
Chesapeake Bay Fiscal 2010 Budget Overview

**Department of Legislative Services
Office of Policy Analysis
Annapolis, Maryland**

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Analysis of the FY 2010 Maryland Executive Budget, 2009

Chesapeake Bay Fiscal 2010 Budget Overview

Analysis in Brief

Major Trends

Chesapeake Bay 2000 Agreement Commitments Unmet and Civil Action Filed: The Chesapeake Bay 2000 Agreement (C2K) commitments for restoration of the bay will not be met. Instead, a program of two-year milestones is planned with a new restoration deadline. Four organizations and four individuals have filed a civil action against the U.S. Environmental Protection Agency (EPA) for failing to abide by the Clean Water Act and Chesapeake Bay Agreements.

Fiscal 2009 Funding Pending; Fiscal 2010 Funding Partially Diverted: The fiscal 2009 allocation of the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund is still uncertain due to falling revenues (motor fuel tax and short-term vehicle rental tax) and budgetary pressures for reversion of funds to the general fund. The total amount of the fiscal 2010 allocation and a plan for the allocation also is uncertain.

Issues

BayStat Data and Process Reviewed: The BayStat data process is hampered by time lags in the presentation of data and the time lags between outcomes and actual bay water quality improvements. While some management trends are improving, significant management decisions have yet to be publicly attributed to the BayStat data. **While the data collected is indicative of agency activities, it is not easy to connect it to the C2K commitments. For instance, only the wastewater treatment estimated nutrient reductions ties in to the nutrient reduction commitment, and no measure indicates cost-effectiveness or targeting of best management practices. In addition, the most critical measure for bay restoration, the removal of State waters from the EPA's List of Impaired Waters, is not included.**

The BayStat agencies should be prepared to comment on how the BayStat data dashboard and the BayStat process in general could be improved to show the cost-effectiveness of programs, targeting of funding, and the relationship between outcomes and meeting the C2K commitments.

Chesapeake Bay 2010 Trust Fund Allocation: The fiscal 2009 and 2010 allocations of the trust fund are still uncertain due to declining revenues, budgetary shortfall needs, and the absence of annual and expenditure plans required to be submitted. **The agencies should be prepared to comment on whether the BayStat Subcabinet will submit an annual work and expenditure plan as required by Chapters 120 and 121 of 2008, how the weighting for funding will be conducted, and what the connection is between the broad categories of possible funding and Chesapeake Bay restoration.**

Potential Federal Funding: Two pieces of federal legislation may allow for additional Chesapeake Bay restoration funding in fiscal 2010. The federal 2008 Farm Bill was passed in May 2008, and the American Recovery and Reinvestment Act of 2009 has been introduced in the U.S. House of Representatives. **The agencies should be prepared to comment on the likelihood of receiving federal funding for bay restoration as part of either the 2008 Farm Bill or the American Recovery and Reinvestment Act of 2009.**

Recommended Actions

1. Add budget bill language stating that it is the General Assembly's intent that the Department of Budget and Management include in the Governor's budget books a summary of Chesapeake Bay restoration expenditures by agency and Chesapeake Bay 2000 Agreement commitment category.

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Overview

In 1999, the U.S. Environmental Protection Agency (EPA) identified the Chesapeake Bay as an impaired water body. In 2000, the Chesapeake Bay partners (the states of Maryland, Pennsylvania, and Virginia; the District of Columbia; the Chesapeake Bay Commission; and the EPA) negotiated the Chesapeake Bay 2000 Agreement (C2K), which specified restoration goals to improve the bay and remove it from the EPA’s List of Impaired Waters.

Maryland’s Commitments

Maryland has over 90 commitments as part of C2K. The Department of Natural Resources (DNR) has broken down the commitments into 13 categories. **Exhibit 1** summarizes the status of these commitments in which the distinction is made between commitments that have been met and ongoing commitments. Ongoing commitments are further broken down into commitments that can be quantified and those that can not. The exhibit shows the percent and number of commitments met in each category. One of the more familiar commitment categories is nutrient and sediments, which contains the unmet commitment of reducing Maryland’s portion of nutrient and sediment flow into the bay.

Exhibit 1 Status of Meeting Chesapeake Bay 2000 Agreement Commitments

<u>Commitment Category</u>	<u>Description</u>	<u>Status of Commitments</u>			<u>Agency Contacts</u>
		<u>Met</u>	<u>Ongoing</u>		
			<u>Quantified</u>	<u>Not Quantified</u>	
Nutrients and Sediments	Define nutrient and sediment reductions and implement	66.7% (4)	33.3% (2)	0.0% (0)	DNR, MDE, UM
BMPs Necessary to Meet Nutrient Reduction Goals	BMPs for forest connection, wetlands management, stream restoration, boat discharge	37.5% (6)	43.75% (7)	18.75% (3)	MDE, DNR,
Living Resources	Goals for oysters, submerged aquatic vegetation, crabs, exotic species, fish passage/management	46.7% (7)	53.3% (8)	0.0% (0)	DNR, CBP, MDE

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<u>Commitment Category</u>	<u>Description</u>	<u>Ongoing</u>			<u>Agency Contacts</u>
		<u>Met</u>	<u>Quantified</u>	<u>Not Quantified</u>	
Development, Redevelopment and Revitalization	Goals for harmful sprawl development reduction, sound land use, coordination of local water quality programs, brownfield redevelopment	7.7% (1)	38.5% (5)	53.8% (7)	MDP, MDE
Land Conservation	Provide technical/financial assistance for local conservation planning, strengthen land acquisition programs	66.7% (4)	16.7% (1)	16.7% (1)	DNR, MDP
Education and Outreach	Provide a meaningful bay experience for every student, increase outreach to minorities, provide for interactive bay information sources	14.3% (1)	28.6% (2)	57.1% (4)	DNR, MSDE
Community Engagement	Incorporate local governments into decisionmaking, identify community watershed organizations, address environmental justice	25.0% (2)	37.5% (3)	37.5% (3)	DNR, MDE
Government by Example	Ensure State government uses stormwater management and develops according to C2K goals and expand use of clean fuel vehicles	25.0% (1)	0.0% (0)	75.0% (3)	MDE, DNR, DGS, MEA
Chemical Contaminants	Strive for zero release of chemical contaminants from point sources and reduce the potential risk of pesticides	0.0% (0)	40% (2)	60.0% (3)	MDE, MDA
Priority Urban Waters	Support restoration of Anacostia River, Elizabeth River, and Baltimore Harbor	0.0% (0)	0.0% (0)	100.0% (2)	MDE
Transportation	Promote coordination of transportation and land use planning, reduce dependence on automobiles, encourage clean vehicle technology	0.0% (0)	0.0% (0)	100.0% (4)	MDP, MDOT
Public Access	Increase water trails, expand public access to the bay, develop place-based interpretation partnerships	50.0% (2)	25.0% (1)	25.0% (1)	DNR

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Status of Commitments

<u>Commitment Category</u>	<u>Description</u>	<u>Ongoing</u>			<u>Agency Contacts</u>
		<u>Met</u>	<u>Quantified</u>	<u>Not Quantified</u>	
Partnerships	Strengthen partnerships with Delaware, New York, and West Virginia (non-signatory states)	50.0% (1)	0.0% (0)	50.0% (1)	DNR
Total		31.5% (29)	33.7% (31)	34.8% (32)	

BMPs: Best Management Practices
 C2K: Chesapeake Bay 2000 Agreement
 CBP: Chesapeake Bay Program
 DGS: Department of General Services
 DNR: Department of Natural Resources
 MDA: Maryland Department of Agriculture
 MDE: Maryland Department of the Environment
 MDOT: Maryland Department of Transportation
 MDP: Maryland Department of Planning
 MEA: Maryland Energy Administration
 MSDE: Maryland State Department of Education
 UM: University of Maryland

Source: Department of Natural Resources

Nutrient and Sediment Commitment

As part of C2K under the nutrient and sediments commitment, specific pollution reduction goals have been allocated to the various bay states. Maryland's recent pollutant loads, as modeled by the EPA's Chesapeake Bay Program, and associated reduction goals are summarized in **Exhibit 2**.

**Exhibit 2
 Maryland's Pollutant Loads and Reduction Goals**

<u>Pollutant</u>	<u>2005 Loads</u>	<u>2006 Loads</u>	<u>2007 Loads</u>	<u>2010 Goal</u>
Nitrogen (million lbs/yr)	56.19	53.65	53.20	37.25
Phosphorus (million lbs/yr)	3.80	3.75	3.76	2.92
Sediment (million tons/yr)	0.99	0.97	0.97	0.71

Source: U.S. Environmental Protection Agency's Chesapeake Bay Program

Funding for Bay Restoration Across Agencies

One barrier to effective Chesapeake Bay restoration has been a lack of overall knowledge of how funding is allocated across agencies. **Exhibit 3** provides an overview of funding (general and special funds) for bay restoration compiled by the Department of Budget and Management (DBM) for the 2008 legislative session. DBM’s methodology involved including any program with greater than 50% of the program’s funding dedicated to bay restoration, as defined by the participating agencies.

Exhibit 3
Overview of Maryland’s Funding for Chesapeake Bay Restoration
Fiscal 2007-2009

<u>Agency</u>	<u>2007 Expenditures</u>	<u>2008 Appropriation</u>	<u>2009 Allowance</u>
Department of Planning	\$5,552,027	\$5,570,180	\$6,288,464
Department of Natural Resources	28,627,790	30,021,122	33,039,640
MD State Department of Education	1,699,865	1,700,000	1,700,000
Department of Transportation	6,990,146	15,666,454	27,574,901
Department of the Environment	106,333,584	124,195,763	163,085,542
Department of Agriculture	110,087,957	96,531,858	71,952,030
Maryland Higher Education Institutions	32,694,085	30,614,527	27,775,094
Chesapeake Bay 2010 Trust Fund	0	0	50,000,000 ¹
Total	\$291,985,454	\$304,299,904	\$381,415,671

¹The CB 2010 Trust Fund is not anticipated to have \$50,000,000 in expenditures in fiscal 2009.

Source: Department of Budget and Management

While the Chesapeake Bay restoration funding was provided in the fiscal 2009 Governor’s budget books, it was not provided in the fiscal 2010 Governor’s budget books. In addition, the data does not provide a link to the Chesapeake Bay 2000 Agreement commitments and thus does not provide any additional understanding about the effectiveness of State spending for Chesapeake Bay restoration. Finally, the methodology for determining what programs are included in the data does not appear to have been developed.

The agencies should work with the Department of Budget and Management on an updated version of the data in the fiscal 2009 Governor’s budget books Appendix Q: Summary of Chesapeake Bay Restoration Expenditures by Agency. This information should be included in the fiscal 2011 Governor’s budget books and should be presented separately by (1) agency, and (2) Chesapeake Bay 2000 Agreement commitment category. Budget bill language to this effect is included as the recommended action.

New Deadline for Bay Restoration to Be Set

Progress toward the C2K commitments, in particular the reduction of nutrients and sediments, has been slow. In fact, due to population growth and related development, the EPA’s Chesapeake Bay Program reports that in some areas, conditions have deteriorated.

At the December 5, 2007 meeting of the Chesapeake Executive Council, Governor Martin J. O’Malley acknowledged that 2010 nutrient and sediment reduction goals would not be met. This acknowledgment was followed by a revised bay restoration plan involving two-year milestones leading up to a new deadline. The two-year milestone period was chosen in order to set intermediate goals for accountability purposes (the original C2K agreement was a 10-year goal without any periodic checks). However, the milestones and new restoration date will not be set until spring 2009 in order to take advantage of the most recent EPA Chesapeake Bay Program’s health and restoration assessment to be published in spring 2009. If 2020 is set as the new restoration date, then Maryland needs to accelerate implementation by 2.5 times over the current rate.

The new two-year milestone approach is matched with the requirement for the EPA to create what is called a total maximum daily load (TMDL) amount for the Chesapeake Bay watershed. The TMDL will designate the maximum amount of nitrogen, phosphorus, and sediment that the Chesapeake Bay can receive and be restored. The TMDL will need to be completed by May 1, 2011, but Virginia, Maryland, and the District of Columbia have requested that it be completed by December 31, 2010.

In the meantime, four organizations and four individuals filed a civil action on January 5, 2009, against the EPA and its administrator. The civil action was filed for failure to perform obligatory duties and abide by the terms and conditions of the Clean Water Act, the Administrative Procedure Act, and the Chesapeake Bay Agreements.

Issues

1. BayStat Data and Process Reviewed

The Governor created BayStat by Executive Order 01.01.2007.02 in February 2007 as a management tool for coordinating and communicating bay restoration programs and progress. The agencies involved are the Maryland Department of Agriculture (MDA), Maryland Department of the Environment (MDE), DNR, and Department of Planning (MDP). The process for BayStat is similar to that of the StateStat process: the Governor's BayStat staff solicit monthly updates on performance measures, the measures are reviewed in a meeting with the Governor's Deputy Chief of Staff, the data is released as a spreadsheet BayStat data dashboard and periodically posted on the BayStat web site. The BayStat data process raises three questions:

- is the right data being collected;
- what are the trends in the data collected; and
- has the data led to any management decisions.

Right Data Collected?

The question of whether the right data is being collected is complicated by the following:

- the hybrid nature of BayStat – BayStat is intended to be a measurement tool for Chesapeake Bay restoration purposes; however, it also is functioning as a management tool for the agencies themselves because none of the agencies individually have been included in the StateStat process; and
- the lag time between agency actions and improvements in Chesapeake Bay health – it is difficult to connect Chesapeake Bay restoration data with month-to-month agency management decisions.

The data that is collected was recommended by the agencies but has changed over the time BayStat has been in use. For instance, blue crabs were tracked as a BayStat measure at one point but are no longer tracked. This is because the measure, while an important indicator of Chesapeake Bay health, did not lend itself to month-to-month management actions.

The BayStat data dashboard includes information on the following:

- Septic (MDE) – on-site septic retrofit program statistics including total expenditures, revenues, new installation, new installations in the critical area, new installations by MDE directly, expenditures by MDE directly, new grant awards amounts, and number of counties enrolled;

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- Wastewater treatment plant (MDE) – wastewater treatment plant schedule for enhanced nutrient removal upgrades including estimated nitrogen reduction and planning/design/construction schedule;
- Compliance (MDE) – water management administration compliance information on sites with permits, number of inspections, compliance profile, significant violations, disposition of significant violations, enforcement actions, and penalties;
- Land (DNR, MDA) – land data for Program Open Space (POS), Maryland Agricultural Land Preservation Foundation agricultural easements, Rural Legacy Program easements, and Maryland Environmental Trust easements, as well as Maryland Forest Conservation Act acreage by county;
- Farms (MDA) – Manure Transport Program statistics, nutrient management plan progress, and overall agricultural compliance; and
- Cover crops (MDA) – applications and approvals by county.

Data Trends

The following trends in the BayStat data dashboard data can be discerned:

- Septic (MDE) – there is increasing trend in septic installation but not necessarily in the Critical Area.
- Wastewater treatment plant (MDE) – 11 of the 66 major wastewater treatment plants now have been upgraded to enhanced nutrient removal technology of which St. Michael's was the most recent completion on October 22, 2008.
- Compliance (MDE) – the number of discharge permit and erosion and sediment control sites inspected decreased between fiscal 2005 and 2008; there is no trend in significant violations with environmental or health impacts.
- Land (DNR, MDA) – POS acquisition acreage peaked in fiscal 2007 while the Maryland Agricultural Land Preservation Program conservation easement acreage appears to have peaked in fiscal 2008.
- Farms – tons of manure transported in the Manure Transport Program increased steadily between fiscal 1999 and 2008 with more non-poultry litter transported than poultry litter since fiscal 2007.
- Cover Crops – the applications for cover crops has increased as has funding, but the dollar per acre decreased between fiscal 2007 and 2008 before improving in fiscal 2009.

Management Decisions

The theory behind BayStat is to track progress in order to better target resources, but BayStat itself does not appear to have led to any major management decisions. Rather the BayStat process appears to be a good forum for gathering information across a number of Chesapeake Bay restoration policy areas.

One concrete exception to this might be the septic system program, and a more general exception might be the allocation of funding for the Chesapeake Bay 2010 Trust Fund. The septic system upgrade program in MDE has experienced a tepid response from the public. This has meant limited expenditures to date. The BayStat process exposed this slow activity and led to an increase in marketing of the program to the public, which has resulted in an uptick in interested phone calls to the program.

The place where the BayStat program may prove most effective is in the targeting of funding for the Chesapeake Bay 2010 Trust Fund allocation. Here there is the opportunity to present proposals for the allocation to a number of Chesapeake Bay restoration professionals across the agencies using graphics and data to support and justify the allocation.

While the data collected is indicative of agency activities, it is not easy to connect it to the C2K commitments. For instance, only the wastewater treatment estimated nutrient reductions ties in to the nutrient reduction commitment, and no measure indicates cost-effectiveness or targeting of best management practices. In addition, the most critical measure for bay restoration, the removal of State waters from the EPA’s List of Impaired Waters, is not included.

The BayStat agencies should be prepared to comment on how the BayStat data dashboard and the BayStat process in general could be improved to show the cost-effectiveness of programs, targeting of funding, and the relationship between outcomes and the meeting of C2K commitments.

2. Chesapeake Bay 2010 Trust Fund Allocation

Chapter 6 of the 2007 special session (House Bill 5) established a Chesapeake Bay 2010 Trust Fund to be used 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. Subsequently, Chapters 120 and 121 of 2008 established a framework for how the trust fund money must be spent by specifying that it be used for nonpoint source pollution control projects and by expanding it to apply to the Atlantic Coastal Bays. The Acts also established a Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund, administered by MDE, to provide financial assistance for the implementation of urban and suburban stormwater management practices and stream and wetland restoration.

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Pursuant to Chapters 120 and 121 of 2008, money in the trust fund must be distributed by the BayStat Subcabinet agencies as follows:

- to counties, bicounty agencies, municipalities, forest conservation district boards, soil conservation districts, academic institutions, and nonprofit organizations having demonstrated ability to implement nonpoint source pollution control projects through competitive grants;
- to the Maryland Agricultural Water Quality Cost Share Program within MDA;
- to the Woodland Incentives Fund within DNR; and
- to the Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund, a new special fund administered by the Water Quality Financing Administration within MDE to provide financial assistance for urban and suburban stormwater management practices and stream/wetland restoration.

Solicitation for the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund

The agencies originally involved in the allocation for the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund (CB 2010 Trust Fund) include MDP, MDA, DNR, MDE, and the University of Maryland Center for Environmental Science. The agency Secretaries and President of the University of Maryland are the members of the Governor’s BayStat Subcabinet. The original plan was to target fiscal 2009 funding to five tributary basins: Lower Eastern Shore, Choptank River, Upper Eastern Shore, Lower Western Shore, and Patuxent River. In order to find the most effective projects for these five tributary basins in fiscal 2009 and 2010, a competitive request for proposals process was conducted as follows:

- DNR’s solicitation for the Local Implementation Grant – 31 multi-year proposals requesting greater than \$25 million for fiscal 2009 alone (\$104,275,751 million over three years);
- MDE’s solicitation for the Nonpoint Source Fund – 58 proposals requesting \$27.1 million as part of total project costs of \$43.5 million; and
- MDA’s solicitation for the Maryland Agricultural Cost-Share Program and Cover Crop Program – \$20 million in total cover crop funding was solicited with a preliminary allocation of \$9.5 million from the CB 2010 Trust Fund.

These proposals were then to be aggregated into a plan to be presented to BayStat with input from the Scientific Advisory Panel. The number and amount of proposals received would have allowed for the funding of these proposals in both fiscal 2009 and 2010. Therefore, a separate request for proposals’ process will not be needed for fiscal 2010.

Potential Fiscal 2009 and 2010 Allocation

The Governor's proposed fiscal 2009 budget included \$50 million from the motor fuel tax and sales and use tax on short-term vehicle rentals for the trust fund, but budget reconciliation legislation reduced the amount from the motor fuel tax by \$6.5 million and reduced the amount from the sales and use tax on short-term vehicle rentals by \$18.5 million (Chapter 414 of 2008). Therefore, as enacted, the fiscal 2009 budget includes \$25 million for the trust fund. However, the Board of Public Works made a further reduction of \$5.0 million on October 15, 2008. In addition, the current revenue projections for the motor fuel tax and sales and use tax on short-term vehicle rentals are lower than the appropriation amount; DLS currently estimates revenues of \$9.6 million in fiscal 2009 and \$31.5 million in fiscal 2010.

The fiscal 2010 allowance includes \$31.5 million in DNR's budget in Watershed Services. Of this \$31.5 million, approximately \$11.9 million is included in MDA's budget in the Office of Resource Conservation as reimbursable funds for cover crops, leaving approximately \$19.6 million in funding that either DNR will administer itself or will transfer to other agencies to administer as part of the BayStat allocation process. However, the Governor also has submitted the Budget Reconciliation and Financing Act of 2009 which proposes to reduce the fiscal 2010 allocation by \$6.5 million, for a fiscal 2010 appropriation of \$25.0 million. **Exhibit 4** provides a summary of the CB 2010 Trust Fund history.

Exhibit 4 Chesapeake Bay 2010 Trust Fund History

<u>Appropriation</u>	<u>Fiscal 2009</u>	<u>Fiscal 2010</u>
Allowance	\$50.0 million	\$31.5 million
Reduction	\$25.0 million (Chapter 414 of 2008)	\$6.5 million (Governor's BRFA)
Reduction	\$5.0 million (BPW; October 15, 2008)	n/a
Available Appropriation	\$20.0 million	\$25.0 million
Available Revenue	\$9.6 million	\$25.0 million
Amount Committed to MDA	\$9.5 million	\$11.9 million
Unallocated	\$0.1 million	\$13.1 million

BPW: Board of Public Works
BRFA: Budget Reconciliation and Financing Act of 2009
MDA: Maryland Department of Agriculture

Note: Further revenue write-downs may impact the fiscal 2010 allocation.

Source: Department of Legislative Services

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MDA has solicited \$20.0 million of cover crop interest from farmers in fiscal 2009 based on an agreement made with the Administration that MDA would receive \$9.5 million of the CB 2010 Trust Fund allocation. With the October 15, 2008 Board of Public Works reduction of \$3.075 million in general funds for cover crops, however, MDA is even more dependent on this CB 2010 Trust Fund allocation in order to guarantee that all cover crop participants are compensated. The number of eligible cover crop funding applicants usually drops off for the spring final certification, and so the full \$20.0 million probably will not be required. Thus the reduction in general funds maintains the need for the CB 2010 Trust Fund special funds as insurance.

Annual Work and Expenditure Plans Not Completed as Required

Chapters 120 and 121 of 2008 require that the BayStat Subcabinet submit annual work and expenditure plans as part of the annual budget submission; however, this has not been done. The two plans are required to identify the following:

- annual work plan – planned work to be funded with money from the CB 2010 Trust Fund for the next fiscal year, including annual nutrient and sediment reduction targets, performance measures, and accountability criteria; and
- expenditure plan – planned expenditures for the work plan including an accounting of all monies distributed from the CB 2010 Trust Fund in the previous fiscal year.

Given the lack of information provided by the BayStat Subcabinet, **Exhibit 5** only provides the overall categories in which fiscal 2010 funding eventually may be allocated.

Exhibit 5
Possible Chesapeake Bay 2010 Trust Fund Allocation
Fiscal 2010

<u>Agency</u>	<u>Sector Type</u>	<u>Specific Program</u>	<u>Description</u>
MDA	Agriculture	Cover Crops	Traditional cover crop funding
		Animal Waste Management (MAFO/CAFO)	Animal waste management best management practice funding
		Technical Assistance	Soil Conservation District personnel to assist farmers with best management practices
		Conservation Reserve Enhancement Program	Removal of marginal land from production
MDE	Urban Stormwater Projects	Small Creek and Estuary Restoration Program	Dredging of streambeds and streambank/channel stabilization funding for local governments
		Maryland Stormwater Pollution Control Program	Stormwater retrofit projects for local governments
DNR	Local Implementation Grants		Competitive targeted innovative watershed restoration practices solicited from local governments
DNR/University of Maryland, College Park	Innovative Technologies		Seed capital for research on innovative environmental restoration technologies
DNR/University of Maryland Center for Environmental Science	Strategic Monitoring		Monitoring of outcomes of implemented projects

CAFO: Concentrated Animal Feeding Operation – federally defined as an animal feeding operation that discharges or proposes to discharge to surface waters of the State.

MAFO: Maryland Animal Feeding Operation – any large animal feeding operation (based on the Environmental Protection Agency’s definition, includes poultry operations totaling 100,000 square feet or greater) that because of their size have a significant potential to discharge to either surface or groundwater of the State.

DNR: Department of Natural Resources

MDA: Maryland Department of Agriculture

MDE: Maryland Department of the Environment

Source: Department of Legislative Services

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While it is understood that the categories in Exhibit 5 are placeholders for funding, these placeholders raise the questions of how funding will be weighted and what the connection is between these strategies and Chesapeake Bay restoration. Some categories for comparison of the funding options within specific examples follow:

- behavioral change vs. technical fix – higher funding for Soil Conservation district personnel providing technical assistance addresses the need for behavioral change while higher funding for innovative technologies implements a technical fix;
- local government vs. State government – higher funding for local implementation grants would let the market of ideas inform how Chesapeake Bay restoration is conducted while higher small creek and estuary restoration program funding would involve more State government control over implementation;
- annual vs. permanent – higher funding for the removal of marginal land from production along streams and rivers would require ongoing annual payments to reduce nutrients while higher funding for animal waste management capital funding would be a one-time investment in best management practice infrastructure; and
- cost-effective vs. realization of changing landscape – higher funding for cover crops is a fairly cost-effective strategy while higher funding for stormwater retrofit projects would address the fact that Maryland is urbanizing and needs to address nutrient and sediment loads from its urban cores.

In the end, the allocation of funding from the CB 2010 Trust Fund must be considered in light of the two drivers of bay impairment: population increase and the current pattern of land use. In addition, the allocation of funding must be considered in light of the Chesapeake Bay TMDL, which would require any increase in population to be offset by the reduction in per capita nutrient and sediment loads to the Chesapeake Bay even after all the required reductions have been made.

The agencies should be prepared to comment on whether the BayStat Subcabinet will submit an annual work and expenditure plan as required by Chapters 120 and 121 of 2008, how the weighting for funding will be conducted, and what the connection is between the broad categories of possible funding and Chesapeake Bay restoration.

3. Potential Federal Funding

Two pieces of federal legislation may allow for additional Chesapeake Bay restoration funding in fiscal 2010. The federal 2008 Farm Bill was passed in June 2008, and the American Recovery and Reinvestment Act of 2009 has been introduced in the U.S. House of Representatives. In Section 2605 of the 2008 Farm Bill Conservation Title, \$188.0 million is authorized on a competitive basis to any of the six Chesapeake Bay watershed states. However, funding will be prioritized between federal fiscal 2009 and 2012 to the Susquehanna, Potomac, Shenandoah, and Patuxent rivers and their tributaries.

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The American Recovery and Reinvestment Act of 2009 as proposed by the House Appropriations Committee has four provisions that may relate to Chesapeake Bay restoration as follows:

- Title II – Agriculture, Nutrition, and Rural Development – \$350.0 million in Watershed and Flood Prevention Operations funding in the Natural Resources Conservation Service, which could be used for designing and building flood prevention and water quality improvements, including dams to reduce flood risk and provide agricultural irrigation and water supply and infrastructure to clean polluted water;
- Title II – Agriculture, Nutrition, and Rural Development – \$1.5 billion for the Rural Water and Waste Disposal Program in the Natural Resources Conservation Service to provide rural communities with funding for drinking water and wastewater treatment infrastructure;
- Title V – Energy and Water – \$4.5 billion for funding the Army Corps of Engineer’s mission, which includes the construction of environmental restoration projects; and
- Title VIII – Interior and Environment – \$6.0 billion for the Clean Water State Revolving Fund in EPA for wastewater infrastructure improvements.

The agencies should be prepared to comment on the likelihood of receiving federal funding for bay restoration as part of either the 2008 Farm Bill or the American Recovery and Reinvestment Act of 2009.

Recommended Actions

1. Add the following language:

SECTION X. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that the Governor’s fiscal 2011 budget books include separately a summary of Chesapeake Bay restoration expenditures by (1) agency, and (2) Chesapeake Bay 2000 Agreement commitment category. The Department of Budget and Management (DBM) should include the fiscal 2009 actual, fiscal 2010 working appropriation, and fiscal 2011 allowance for programs that have over 50% of their activities directly related to Chesapeake Bay restoration. Further provided that DBM should provide to the Department of Legislative Services (DLS) the same data disaggregated by program in an electronic format subject to the concurrence of DLS.

Explanation: The fiscal 2009 Governor’s budget books contain Appendix Q: Summary of Chesapeake Bay Restoration Expenditures by Agency. Appendix Q provides an overview of Chesapeake Bay restoration funding across State agencies, which is helpful for understanding the scope and scale of the State’s commitment of resources to bay restoration. However, this data is not contained in the fiscal 2010 Governor’s budget books. Therefore, a revised version of the data presented in Appendix Q should be included in the fiscal 2011 Governor’s budget books. The data should show the fiscal 2009 actual, fiscal 2010 working appropriation, and fiscal 2011 allowance for programs that have over 50% of their activities directly related to Chesapeake Bay restoration. The data should be presented separately by (1) agency, and (2) Chesapeake Bay 2000 Agreement commitment category. The agency presentation is to be modeled on Appendix Q and the Chesapeake Bay 2000 Agreement commitment category presentation is to be modeled on Appendix K: Share of the State Budget for Services to Children, Youth, and Families, both in the fiscal 2009 Governor’s budget books. In addition, DBM should provide to DLS the same data disaggregated by program in an electronic format subject to the concurrence of DLS.

Information Request	Author	Due Date
Summary of Chesapeake Bay restoration expenditures	Department of Budget and Management	Fiscal 2011 State budget submission and annually thereafter