

CHESAPEAKE BAY ACCOUNTABILITY AND RECOVERY ACT
OF 2009

SEPTEMBER 29, 2009.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. RAHALL, from the Committee on Natural Resources,
submitted the following

R E P O R T

[To accompany H.R. 1053]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1053) to require the Office of Management and Budget to prepare a crosscut budget for restoration activities in the Chesapeake Bay watershed, to require the Environmental Protection Agency to develop and implement an adaptive management plan, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Chesapeake Bay Accountability and Recovery Act of 2009”.

SEC. 2. CHESAPEAKE BAY CROSSCUT BUDGET.

(a) **CROSSCUT BUDGET.**—The Director, in consultation with the Chesapeake Executive Council, the chief executive of each Chesapeake Bay State, and the Chesapeake Bay Commission, shall submit to Congress a financial report containing—

(1) an interagency crosscut budget that displays—

(A) the proposed funding for any Federal restoration activity to be carried out in the succeeding fiscal year, including any planned interagency or intra-agency transfer, for each of the Federal agencies that carry out restoration activities;

(B) to the extent that information is available, the estimated funding for any State restoration activity to be carried out in the succeeding fiscal year;

(C) all expenditures for Federal restoration activities from the preceding 3 fiscal years, the current fiscal year, and the succeeding fiscal year; and

- (D) all expenditures, to the extent that information is available, for State restoration activities during the equivalent time period described in subparagraph (C);
- (2) a detailed accounting of all funds received and obligated by all Federal agencies for restoration activities during the current and preceding fiscal years, including the identification of funds which were transferred to a Chesapeake Bay State for restoration activities;
- (3) to the extent that information is available, a detailed accounting from each State of all funds received and obligated from a Federal agency for restoration activities during the current and preceding fiscal years; and
- (4) a description of each of the proposed Federal and State restoration activities to be carried out in the succeeding fiscal year (corresponding to those activities listed in subparagraphs (A) and (B) of paragraph (1)), including the—
 - (A) project description;
 - (B) current status of the project;
 - (C) Federal or State statutory or regulatory authority, programs, or responsible agencies;
 - (D) authorization level for appropriations;
 - (E) project timeline, including benchmarks;
 - (F) references to project documents;
 - (G) descriptions of risks and uncertainties of project implementation;
 - (H) adaptive management actions or framework;
 - (I) coordinating entities;
 - (J) funding history;
 - (K) cost-sharing; and
 - (L) alignment with existing Chesapeake Bay Agreement and Chesapeake Executive Council goals and priorities.
- (b) **MINIMUM FUNDING LEVELS.**—The Director shall only describe restoration activities in the report required under subsection (a) that—
 - (1) for Federal restoration activities, have funding amounts greater than or equal to \$100,000; and
 - (2) for State restoration activities, have funding amounts greater than or equal to \$50,000.
- (c) **DEADLINE.**—The Director shall submit to Congress the report required by subsection (a) not later than 30 days after the submission by the President of the President’s annual budget to Congress.
- (d) **REPORT.**—Copies of the financial report required by subsection (a) shall be submitted to the Committees on Appropriations, Natural Resources, Energy and Commerce, and Transportation and Infrastructure of the House of Representatives and the Committees on Appropriations, Environment and Public Works, and Commerce, Science, and Transportation of the Senate.
- (e) **EFFECTIVE DATE.**—This section shall apply beginning with the first fiscal year after the date of enactment of this Act for which the President submits a budget to Congress.

SEC. 3. ADAPTIVE MANAGEMENT PLAN.

- (a) **IN GENERAL.**—Not later than 1 year after the date of enactment of this Act, the Administrator, in consultation with other Federal and State agencies, shall develop an adaptive management plan for the Chesapeake Bay Program and restoration activities that includes—
 - (1) definition of specific and measurable objectives to improve water quality, habitat, and fisheries;
 - (2) a process for stakeholder participation;
 - (3) monitoring, modeling, experimentation, and other research and evaluation practices;
 - (4) a process for modification of restoration activities that have not attained or will not attain the specific and measurable objectives set forth under paragraph (1); and
 - (5) a process for prioritizing restoration activities and programs to which adaptive management shall be applied.
- (b) **IMPLEMENTATION.**—The Administrator shall implement the adaptive management plan developed under subsection (a).
- (c) **UPDATES.**—The Administrator shall update the adaptive management plan developed under subsection (a) every 3 years.
- (d) **REPORT TO CONGRESS.**—
 - (1) **IN GENERAL.**—Not later than 60 days after the end of a fiscal year, the Administrator shall transmit to Congress an annual report on the implementation of the adaptive management plan required under this section for such fiscal year.

(2) **CONTENTS.**—The report required under paragraph (1) shall contain information about the application of adaptive management to restoration activities and programs, including programmatic and project level changes implemented through the process of adaptive management.

(3) **EFFECTIVE DATE.**—Paragraph (1) shall apply to the first fiscal year that begins after the date of enactment of this Act.

SEC. 4. INDEPENDENT EVALUATOR FOR THE CHESAPEAKE BAY PROGRAM.

(a) **IN GENERAL.**—There shall be an Independent Evaluator for the Chesapeake Bay Program, who shall review and report on restoration activities and the use of adaptive management in restoration activities, including on such related topics as are suggested by the Chesapeake Executive Council.

(b) **APPOINTMENT.**—

(1) **IN GENERAL.**—The Independent Evaluator shall be appointed by the Administrator from among nominees submitted by the Chesapeake Executive Council.

(2) **NOMINATIONS.**—The Chesapeake Executive Council may submit to the Administrator 4 nominees for appointment to any vacancy in the office of the Independent Evaluator.

(c) **REPORTS.**—The Independent Evaluator shall submit a report to the Congress every 3 years in the findings and recommendations of reviews under this section.

(d) **CHESAPEAKE EXECUTIVE COUNCIL.**—In this section the term “Chesapeake Executive Council” has the meaning given that term by section 307 of the National Oceanic and Atmospheric Administration Authorization Act of 1992 (Public Law 102–567; 15 U.S.C. 1511d).

SEC. 5. DEFINITIONS.

In this Act, the following definitions apply:

(1) **ADAPTIVE MANAGEMENT.**—The term “adaptive management” means a type of natural resource management in which project and program decisions are made as part of an ongoing science-based process. Adaptive management involves testing, monitoring, and evaluating applied strategies and incorporating new knowledge into programs and restoration activities that are based on scientific findings and the needs of society. Results are used to modify management policy, strategies, practices, programs, and restoration activities.

(2) **ADMINISTRATOR.**—The term “Administrator” means the Administrator of the Environmental Protection Agency.

(3) **CHESAPEAKE BAY STATE.**—The term “Chesapeake Bay State” or “State” means the States of Maryland, West Virginia, Delaware, and New York, the Commonwealths of Virginia and Pennsylvania, and the District of Columbia.

(4) **CHESAPEAKE BAY WATERSHED.**—The term “Chesapeake Bay watershed” means the Chesapeake Bay and the geographic area, as determined by the Secretary of the Interior, consisting of 36 tributary basins, within the Chesapeake Bay States, through which precipitation drains into the Chesapeake Bay.

(5) **CHIEF EXECUTIVE.**—The term “chief executive” means, in the case of a State or Commonwealth, the Governor of each such State or Commonwealth and, in the case of the District of Columbia, the Mayor of the District of Columbia.

(6) **DIRECTOR.**—The term “Director” means the Director of the Office of Management and Budget.

(7) **RESTORATION ACTIVITIES.**—The term “restoration activities” means any Federal or State programs or projects that directly or indirectly protect, conserve, or restore living resources, habitat, water resources, or water quality in the Chesapeake Bay watershed, including programs or projects that promote responsible land use, stewardship, and community engagement in the Chesapeake Bay watershed. Restoration activities may be categorized as follows:

- (A) Physical restoration.
- (B) Planning.
- (C) Feasibility studies.
- (D) Scientific research.
- (E) Monitoring.
- (F) Education.
- (G) Infrastructure Development.

PURPOSE OF THE BILL

The purpose of H.R. 1053 is to require the Office of Management and Budget to prepare a crosscut budget for restoration activities in the Chesapeake Bay watershed, to require the Environmental

Protection Agency to develop and implement an adaptive management plan, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

In the last 30 years, the United States has devoted enormous effort and committed billions of dollars toward restoring large ecosystems such as the Chesapeake Bay, the Great Lakes, the Florida Everglades and the California Bay-Delta. The Chesapeake Bay Partnership includes 10 federal agencies, 6 states, and the District of Columbia, as well as thousands of localities and non-governmental organizations all contributing to help restore the health of the Bay. Coordination and oversight of the funding and implementation of restoration activities remains challenging and sometimes controversial for this complex endeavor.

To address the complexity of organizing, managing and implementing ecosystem-based restoration initiatives, some participating agencies have implemented crosscut budgets. A crosscut budget is used to present budget information from two or more agencies whose activities are targeted to address a common policy goal. Crosscut budgets can assist in making data from multiple agencies more understandable, help track program accomplishments, measure progress towards achieving program goals, and help coordinate and organize restoration priorities.

Adaptive management is another tool used in implementing complex environmental restoration activities. Adaptive management incorporates new information from scientific studies, and new or unforeseen circumstances, into the restoration planning initiatives to assure that the restoration goals are achieved efficiently and effectively.

On May 12, 2009, President Obama signed an Executive Order to refocus and direct federal government activities to protect and restore the Chesapeake Bay. This new order established a new Federal Leadership Committee to complete reports on the key challenges to protecting and restoring the Bay and required the identification of tools and strategies to address these challenges which include water quality and storm water management; the effects of a changing climate; the need for better coordination and targeting of federal resources; and the need for strengthened federal research activities and scientific support for decision-makers. While comprehensive in scope, this order did not direct the federal government to develop a crosscut budget to identify relevant federal program expenditures nor to link these expenditures to measureable performance goals and milestones.

COMMITTEE ACTION

H.R. 1053 was introduced on February 12, 2009 by Representative Robert J. Wittman (R-VA). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Insular Affairs, Oceans and Wildlife. On July 8, 2009, the Subcommittee held a hearing on the bill.

On July 29, 2009, the Subcommittee was discharged from further consideration of H.R. 1053 and the full Natural Resources Committee met to consider the bill. Rep. Wittman offered an amendment in the nature of a substitute to direct the EPA Administrator to appoint an independent evaluator to report on the effectiveness

of restoration activities and efforts at adaptive management. The amendment was adopted by unanimous consent. The bill, as amended, was then ordered favorably reported to the House of Representatives by unanimous consent.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 provides that this Act may be cited as the “Chesapeake Bay Accountability and Recovery Act of 2009.”

Section 2. Chesapeake Bay crosscut budget

Section 2 directs the Director of the Office of Management and Budget (OMB) to prepare a financial report containing an inter-agency crosscut budget. The crosscut budget will display proposed funding for federal restoration activity, estimated funding for state restoration activity, and expenditures for federal restoration for the preceding 3 fiscal years and current year, and expenditures for state restoration during the equivalent time period. Also included in the financial report will be accounting of all funds received and obligated by federal agencies for restoration activities; accounting from each state for funds received and obligated from a federal agency for restoration activities; and a description of each proposed federal and state restoration activity.

Section 3. Adaptive management plan

Section 3 directs the Administrator of the Environmental Protection Agency to develop an adaptive management plan for the Chesapeake Bay Program and restoration activities. The adaptive management plan will include specific measurable objectives to improve water quality, habitat and fisheries; a process for stakeholder participation; research and evaluation practices; a modification process; and a process for prioritizing the restoration activities to which adaptive management will be applied. Additionally, this section instructs the Administrator to prepare an annual report to Congress.

Section 4. Independent evaluator for the Chesapeake Bay Program

Section 4 directs the EPA Administrator to appoint an Independent Evaluator to review and report on restoration activities and the use of adaptive management. The Independent Evaluator will submit a report to Congress every 3 years, detailing findings and recommendations of the evaluation.

Section 5. Definitions

Section 5 defines key terms included in the bill.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources’ oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. **Cost of Legislation.** Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. **Congressional Budget Act.** As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. **General Performance Goals and Objectives.** As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to require the Office of Management and Budget to prepare a crosscut budget for restoration activities in the Chesapeake Bay watershed, to require the Environmental Protection Agency to develop and implement an adaptive management plan, and for other purposes.

4. **Congressional Budget Office Cost Estimate.** Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

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H.R. 1053 would require the Environmental Protection Agency (EPA) to develop, no later than one year after the bill's enactment, a management plan for the Chesapeake Bay Program and restoration activities related to the bay. EPA would be required to update the management plan every three years. The legislation would require new financial reports on the Chesapeake Bay Program from the Office of Management and Budget and would require EPA to appoint an independent evaluator, who would review and report to the Congress on the management plan for the bay.

Based on information from EPA, CBO estimates that implementing this legislation would cost about \$1 million in 2010 and less than \$500,000 annually in subsequent years, subject to the availability of appropriations. Enacting the bill would not affect direct spending or receipts.

H.R. 1053 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Susanne S. Mehlman. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

EARMARK STATEMENT

H.R. 1053 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

