

A Coalition for an Affordable Bay Solution

SB 994 – Profile of Opposition Interest

While the Chesapeake Bay Foundation (CBF) has led the opposition to SB 994, it has recently been joined by other existing Chesapeake Bay stakeholder groups that continuously support and in many cases lobby for more funding to meet EPA and state clean water mandates.

SB 994 was written to support meeting these mandates at a fraction of current costs. The Coalition for an Affordable Bay Solution (CABS) believes therein lies the root of the opposition—the concern that SB 994 will reduce funding for specific existing programs. As inserted into and approved by the Senate Agriculture Committee, SB 994 provides that funding for existing programs cannot be used to fund SB 994. CABS did not oppose this amendment by the Committee. Thus, while SB 994 will significantly reduce costs for a large portion of the compliance mandate by enabling low cost public and private sector alternative solutions, existing programs will still be required to meet Chesapeake Bay compliance mandates. SB 994 would, however:

- Require a competitive bidding program be established to procure verified nutrient reductions at the lowest cost to taxpayers, including a scoring program that would value local benefits to Pennsylvania’s interior freshwater resources.
- Transfer project performance risk and financial accountability from the taxpayer under the present system to the credit generator. It would enable all sources –public or private---to voluntarily participate.
- Be in many ways similar to existing state procurement programs for purchasing office equipment or professional services, etc.
- Enable low cost solutions to provide a significant portion of the mandated reductions under EPA TMDL mandates. Existing solutions, sources, and programs would still have an active role in the overall compliance mandate strategy, but a low cost procurement tool would be available to support those programs.

In January, after extensive consultation with the existing stakeholder groups, the Pennsylvania Legislative Budget & Finance (LBFC) released a report stating that a competitive bidding program to meet the nutrient requirements under EPA’s Chesapeake Bay TMDL could

save Pennsylvania (tax and rate payers) up to \$1.5B *annually* by 2025. For perspective, that projected savings is 5% of the recently adopted 2014 Pennsylvania state budget.

Those in opposition to SB 994 lobby that a competitive bidding program will somehow result in mandated use of specific solutions and higher costs. There is no language in SB 994 that favors any specific solution or technology or any particular company. Indeed, SB 994 is a bill favoring a transparent bidding process to seek low cost solutions to an expensive problem.

The opposition states that existing modeled practices are already the low cost solution and Pennsylvania basically needs to “stay the course”. EPA recently reported that these existing proven modeled practices which Pennsylvania taxpayers have supported for years are significantly less efficient than claimed in the models. As a result, beginning in 2015, EPA will be requiring an uncertainty ratio projected to be 50% to account for the difference between modeled and verified reductions.

LBFC concluded that a competitive bidding program as outlined would significantly reduce costs. EPA projects that the existing proven practices do not deliver as advertised and are therefore significantly more expensive than previously stated. Both of these conclusions call for change in approach to meeting the nutrient compliance mandates.

SB 994 is simply a tool to reduce mandated compliance costs statewide. It imposes neither regulatory mandates nor funding requirements. While changes in established approaches are disruptive and require adaption, Pennsylvania’s taxpayers, freshwater resources, habitat and the Bay all require an affordable cost effective solution that can be implemented now to avoid the crushing costs of the existing “stay the course” approach. Stormwater legislation has been enacted and recent federal court jurisprudence affirming EPA’s authority to impose such compliance mandates combine to accelerate compliance spending. A continuation of the existing approach will result in the unnecessary expenditure of billions in tax and ratepayer funds while the Bay compliance mandates will still not be met.

In conclusion, as part its campaign to oppose and discredit SB 994, the CBF has released a series of misleading ‘fact’ sheets on an assortment of topics. In some cases, these CBF fact sheets have presented positions contrary to not only prior CBF positions but also positions contrary to the Chesapeake Bay Commission and the Pennsylvania Department of Environmental Protection. CABS has provided a series of fact check responses to the CBF fact sheets which are posted on the front page of the CABS website at <http://affordablebaysolutions.org/>.