
Chesapeake Bay Fiscal 2011 Budget Overview

**Department of Legislative Services
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Analysis of the FY 2011 Maryland Executive Budget, 2010

Chesapeake Bay – Fiscal 2011 Budget Overview

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Analysis in Brief

Major Trends

New Milestones and Regulatory Approach Adopted for Chesapeake Bay Restoration: The 2010 deadline for the Chesapeake Bay 2000 Agreement will not be met; therefore, Maryland has committed to a two-year milestone approach that will be complemented by a baywide total maximum daily load (TMDL) to be created and regulated by the U.S. Environmental Protection Agency.

Chesapeake Bay Program Reauthorization Proposed: Senator Benjamin L. Cardin and Representative Elijah E. Cummings have submitted federal legislation to reauthorize the U.S. Chesapeake Bay Program and to provide additional funds for stormwater retrofits.

Fiscal 2010 and 2011 Funding Partially Diverted: To help balance the general fund budget, fiscal 2010 and 2011 Chesapeake and Atlantic Coastal Bays 2010 Trust Fund revenues are being diverted to the general fund. The fiscal 2010 allocation has yet to be appropriated by special fund budget amendment.

Issues

Current Status of Chesapeake Bay Restoration: Focus has shifted to two-year milestones for reduction of nutrient and sediment loads to the Chesapeake Bay. As of December 2009, Maryland's first two-year milestone appears to have shortfalls in the nitrogen loading reduction for cover crops and enhanced nutrient removal technology upgrades at wastewater treatment plants. **The Department of Legislative Services (DLS) recommends that the BayStat agencies comment on the likelihood of meeting the first two-year milestone given that only 21% of the cover crop and 12% of the enhanced nutrient removal technology goals have been achieved as of December 2009.**

Chesapeake and Atlantic Coastal Bays 2010 Trust Fund Allocation: The BayStat agencies submitted the required expenditure and work plans, which showed that not all fiscal 2009 projects had been completed, a number of projects with low cost-effectiveness appear to have been selected, and that agency direct costs will be allocated for the first time in fiscal 2011. **DLS recommends that the BayStat agencies comment on how project completion rates can be improved, how the cost-effectiveness for the projects selected for funding could be increased, and how the agencies intend to spend the agency direct costs funding allocation.**

Overall Chesapeake Bay Restoration Capacity and Funding: The Department of Budget and Management submitted the required appendix on Chesapeake Bay restoration expenditures, but fund sources were not designated and more information is needed to understand the funding needs and State capacity for Chesapeake Bay restoration. **DLS recommends that the BayStat agencies comment on the legal, regulatory, programmatic, financial, staffing, and technical capacities for**

meeting the two-year milestones and the Chesapeake Bay TMDL and whether this information will be included in the Watershed Implementation Plan such that annual budget submissions and regulation changes can be judged against the demonstrated need.

Proposed Federal Funding for Chesapeake Bay Restoration: Two sources of additional federal funding for Chesapeake Bay restoration have been identified but are still in the preliminary stages of development. The first is the federal Chesapeake Bay Program reauthorization legislation proposed by Senator Cardin. The second is funding proposed by the Federal Leadership Committee, set up by President Barack H. Obama's executive order for the Chesapeake Bay. **DLS recommends that the BayStat agencies comment on the status of the Chesapeake Bay Program reauthorization legislation, on how the Federal Leadership Committee's funding proposal was derived, and on how the grants in the reauthorization and in the Federal Leadership Committee funding proposal would assist Maryland in meeting its two-year milestone and the Chesapeake Bay TMDL.**

Impact on Chesapeake Bay Region of Differential Regulatory Treatment: The concern has been raised that the Chesapeake Bay watershed states may be adversely impacted relative to states outside of the watershed if federal regulations on stormwater and concentrated animal feeding operations are made more restrictive here than elsewhere. **DLS recommends that the BayStat agencies comment on the concern that Chesapeake Bay watershed regulations for concentrated animal feeding operations and for stormwater management may result in a competitive disadvantage for Chesapeake Bay watershed agricultural and development industries.**

Updates

Interagency Agreements on Chesapeake Bay Restoration: A report on the schedule of contracts and interagency agreements exceeding \$25,000 that concern Chesapeake Bay restoration spending was requested in the 2009 *Joint Chairmen's Report*. The data submitted shows that the Maryland Department of Agriculture's Office of Resource Conservation contracted out the greatest amount of money, primarily for cover crops for farmers.

Fiscal 2010 Spending Restriction Lifted: The fiscal 2010 spending restriction on the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund appropriation was lifted with the submission of a report by the BayStat agencies in August 20, 2009, showing how expenditures for fiscal 2010 matched revenue.

Recommended Actions

1. Add language to restrict funding until the submission of two reports.

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 voluntary restoration goals to improve the bay and remove it from the EPA's List of Impaired Waters.

Recent Policy Developments

In response to the failure of C2K, a new restoration policy framework is emerging that emphasizes stronger federal oversight over the restoration process. Key elements of this framework include a May 2009 federal executive order on Chesapeake Bay Restoration and Protection, the creation of two-year restoration policy milestones, and the development of a baywide total maximum daily load (TMDL) for nutrients and sediments.

Federal Executive Order

On May 12, 2009, President Barack H. Obama signed Executive Order 13508 recognizing the Chesapeake Bay as a national treasure and mobilizing federal agencies to take the lead in renewed efforts to restore the bay and its watershed. The executive order established a Federal Leadership Committee to oversee the development and coordination of bay restoration activities and set forth the following timeline of requirements:

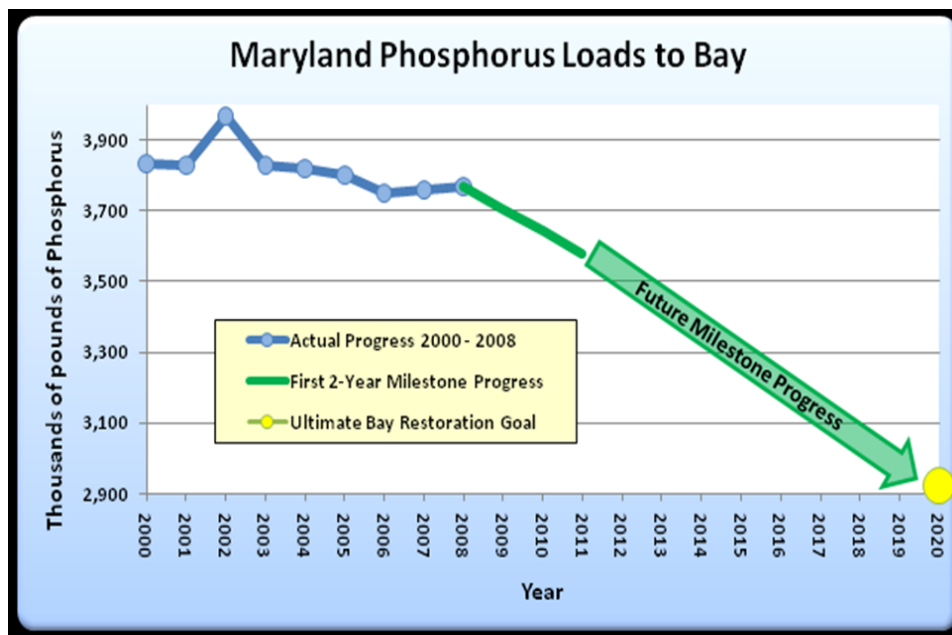
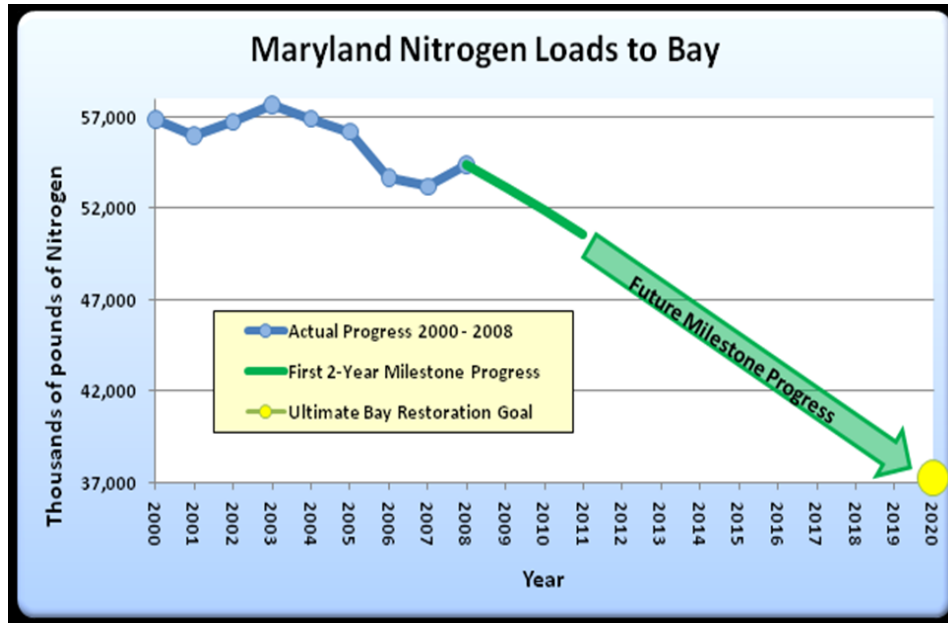
- prepare and submit draft action reports that set forth recommendations on specified restoration topics by September 2009;
- submit final recommendations for a Chesapeake Bay restoration and protection strategy by November 2009;
- publish a final strategy by May 2010;
- publish an annual Chesapeake Bay Action Plan, beginning in 2010, describing how federal funding will be used for bay restoration efforts in the next fiscal year, and an annual progress report, that reviews indicators of the health of the bay and assesses progress on the implementation of the previous year's action plan; and
- require an independent evaluator to submit periodic progress reports.

Two-year Policy Milestones

In May 2009, the Chesapeake Bay partners discarded the broad 10-year goal framework used over the past 30 years and committed to new voluntary 2-year incremental goals called milestones for reducing nitrogen and phosphorus loads to the bay. The first set of milestones is scheduled to be achieved by December 31, 2011, and all programs to implement the milestones must be in place by 2025. The first set of milestones requires a watershed-wide nitrogen load reduction of 15.8 million pounds and a phosphorus load reduction of 1.05 million pounds (over 2008 levels). To achieve this goal, Maryland must reduce its nitrogen loads by 3.75 million pounds and its phosphorus loads by 193,000 pounds (from 2008 levels). Subsequent milestones will be tailored to achieve the limits set by the baywide TMDL. As shown in **Exhibit 1**, the milestones require a significant increase in the rate of pollution reduction.

To achieve the first set of milestones, Maryland plans to implement 27 strategies with specific, measurable targets for nitrogen and phosphorus reduction. Most of the actions proposed to date expand on existing programs. BayStat intends to track Maryland's progress toward the milestones and make relevant program information available.

**Exhibit 1
Maryland's Pollutant Reduction Goals**



Note: Nitrogen and phosphorus loads are based on monitoring data.

Source: Maryland Department of Natural Resources

Chesapeake Bay TMDL

EPA is planning to publish a final TMDL for the Chesapeake Bay by December 2010. The TMDL will address all sources of nitrogen, phosphorus, and sediment pollution and allocate load caps for these pollutants to the District of Columbia and the Chesapeake Bay watershed states. Subsequently, EPA will work with jurisdictions to create individual state Watershed Implementation Plans that seek to achieve restoration objectives. **Exhibit 2** shows how the Chesapeake Bay TMDL, Watershed Implementation Plans, and two-year milestones compare with the Tributary Strategies – the existing framework for Chesapeake Bay restoration implementation.

Accountability Framework

Exhibit 3 depicts the proposed timeline for the TMDL, Watershed Implementation Plans, and Two-Year Milestones.

Exhibit 2
Comparison of Chesapeake Bay Restoration Planning Commitments

	<u>Tributary Strategy</u>	<u>2009-2011 State Two-year Milestones</u>	<u>Watershed Implementation Plans</u>	<u>Future Two-year Milestones (2012-2013 and Onward)</u>
(1) Scale of interim and final target loads	Basin and Source Sector-Specific	Statewide and Source Sector-Specific	Basin, Segment, Local, and Source Sector-Specific	Basin, Segment, Local, and Source Sector-Specific
(2) Nutrient and sediment reductions by sector, segment drainage, and local area			X	X
(3) Load reduction schedule that meets interim and final targets			X	X
(4) Identification of program gaps			X	
(5) Program enhancements (legal, regulatory, programmatic, financial, staffing, and technical capacity)		X	X (with schedule)	X
(6) State/District contingencies		Limited	X	X
(7) Account for growth by setting aside allocations or specifying how will offset			X	X
(8) General description of planned pollutant controls	X		X	
(9) Quantitative planned BMP controls	X	X		X
(10) Quantitative planned point source controls	X	X	X	X
(11) Local/segment drainage location of reduction practices, controls, and technologies				X
(12) Uniform, transparent, and consistent tracking and reporting requirements			X	X

BMP: best management practices

Source: U.S. Environmental Protection Agency

Exhibit 3
Chesapeake Bay Accountability Framework Schedule

<u>Year</u>	<u>Date</u>	<u>Bay TMDL Development and Implementation</u>	<u>Watershed Implementation Plans</u>	<u>Two-year Milestone</u>
2010	April 30	Partners agree to draft watershed and tidal sediment target loads		
	June 1		Preliminary phase I Plans by source sector and segment submitted to EPA	
	August 1		States, District submit draft phase I Plans	
	August 15	Draft Bay TMDL and supporting phase I Plans released for comment		
	November 1		States, District submit final phase I Plans	
	December 31	Final Bay TMDL and phase I Plans published		
2011	June 1	Draft phase II Plans with local area targets and specific controls to meet interim target submitted to EPA		
	November 1	Final phase II Plans submitted to EPA		
2012	January 1			First milestone period with TMDL effect starts
2017	January 1	States, District submit Plans updated with 2018-2025 controls		
2018	January 1	Second stage of TMDL implementation begins		
2025	December 31	States, District have controls in place to meet final target load		

EPA: Environmental Protection Agency
TMDL: Total Maximum Daily Loads

Note: Key dates and activities are in bold type.

Source: U.S. Environmental Protection Agency

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Currently, EPA intends to implement sanctions if jurisdictions exceed their nutrient and sediment loading caps. Such sanctions may include the following:

- expand National Pollutant Discharge Elimination System (NPDES) permit coverage to currently unregulated sources – increase number of sources, operations, and/or communities regulated;
- object to NPDES permits and increase program oversight – expand EPA oversight review of draft permits and object to permits that do not meet the Bay TMDL;
- require net improvement offsets – discharges from new or increased point sources would have to be more than offset;
- establish finer scale wasteload (point sources) and load (nonpoint sources) allocations in the Bay TMDL – instead of a count-level allocation, the allocation might be made at a finer scale;
- require additional reductions of loadings from point sources – puts the burden more heavily on points sources such as wastewater treatment plants;
- increase and target federal enforcement and compliance assurance in the watershed – air and water sources of nutrients and sediments could be targeted;
- condition or redirect EPA grants – incorporate criteria into future requests for proposals based on Watershed Implementation Plan progress; and
- promulgate local nutrient water quality standards – federally designated water quality standards instead of State standards.

Federal Legislation

On October 20, 2009, the Chesapeake Clean Water and Ecosystem Restoration Act of 2009 was introduced in the U.S. Senate (S. 1816) and the U.S. House of Representatives (H.R. 3852). Among other things, this legislation seeks to reauthorize the EPA's Chesapeake Bay Program, authorize a new \$1.5 billion urban/suburban stormwater grant program, strengthen state and local government authority under the Clean Water Act and codify President Obama's Chesapeake Bay executive order.

Issues

1. Current Status of Chesapeake Bay Restoration

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 4**.

Exhibit 4
Maryland's Pollutant Loads and Reduction Goals

<u>Pollutant</u>	<u>2005 Loads</u>	<u>2006 Loads</u>	<u>2007 Loads</u>	<u>2008 Loads</u>	<u>Original 2010 Goal</u>
Nitrogen (million lbs/yr)	56.19	53.65	53.20	54.36	37.25
Phosphorus (million lbs/yr)	3.80	3.75	3.76	3.77	2.92
Sediment (million tons/yr)	0.99	0.97	0.97	0.96	0.71

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

Given the gap between the current loads and the C2K goal, the two-year milestone approach has been adopted. The new reduction goal for the first two-year milestone period between 2009 and 2011 is a reduction of nitrogen loading by 3.75 million pounds relative to 2008 loads. **Exhibit 5** provides an overview of the current progress toward the first two-year milestone, as of December 2009.

Exhibit 5
Progress Toward Meeting First Two-year Milestone

Sectors/Best Management Practices	Lead Agency	Units	Two-year Milestone Goal (over 2008 levels)		Progress (Thru December 2009)		
			Goal	Pounds of Nitrogen Per Year	Units	Pounds of Nitrogen Per Year	% of Goal Achieved
<i>Agriculture</i>							
Nutrient Management Plan Enforcement	MDA	Acres	100,000	311,000	97,633	303,639	98%
Cover Crops	MDA	Acres	280,634	1,370,929	59,473	290,532	21%
Soil Conservation and Water Quality Plans	MDA	Acres	257,049	159,370	116,914	72,487	45%
Heavy Use Poultry Area Concrete Pads	MDA	Farms	400	88,000	219	48,180	55%
Manure Transport	MDA	Tons	10,000	20,000	16,775	33,550	168%
Livestock Waste Structures	MDA	Structures	145	76,995	50	26,550	34%
Water Control Structures	MDA	Acres	25,000	75,000	7,400	22,200	30%
Stream Protection with Fencing	MDA	Acres	3,000	20,370	2,863	19,440	95%
Dairy Manure Incorporation Technology	MDA	Acres	2,500	22,000	982	8,642	39%
Poultry Waste Structures	MDA	Structures	53	11,130	38	7,980	72%
Runoff Control Systems	MDA	Systems	75	5,175	81	5,589	108%
Stream Protection without Fencing	MDA	Acres	3,000	10,200	957	3,254	32%
Poultry Manure Incorporation Technology	MDA	Acres	2,500	13,000	0	0	0%
<i>Urban</i>							
MD Healthy Air Act	MDE	Pounds	305,882	305,882	305,882	305,882	100%

<u>Sectors/Best Management Practices</u>	<u>Lead Agency</u>	<u>Units</u>	Two-year Milestone Goal (over 2008 levels)		Progress (Thru December 2009)		
			<u>Goal</u>	<u>Pounds of Nitrogen Per Year</u>	<u>Units</u>	<u>Pounds of Nitrogen Per Year</u>	<u>% of Goal Achieved</u>
Wastewater Treatment Plants ENR	MDE	Pounds	740,000	740,000	85,526	85,526	12%
Stormwater runoff management retrofits	MDE	Acres	90,000	119,700	26,250	34,913	29%
Required septic retrofits inside of Critical Area	MDE	Systems	1,080	13,133	695	8,451	64%
Voluntary septic retrofits outside of Critical Area	MDE	Systems	1,920	10,042	957	5,005	50%
81 State-owned DNR septics	DNR	Systems	81	424	16	84	20%
9 State-owned non-DNR septics	MDE	Systems	9	47	3	16	33%
Blue Plains BNR Upgrade	MDE	Pounds	190,000	190,000	0	0	0%
<i>Private Land – Filters</i>							
Streamside Grass Buffers – private lands	MDA	Acres	7,000	119,420	1,073	18,305	15%
Wetland restoration – private lands	MDA	Acres	700	20,104	444	12,752	63%
Retire Highly Erodible Land – private lands	MDA	Acres	1,800	17,190	1,141	10,897	63%
Streamside Forest Buffers – private lands	MDA	Acres	3,000	86,160	173	4,969	6%
<i>Public Land – Filters</i>							
Wetland Restoration – public lands	DNR	Acres	1,000	28,720	236	6,778	24%
Streamside Forest Buffers – public lands	DNR	Acres	2,100	60,312	118	3,389	6%
Retire Highly Erodible Land – public lands	DNR	Acres	2,000	19,100	136	1,299	7%

<u>Sectors/Best Management Practices</u>	<u>Lead Agency</u>	<u>Units</u>	Two-year Milestone Goal (over 2008 levels)		Progress (Thru December 2009)		
			<u>Goal</u>	<u>Pounds of Nitrogen Per Year</u>	<u>Units</u>	<u>Pounds of Nitrogen Per Year</u>	<u>% of Goal Achieved</u>
Streamside Grass Buffers – public lands	DNR	Acres	1,000	17,060	40	682	4%
Total				3,930,463		1,340,991	34%

BNR: biological nutrient removal
DNR: Department of Natural Resources
ENR: enhanced nutrient removal
MDA: Maryland Department of Agriculture
MDE: Maryland Department of the Environment

Note: There is an assumption that new septics and development will increase nitrogen loading by 72,960 pounds and 111,005 pounds, respectively, which when subtracted from the 3,930,465 in projected nitrogen load reduction leads to a net reduction of 3.75 million pounds of nitrogen.

Source: BayStat agencies

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Two shortfalls in the nitrogen loading reduction as of December 2009 stand out. The cover crop goal of increasing acres planted to 460,000 acres (290,532 pounds of nitrogen reduced) is only 21% met, and the enhanced nutrient removal technology upgrade goal for wastewater treatment plants of 740,000 pounds of nitrogen only is 12% met. This is of concern because cover crops and enhanced nutrient removal technology account for approximately 54% of the planned reductions.

The Department of Legislative Services (DLS) recommends that the BayStat agencies comment on the likelihood of meeting the first two-year milestone, given that only 21% of the cover crop and 12% of the enhanced nutrient removal technology goals have been achieved as of December 2009.

2. Chesapeake and Atlantic Coastal Bays 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 the Maryland Department of the Environment (MDE), to provide financial assistance for the implementation of urban and suburban stormwater management practices and stream and wetland restoration.

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 the Maryland Department of Agriculture (MDA);
- to the Woodland Incentives Fund within the Department of Natural Resources (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.

Fiscal 2010 and 2011 Funding Overview

After all fiscal 2009 transfers to the general fund and agency spending, the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund ended fiscal 2009 with a \$4.6 million fund balance. For fiscal 2010, revenues were projected to be \$39.4 million. However, the Budget Reconciliation and Financing Act (BRFA) of 2009 transferred \$21.5 million to the general fund – \$8.4 million in motor fuel tax and \$13.1 million in sales and use tax on short-term vehicle rentals. In addition, the BRFA of 2010 proposes to transfer a total of \$8.0 million to the general fund in sales and use tax on short-term vehicle rentals, which leaves \$14.5 million in available revenue. Of this \$14.5 million in available revenue, the BayStat agencies anticipate allocating \$8.8 million, which is comprised of the fiscal 2010 expenditure plan of \$8.0 million and a \$0.8 million deficiency request. After all of these actions, there is projected to be a \$5.7 million balance at the end of fiscal 2010.

For fiscal 2011, there is an opening fund balance of \$5.7 million, and revenues are projected to be \$42.1 million. However, the Governor's proposed BRFA of 2010 reduces this revenue by \$22.1 million – \$5.0 million from the motor fuel tax and \$17.1 million from the sales and use tax on short-term vehicle rentals – leaving \$25.7 million in available revenue. On the spending side, the BayStat agencies have submitted a work plan showing \$20.0 million in expenditures. As a result, there is anticipated to be a \$5.7 million fund balance at the end of fiscal 2011 as long as revenue projections are met. **Exhibit 6** provides a summary of the trust fund history.

Exhibit 6
Chesapeake and Atlantic Coastal Bays 2010 Trust Fund History
Fiscal 2009-2011
(\$ in Millions)

<u>Appropriation</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
Opening Balance	\$0.0	\$4.6	\$5.7
Revenue	39.2	39.4	42.1
Transfers to the General Fund			
Chapter 414 of 2008	-25.0		
BRFA of 2009		-21.5	
BRFA of 2010		-8.0	-22.1
Subtotal GF Transfers	-\$25.0	-\$29.5	-\$22.1
Available Revenue	\$14.2	\$14.5	\$25.7
Spending			
MDA	-6.9	-3.6	-11.1
Other Agencies	-2.7	-4.4	-8.9
DNR Deficiency		-0.8	
Subtotal Agency Spending	-\$9.6	-\$8.8	-\$20.0
Available Balance	\$4.6	\$5.7	\$5.7

BPW: Board of Public Works
BRFA: Budget Reconciliation and Financing Act
DNR: Department of Natural Resources
GF: general fund
MDA: Maryland Department of Agriculture

Source: Department of Legislative Services

Fiscal 2011 Allocation for the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund

The agencies originally involved in the allocation for the trust fund include the Maryland Department of Planning, 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 implement a competitive request for proposals each fiscal year with the funding targeted to five tributary basins: lower Eastern Shore, Choptank River, upper Eastern Shore, lower western shore, and Patuxent River. While an initial request for proposals was solicited for fiscal 2009, no new request was solicited for either fiscal 2010 or 2011 due to the reductions in trust fund monies and the substantial response to the original request. A new request is planned for fiscal 2012.

The original fiscal 2009 request for proposals generated the following response:

- DNR's solicitation for the Local Implementation Grant – 31 multi-year proposals requesting greater than \$25.0 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 – \$20.0 million in total cover crop funding was solicited with a preliminary allocation of \$9.5 million from the CB 2010 Trust Fund.

Exhibit 7 provides an overview of the trust fund allocations for fiscal 2011 as compared with fiscal 2009 and 2010. One change of note is that in fiscal 2011 there is \$0.3 million allocated to agency direct costs, the first such allocation from the trust fund.

Exhibit 7
Chesapeake and Atlantic Coastal Bays 2010 Report Planned Expenditures
Fiscal 2009-2011
(\$ in Millions)

<u>Main Category</u>	<u>Subcategory</u>	<u>2009</u>	<u>2010</u>	<u>Proposed 2010 Deficiency</u>	<u>2011</u>
Strategic Monitoring (DNR)	Strategic Monitoring	\$0.25	\$0.20	\$0.02	\$0.40
Subtotal		\$0.25	\$0.20	\$0.02	\$0.40
Agency Direct Costs	MDA	\$0.00	\$0.00	\$0.00	\$0.30
	MDE	0.00	0.00	0.00	
	DNR	0.00	0.00	0.00	
Subtotal		\$0.00	\$0.00	\$0.00	\$0.30
Agency Technical Assistance Costs (MDA)	MDA to SCD for BMP Implementation	\$0.85	\$0.68	\$0.07	\$0.68
Subtotal		\$0.85	\$0.68	\$0.07	\$0.68
Urban/Suburban Stormwater Projects (MDE)	St. Mary's SW Retrofit, Anne Arundel	\$0.10	\$0.00	\$0.00	\$0.00
	Laurel High School LID, Prince George's	0.07	0.00	0.00	0.00
	Bear Branch Restoration, Prince George's	0.90	0.00	0.00	0.00
	Parkside Wetland Retrofit, Baltimore City	0.65	0.00	0.00	0.00
	Rockfish Bar and Grill, Anne Arundel	0.11	0.00	0.00	0.00
	Tanyard Branch SW Improvement, Talbot	0.00	0.49	0.00	0.00
	Western Branch Wetland, Prince George's	0.00	0.55	0.00	0.00
	Moore's Run Wetlands, Baltimore City	0.00	0.00	0.00	1.87
	Greenhill/Hillside, Prince George's	0.00	0.14	0.00	0.00
	Back River Restoration, Baltimore	0.00	0.32	0.15	0.23
Subtotal		\$1.83	\$1.50	\$0.15	\$2.10

<u>Main Category</u>	<u>Subcategory</u>	<u>2009</u>	<u>2010</u>	<u>Proposed 2010 Deficiency</u>	<u>2011</u>
Agricultural Practices					
(MDA)	Cover Crops	\$3.08	\$1.90	\$0.00	\$9.52
	Forest/Grass Buffers/Wetlands	0.00	0.00	0.27	0.80
	Animal Waste Management	3.00	0.98	0.02	0.80
Subtotal		\$6.08	\$2.88	\$0.29	\$11.12
Targeted Innovative Practices (DNR)					
	Little Patuxent River Watershed, Howard	\$0.34	\$1.00	\$0.13	\$1.30
	Magothy River Watershed, Anne Arundel	0.00	0.36	0.00	0.48
	Wheel Creek Watershed, Harford	0.00	0.16	0.00	0.37
	Tred Avon River Watershed, Talbot	0.00	0.00	0.00	0.48
	Watershed 263, Baltimore City	0.00	0.36	0.00	0.48
	Middle Chester River Watershed, Kent	0.00	0.36	0.00	0.52
	Corsica River Watershed, Queen Anne's	0.00	0.00	0.00	0.52
	Natural Filters Strategic Implementation, Statewide	0.00	0.25	0.15	1.00
Subtotal		\$0.34	\$2.49	\$0.28	\$5.15
Bay Restoration					
Innovative Technology	Bay Restoration Innovative Technology	\$0.25	\$0.25	\$0.00	\$0.25
Subtotal		\$0.25	\$0.25	\$0.00	\$0.25
Total		\$9.60	\$8.00	\$0.81	\$20.00

BMP: best management practice
DNR: Department of Natural Resources
LID: low impact development
MDA: Maryland Department of Agriculture
MDE: Maryland Department of the Environment
SCD: Soil Conservation District
SW: stormwater

Note: The Conservation Reserve Enhancement Program agreement was not signed until late in fiscal 2009; therefore, the \$250,000 that originally was planned for MDA Forest/Grass Buffers/Wetlands was not spent. Instead, this funding was used for cover crops.

Source: Department of Natural Resources; Department of Legislative Services

Annual Work and Expenditure Plans Submitted as Required

The fiscal 2011 allocation is submitted as part of the requirement in Chapters 120 and 121 of 2008 that the BayStat subcabinet submit annual work and expenditure plans as part of the annual budget submission. The two plans are required to identify the following:

- annual work plan – planned work to be funded with money from the Chesapeake and Atlantic Coastal Bays 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 Chesapeake and Atlantic Coastal Bays 2010 Trust Fund in the previous fiscal year.

The combined work/expenditure plan reflects the difficulty in allocating funding in an uncertain budget environment. As shown in **Exhibit 8**, there are a number of fiscal 2009 urban/suburban stormwater projects that do not appear to have begun. However, in addition to the lack of progress in some cases, there is also a relatively high dollar per pound of nitrogen reduced for some of the projects in both fiscal 2009 and 2010. While this calculation does not account for the overall nitrogen reductions over the life of the project, it does raise the concern that there may be more cost-effective uses of trust fund monies.

Exhibit 8 Chesapeake and Atlantic Coastal Bays Work Plan Progress Fiscal 2009-2010

<u>Main Category</u>	<u>Subcategory</u>	<u>Fiscal 2009</u>		<u>Fiscal 2010</u>	
		<u>% Complete</u>	<u>\$/lb Nitrogen Reduced</u>	<u>% Complete</u>	<u>\$/lb Nitrogen Reduced</u>
Strategic Monitoring	Strategic Monitoring/Trust Fund	71%	n/a	0%	n/a
	Flow Monitoring	25%	n/a	0%	n/a
	Trust Fund Mapper	100%	n/a	0%	n/a
Technical Assistance	Soil Conservation Staff Hiring	90%	n/a	95%	n/a
	Training	50%	n/a	80%	n/a
Urban/Suburban Stormwater	St. Mary's Parish Stormwater Retrofit	100%	\$1,674		

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<u>Main Category</u>	<u>Subcategory</u>	Fiscal 2009		Fiscal 2010	
		<u>% Complete</u>	<u>\$/lb Nitrogen Reduced</u>	<u>% Complete</u>	<u>\$/lb Nitrogen Reduced</u>
Projects	Laurel High School LID	0%	\$21,741		
	Bear Branch Watershed Stream Stabilization	0%	\$1,236		
	Parkside Wetland Retrofit	0%	\$3,529		
	Rockfish Raw Bar and Grill Stormwater Retrofit	0%	\$28,612		
	Tanyard Branch Stormwater Improvement			0%	\$4,832
	Western Branch Environmental Wetland Restoration			0%	\$20,218
	Greenhill/Hillside Roads Stream Restoration			0%	\$1,760
	Back River Watershed Restoration			0%	\$1,650
Agricultural Practices	Maryland Cover Crop Program	100%	\$9	100%	Information not available
	Maryland Conservation Reserve Enhancement Program	100%; used nutrient management plan fines	\$1; not counting best management practices	100%	\$1; not counting best management practices
	Animal Waste Management	12%	\$150	0%	\$163
Targeted Innovative Practices	Little Patuxent Local Implementation Grant	25%; average of four projects	\$19,118	6%; average of 9 new projects	\$608
	Magothy Local Implementation Grant			0%; average of 5 projects	\$1,384; excludes match because not known
	Wheel Creek (Bush River) Implementation Grant			4%; average of 4 projects	\$1,499
	Watershed 263 Local Implementation Grant			8%; average of 5 projects	\$250,351

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Chesapeake Bay – Fiscal 2011 Budget Overview

<u>Main Category</u>	<u>Subcategory</u>	Fiscal 2009		Fiscal 2010	
		<u>% Complete</u>	<u>\$/lb Nitrogen Reduced</u>	<u>% Complete</u>	<u>\$/lb Nitrogen Reduced</u>
	Middle Chester Local Implementation Grant			11%; average of 5 projects	\$1,841; for 3 of 5 projects
	Natural Filters			10%	\$265
Innovative Technology/ Contingency Development	Innovative Technology	100%	n/a	0%	n/a

Note: The dollar per pound nitrogen reduction calculation is based on the total cost for each project and not just the trust fund portion. The calculation does not account for the multiple years of benefits for most of the projects; the one exception is cover crops, which are an annual practice.

Source: BayStat agencies; Department of Legislative Services

DLS recommends that the BayStat agencies comment on how project completion rates can be improved, how the cost-effectiveness for the projects selected for funding could be increased, and on how the agencies intend to spend the agency direct costs funding allocation.

3. Overall Chesapeake Bay Restoration Capacity and Funding

A continuing barrier to effective Chesapeake Bay restoration has been a lack of overall knowledge of how funding is allocated across agencies. In addition, there has been a lack of acknowledgment of the overall legal, regulatory, programmatic, financial, staffing, and technical capacity needed for restoration.

One of the complicating factors when looking at bay restoration funding is the changing focus from the over 90 C2K commitments – including land conservation, chemical contaminants, and transportation coordination – to a focus on just the nutrient and sediment reduction commitments necessary for the first two-year milestone period. A simple breakdown of overall Chesapeake Bay restoration spending could be made as follows:

- contracts and grants for funding the Chesapeake Bay Agreement commitments; and
- State salaries supporting the Chesapeake Bay Agreement commitments.

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In addition, a breakout could be made for the milestone spending under each of these two broad categories of spending.

Exhibit 9 provides an overview of funding (all funds) for bay restoration compiled by the Department of Budget and Management (DBM) for the 2010 legislative session. This information was required of DBM as part of the fiscal 2010 operating budget bill. The requirement was to submit Chesapeake Bay restoration funding by agency and fund for fiscal 2009 actual, fiscal 2010 working appropriation, and fiscal 2011 allowance in the Governor's 2010 budget books and separately by electronic means to DLS. DBM incorporated the required Chesapeake Bay restoration funding exhibit (Appendix S) in the Governor's budget books and delivered the electronic spreadsheet.

DBM's methodology for creating Appendix S involved including any program with greater than 50% of the program's funding dedicated to bay restoration, as defined by the participating agencies. However, the electronic spreadsheet does not break down the spending by fund for all of the agencies/programs shown. In addition, while not required of DBM, more information is needed to understand the effectiveness of State spending for Chesapeake Bay restoration.

One way to get a more comprehensive look at Chesapeake Bay restoration spending would be to adapt the framework being considered for the Watershed Implementation Plans that Maryland will need to develop to show how it will comply with the Chesapeake Bay TMDL. The Watershed Implementation Plan guidance provided by EPA reflects the need to submit information on the legal, regulatory, programmatic, financial, staffing, and technical capacity necessary for reducing nutrient and sediment loads. This requirement reflects the concern that there may be multiple barriers to meeting the two-year milestone reductions.

DLS recommends that the BayStat agencies comment on the legal, regulatory, programmatic, financial, staffing, and technical capacities for meeting the two-year milestones and the Chesapeake Bay TMDL and whether this information will be included in the Watershed Implementation Plan such that annual budget submissions and regulation changes can be judged against the demonstrated need.

Exhibit 9
Overview of Maryland’s Funding for Chesapeake Bay Restoration
Fiscal 2009-2011

<u>Agency/Program</u>	<u>2009 Actual</u>	<u>2010 Appropriation</u>	<u>2011 Allowance</u>
Maryland Department of the Environment	\$159,041,197	\$284,841,978	\$141,742,682
Maryland Department of Transportation	78,055,000	171,845,000	115,285,000
Department of Natural Resources	43,537,929	55,813,377	62,318,017
Chesapeake Bay 2010 Trust Fund	9,600,000	8,000,000	42,101,428*
Department of Agriculture	26,969,162	21,038,947	28,067,001
Maryland Agricultural Land Preservation Fund	44,915,168	14,604,044	27,943,827
Maryland Higher Education	20,238,252	21,084,943	20,116,431
Program Open Space	29,920,741	17,673,632	19,246,129*
Rural Legacy	13,467,626	11,800,000	12,637,770*
Department of Planning	5,543,310	5,019,754	5,441,558
Maryland State Department of Education	1,996,465	919,455	919,455
Total	\$433,284,850	\$612,641,130	\$475,819,298

* A contingent action in the fiscal 2011 operating budget bill would replace Program Open Space and Rural Legacy Program special funds with general obligation bonds. In addition, a contingent reduction would reduce the trust fund appropriation by \$21.1 million to \$20.0 million.

Source: Department of Budget and Management

4. Proposed Federal Funding for Chesapeake Bay Restoration

Two sources of additional federal funding for Chesapeake Bay restoration have been identified but are still in the preliminary stages of development. The first is the federal Chesapeake Bay Program reauthorization legislation proposed by Senator Benjamin L. Cardin. The second is funding proposed by the Federal Leadership Committee, set up by President Obama’s executive order for the Chesapeake Bay.

Cardin Bill

On October 20, 2009, the Chesapeake Clean Water and Ecosystem Restoration Act of 2009 was introduced in the U.S. Senate (S. 1816) and the U.S. House of Representatives (H.R. 3852). The Senate Committee on Environment and Public Works’ Subcommittee on Water and Wildlife held hearings on

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November 9, 2009, and the House legislation was referred to the House Committee on Transportation and Infrastructure's Subcommittee on Water Resources and Environment on October 21, 2009.

Among other things, this legislation seeks to reauthorize the EPA's Chesapeake Bay Program, authorize a new \$1.5 billion urban/suburban stormwater grant program, strengthen state and local government authority under the Clean Water Act, and codify President Obama's Chesapeake Bay executive order.

The funding proposed in the Cardin Bill falls into four categories that would be allocated across the Chesapeake Bay watershed as follows:

- Implementation and monitoring grants
 - \$80 million (not to exceed 50% of project costs) for each of federal fiscal 2010 through 2015 to meet Chesapeake Bay Agreement commitments;
 - \$5 million (not to exceed 80% of project costs) for each of federal fiscal 2010 through 2015 to conduct a freshwater monitoring program
 - \$5 million (not to exceed 80% of project costs) for each of federal fiscal 2010 through 2015 to conduct a Chesapeake Bay and tidal water monitoring program
- Chesapeake Stewardship Grants – \$15 million for each of federal fiscal 2010 through 2014 to conduct Watershed Implementation Plans on the local level;
- Stormwater Pollution and Implementation Grants
 - \$10 million (no more than 80% of project cost) for technical assistance on predevelopment hydrology construction and model guidelines;
 - \$1.5 billion (no more than 75% of project cost) for implementing projects designed to reduce stormwater discharges such as stormwater retrofits; and
- Nutria Eradication Grants – \$4 million for each of federal fiscal 2010 through 2015 would be appropriated to the Secretary of the Department of Interior.

Federal Leadership Committee Proposal

On November 25, 2009, the Governors of Maryland and Virginia sent a letter to President Obama requesting that \$365 million in annual funding be made available to meet the initiatives in Executive Order 13508. The funding level was determined by the Federal Leadership Committee for the Chesapeake Bay, and the funding needs identified are as follows:

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- \$100 million for technical and conservation assistance to agricultural sectors;
- \$100 million for stormwater controls and stream restoration;
- \$60 million for land conservation and public access;
- \$50 million for upgrades to the Blue Plains sewage treatment plant;
- \$40 million for habitat and fish and wildlife restoration, including oysters;
- \$10 million for climate change preparedness and adaptation; and
- \$5 million for monitoring and accountability activities.

DLS recommends that the BayStat agencies comment on the status of the Chesapeake Bay Program reauthorization legislation, on how the Federal Leadership Committee’s funding proposal was derived, and on how the grants in the reauthorization and in the Federal Leadership Committee funding proposal would assist in Maryland meeting its two-year milestone and the Chesapeake Bay TMDL.

5. Impact on Chesapeake Bay Region of Differential Regulatory Treatment

The concern has been raised that the Chesapeake Bay watershed states may be adversely impacted relative to states outside of the watershed if federal regulations on stormwater and concentrated animal feeding operations are made more restrictive here than elsewhere. If more restrictive Chesapeake Bay watershed regulations are adopted, then it could create a competitive disadvantage for firms located in the Chesapeake Bay region. For instance, there is the concern that the poultry industry may see some movement to other poultry raising areas due to how existing concentrated animal feeding operation regulations are interpreted. A countervailing perspective is that the EPA may eventually apply the restrictive regulations across the country and that at least in the Chesapeake Bay region there may be funding in order to mitigate the regulations.

DLS recommends that the BayStat agencies comment on the concern that Chesapeake Bay watershed regulations for concentrated animal feeding operations and for stormwater management may result in a competitive disadvantage for Chesapeake Bay watershed agricultural and development industries.

Recommended Actions

1. Add the following section:

Section XX. AND BE IT FURTHER ENACTED, That \$500,000 of the General Fund Appropriation for the Department of Budget and Management (DBM) and \$500,000 of the General Fund Appropriation for the Department of Natural Resources (DNR) made for the purpose of general operating expenses may not be expended until DBM and DNR provide two reports on Chesapeake Bay restoration spending. The reports shall be drafted subject to the concurrence of the Department of Legislative Services in terms of both electronic format to be used and data to be included. The scope of the reports is as follows:

- (1) Chesapeake Bay restoration 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 2010 actual, fiscal 2011 working appropriation, and fiscal 2012 allowance, which is to be included as an appendix in the fiscal 2012 budget volumes and submitted electronically in disaggregated form to the Department of Legislative Services; and
- (2) Two-year milestone funding over the fiscal 2009-2012 time period by fund type and particular fund source for each best management practice along with the associated nitrogen, phosphorus, and sediment reductions as they relate to meeting the respective two-year milestone, which is to be submitted electronically to the Department of Legislative Services at the time of the fiscal 2012 State budget submission.

Explanation: This language restricts funds until DBM and DNR provide information on (1) overall Chesapeake Bay restoration spending; and (2) two-year milestones best management practice funding at the time of the fiscal 2012 budget submission.

Information Request	Authors	Due Date
Summary of Chesapeake Bay restoration expenditures and two-year milestone funding	DBM, DNR	Fiscal 2012 State budget submission and annually thereafter

Updates

1. Interagency Agreements on Chesapeake Bay Restoration

A report on the schedule of contracts and interagency agreements exceeding \$25,000 that concern Chesapeake Bay restoration spending was requested in the 2009 *Joint Chairmen's Report*. The report was requested due to the concern that there is inadequate accountability of Chesapeake Bay restoration spending. Information requested for the report included the amount of funding and the purpose of funding for each contract. DBM submitted the requested information on behalf of MDA, MDE, and DNR. In terms of the number of contracts over \$25,000 contracted for in each agency, there were 6 in MDA for \$42.1 million, 95 in MDE for \$22.4 million, and 127 in DNR for \$43.0 million over the fiscal 2009-2011 time period.

Exhibit 10 shows the overall State agencies and representative types of services for which Chesapeake Bay restoration-related services were contracted. The total fiscal 2009 through 2011 funding is estimated to be highest for MDA's Office of Resource Conservation, primarily due to cover crop funding contracts. The second highest estimated total funding for this time period is for the DNR's Fisheries Service, primarily due to federal funding for the crab license buy-back.

Exhibit 10
Chesapeake Bay Restoration Contracts Over \$25,000 by Service Provided
Fiscal 2009-2011

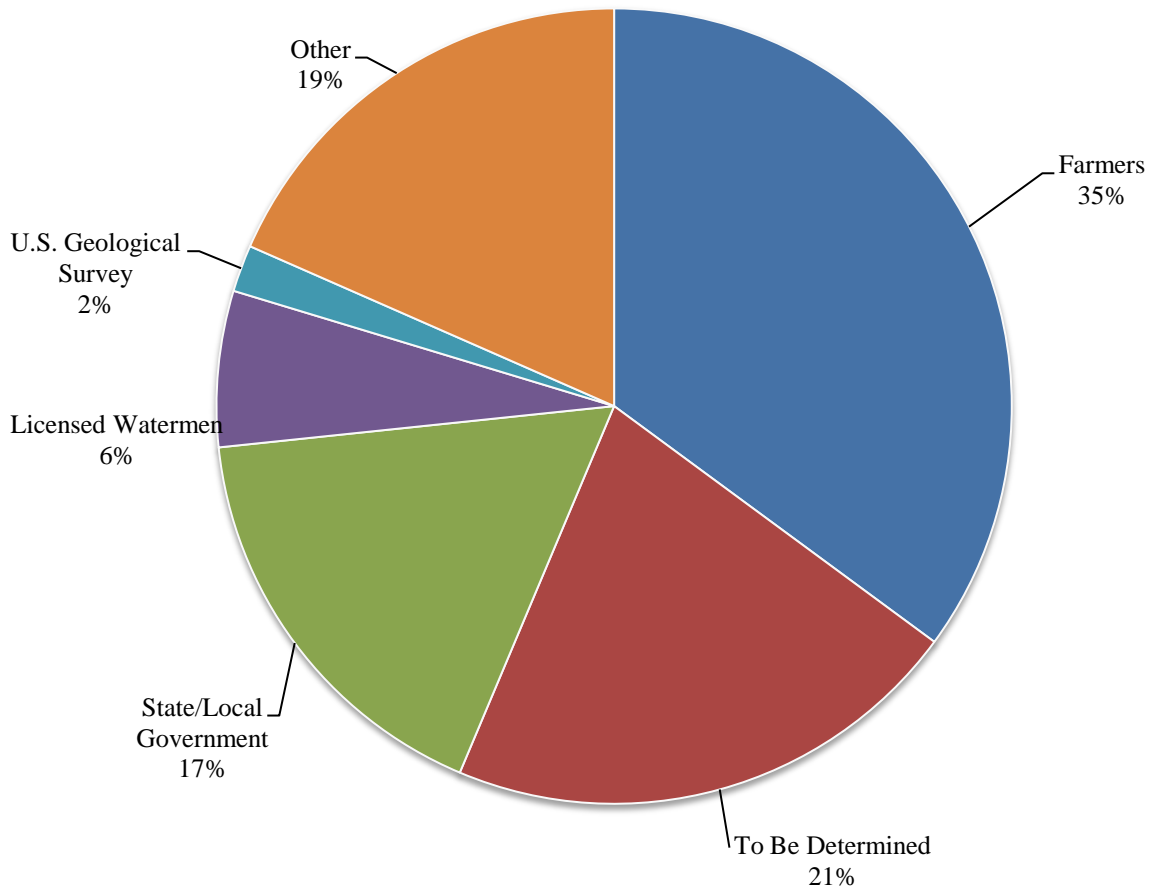
<u>Contracting Unit</u>	<u>Examples of Contracted Service</u>	<u>2009 Actual</u>	<u>2010 Estimated</u>	<u>2011 Estimated</u>	<u>2009-2011 Total</u>
MDA – Office of Resource Conservation	Nutrient management planning, manure transport, cover crops	\$13,712,680	\$12,541,341	\$15,871,500	\$42,125,521
DNR – Fisheries Service	License buyback, oyster aquaculture training and education, striped bass – monitor commercial catches	1,359,493	7,745,223	14,284,713	23,389,429
DNR – Watershed Services	Chesapeake Bay Implementation grants to other governmental agencies, State wetlands assessment, mitigation project with Maryland Port Administration	1,273,694	5,353,517	5,866,608	12,493,819
MDE – Science Services Administration	Potomac River Total Maximum Daily Load, Gwynns Falls stream restoration, develop hydrologic models	3,027,187	4,821,496	3,567,000	11,415,683
MDE – Water Management Administration	100-year floodplain mapping, non-tidal wetlands restoration – Central Maryland Correctional Facility, technical assistance for Chesapeake Bay restoration onsite sewage systems	2,699,633	2,396,635	2,095,750	7,192,018
DNR – Resource Assessment Service - Monitoring and Ecosystem Assessment	Stream and river sampling, coastal assessment of benthic populations, brown tide analysis	1,563,943	1,621,537	1,687,005	4,872,485
MDE – Coordinating Offices	Department of General Services wastewater construction consultant for design, review and program administration; enhanced nutrient removal operations and maintenance grants; training and technical assistance	731,850	1,366,385	1,700,000	3,798,235
DNR – Resource Assessment Service - Maryland Geological Survey	Drilling for water sampling, water resources investigations	562,051	473,961	518,368	1,554,380
DNR – Critical Area Commission	Critical Area Map Initiative, conversion of Critical Area Commission records to digital format, Circuit Rider Program	211,000	214,600	247,467	673,067
Total		\$25,141,531	\$36,534,695	\$45,838,411	\$107,514,637

DNR: Department of Natural Resources
MDA: Maryland Department of Agriculture
MDE: Maryland Department of the Environment

Source: Department of Natural Resources, Maryland Department of Agriculture, Maryland Department of the Environment, Department of Legislative Services

Exhibit 11 shows the top recipients of Chesapeake Bay restoration contracts over \$25,000. Farmers are the top recipients at 35% primarily due to cover crop funding contracts. The “To Be Determined” category reflects unspecified vendors or where it is otherwise unclear as to whom the vendor is. State/local government receives the next highest designation of 17% which reflects funding for Maryland Environmental Service and DNR, among others. Licensed watermen account for 6% of the contracts primarily due to the federal funding for the crab license buy-back.

Exhibit 11
Top Chesapeake Bay Restoration Contracts Recipients
Fiscal 2009-2011



Note: The “Farmers” label includes payments that will be made to nutrient management consultants. The “To Be Determined” label reflects the lack of specificity in the information provided.

Source: Department of Natural Resources, Maryland Department of Agriculture, Maryland Department of the Environment, Department of Legislative Services

2. Fiscal 2010 Spending Restriction Lifted

Fiscal 2010 operating budget bill language restricted \$10 million of DNR’s Watershed Services special fund appropriation until a report was submitted on the name, location, description, and nutrient and sediment targets for all projects to be funded in fiscal 2010 with Chesapeake and Atlantic Coastal Bays 2010 Trust Fund monies. This requirement was adopted due to a lack of information on nutrient and sediment targets and specific project names submitted with DNR’s fiscal 2010 budget.

DNR submitted a report on August 20, 2009, and the budget committees recommended that the funds be released. A summary of the allocation submitted by DNR may be found in **Exhibit 12**. The exhibit reflects the available revenue of \$9.6 million for 2009, the \$8.0 million available for fiscal 2010, and the proposed allocation of \$0.8 million in revenues attained but not expended in fiscal 2009.

Exhibit 12
Chesapeake and Atlantic Coastal Bays 2010 Report Planned Expenditures
Fiscal 2009 and 2010
(\$ in Millions)

<u>Main Category</u>	<u>Subcategory</u>	<u>2009</u>	<u>2010</u>	<u>Pending Budget Amendment 2010</u>	<u>Nitrogen Reduced (Lbs/Year)</u>
Strategic Monitoring (DNR)	Strategic Monitoring	\$0.25	\$0.20	\$0.02	n/a
Agency Direct Costs	MDA, MDE, DNR	0.00	0.00	0.00	n/a
Technical Assistance Costs	MDA to SCD	0.85	0.68	0.07	n/a
Stormwater Projects (MDE)	Projects shown in Exhibit 7	1.83	1.50	0.15	2,549
Agricultural Practices	Cover Crops, CREP, AWM	6.08	2.88	0.29	TBD
Innovative Practices	Projects shown in Exhibit 7	0.34	2.49	0.28	157,372
Innovative Technology	Bay Restoration	0.25	0.25	0.00	TBD
Total		\$9.60	\$8.00	\$0.81	159,921

AWM: animal waste management
 CREP: Conservation Reserve Enhancement Program
 DNR: Department of Natural Resources
 MDA: Maryland Department of Agriculture
 MDE: Maryland Department of the Environment
 SCD: Soil Conservation District
 TBD: to be determined

Note: Load reductions are based on completion of multi-year projects and may reflect funding beyond fiscal 2010.

Source: Department of Natural Resources; Department of Legislative Services