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CHESAPEAKE BAY ACCOUNTABILITY AND RECOVERY ACT OF 2011

OCTOBER 14, 2011.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural Resources, submitted the following

R E P O R T

[To accompany H.R. 258]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 258) 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 2011".

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 2 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 restoration activities in the Chesapeake Bay watershed 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 2 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.

(e) INCLUSION OF PLAN IN ANNUAL ACTION PLAN AND ANNUAL PROGRESS REPORT.—The Administrator shall ensure that the Annual Action Plan and Annual Progress Report required by section 205 of Executive Order 13508 includes the adaptive management plan outlined in subsection (a).

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

(a) IN GENERAL.—There shall be an Independent Evaluator for restoration activities in the Chesapeake Bay watershed, 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 2 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. 258, as ordered reported, is to require the Office of Management and Budget to prepare a crosscut budget for restoration activities in the Chesapeake Bay watershed, and to require the Environmental Protection Agency to develop and implement an adaptive management plan.

BACKGROUND AND NEED FOR LEGISLATION

The Chesapeake Bay supports more than 3,600 species of fish, plants and wildlife, and as one of the largest estuaries in the world, it generates more than $1 billion in economic activity.

A number of federal agencies are involved in restoration activities in and around the Chesapeake Bay including the National Oceanic and Atmospheric Administration, the U.S. Fish and Wildlife Service, the Environmental Protection Agency (EPA), the National Park Service, the U.S. Geological Survey, the U.S. Department of Agriculture, and the U.S. Army Corps of Engineers. Because multiple federal and State agencies take part in various aspects of Chesapeake Bay restoration, coordination on projects and funding is not always apparent. In addition, while millions of tax dollars have been spent to improve the quality of the Bay, these funds are distributed among many agencies and departments. According to the Fiscal Year 2011 Action Plan, federal funding totals as much as $490 million in Fiscal Year 2011 alone. The many federal and State Chesapeake Bay restoration programs lack a single comprehensive reporting system for the funding of these activities. This legislation would bring transparency to federal funding of all restoration activities, and would institute measurable objectives to ensure that both federal and State dollars spent on restoration are producing positive results.

The primary components of H.R. 258 are: (1) a requirement that a cross-cut budget be submitted to Congress; (2) a requirement that EPA, in consultation with other federal and State agencies, develop an adaptive management plan for restoration activities; and (3) a requirement for the appointment of an independent evaluator to review restoration activities and to report to Congress.

While some of the objectives of H.R. 258 are included in Executive Order 13508 on Chesapeake Bay Protection and Restoration, issued in May 2009, progress has been slow, and EPA has not implemented the requirements of the Executive Order. In addition, H.R. 258 would codify the requirement for a cross-cut budget. While the Executive Order contains a similar budget requirement, Administration budget requests still do not provide adequate transparency, and the Executive Order does not require that the crosscut budget requests be submitted to Congress.

COMMITTEE ACTION

H.R. 258 was introduced on January 7, 2011, by Congressman Rob Wittman (R–VA). The bill was referred primarily to the Committee on Natural Resources, and within the Committee to the Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs. The bill was also referred to the Committee on Transportation and Infrastructure. On April 7, 2011, the Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs held a hearing on the bill. On

July 20, 2011, the Full Resources Committee met to consider the bill. The Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs was discharged by unanimous consent. Congressman Rob Wittman (R–VA) offered an amendment; the amendment was adopted by unanimous consent. The bill, as amended, was ordered favorably reported to the House of Representatives by unanimous consent.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The short title of the Act is the "Chesapeake Bay Accountability and Recovery Act of 2011."

Section 2. Chesapeake Bay crosscut budget

Section 2 requires the Director of the Office of Management and Budget, in consultation with the Chesapeake Bay Council, the chief executive of each of the Chesapeake Bay States and the Chesapeake Bay Commission, to submit a financial report to Congress, no later than 30 days after the President submits his annual budget request, which contains a crosscutting budget. This budget should display: the proposed funding for any federal restoration activity (equal or greater than $100,000) for each federal agency for the succeeding year; to the extent the information is available, an estimated funding for State restoration activities (equal or greater than $50,000) for the succeeding year; all federal restoration expenditures from the preceding two years, the current year and the succeeding year; and all expenditures for State restoration activities during the preceding two years, the current year and the succeeding year.

The Director is also required to submit to Congress a detailed accounting of all funds received and obligated by all federal agencies for restoration activities during the current and preceding years, including funds that were transferred to a Chesapeake Bay State for restoration activities.

The report must also contain, to the extent the 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 years.

The report must contain a description of each proposed federal and State restoration activity to be carried out in the succeeding year and include: a project description; the current status of the project; the federal, State statutory or regulatory authority, program or responsible agencies; authorization levels for appropriations; project time lines including benchmarks; references to project documents; descriptions of risks and uncertainties of project implementation; adaptive management actions or frameworks; coordinating entities; funding history; and alignment with the Chesapeake Bay Agreement and the Chesapeake Bay Executive Council goals and priorities.

Section 3. Adaptive management plan

Section 3 requires the EPA Administrator, in consultation with other federal and State agencies, to develop an adaptive management plan for the Chesapeake Bay Program and restoration activi-

ties that includes: definitions of specific and measurable objectives to improve water quality, habitat and fisheries; a process for stake holder involvement; monitoring, modeling, experimentation and other research and evaluation practices; a process for the modification of restoration activities that have not met objectives; and a process for prioritizing restoration activities to which adaptive management shall be applied.

This section also requires that the Administrator implement the adaptive management plan using the criteria cited above and requires the Administrator to update the adaptive management plan every two years.

Further, this section requires the Administrator to report to Congress, no later than 60 days after the end of each fiscal year, on the implementation of the adaptive management plan and any programmatic and project level changes implemented through the adaptive management plan.

Section 4. Independent evaluator for the Chesapeake Bay program

Section 4 requires that an Independent Evaluator be appointed by the EPA Administrator from among nominees submitted by the Chesapeake Bay Executive Council. The Independent Evaluator shall review and report on restoration activities, the use of adaptive management in restoration activities, and on other related topics suggested by the Chesapeake Bay Executive Council.

This section also requires the Independent Evaluator to submit a report to Congress every two years on the findings and recommendations.

Section 5. Definitions

Section 5 adds definitions of "adaptive management," "Administrator," "Chesapeake Bay State," "Chesapeake Bay watershed," "chief executive," "Director," and "restoration activities."

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.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) 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)(2)(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. 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:

H.R. 258—Chesapeake Bay Accountability and Recovery Act of 2011

H.R. 258 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 two 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 plan.

Based on information from EPA, CBO estimates that implementing this legislation would cost about $1 million annually over the 2012–2016 period, subject to the availability of appropriated funds. Enacting the bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures do not apply.

H.R. 258 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.

2. Section 308(a) of 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 credit authority, or an increase or decrease in revenues or tax expenditures. Based on information from the Environmental Protection Agency, CBO estimates that implementing this legislation would cost about $1 million annually over the 2012–2016 period, subject to the availability of appropriated funds. Enacting the bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures do not apply.

3. General Performance Goals and Objectives. This bill does not authorize funding and therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

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.

U.S. House of Representatives
Committee on Transportation and Infrastructure

John L. Mica
Chairman

James W. Coon II, Chief of Staff

Washington, DC 20515
September 27, 2011

Nick J. Rahall, II
Ranking Member

James H. Zoia, Democrat Chief of Staff

The Honorable Doc Hastings
Chairman
Committee on Natural Resources
1324 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I write concerning H.R. 258, the "Chesapeake Bay Accountability and Recovery Act of 2011."

As you know, the Committee on Transportation and Infrastructure also received a referral on H.R. 258 when the bill was introduced on January 7, 2011. In an effort to help expedite the passage of this important legislation, the Committee on Transportation and Infrastructure will forgo Committee action on the bill.

The Committee on Transportation and Infrastructure takes this action with our mutual understanding that by foregoing consideration of H.R. 258 at this time, we do not waive any jurisdiction over subject matter contained in this or similar legislation, and that our Committee will be appropriately consulted and involved as the bill or similar legislation moves forward so that we may address any remaining issues in our jurisdiction. Our Committee also reserves the right to seek appointment of an appropriate number of conferees to any House-Senate conference involving this or similar legislation, and requests your support for any such request.

I would appreciate your response to this letter confirming this understanding with respect to H.R. 258, and would ask that a copy of our exchange of letters on this matter be included in the *Congressional Record* during floor consideration.

Sincerely,

John L. Mica
Chairman

cc: The Honorable John Boehner
The Honorable Eric Cantor
The Honorable Kevin McCarthy
The Honorable Nancy Pelosi
The Honorable Steny Hoyer
The Honorable Nick J. Rahall, II
The Honorable Edward J. Markey
Mr. John Sullivan, Parliamentarian

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DEMOCRATIC STAFF DIRECTOR

September 28, 2011

The Honorable John Mica
Chairman
Committee on Transportation and Infrastructure
2165 Rayburn HOB
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter regarding H.R. 258, the Chesapeake Bay Accountability and Recovery Act of 2011. As you know, the Committee on Natural Resources ordered reported the bill by unanimous consent on July 20, 2011. I recognize and appreciate your desire to bring this legislation before the House of Representatives, and accordingly, understand that the Committee on Transportation and Infrastructure will forego action on the bill.

The Committee on Natural Resources concurs with the mutual understanding that by foregoing consideration of H.R. 258 at this time, the Committee on Transportation and Infrastructure does not waive any jurisdiction over the subject matter contained in this or similar legislation. In addition, should a conference on the bill be necessary, I would support your request to have the Committee on Transportation and Infrastructure represented on the conference committee. Finally, I would be pleased to include your letter and this response in the bill report filed by the Committee on Natural Resources, as well as the Congressional Record during floor consideration, to memorialize our understanding.

Thank you for your consideration.

Sincerely,

Doc Hastings
Chairman