

**UA01**  
**Department of the Environment – Capital**

***Capital Budget Summary***

**Grant and Loan *Capital Improvement Program***  
(\$ in Millions)

<b>Program</b>	<b>FY 2020 Approp.</b>	<b>FY 2021 Approp.</b>	<b>FY 2022 Request</b>	<b>FY 2023 Est.</b>	<b>FY 2024 Est.</b>	<b>FY 2025 Est.</b>	<b>FY 2026 Est.</b>
Maryland Water Quality Revolving Loan Fund	\$166.086	\$157.716	\$176.824	\$156.800	\$156.800	\$156.800	\$156.800
Maryland Drinking Water Revolving Loan Fund	46.715	33.548	57.850	33.000	33.000	33.000	33.000
Bay Restoration Fund – Wastewater Projects	70.000	75.000	75.000	75.000	75.000	75.000	75.000
Septic System Upgrade Program	15.000	15.000	15.000	15.000	15.000	15.000	15.000
Supplemental Assistance Program	0.000	4.175	3.000	3.000	3.000	3.000	3.000
Water Supply Financial Assistance Program	1.960	1.426	2.557	2.500	2.500	2.500	2.500
Hazardous Substance Clean-Up Program	0.255	0.000	0.750	1.000	1.000	1.000	1.000
Mining Remediation Program	0.500	0.500	0.500	0.500	0.500	0.500	0.500
Comprehensive Flood Management Program	5.000	6.180	5.959	3.000	3.000	5.000	5.000
<b>Total</b>	<b>\$305.516</b>	<b>\$293.545</b>	<b>\$337.440</b>	<b>\$289.800</b>	<b>\$289.800</b>	<b>\$291.800</b>	<b>\$291.800</b>

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*UA01 – Department of the Environment – Capital*

<b>Fund Source</b>	<b>FY 2020 Approp.</b>	<b>FY 2021 Approp.</b>	<b>FY 2022 Request</b>	<b>FY 2023 Est.</b>	<b>FY 2024 Est.</b>	<b>FY 2025 Est.</b>	<b>FY 2026 Est.</b>
PAYGO GF	\$0.255	\$0.200	\$0.750	\$1.000	\$1.000	\$1.000	\$1.000
PAYGO SF	177.745	216.400	259.793	214.500	214.500	214.500	214.500
PAYGO FF	106.005	53.146	53.160	53.500	53.500	53.500	53.500
GO Bonds	21.511	23.799	23.737	20.800	20.800	22.800	22.800
Revenue Bonds	0.000	0.000	0.000	0.000	0.000	0.000	0.000
<b>Total</b>	<b>\$305.516</b>	<b>\$293.545</b>	<b>\$337.440</b>	<b>\$289.800</b>	<b>\$289.800</b>	<b>\$291.800</b>	<b>\$291.800</b>

FF: federal funds  
 GF: general funds  
 GO: general obligation  
 PAYGO: pay-as-you-go  
 SF: special funds

## ***Key Observations***

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### **Bay Restoration Fund Balance Projections**

Committee narrative in the 2020 *Joint Chairmen’s Report (JCR)* noted that the budget committees were concerned that the Maryland Department of the Environment (MDE) had not provided sufficient information about the accounting of the Bay Restoration Fund (BRF) – Wastewater Account to understand the cash flow needs of the program. Therefore, the budget committees requested the submission of the BRF fund balance information. MDE’s revenue estimates appear to understate the available fund balance in the BRF. **The committees may wish to consider directing that a portion of the fund balance be used on a one-time basis to fund other critical environmental capital projects programmed to receive general obligation (GO) bonds in fiscal 2022.**

## ***Summary of Recommended PAYGO Actions***

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1. Concur with Governor’s allowance.

## ***Summary of Recommended Bond Actions***

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1. Comprehensive Flood Management Program

Approve the \$5,959,000 general obligation bond authorization for the Comprehensive Flood Management Program.

2. Maryland Drinking Water Revolving Loan Fund

Approve the \$4,034,000 general obligation bond authorization for the Maryland Drinking Water Revolving Loan Fund.

3. Maryland Water Quality Revolving Loan Fund

Approve the \$7,687,000 general obligation bond authorization for the Maryland Water Quality Revolving Loan Fund.

4. Mining Remediation Program

Approve the \$500,000 general obligation bond authorization for the Mining Remediation Program.

5. Supplemental Assistance Program

Approve the \$3,000,000 general obligation authorization for the Supplemental Assistance Program.

6. Water Supply Financial Assistance Program

Approve the \$2,557,000 general obligation bond authorization for the Water Supply Financial Assistance Program.

7. SECTION 2 – Maryland Department of the Environment – Chesapeake Bay Water Quality Project Funds

Approve the deauthorization of \$356,155 in general obligation bonds from the fiscal 2016 funding provided for the Supplemental Assistance Program.

## ***Budget Overview***

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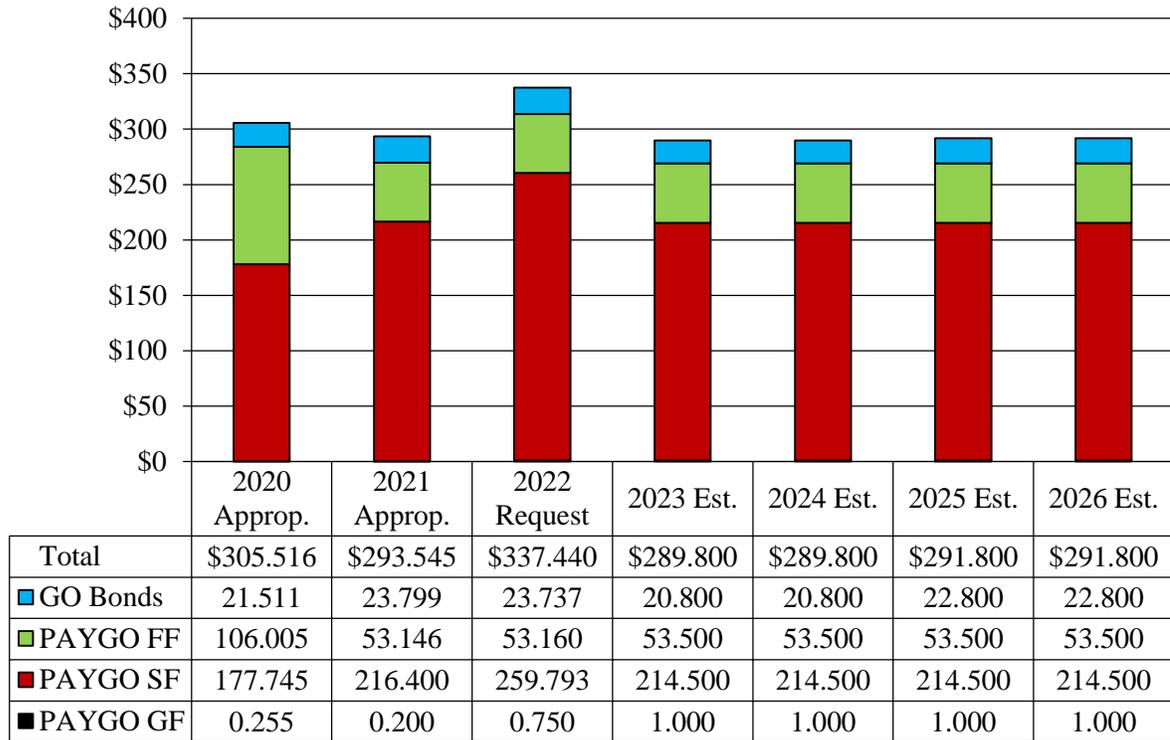
### **Fiscal 2020 and Fiscal 2021 Cost Containment**

The Hazardous Substance Clean-Up Program’s fiscal 2020 general fund appropriation was reduced by \$270,000 at the May 20, 2020 Board of Public Works (BPW) meeting as part of cost containment actions taken to address the COVID-19 pandemic. Similarly, the program’s fiscal 2021 general fund appropriation was reduced by \$500,000 at the July 1, 2020 BPW meeting, which deleted the fiscal 2021 appropriation.

### **Fiscal 2022 Budget**

MDE’s fiscal 2022 capital program includes \$0.8 million in general funds, \$259.8 million in special funds, \$53.2 million in federal funds, and \$23.7 million in GO bonds for a total of \$337.4 million. The overall change between fiscal 2021 and 2022 is a \$43.9 million increase, as shown in **Exhibit 1**. The increase in funding between fiscal 2021 and 2022 is primarily attributable to the \$24.3 million increase in special funds for the Drinking Water Revolving Loan Fund (DWRLF) and the \$19.1 million increase in special funds for the Water Quality Revolving Loan Fund (WQLRF).

**Exhibit 1**  
**MDE Capital Programs Funding**  
**Fiscal 2020-2026 Est.**  
**(\$ in Millions)**



FF: federal funds  
 GF: general funds  
 GO: general obligation  
 MDE: Maryland Department of the Environment  
 PAYGO: pay-as-you-go  
 SF: special funds

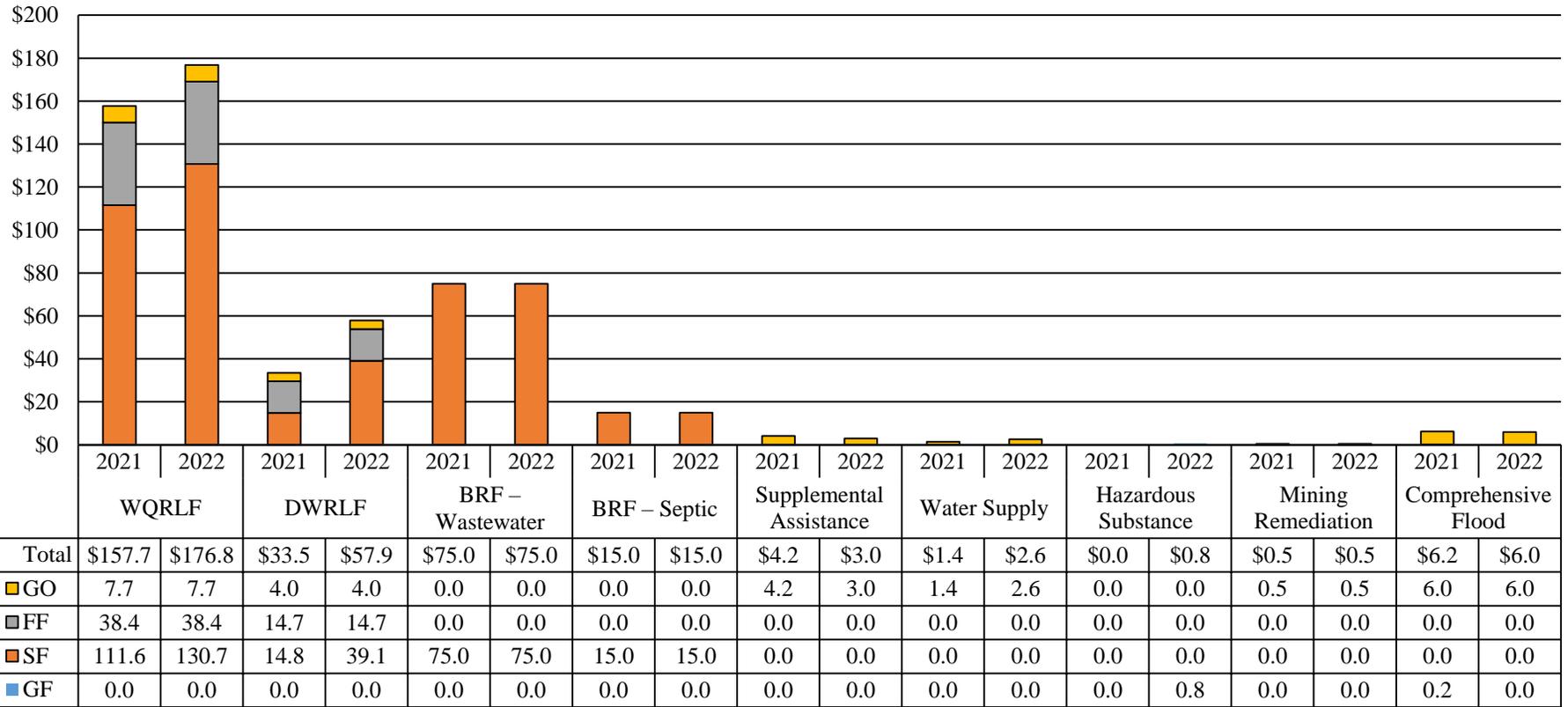
Source: Department of Budget and Management

For the out-years, the overall funding available for MDE’s capital programs appears to be relatively flat. This does not account for any revenue bonds that may be issued for the WQRLF, the DWRLF, or the BRF – Wastewater Projects which in any event may not be issued due to the cash flow management approach that MDE has adopted for these programs.

**Highlights**

The changes in program funding between fiscal 2021 and 2022 are reflected in **Exhibit 2**.

**Exhibit 2**  
**MDE Capital Funding Changes**  
**Fiscal 2021-2022**  
**(\$ in Millions)**



BRF: Bay Restoration Fund  
 DWRLF: Drinking Water Revolving Loan Fund  
 FF: federal funds  
 GF: general funds

GO: general obligation funds  
 MDE: Maryland Department of the Environment  
 SF: special funds  
 WQRLF: Water Quality Revolving Loan Fund

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

The highlighted changes in funding for fiscal 2022 are as follows.

### **WQRLF**

The WQRLF allowance for fiscal 2022 is \$176.8 million and is comprised of \$130.7 million in special funds, \$38.4 million in federal funds, and \$7.7 million in GO bond authorization used to match the federal funds. MDE initially anticipated issuing \$120.0 million in revenue bonds to meet the anticipated project funding requests in fiscal 2021 and more recently indicated that the revenue bonds may be issued in fiscal 2022, but it now appears that revenue bonds will not be necessary in the immediate future.

There are several large projects in the fiscal 2022 allowance as follows:

- ***Urban Stormwater Retrofit Public-private Partnership, Phase 4 (Prince George’s County):*** There is \$30 million budgeted for the fourth loan for stormwater infrastructure retrofits, which range from structural treatment options such as small rain gardens on private property as part of the Alternative Compliance Program to large urban retrofit solutions involving suburban drain inlet modifications, pond retrofits, county right-of-way best management practices, and green streets and high-flow media treatment options;
- ***Replacement of the Southwest Diversion Pressure Sewer Phase I, SC-866 (Baltimore City):*** There is \$24.9 million budgeted for the installation of new pipe, relocation of existing utilities, abandonment of sections of pipe, paving, and restoration in order to prevent sanitary sewer overflows (SSO) and address capacity problems in the aging sewer system; and
- ***Sanitary Sewer Reconstruction – Broad Creek Sewer Basin Prince George’s County Section 5:*** There is \$10.2 million budgeted for over seven miles of sanitary sewer main reconstruction in the Broad Creek basin located on or near State, local, and county road rights-of-way.

There are two energy projects that are being completed in cooperation with the Department of Housing and Community Development (DHCD). The funding is being provided for disadvantaged (\$9.0 million) and nondisadvantaged (\$6.0 million) communities. The overall project is titled Maryland DHCD Energy Fund and is intended to implement energy efficiency and renewable energy capital improvements in single-family households, multi-family housing, and commercial buildings across the State. MDE notes that it is working with DHCD to complete the funding agreement.

### **DWRLF**

The DWRLF allowance for fiscal 2022 is \$57.9 million and is comprised of \$39.1 million in special funds, \$14.7 million in federal funds, and \$4.0 million in GO bond authorization used to match federal funds. This will support 9 projects in 6 jurisdictions throughout the State. **Exhibit 3** shows the funding for the DWRLF in MDE’s operating and pay-as-you-go budgets. MDE had tentatively scheduled \$50.0 million in revenue bond issuance for fiscal 2022, but now notes that any future debt

issuance will be analyzed based on cash flows, project pace, current commitment, and potential future commitments.

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**Exhibit 3**  
**Drinking Water Revolving Loan Fund – Operating and PAYGO**  
**Fiscal 2021-2022**

	<b>Federal Fiscal 2019 for <u>State Fiscal 2021</u></b>	<b>Federal Fiscal 2020 for <u>State Fiscal 2022</u></b>
Capital Projects	\$14,715,340	\$14,724,100
2% Set-aside (Technical Assistance)	403,160	403,400
4% Set-aside (DWRLF Administration)	0	0
10% Set-aside (Drinking Water Program Support)	2,015,800	2,017,000
15% Set-aside (Local Assistance)	3,023,700	3,025,500
<b>Total</b>	<b>\$20,158,000</b>	<b>\$20,170,000</b>

DWRLF: Drinking Water Revolving Fund

PAYGO: pay-as-you-go

Source: Maryland Department of the Environment

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DWRLF encumbrances have decreased from \$93.1 million in fiscal 2017 to \$1.8 million in fiscal 2020, while expenditures have generally increased over the same time period. MDE notes that projects are taking longer than expected for the recipients to design and advertise for construction bids, in part due to the COVID-19 pandemic. In terms of the expenditures, MDE notes that they are primarily due to large Baltimore City and Baltimore County disbursements.

**BRF – Wastewater Projects**

Funding for the BRF – Wastewater Projects is \$75.0 million in special funds that supports 14 projects in 11 jurisdictions. When completed, the projects are estimated to reduce 142,000 pounds of nitrogen per year from flowing to the Chesapeake Bay; the point source pollution projects will serve approximately 64,501 equivalent dwelling units throughout Maryland, and the nonpoint source pollution projects will treat 486 drainage acres. MDE is still considering whether to issue \$100.0 million in new revenue bonds in fiscal 2022 or 2023, dependent upon project cash flow projections and schedules. However, any debt that would be issued would be for eight years or less, due to the BRF fee decreasing after 2030.

For fiscal 2022, the three largest projects are the 78 Inch Parallel Pipeline from Mill Race to Combined Sewer Overflow Storage project (\$15.0 million), Valley Proteins Wastewater Treatment Plant enhanced nutrient removal (ENR) upgrade project (\$12.8 million), and Town of Hancock Wastewater System project (\$8.0 million). **Exhibit 4** shows the fiscal 2022 project amount breakdown by funding category.

**Exhibit 4  
Bay Restoration Fund Funding Categories  
Fiscal 2022**

<u>Funding Category</u>	<u>Project</u>	<u>Amount</u>
Combined Sewer Overflows Abatement, Rehabilitation of Existing Sewers, and Upgrading Conveyance Systems, Including Pumping Stations	Multiple	\$16.584
Septic System and Sewage Holding Tank Upgrades (Includes Connection of Septic to Public Sewer)	Multiple	10.335
Wastewater Treatment Plant Upgrade to Enhanced Nutrient Removal (ENR) – Discharge into the Atlantic Coastal Bays or other Waters of the State	n/a	0.000
Minor Wastewater Treatment Plant Upgrade to ENR	Multiple	34.498
Major Wastewater Treatment Plant Upgrade to ENR (Includes ENR Refinement)	Multiple	11.910
Future Wastewater Treatment Plant Upgrade Beyond ENR	n/a	0.000
Local Government Stormwater Control Measures	n/a	0.000
Stormwater Alternative Compliance Plans	Multiple	1.673
<b>Total</b>		<b>\$75.000</b>

Source: Maryland Department of the Environment

Chapter 44 of 2020 (Bay Restoration Fund – Authorized Uses) provides funding up to 50% for grants for local government stormwater control measures – including projects relating to water quality, climate resiliency, or flood control – for jurisdictions that have implemented a specified system of charges under current authority.

**Septic System Upgrade Program**

The Septic System Upgrade Program is funded with \$15.0 million in special funds. There is also \$1.5 million in MDE’s operating budget that is programmed by Chapter 379 of 2014, which requires that up to 10% of the funds in the septic account of the BRF be distributed to a local public entity delegated by MDE – local health departments – to cover reasonable costs associated with implementation of MDE regulations pertaining to septic systems that use the best available technology (BAT) for nitrogen removal. The program anticipates upgrading 1,100 systems in fiscal 2022. There are roughly 420,000 septic systems statewide, of which approximately 52,000 are in the critical areas, and counties have identified septic problem areas as part of their water and sewer plans. Other recent changes to the program include:

- Chapter 585 of 2018 expanded the uses of the BRF Septic Account to include funding for (1) a local jurisdiction to provide financial assistance to eligible homeowners for the reasonable cost

of pumping out septic systems under specified conditions and (2) in fiscal 2020 and 2021, financial assistance to a local jurisdiction to develop a qualifying septic stewardship plan. MDE is not aware of any jurisdictions seeking to use BRF funds to develop a plan but notes that a jurisdiction cannot fund pump outs unless a septic stewardship plan is in place.

- Chapter 413 of 2020 expanded the authorized uses of the BRF – Septic Account to include costs associated with connecting a property served by a septic system to an existing municipal wastewater facility that has signed a funding agreement with MDE and is under construction to achieve ENR or biological nutrient removal level treatment. No funds have been allocated yet under Chapter 413, but there are several jurisdictions where these connections are being contemplated: East New Market, Lewistown, Secretary, Trappe, and Somerset County.

### **Supplemental Assistance Program**

The fiscal 2022 allowance includes \$3.0 million in GO bonds for two projects in two jurisdictions. The funds will be used toward the non-ENR portion of the projects. The 2021 *Capital Improvement Program* (CIP) programs \$3.0 million in GO bond funds annually for fiscal 2023 through 2026, an increase of \$1.0 million in GO bond funds relative to the 2020 CIP due to the anticipation of continued financial need from small, disadvantaged communities that are undertaking projects to meet water quality requirements.

The two fiscal 2022 projects are as follows:

- ***Rock Hall Wastewater Treatment Plant (WWTP) System ENR Upgrade (Kent County):*** There is \$1.5 million budgeted for the non-ENR portion of the project that overall will upgrade the existing Rock Hall WWTP to ENR, bringing about an 83% reduction of nitrogen and 70% reduction of phosphorus in the discharge, reducing nutrients to the Chester River and to the Chesapeake Bay.
- ***Town of Hancock Wastewater System Project (Washington County):*** There is \$1.5 million budgeted for the non-ENR portion of the project that overall will upgrade the Hancock WWTP to ENR, which will reduce nutrients to Tonoloway Creek and the Chesapeake Bay.

### **Water Supply Financial Assistance Program**

The Water Supply Financial Assistance Program receives \$2,557,000 in GO bonds to fund three projects to their maximum amount allowed under the program. The fiscal 2022 project list is as follows.

- ***Luke Water Distribution System (Allegany County):*** There is \$722,000 in GO bond funding for the second phase of work related to the Verso paper mill shutdown and the associated loss of water supply that it provided to the citizens of Luke. The second phase includes the replacement of existing aging water mains, fire hydrants, and service lines to minimize water

loss and the installation of meters for each residential unit. The first phase of the project received funding in fiscal 2021 and is currently in the planning stage with construction expected to begin in fall 2021.

- ***Pittsville Water Treatment Plant Upgrades (Wicomico County):*** There is \$968,000 in GO bonds for the Pittsville Water Treatment Plant Upgrades project, which will upgrade the existing water treatment plant for the Town of Pittsville in order to increase the reliability of the deteriorating facility. Improvements include the replacement of valves serving the iron removal filters, overhaul of sludge drying beds, addition of instrumentation, replacement of clarifiers, repairs to pipe insulation, and ancillary improvements. Construction is expected to begin in fiscal 2022.
- ***Pocomoke City Water Tanks #1 and #2 Mixers (Worcester County):*** There is \$867,000 in the fiscal 2022 allowance for the design and construction of new mixers in Pocomoke City's Water Tanks #1 and #2. The work will reduce the total trihalomethanes in the city's drinking water, with construction expected to begin in fiscal 2022.

### **Hazardous Substance Clean-Up Program**

The fiscal 2022 allowance includes \$750,000 in general funds for the Hazardous Substance Clean-Up Program, which is \$250,000 less than the amount programmed in the 2020 CIP due to project schedules and planned site assessments. BPW cost containment actions reduced the fiscal 2020 appropriation by \$270,000 from \$525,000 to \$255,000 and eliminated the \$500,000 appropriation for fiscal 2021. As a result, MDE may limit work at some sites that will require funding by the end of the year due to the fiscal 2020 and 2021 cost-containment actions. The 2021 CIP reflects \$1.0 million for fiscal 2023 through 2026. The fiscal 2022 funding provides for the following projects.

- ***Montgomery Brothers Dump (Cecil County):*** There is \$100,000 for the Montgomery Brothers Dump site, which is an old unpermitted landfill. The potential for offsite migration was determined through hotspot soil analysis conducted in fiscal 2021, and a work plan to determine the next steps is being developed.
- ***Former Ames Shopping Plaza (Harford County):*** There is \$50,000 for continued funding of this site, which has parcels in the Voluntary Cleanup Program. Funding is needed to determine the fate and transport of groundwater contamination plumes.
- ***Glebe Road (Talbot County):*** There is \$100,000 for further investigation and delineation of a contamination plume on this industrial site with historical contamination.
- ***Garden State Tannery (Washington County):*** There is \$100,000 for the investigation of suspected contamination by per- and polyfluoroalkyl substances.
- ***Elite Free State Cleaners (Wicomico County):*** There is \$100,000 in continued planning funding for the Elite Free State Cleaners project.

- ***Anacostia River – Northeast and Northwest Branches (Regional):*** There is \$100,000 for the investigation of large areas of potential polychlorinated biphenyl contamination. The overall cost estimate has increased by \$100,000. MDE notes that Anacostia River contamination is a multi-jurisdictional program with a potentially large, but still being determined, number of responsible parties.

### **Mining Remediation Program**

The Mining Remediation Program receives \$500,000 in GO bonds, which is equal to both the fiscal 2021 authorization and the amount programmed for fiscal 2022 in the 2020 CIP. The funds will be used for construction of the Upper Georges Creek Stream Sealing Construction Phase I project. The overall Upper George Creek project is informed by the Stream Monitoring Report of the Upper Georges Creek and is intended to address known locations where streams are being lost to collapsing historic abandoned underground mine tunnels.

The federal authority to collect the Abandoned Mine Land fee from coal production expires on September 30, 2021. If legislation is not passed to extend the authority to collect the fee, MDE would no longer receive funding from the U.S. Department of the Interior – Office of Surface Mining that is used to support the annual operating and maintenance cost of the Mining Remediation Program. Maryland would receive \$3.0 million annually until the federal Abandoned Mine Land fund balance is fully distributed to State programs, which could sustain the program through fiscal 2025 or later. The program could subsequently continue to use funds from the State’s Acid Mine Drainage Abatement and Treatment Fund, which has a balance of approximately \$3 million and could further sustain the program for upwards of five additional years.

### **Comprehensive Flood Management Program**

The fiscal 2022 allowance includes \$6.0 million in GO bond funding for the Comprehensive Flood Management Program. This reflects \$3.0 million more in GO bond funding than was programmed in the 2020 CIP, due to the intent to fully fund existing partially funded projects that are progressing. As a result of this decision, MDE did not use its new project ranking system to evaluate projects for fiscal 2022 funding; MDE plans to connect the program with the local hazard mitigation planning process, since local governments are the ones applying for the grant.

Chapters 651 and 652 of 2019 require the Governor to appropriate at least \$3 million in the State budget in fiscal 2021 and 2022, and at least \$2 million in fiscal 2023. In addition to the \$6.0 million included in the fiscal 2022 budget, the 2021 CIP programs another \$16.0 million through fiscal 2026.

The projects funded by the Comprehensive Flood Management Program that could potentially qualify for federal funding or already have qualified for funding are as follows:

- ***Crisfield:*** Crisfield has been awarded \$1.2 million to install critical water infrastructure to help mitigate flooding per a December 2020 announcement by U.S. Senators Chris Van Hollen and Ben Cardin; and
- ***Howard County:*** Howard County has been invited to apply for the U.S. Environmental Protection Agency’s (EPA) Water Infrastructure Finance and Innovation Act funding in order to finance the North Tunnel and other flood mitigation projects as part of the Ellicott City Safe and Sound Plan.

Fiscal 2022 funding is authorized to be used to acquire flood prone properties for demolition or relocation, install flood warning systems, and construct flood control projects in order to reduce the risk of loss of life and property from flooding. The fiscal 2022 projects are as follows:

- ***Annapolis City Dock Stormwater and Flood Mitigation (Anne Arundel County):*** \$1,400,000;
- ***Ellicott City H7 Mitigation Pond (Howard County):*** \$2,400,000;
- ***Ellicott City Maryland Avenue Culverts (Howard County):*** \$370,000; and
- ***Windmill Sanitary Sewer Pump Station Relocation and Forcemain Project (Talbot County):*** \$1,789,000.

## ***Issues***

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### **1. Bay Restoration Fund Balance Projections**

Committee narrative in the 2020 JCR noted that the budget committees were concerned that MDE had not provided sufficient information about the accounting of the BRF – Wastewater Account to understand the cash flow needs of the program. Therefore, the budget committees requested that MDE submit an electronic editable cash flow spreadsheet for the BRF with the fiscal 2022 budget submission and annually thereafter. The spreadsheet was requested to reflect fund balance information that takes into account all commitments and obligations made by MDE on the use of the BRF and to include the following schedules: capital project costs; revenues and expenditures; and revenue bond debt issuance and debt service.

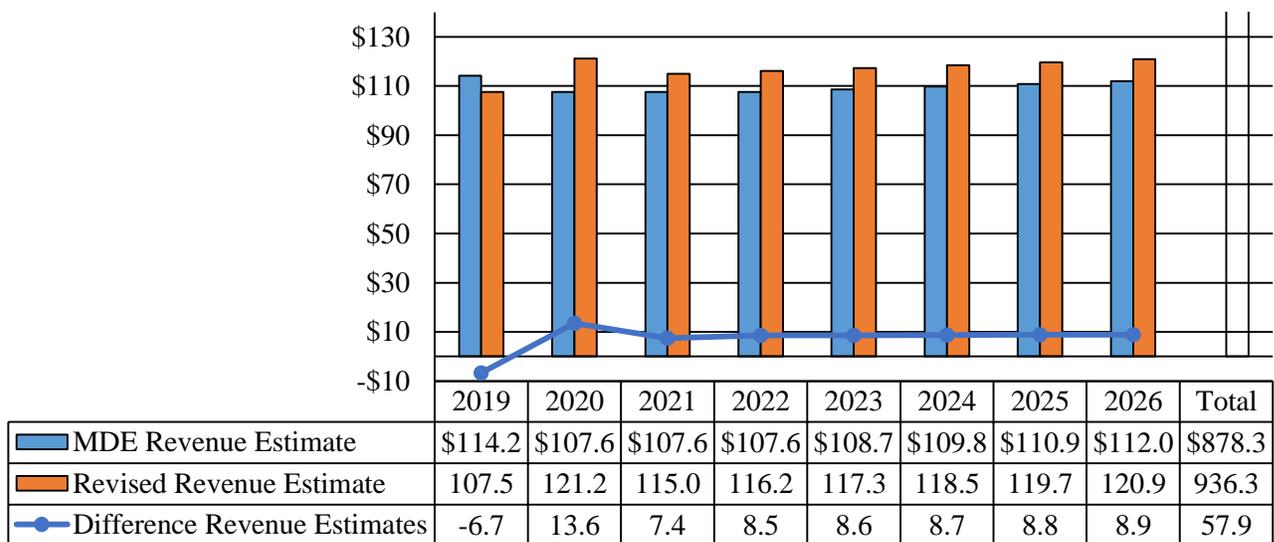
#### **BRF Balance**

The submitted spreadsheet appears to have been created in June 2020 and does not include any formulas to check assumptions about calculations. As a result of the June 2020 source material, the

spreadsheet does not reflect more recent revenue amounts that show revenues of \$107.5 million in fiscal 2019 and \$121.2 million in fiscal 2020 – averaging approximately \$115.0 million in recent years. MDE notes that the revenue amounts in the spreadsheet reflected projections, presumably from around June 2020, and that MDE was being conservative in its estimates due to the COVID-19 pandemic.

**Exhibit 5** compares MDE’s revenue estimates with a revised estimate that reflects the following: the fiscal 2019 and 2020 actual revenues collected; for fiscal 2021, the fiscal 2017 to 2020 average actual revenues of \$115.0 million; and for fiscal 2022 through 2026, a 1% annual increase in revenues from the \$115.0 million base in fiscal 2021, which is consistent with MDE’s annual increase assumption. The revised estimate results in a much larger fund balance than reported by MDE, upward of \$58.0 million by fiscal 2026. **The committees may wish to consider directing that a portion of the fund balance be used on a one-time basis to fund other critical environmental capital projects programmed to receive GO bonds in fiscal 2022.**

**Exhibit 5**  
**MDE vs. DLS Bay Restoration Fund Revenue Estimates**  
**Fiscal 2019-2026**  
**(\$ in Millions)**



DLS: Department of Legislative Services  
MDE: Maryland Department of the Environment

Source: Maryland Department of the Environment; Department of Legislative Services

### BRF Balance Used In Other Bills

Two sets of bills have been introduced in the 2021 legislative session that propose to use BRF funding for new or extended programs. As introduced, the bills would establish additional claims on BRF funding. The bills are as follows.

- ***SB 119 and HB 507 (Clean Water Commerce Act of 2021):*** The bills would reauthorize and modify the Clean Water Commerce Act through June 30, 2030, and require MDE to transfer \$20.0 million annually from the BRF Wastewater Account to the Clean Water Commerce Fund, a new special fund established by the bills. The new Clean Water Commerce Fund must in turn be used to purchase “environmental outcomes” to help the State achieve the Chesapeake Bay Total Maximum Daily Load (TMDL).
- ***SB 414 and HB 583 (Climate Solutions Now Act of 2021):*** The bills would make broad changes to the State’s approach to reducing statewide greenhouse gas emissions and addressing climate change. In terms of the BRF, the bills establish State tree-planting goals funded by money transferred annually from the BRF Wastewater Account after all WWTP upgrade eligible costs are funded from fiscal 2022 through 2030, as follows: \$10.0 million to the Chesapeake Bay Trust for the Urban Trees Program established by the bill; \$2.5 million to the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund to be used for tree planting on public and private land; and \$2.5 million to the Maryland Department of Agriculture (MDA) to fund tree planting under the Conservation Reserve Enhancement Program and other tree-planting programs on agricultural land.

### **Hardship Exemptions and the COVID-19 Pandemic**

Statute authorizes billing authorities to establish financial hardship exemption programs for certain residential dwellings that demonstrate substantial financial hardship, subject to MDE approval. This became especially important during the COVID-19 pandemic when Governor Lawrence J. Hogan, Jr. issued executive orders prohibiting termination of residential services and late fees on March 16, 2020, and then amended and restated this order on April 29, 2020, May 29, 2020, June 29, 2020, and July 31, 2020. The final July 31, 2020 executive order terminated on September 1, 2020. Subsequently, on August 31, 2020, the Public Service Commission prohibited residential utility service terminations through November 15, 2020.

In terms of local actions, Baltimore City took action on April 22, 2020, instituting a water bill discount effective May 8, 2020, that was to remain effective until either 90 days after the end of the current state of emergency or on December 31, 2020, whichever occurred first. This water bill discount was to be consistent with Baltimore City’s existing BH20 Assists Program, which provides a 43% discount on water and sewer use charges and the removal of bay restoration and stormwater remediation fees on water bills. As a result of this program and other financial hardship exemption programs instituted by local jurisdictions, there was a potential indeterminate loss of BRF revenues, even though such a loss of revenue has not been seen to date.

MDE notes that there are 128 jurisdictions with hardship exemptions and that the level of use of these exemptions has been consistent over time and has not increased substantially during the COVID-19 pandemic. Additionally, MDE notes that BRF revenues have been consistent with historical levels during the pandemic and shown no significant impact from additional hardship exemptions.

## ***PAYGO Recommended Actions***

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1. Concur with Governor's allowance.

## ***GO Bond Recommended Actions***

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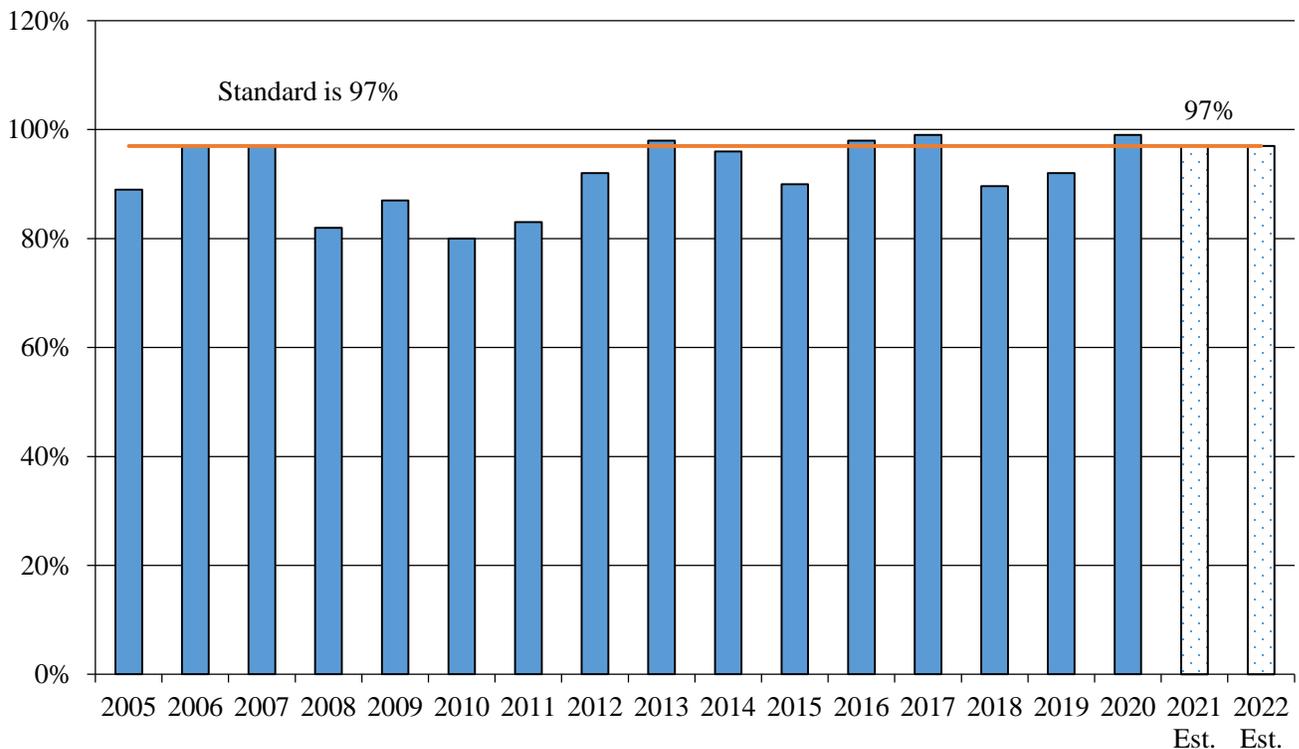
1. Approve the \$5,959,000 general obligation bond authorization for the Comprehensive Flood Management Program to provide funds to local governments for projects that reduce the risk of loss of life and property from flooding.
2. Approve the \$4,034,000 general obligation bond authorization for the Maryland Drinking Water Revolving Loan Fund to provide funds to finance drinking water projects.
3. Approve the \$7,687,000 general obligation bond authorization for the Maryland Water Quality Revolving Loan Fund to provide funds to finance water quality improvement projects.
4. Approve the \$500,000 general obligation bond authorization for the Mining Remediation Program to provide funds to design, construct, and equip active and passive measures to remediate damage to water quality related to abandoned mining operations.
5. Approve the \$3,000,000 general obligation bond authorization for the Supplemental Assistance Program to provide grants to assist grant and loan recipients to meet the local share of construction costs for wastewater facility improvements.
6. Approve the \$2,557,000 general obligation bond authorization for the Water Supply Financial Assistance Program to provide funds for assistance to State and local government entities to acquire, design, construct, rehabilitate, equip, and improve water supply facilities.
7. Approve the deauthorization of \$356,155 in general obligation bond authorization from the fiscal 2016 funding provided for the Supplemental Assistance Program attributable to the Smith Island Clean Water Project.

## Performance Measures and Outputs

### DWRLF

**Exhibit 6** shows an overall trend toward a cleaner public water system in Maryland. However, between fiscal 2017 and 2018, there was a decrease in the percent of Marylanders served by systems that are in compliance with all drinking water regulations.

**Exhibit 6**  
**Marylanders Served by Public Water Systems in Significant Compliance**  
**Fiscal 2005-2022 Est.**



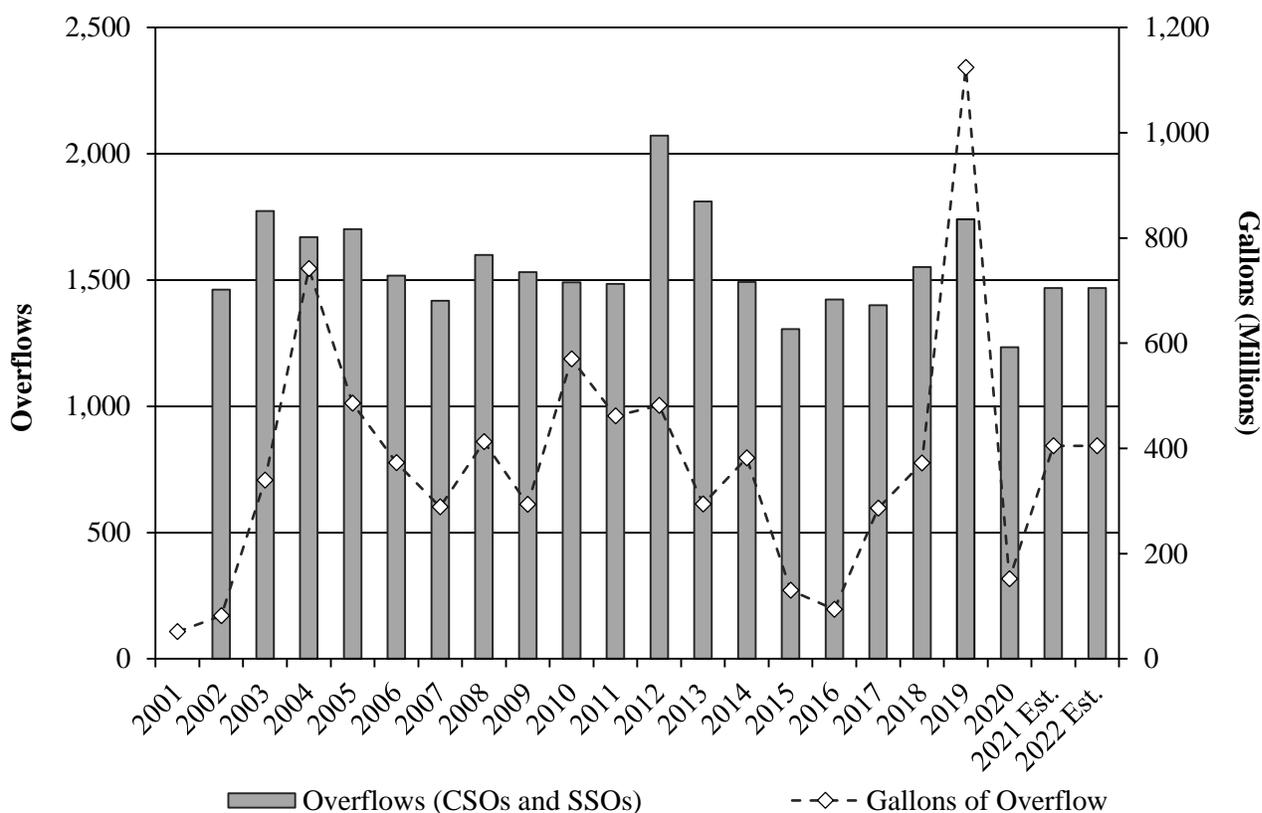
Source: Governor’s Fiscal 2008-2022 Budget Books; Department of Budget and Management

### BRF – Wastewater Projects

A number of Maryland’s jurisdictions have signed consent decrees requiring the upgrade of their sewer systems due to the release of untreated sewage from facilities with National Pollutant Discharge Elimination System permits.

As illustrated in **Exhibit 7**, the number of gallons of overflow had been showing a decreasing trend between fiscal 2010 and 2018, but then there was a substantial increase in fiscal 2019. Over the fiscal 2001 through 2019 period, it appears that very little progress has been made to reduce the number of overflows. Large overflows in a particular year may be attributable to a few extreme events, such as in Cumberland and La Vale in Allegany County in recent years and particularly due to substantial storms in calendar 2019 that increased combined sewer overflows (CSO). The fiscal 2020 data reflects a reduction in both the number and gallons of CSO and SSO. MDE has noted that funding for sewer rehabilitation, progress on improvements and repairs to collection systems, and the amount of rainfall will determine future sewer overflow reductions and that it has very little control over either the number of overflows or the associated gallons.

**Exhibit 7**  
**CSO and SSO Overflows**  
**Fiscal 2001-2022 Est.**



CSO: combined sewer overflow  
 SSO: sanitary sewer overflow

Note: The number of gallons of overflow is calculated by the annual net change in number of gallons of overflows from the fiscal 2003 to 2005 average.

Source: Governor’s Fiscal 2008-2022 Budget Books; Department of Budget and Management

## ***Program Description***

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Descriptions of MDE’s eight current programs are as follows.

- ***WQRLF:*** The WQRLF was created to provide low-interest loans to counties and municipalities to finance water quality improvement projects. Projects eligible for funding include WWTPs; failing septic systems; and nonpoint source projects, such as urban stormwater control projects. The federal Act requires a 20% State match. For fiscal 2022, at least 10% of the federal funding must be used for green reserve projects – water efficiency, energy efficiency, and stormwater projects – provided that sufficient applications are received. The federal appropriation act further requires a minimum of 10% of the capitalization be provided as additional subsidies and between 0% and 30% may be provided as additional subsidization above and beyond the 10% statutory minimum. WQRLF projects are prioritized based on an EPA-approved Integrated Project Priority System. The priority system for WQRLF projects consists of a system for evaluating, rating, and ranking of both point source and nonpoint source water quality projects. Through January 1, 2021, the program has executed \$3.0 billion in loans, loan forgiveness, and grants.
- ***DWRLF:*** The DWRLF was established in accordance with a federal capitalization grant approved by the U.S. Congress in 1996 in anticipation of future federal capitalization grants. This program was authorized by the General Assembly to provide loans to counties and municipalities to finance water supply improvements and upgrades. In accordance with the federal law, these funds may also be loaned to private parties. The federal Act requires that a minimum of 20% of State matching funds for each year’s federal capitalization grant be deposited into the fund. For fiscal 2022, at least 14% of the federal funding must be used for loan forgiveness or grants, and additional subsidies are required for the use of at least 6% but no more than 35% of the capitalization grant for state-defined, disadvantaged communities. Similar to the WQRLF, DWRLF projects are prioritized based on an EPA-approved Drinking Water Project Priority System that focuses on many criteria, the most important being the public health benefit. Through January 1, 2021, the program has executed \$471.3 million in loans, loan forgiveness, and grants.
- ***BRF – Wastewater Projects:*** The BRF (Chapter 428 of 2004) was created to address the significant decline in Chesapeake Bay water quality due to overenrichment of nutrients, such as phosphorus and nitrogen. This dedicated fund, financed in large part by WWTP users, initially was used to provide grants to local governments to upgrade Maryland’s 67 major WWTPs with ENR technology as part of reducing an additional 7.5 million pounds of nitrogen per year in order to reach Maryland’s commitment under TMDL as implemented by the Waterway Improvement Program. The current funding prioritization schedule is as follows: funding an upgrade of a wastewater facility with a design capacity of 0.5 million gallons or more per day from no upgrade all the way to ENR; and funding for the most cost-effective ENR upgrades at WWTP with a design capacity of less than 0.5 million gallons per day from no upgrade all the way to ENR. The prioritization schedule then includes the following uses, as determined by MDE and based on water quality and public health benefits: funding up to 100.0% for ENR upgrades at WWTPs that discharge into the Atlantic Coastal Bays or other waters of the State;

funding future upgrades of WWTPs to achieve additional nutrient removal or water quality improvement that is greater than ENR treatment levels; funding up to 87.5% of the cost for CSO abatement, rehabilitation of existing sewers, and upgrading conveyance systems, including pumping stations; costs associated with upgrading septic systems and sewage holding tanks; funding up to 50% for grants for local government stormwater control measures – including projects relating to water quality, climate resiliency, or flood control per Chapter 44 – for jurisdictions that have implemented a specified system of charges under current authority; and funding up to 100% for stormwater alternative compliance plans.

- ***BRF – Septic System Projects:*** The BRF includes a separate program to fund the replacement of failing septic systems. This program is funded as part of the BRF legislation by a fee on users of septic systems and sewage holding tanks, of which 60% of the revenue is allocated to MDE for the Septic System Upgrade Program and 40% to MDA for the Cover Crop Program. MDE provides grants to upgrade failing systems and holding tanks with BAT for nitrogen removal. Overall, the program gives priority to projects that involve failing systems in environmentally sensitive areas that are ready to proceed. The program is administered by county governments or other parties; contractors conducting the septic system upgrades are directly reimbursed for their work. Applications are prioritized as follows: (1) failing septic systems or holding tanks in the Critical Areas; (2) failing septic systems or holding tanks outside the Critical Areas; (3) nonconforming septic systems in the Critical Areas; (4) nonconforming septic systems outside of the Critical Areas; (5) other septic systems in the Critical Areas, including new construction; and (6) other septic systems outside the Critical Areas, including new construction.
- ***Supplemental Assistance Program:*** The Supplemental Assistance Program provides grant assistance to local governments for planning, designing, and constructing WWTP improvements; for connection of older communities with failing septic systems; for correction of CSO and SSO; and for correction of excessive infiltration and inflow throughout the State. Funds are targeted principally to two types of projects: (1) maintaining compliance at existing WWTPs; and (2) eliminating failing septic systems in older communities. Funds are directed principally to projects where local governments need a subsidy to undertake the needed water quality or public health project. This program is often used in conjunction with other sources of federal and State financial assistance to achieve project affordability. This program funds up to 87.5% of eligible costs for projects in small, lower-income jurisdictions, not to exceed \$1.5 million.
- ***Water Supply Financial Assistance Program:*** The General Assembly created the Water Supply Financial Assistance Program in 1982 to address the deteriorating condition of the State’s water supply infrastructure and the lack of adequate financing available to local governments to upgrade water supply systems. This program provides grants to assist small communities in the acquisition, construction, equipping, rehabilitation, and improvement of publicly owned water supply facilities. The State may provide up to 87.5% of total eligible project costs (not to exceed \$1.5 million per project) and a minimum 12.5% local match is required. In recent years, all assistance has been in the form of grants rather than loans. This

program is often used in conjunction with other sources of federal and State financial assistance (such as the DWRLF) to achieve project affordability.

- ***Hazardous Substance Clean-Up Program:*** The Hazardous Substance Clean-Up Program provides funds for cleaning up uncontrolled waste sites listed on the federal National Priorities List (Superfund) and other uncontrolled waste sites within the State that do not qualify for federal funding through the Superfund program. The State provides up to 100% of the costs of cleanup for the projects not included on the National Priorities List. At orphan sites, sites lacking a financially viable responsible party to pay for the cleanup, the State provides 100% of the cost of the preliminary site assessment. In all cases, the program seeks cost recovery when possible from the responsible parties. The program also provides the State's share (10%) of remediation costs for federal Superfund orphan sites with the remainder provided through the federal share (90%).
- ***Mining Remediation Program:*** Where there is no financially viable responsible party, the program provides funding for remediation of abandoned lands and waters impacted by inadequate coal mining reclamation practices prior to the passage of the federal Surface Mine Control and Reclamation Act of 1977. The program works through the Maryland Abandoned Mine Land Division. Projects include reclamation of surface mine high walls and pits, stabilization of landslides, restoration of stream banks to address flooding, extinguishing underground coal mine and coal refuse fires, stabilization of coal refuse piles, water supply replacement, stabilizing buildings and roads that are impacted by underground mine subsidence, and acid mine drainage treatment projects.
- ***Comprehensive Flood Management Program:*** The program provides grant funding to local governments for projects that reduce the risk of loss of life and property from flooding. Grant funds may be used to acquire flood-prone properties for demolition or relocation; install flood warning systems; and construct flood control projects, including engineering studies required to support the design of these projects. Capital projects that assist with flood management techniques may include but are not limited to flood control dams, levees and dikes, stormwater detention or retention structures, and flood proofing. Chapters 651 and 652 authorize MDE, under its existing Comprehensive Flood Management Grant Program, to award grants to subdivisions that have incurred at least \$1 million in infrastructure damage by a flood event that occurred on or after January 1, 2009. The grants may be for an amount up to 50% of the combined cost of infrastructure repairs, watershed restoration, and emergency work associated with a flood event that may be equal to a certain amount of the total money appropriated to the grant program in specified fiscal years. Chapters 651 and 652 require the Governor to appropriate at least \$3 million in the State budget in fiscal 2021 and 2022, and at least \$2 million in fiscal 2023.