restoration and conservation, and partnership. These recommendations include the following points:

• *Science:* (1) Optimize monitoring, modeling, and analysis; (2) integrate scientific findings in decision making, resource allocation, and communication; and (3) address knowledge gaps across areas relating to climate change, land use, and social science.

- **Restoration and Conservation:** (1) Elevate the importance of conservation and stewardship of natural and cultural resources and restore and conserve nearshore habitats; (2) review existing goals, outcomes, and management strategies; and (3) improve the Chesapeake Bay Program's comprehensive approach to planning, prioritizing, progress tracking, and accountability.
- **Partnership:** (1) Streamline the Chesapeake Bay Program's approach to governance and structure; (2) build capacity through local networks; (3) ensure watershed restoration is relevant to all communities, including those that have been historically underrepresented, underresourced, and underserved; and (4) enhance communication and transparency to foster long-term success.

At its December 10, 2024 annual meeting, the Chesapeake Executive Council adopted the *Charge to the Principals' Staff Committee: Charting a Course Beyond 2025*. In the charge, the Chesapeake Executive Council acknowledged that calendar 2025 is the final year for achieving key outcomes under the *2014 Chesapeake Bay Watershed Agreement*. The Chesapeake Executive Council adopted the Principal Staff Committee's recommendations and directed the Principal Staff Committee to complete two actions by December 31, 2025, as follows:

- *"2014 Chesapeake Bay Watershed Agreement" Outcome Revisions:* Revise the agreement's outcomes, as necessary, with most of the work to be completed by the end of calendar 2025. The revisions should reflect the following: engage all communities in the watershed; acknowledge the living resources mandate alongside water quality; elevate conservation to stand beside the Chesapeake Bay Program's science, restoration, and partnership pillars; ground the work in the most recent science; consider measurable and time-bound goals and outcomes; acknowledge that changing science requires changing efforts; and acknowledge the different perspectives from which each partnership is approaching the Chesapeake Bay restoration goal.
- *Partnership Process Simplification and Streamlining:* Simplify and streamline the partnership process such that the revised structure and process is more inclusive of all communities and more manageable for partnership staff. A framework with as much detail as possible is requested to be completed by December 1, 2025.

DLS recommends that the Administration brief the committees on how the Chesapeake Executive Council's *Charge to the Principals' Staff Committee: Charting a Course Beyond 2025* impacts Maryland's Chesapeake Bay efforts and how Maryland's fiscal 2026 budget reflects the guidance provided in the charge.

5. Conowingo Dam WIP, Relicensing, and Settlement Agreement and Impact of Federal Energy Regulatory Commission Action on Relicensing

The Conowingo Dam, a peaking hydroelectric facility that uses reservoir storage to generate electricity during peak electricity demand periods, has been described as the largest BMP on the Susquehanna River because it collects sediment and associated nutrients that would otherwise flow into the bay. However, the dam, owned by Constellation Energy (formerly Exelon Corporation), has reached its sediment storage capacity. As a result of the dam reaching capacity, the jurisdictions have a reduction target of 6.0 million pounds of nitrogen and 260,000 pounds of phosphorus under a separate WIP managed by a trio of third parties contracted for this purpose. The ultimate implementation of the WIP is the responsibility of the jurisdictions.

Conowingo Dam WIP

The final Conowingo Dam WIP submitted to EPA for review in September 2021 reflects an over-the-target reduction of 6.75 million pounds of nitrogen per year. The total annualized cost of nitrogen reduction is still to be determined but ranges from \$53.3 million to \$253.0 million per year. In its January 2022 evaluation of the final Conowingo Dam WIP, EPA raised concerns over the need to distinguish restoration activities under the Conowingo Dam WIP from activities that are already pledged under the bay jurisdictions' Phase III WIPs as well as the need to identify dedicated funding mechanisms. On July 19, 2022, based on EPA guidance, the Principals' Staff Committee reached consensus that Maryland, New York, and Pennsylvania can use a phased approach that extends beyond calendar 2025 to address nutrient loads from the Conowingo Dam, indicating that this approach will allow time to build the organizational infrastructure necessary to implement the final Conowingo Dam WIP.

The Conowingo Dam WIP is the first of three activities to be addressed by the third-party contractors and reflects the recommended BMP implementation strategy. The two remaining activities to be addressed by the third-party contractors include the development and implementation of (1) a financing strategy (Phase I of the financing strategy was completed on July 1, 2021, by the University of Maryland Center for Global Sustainability and covers the 2022 to 2025 time period) and (2) a system for tracking, verifying, and reporting BMP implementation to be completed by the Chesapeake Conservancy. A letter of agreement template was completed in September 2021 and approved by the Chesapeake Bay partnership. The letter of agreement template provides jurisdictions a legal/contractual mechanism to contribute funding toward the Conowingo Dam WIP implementation, but it does not commit any jurisdiction to provide funding. Instead, it appears that the financing strategy relies on the \$25.0 million provided in MDE's fiscal 2023 budget, although the Administration did note in its 2023 session agency testimony that New York committed \$500,000 to Conowingo practices, the Susquehanna River Basin Commission identified a \$6 million grant program that can fund Conowingo BMPs, and Maryland was working with Pennsylvania on a Conowingo set-aside in Pennsylvania's \$22 million clean water procurement program run by PennVest. The Conowingo WIP Steering Committee's June 3, 2024 meeting notes reflect that the Chesapeake Conservancy distributed documentation outlining the

work on tracking and reporting BMP implementation, but it is not clear whether the work has been completed.

Maryland's fiscal 2023 budget included \$25.0 million for a Conowingo Dam WIP project in MDE to implement nutrient control actions under the Conowingo Dam WIP. The 2022 JCR included committee narrative requesting two reports concerning the Conowingo Dam WIP funding. The first report on a non-State funding match was due 30 days after the non-State match has been secured, and a second report on how funds would be spent was due 30 days before the spending of the fiscal 2023 funding. In addition, the budget committees expressed the intent that the funding be used only for the purchase or implementation of cost-effective pollution load reduction BMPs, with at least a 15-year beneficial life that support the Chesapeake Bay Program partnership's efforts to achieve the Chesapeake Bay TMDL, with a priority placed on the purchase or implementation of fixed natural filter practices as defined in § 8-701 of the Agriculture Article. The reports were requested in light of the lack of an agreed upon funding strategy for the Conowingo Dam WIP and the uncertainty about how the funding was to be used. The triggering events did not occur during fiscal 2023, and so the reports were not submitted.

A January 4, 2023 Board of Public Works agenda item for MDE approved the use of the \$25.0 million in PAYGO general funds for the Conowingo Dam WIP – Nutrient Reduction project. The funding is being used according to the pay-for-performance financing model. The Susquehanna River Basin Commission – the fiscal agent selected for the project – initiated an RFP on October 24, 2023, which closed on January 22, 2024. On August 15, 2024, the Susquehanna River Basin Commission announced \$11.4 million in projects. The commission announced a round 2 RFP on September 18, 2024, with a December 16, 2024 closing. Of the \$25.0 million budgeted in the Dedicated Purpose Account for the Conowingo Dam WIP, \$16.0 million has been released to MDE, and \$9.0 million remains in the account.

Exhibit 12 shows the round 1 projects announced on August 15, 2024. Of note, the precision nutrient management project submitted by Rosetree Consulting, LLC is estimated to reduce 123,000 pounds of nitrogen over four years at a highly cost-effective \$6 per pound of nitrogen reduced. The key to this project appears to be acceptance by growers for four years and an exceptional nitrogen targeting via the undisclosed alternative biological products proposed to be used.

Exhibit 12 Conowingo Watershed Implementation Plan Awardees August 15, 2024

Awardee	<u>Project Type</u>	<u>Amount</u>	Description	Location	Cost <u>(\$ Per Pound)</u>	Lifespan <u>(in Years)</u>	Nitrogen Reduced <u>(in Pounds)</u>
HGS, LLC and Partners (RES LLC, The Mill, Center for Watershed Protection, Earthcare LLC, Ecosystem Planning and Restoration LLC)	Precision Nutrient Management	\$2,033,007	Use precision nutrient management and specialty fertilizers to reduce by 20% annually nitrogen from corn, sorghum, and small grains while improving yields.	Maryland	\$15	20	135,500
Alliance for the Chesapeake Bay	Forest Riparian Buffers and Land Use Conversion	664,175	Plant new forest riparian forest buffer on over 35 acres of farmland and convert over 24 acres of row crop field to permanent grassland. Other benefits: carbon sequestration and wildlife habitat.	Kirkwood, Pennsylvania; Havre De Grace, Maryland	19	15	35,000
Rosetree Consulting, LLC	Precision Nutrient Management	772,485	Incentivize use of alternative biological products on farms in place of commercial nitrogen fertilizer over four growing seasons.	Maryland; Pennsylvania	6	4	123,300

Keystone Streams, LLC	Forest Riparian Buffers	1,274,258	Restore 17 acres of native forest on 17 acres of open agricultural land. Other benefits: floodplain protection; wildlife habitat; and carbon storage.	Pennsylvania	50	20	25,700
Ecotone, LLC	Stream Restoration	6,647,025	Reduce nutrient and sediment through urban and nonurban stream restoration by reconnecting to floodplains at two sites in Maryland and one in Pennsylvania. Other benefits: carbon sequestration; wetland restoration; and habitat enhancement.	Maryland; Pennsylvania	136	10	48,700
Total		\$11,390,950					368,200
Source: Susquehanna River	Basin Commission						

Conowingo Dam Relicensing and Settlement Agreement

Constellation Energy initiated the relicensing proceedings in calendar 2009 before the 2014 expiration of the prior license. The dam received automatic one-year renewals until relicensing was approved; FERC could not act on the relicensing application until MDE issued a CWA Section 401 water quality certification. On April 27, 2018, MDE issued the water quality certification with special conditions, which led Constellation Energy to file an administrative appeal with MDE and lawsuits in federal and State court. Ultimately, on October 29, 2019, the State announced a 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. FERC approved the settlement and issued a new license to Constellation Energy for the Conowingo Dam on March 18, 2021. Although the settlement and FERC's issuance of the new license resolved the litigation against MDE, there were ongoing challenges regarding the water quality certification and relicensing of the dam. On June 17, 2021, environmental advocacy groups filed a petition for review in federal court to challenge FERC's issuance of the new license, and on July 19, 2021, the Maryland Attorney General filed a motion to intervene on the petition for review.

On December 20, 2022, the U.S. Court of Appeals for the District of Columbia Circuit ordered the Conowingo Dam license to be vacated. The ruling was based on the idea that FERC has the power to issue a license in two circumstances: (1) where a state has granted a water quality certification; or (2) where the state has waived its authority to certify by failing or refusing to act. FERC erred by taking a third route and issuing a license based on a private settlement arrangement entered into by Maryland, despite Maryland issuing the April 27, 2018 certification.

On June 1, 2023, MDE resumed its administrative review of the 2018 water quality certification by sending a letter to Constellation Energy and two environmental advocacy groups – Waterkeepers Chesapeake and Lower Susquehanna Riverkeepers – soliciting comments. In addition, MDE issued a limited public notice opportunity on June 30, 2023. Subsequently, the Lower Susquehanna Riverkeepers and Constellation Energy sent two rounds of supplemental replies outlining arguments for and against the 2018 certification, respectively.

FERC published a rule on November 21, 2024, clarifying that the reasonable period of time during which the certifying authority – MDE in this case – may act on a water quality certification request is one year from the certifying authority's receipt of the request. According to FERC, MDE emphasized in its comments that the one-year timeframe is reasonable if the application submitted is complete or nearly complete, which MDE noted is crucial for the certifying authority. Of note, more than one year has elapsed since Constellation Energy submitted its water quality certification request to MDE. This raises the question about how FERC's clarification impacts MDE's action on Constellation Energy's water quality certification request. Once again, the future of the settlement agreement between MDE and Constellation Energy, which 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, remains unclear. MDE noted last year that the settlement agreement payments were paused while mediation was pursued.

DLS recommends that the Administration comment on the budget committees' concerns - which are reflected in fiscal 2023 narrative - about the status of contributions from other states toward the Conowingo Dam WIP and whether the round 1 projects chosen by the Susquehanna River Basin Commission meet the budget committee's intent. The intent is that the \$25.0 million allocated to this purpose in fiscal 2023 be used only for the purchase or implementation of cost-effective pollution load reduction BMPs with at least a 15-year beneficial life that support the Chesapeake Bay Program partnership's efforts to achieve the Chesapeake Bay TMDL, with a priority placed on the purchase or implementation of fixed natural filter practices as defined in § 8-701 of the Agriculture Article. In addition, DLS recommends that the Administration comment on what is known about the responses to the round 2 RFP; what portion of the \$13.6 million in remaining funding will be used for these proposals; how tracking, verifying, and reporting BMP implementation will be handled; and what the next steps are for Maryland's funding and overall involvement in the Conowingo Dam WIP. In addition, given FERC's recent ruling, 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.

6. New Maryland Leadership in Environmentally Engaged Farming Program and Other Proposed Legislative Modifications

Administration bills SB 428/HB 506 (Chesapeake Bay Legacy Act) have been introduced in the 2025 session. The cross-filed bills affect the following policy areas.

Maryland Leadership in Environmentally Engaged Farming (LEEF) Program: Creates • the LEEF program in MDA. The program has been compared to the building industry's Leadership in Energy and Environmental Design. The intent is to (1) increase strategies to reduce nutrient loads to the Chesapeake Bay and mitigate greenhouse gas emissions while enhancing farm profitability; (2) provide incentives for farmers to participate in multiple conservation practices and community best practices - practices that demonstrate greater engagement with Maryland's agricultural and environmental communities; (3) establish tiers for program certification evaluation; and (4) provide State funds to incentivize adoption of conservation practices and community best practices. The tiers of recognition for the program are to be determined by evaluations of practices using the following criteria: proximity to waters of the State; restoration of the Chesapeake and Coastal Bays area among other areas; and benefits to overburdened and underserved communities. To implement the program, the bills would establish the Maryland Leaders in Environmentally Engaged Farming Program Fund. Under the bills, from fiscal 2026 through 2031, the fund may receive up to \$2.0 million of the \$2.5 million appropriated in the State budget to fund tree planting under Chapter 645 of 2021 (Tree Solutions Now Act) that MDA determines it will not be able to use for tree planting. The fiscal 2026 budget includes \$0.9 million in general funds for the LEEF Program and also includes a \$2.0 million general fund

reduction contingent upon the enactment of the BRFA of 2025 reducing the mandate for tree planting on agricultural land. The effect of the BRFA provision would be to reduce the available funding for both tree planting and the LEEF program to \$0.5 million, which appears to be in conflict with the LEEF program authorization in SB 428/HB 506 to receive up to \$2.0 million of the tree planting funding.

- *Healthy Soils:* Modifies the healthy soils definition to include regenerative practices and traditions. Regenerative practices and traditions are defined as stewardship approaches and practices that draw on traditions and innovations from African, indigenous, and original land stewards; promote culturally important food and climate justice programs and initiatives; enhance the land and ecosystem through adaptive land management practices; and produce food in the State for distribution within the State.
- *Fisheries:* Authorizes DNR to prepare and implement if deemed necessary a Maryland-specific fishery management supplement for fish species that have an Atlantic States Marine Fisheries Commission fishery management plan or a federal Regional Fishery Management Council fishery management plan and to prepare fishery management plans that include climatological factors for fish that lack federal fishery management plans. The bills also remove the requirement for a food establishment to hold a food establishment permit if the food establishment is licensed by DNR and harvests and processes fish on a vessel by Ikejme a Japanese fishing style that kills a fish instantly thus preserving the quality of the meat for direct sale to restaurants.
- Water Quality Monitoring Program: Authorizes a water quality monitoring program within DNR to (1) provide for a consistent statewide approach for improving water quality monitoring data; (2) conduct long-term and targeted short-term water quality monitoring to guide water quality improvement goals, improve aquatic living resources and habitat, address climate change, and implement resilience planning; (3) integrate water quality monitoring data into planning processes; and (4) provide the public with water quality monitoring data to inform recreational and other passive uses.
- Agricultural Leases on DNR Land: Authorizes DNR to lease land that is owned or managed by the department to a person implementing practices that support healthy soils and regenerative practices and traditions, subject to the authorization for the lease term to be a minimum of 10 years and the lessee's compliance with all State and federal laws and regulations.
- Whole Watershed Act: Modifies the Whole Watershed Act to require as soon as possible a State, federal, and project sponsor meeting that would inform the development of a permitting plan for the project by the State management team and project sponsor. The permitting plan is to include required State and federal permits, supporting documentation for permit applications, permit application and documentation time frames, and agency permit contacts. The bills also modify language concerning the permit tracking dashboard

to include federal permits as well as the anonymized permitting plan noted above and require project sponsors to provide quarterly permit tracking dashboard updates to the State management team.

• **Oysters:** Specifies the State and project sponsor requirements for marking an aquaculture lease, creates informational meeting and petition procedures for new aquaculture leases, modifies oyster-specific planting language to be shellfish in general, and authorizes DNR to charge an aquaculture lease applicant reasonable advertising and survey fees. The bills also authorize oyster restoration projects funded with public money to be eligible to generate water quality trading credits and develops a process for certifying water quality trading credits generated by oyster restoration projects.

DLS recommends that the Administration consider the apparent conflict between the up to \$2.0 million funding level for the LEEF program in SB 428/HB 506 and the reduction of the available funding for the LEEF program to up to \$0.5 million, after tree planting on agricultural lands, included in a provision of the BRFA of 2025. DLS also recommends that MDA comment on how the LEEF program is anticipated to improve agriculture sector outcomes for Chesapeake Bay restoration and farming profitability, including how program tiers will be determined and what benefits farmers will receive by being certified under each tier. Finally, DLS recommends that budget bill language be added to restrict funding for the LEEF program pending a report on the program's final parameters, including a detailed spending plan. For administrative purposes, the budget bill recommendation will appear in the operating budget analysis for L00A – MDA.

Operating Budget Recommended Actions

1. Nonbudgeted.

Appendix 1 Overview of Maryland's Funding for Chesapeake Bay Restoration Fiscal 2022-2026

	Actual <u>2022</u>	Actual <u>2023</u>	Actual <u>2024</u>	Approp. <u>2025</u>	Allowance <u>2026</u>	\$ Change <u>2024-2025</u>	% Change 2024-2025
Agency/Program Total Funds							
Department of Natural Resources ^{1,2}	\$105,208,586	\$116,930,555	\$113,395,843	\$139,231,275	\$146,354,713	\$7,123,438	5.1%
Program Open Space	11,218,797	93,528,126	106,233,129	17,638,450	15,000,000	-2,638,450	-15.0%
Rural Legacy	20,037,061	26,387,542	33,424,164	15,329,028	14,383,552	-945,476	-6.2%
Department of Planning	5,711,299	6,004,807	6,729,792	8,873,985	7,162,303	-1,711,682	-19.3%
Department of Agriculture ³	54,244,914	58,302,885	65,775,334	63,738,116	63,667,934	-70,182	-0.1%
Maryland Agricultural Land Preservation Foundation	56,126,642	85,052,216	97,505,036	39,514,639	36,751,696	-2,762,943	-7.0%
Maryland Department of the Environment	304.218.715	325.331.261	409.806.530	368.288.636	353,149,877	-15.138.759	-4.1%
Maryland State Department of Education	33,238	532,584	743,515	743,515	743,515	0	0.0%
Maryland Higher Education	27,465,208	32,325,303	30,824,498	36,233,006	67,732,538	31,499,532	86.9%
Maryland Department of Transportation	516,975,627	48,784,925	255,201,300	336,027,706	237,642,800	-98,384,905	-29.3%
Total	\$1,101,240,087	\$793,180,204	\$1,119,639,141	\$1,025,618,356	\$942,588,929	-\$83,029,427	-8.1%
Fund Type							
General Fund	\$41,128,697	\$46,645,572	\$74,614,316	\$60,761,306	\$55,072,212	-\$5,689,094	-9.4%
Special Fund ¹	411,679,464	538,392,851	615,412,783	445,729,283	431,351,676	-14,377,607	-3.2%
Federal Fund	58,222,249	81,664,521	97,613,410	110,505,879	120,188,383	9,682,504	8.8%
Reimbursable Funds	28,913,264	31,495,431	32,070,834	31,361,176	30,601,319	-759,857	-2.4%
Current Unrestricted	24,692,495	7,889,528	8,230,689	10,840,105	42,665,435	31,825,330	293.6%
Current Restricted	2,772,713	24,435,775	22,593,808	25,392,901	25,067,103	-325,798	-1.3%
General Obligation and Revenue Bonds ^{2,3}	16,855,578	13,871,600	13,902,000	5,000,000	0	-5,000,000	-100.0%
Maryland Department of Transportation Funds	516,975,627	48,784,925	255,201,300	336,027,706	237,642,800	-98,384,905	-29.3%
Total	\$1,101,240,087	\$793,180,204	\$1,119,639,141	\$1,025,618,356	\$942,588,929	-\$83,029,427	-8.1%

Analysis of the FY 2026 Maryland Executive Budget, 2025

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	Actual <u>2022</u>	Actual <u>2023</u>	Actual <u>2024</u>	Approp. <u>2025</u>	Allowance <u>2026</u>	\$ Change 2024-2025	% Change 2024-2025
Spending Category							
Land Preservation	\$88,397,392	\$206,145,804	\$238,618,786	\$76,400,386	\$67,662,306	-\$8,738,080	-11.4%
Septic Systems	22,168,299	22,383,807	23,169,792	25,373,985	23,662,303	-1,711,682	-6.7%
Wastewater Treatment	274,420,270	279,054,725	325,598,140	282,217,978	267,255,184	-14,962,794	-5.3%
Urban Stormwater	42,623,168	46,808,253	46,089,717	60,618,069	56,268,119	-4,349,951	-7.2%
Agricultural Best Management Practices ³	75,704,072	78,062,971	92,588,049	84,788,116	84,417,934	-370,182	-0.4%
Oyster Restoration	6,496,715	6,937,582	7,863,037	4,768,025	5,578,467	810,442	17.0%
Transit and Sustainable Transportation							
Alternatives	481,814,325	15,920,629	220,560,090	280,579,852	191,117,807	-89,462,045	-31.9%
Living Resources ^{1,2}	58,819,104	69,756,100	64,049,063	97,493,016	101,782,660	4,289,643	4.4%
Education and Research	27,782,600	32,907,887	31,773,597	37,257,940	68,761,753	31,503,813	84.6%
Other	23,014,141	35,202,446	69,328,871	76,120,988	76,082,396	-38,592	-0.1%
Total	\$1,101,240,087	\$793,180,204	\$1,119,639,141	\$1,025,618,356	\$942,588,929	-\$83,029,427	-8.1%

¹ Reflects an additional \$4,160,000 in general obligation (GO) bonds in fiscal 2021, \$2,770,000 in GO bonds in fiscal 2022, and \$1,970,000 in GO bonds in fiscal 2023 for the Resiliency through Restoration Initiative Program (formerly the Coastal Resiliency Program) that were inadvertently left out of the Appendix L of the Governor's Budget Highlights.

² Reflects \$13,620,000 in special funds in fiscal 2023 for the Oyster Restoration Program that were inadvertently left out of the Appendix L of the Governor's Budget Highlights.

³ Reflects a fiscal 2026 reduction of \$8.0 million in GO bond funding that is not included in the budget.

Note: This presentation only includes State agency programs that have over 50% of their activities directly related to Chesapeake Bay restoration. In addition, funding related to salaries and fringe benefits does not reflect health insurance or increment adjustments.

Source: Department of Budget and Management; Department of Legislative Services