

AGENDA NOTE - HRPDC EXECUTIVE COMMITTEE MEETING

ITEM #7: FEDERAL CLEAN WATER LEGISLATION - REAUTHORIZATION OF THE CHESAPEAKE BAY PROGRAM

SUBJECT:

On October 20, 2009, two nearly identical bills, called the Chesapeake Clean Water and Ecosystem Restoration Act of 2009 were introduced in the U.S. Senate and House of Representatives. These two bills seek to amend the federal Clean Water Act to ensure that the six states of the Bay watershed and the District of Columbia develop and implement detailed plans to reduce pollution sufficiently to achieve the Bay-wide pollution reduction targets for nitrogen, phosphorus, and sediment by 2025.

BACKGROUND:

The proposed bills will: 1) codify the Bay-wide Total Maximum Daily Load (TMDL) for nitrogen, phosphorus, and sediment that the Environmental Protection Agency (EPA) will develop by December 31, 2010; 2) give the federal government authority to compel the states to reduce nitrogen, phosphorus, and sediment loads to meet the TMDL allocations; 3) authorize citizens to bring civil actions against the states and EPA for failure to act.

A recent draft of the Cardin Bill addressed some of the region's concerns, but important issues remain. The HRPDC staff also understands that another bill has now been introduced by several Virginia Congressmen that would make agricultural compliance with the Bay TMDL voluntary.

The Regional Stormwater Management Committee agrees that a timeline for implementation and adequate funding are necessary for a Bay clean up to be successful. The Committee is concerned that the proposed legislation sets unrealistic goals and provides inadequate funding

HRPDC Deputy Executive Director John Carlock will brief the Commission on the recommended letter.

RECOMMENDED ACTION:

Authorize the Chairman to sign the attached letter detailing concerns regarding the impacts of this legislation on local governments in Hampton Roads to the Hampton Roads Congressional Delegation.

STAFF COMMENTARY:

At the January 20, 2010 Quarterly Commission Meeting, the HRPDC authorized the Chairman to send a letter to the Hampton Roads Congressional Delegation expressing the concerns of the HRPDC. A letter was to be developed by the HRPDC staff in cooperation with the Regional Stormwater Management Committee and then reviewed by the HRPDC Ad Hoc Stormwater Committee prior to transmittal. Those steps have been completed. Based on recent changes to the draft legislation, the HRPDC staff is bringing the letter back to the Commission for consideration.

Attachment 7



May 19, 2010

FORM Letter

VA Senators and Congressional Representatives

Dear

At its May 19, 2010 meeting, the Hampton Roads Planning District Commission (HRPDC) discussed proposed amendments to the Clean Water Act as embodied in the Chesapeake Clean Water and Ecosystem Restoration Act. Based on this discussion, the HRPDC would like to express its concerns about the impacts of the Bill. Senator Cardin and Representative Cummings of Maryland have introduced bills to reauthorize the Chesapeake Bay Program, S.1816 and H.R.3852. These two bills seek to amend the federal Clean Water Act to ensure that the six states of the Bay watershed and the District of Columbia develop and implement detailed plans to reduce pollution sufficiently to achieve the Bay wide pollution reduction targets for nitrogen, phosphorus, and sediment by 2025. The comments below refer to the March 2010 version of the Senate Bill.

The HRPDC agrees that a timeline for implementation and adequate funding are necessary for a Bay clean up to be successful, but the Commission is concerned that this legislation sets unrealistic goals and provides inadequate funding. EPA has estimated that costs for stormwater retrofits to reduce nutrient and sediment loads from existing Municipal Separate Storm Sewer Systems (MS4s) will be \$7.9 billion per year. The proposed legislation only authorizes \$1.5 billion of funding for stormwater related projects. Significantly, it is only an authorization, not an actual appropriation of funds.

Other Significant concerns include:

The Frontloaded Implementation Requirement

(Section 117(j)(1)(A)(iv)(VIII)(aa); Page 47, Line 5)

Given the magnitude of the reductions required, a reasonable amount of time should be allotted to States to build capacity in terms of policymaking and appropriations. This challenge is particularly great given States' current budget predicaments. It may be unrealistic to expect that management measures sufficient for 60% of the effort would be in place by May 2017, only half way through the 15-year implementation period ending in 2025. This would set up the States and all affected parties for failure, trigger an EPA takeover of the state's National Pollutant Discharge Elimination System (NPDES) permitting program, and/or subject EPA and the States to citizen suits with associated civil penalties and responsibility for plaintiffs' attorney fees and costs.

May 19, 2010
Page 2

The Adequate State Funding Requirement

(Section 117(j)(1)(A)(iv)(VIII)(bb); Page 47, Line 13)

This provision requires that States have adequate funding to carry out the WIP. In the absence of federal funding, however, this is unlikely, especially in the near term, according to recent congressional testimony (2009) by the immediate past chair of the Principals Staff Committee, former Virginia Secretary of Natural Resources Preston Bryant.

The HRPDC appreciates the significant efforts that will be required to reach the water quality improvement goals currently being revised for the Chesapeake Bay. As the largest and most important estuary in North America, a renewed Chesapeake Bay is critical to the economic vitality and quality of life for all Virginians. On behalf of the Hampton Roads localities, the Hampton Roads Planning District Commission urges you to consider the consequences of approving legislation that will set Virginia up for failure. Realistic goals and adequate funding are essential to restoring habitat and water quality that can support abundant fish and shellfish populations, as well as fishable and swimmable waters.

Thank you for your consideration of this request.

Sincerely,

Bruce C. Goodson
Chairman