

# Latest revisions to S. 1816 Chesapeake Clean Water and Ecosystem Restoration Act

COG staff summary of key points as revised during mark-up June 30 by the Senate Environment and Public Works Committee  
7/30/2010

## Background

- The bill was originally introduced Oct. 20, 2009, by Sen. Ben Cardin (MD) and re-introduced in the spring of 2010. The latest version -- <http://cardin.senate.gov/issues/chesapeakebaybill.pdf> -- was approved by the Senate Environment and Public Works Committee by voice vote on June 30, 2010.
- Its House counterpart, H.R. 3852, is sponsored by Rep. Elijah Cummings (MD), but no action has yet been taken on it. A rival version, H. R. 5509, has also been introduced.

## Summary

- The bill would amend Section 117 of the Clean Water Act, which governs the EPA Chesapeake Bay Program.
- Overall, the bill would codify certain aspects of the Bay TMDL development and implementation process into federal law, including such details as deadlines, the content of the state's watershed implementation plans and the process by which EPA reviews and approves or disapproves of those plans.
- Revisions to the bill have eliminated provisions that would have expanded EPA powers compared to what currently exists within the Clean Water Act, but the bill continues to make explicit powers that have not been specifically defined before.
- The bill would authorize—but not appropriate – a number of new federal funds for Bay restoration activities, including a one-time \$1.5 billion grant program for urban stormwater projects.

**Key changes from previous versions** (*text in italics refers to the page in the mark-up draft where the change can be found*).

- Added a provision to establish a “nutrient trading guarantee pilot program” that would supply federal funding to help to get an interstate trading program established. (*pp. 86-95*)
- Added sediment and sediment reduction to the goals of state management plans in addition to reducing nitrogen and phosphorus. (*p. 108*)
- Deleted previous section on TMDLs. Deleted all references to “TMDLs” in section on watershed implementation plan; deleted references to TMDL allocations developed by the Bay Program. The purpose of implementation plans is now tied to achievement of water quality

standards.

- Instead of “shall adopt” watershed implementation plans, states “may submit” them (*p. 111*), although the bill retained previous language that requires EPA to “ensure that management plans are developed and implemented by Chesapeake Basin States.” (*p. 108*)
- Added a reference in the Stormwater Permits section that would allow for a “fee-in-lieu” system if developers cannot meet the requirements for new or redevelopment in the regulations to be issued by EPA. (*p. 123*)
- Added a reference in the Stormwater Permits section that would require EPA in developing its new stormwater regulations to develop guidance regarding stormwater permits that are pending as of June 30, 2010. (*p. 125*)
- Added new language that expressly prohibits EPA from adding any additional requirements when reviewing state implementation plans for approval. (*p. 130*)
- Dropped previous language that required EPA, in administering a failed state implementation plan, to require offsets of at least 100 percent for any new or expanded permitted discharges; the offset rate is to be determined by EPA in rule making. (*pp. 133-134*).
- Added new provisions indicating that in administering a failed state implementation plan EPA cannot impose any additional requirements on nonpoint sources beyond those already approved by the state and specifically cannot impose permit requirements on such sources; both were possible in previous version of the bill. (*p. 134*).
- Added a new provision that would establish an Agricultural Animal Waste-to-Bioenergy Deployment Program. (*pp. 147-149*)
- Reconfigured the section on the study of the impacts of menhaden on Bay water quality. (*pp. 151-152*)
- Added a new requirement that independent reviews of the program by the National Academy of Sciences or the National Academy of Public Administration shall expressly include economic impacts, along with other factors. (*p. 155*)

**Key provisions of interest** (highlighted text details changes from previous versions)

- The bill still has some of the same deadlines as EPA has announced for various TMDL milestones, including:
  - The Dec. 31, 2010, deadline for EPA to issue a Bay-wide series of TMDLs is no longer explicitly proscribed, although it is mentioned in the Findings section.
  - However, there is now a Nov. 1, 2011, deadline for the states to submit watershed implementation plans (WIPs), although this submission is now an option – i.e. “may submit.”

- Deadlines of May 31, 2017, for the states to achieve 60 percent of the implementation under their WIPS and May 12, 2025, for the states to achieve 100 percent of the implementation under their WIPS are still in place.
- It will still establish “de minimus” federal standards for stormwater permitting programs. States must assure EPA that for any new development or redevelopment site above certain thresholds, the owner will:
  - Maintain or restore predevelopment hydrology for temperature, rate, volume and duration of flow to the maximum extent technically feasible.
  - To the extent that this is not feasible, the owner will provide “compensation” both in and outside “the affected subwatershed” or pay into a “fee-in-lieu” program.
  - Final details to be determined by EPA by May 2011.
- Still delineates the specific content of EPA’s review and approval process for the state WIPs and spells out the consequences of a state failure to submit its WIP, submit its biennial report, or meet its 2-year implementation milestones. These include:
  - Withholding Clean Water Act funding.
  - Taking over administration of the state program for implementing the WIP, enforcing permits and promulgating new point source and nonpoint source regulations as necessary.
  - Requiring offsets for any new discharges.

However, as noted earlier, the bill appears to give states the option to not submit such plans.
- The bill would authorize funding in the following categories:
  - Implementation grants: \$80 million annually.
  - Chesapeake Stewardship grants: \$15 million annually for six years
  - Monitoring grants: \$5 million annually each for freshwater and estuarine.
  - MS4 planning grants for municipalities: \$10 million.
  - MS4 implementation grants for municipalities: \$1.5 billion.
  - Nutria eradication grants: \$4 million annually.
  - Ag Centers of Excellence: \$10 million for six years
  - Nutrient trading guarantee pilot program: \$20 million total through 2015. (New)
  - Ag waste-to-bioenergy grants: \$30 million total through 2015. (New)

*(Note: These are authorizations only; Congressional appropriation would be necessary for these funds to actually become available.)*

Other provisions continue to include a restriction on the amount of phosphorus in cleaning products, a requirement for EPA to report to Congress on commercial products that impact water quality, a ban on the use of Asian oysters, an expansion of the nutria eradication program on the Delmarva Peninsula, and a study on the impact of the menhaden fishery.