# Department of Legislative Services

Maryland General Assembly
2019 Session

## FISCAL AND POLICY NOTE
**Third Reader - Revised**

House Bill 170 (Chair, Economic Matters Committee)(By Request - Departmental - Maryland Energy Administration)

Economic Matters Finance

---

**Jane E. Lawton Conservation Loan Program - Eligible Borrowers**

---

This departmental bill repeals a reference to the State Agency Loan Program (SALP) Fund and expands the definition of "borrower" under the Jane E. Lawton Conservation Loan Program (JELLP) to include a State agency. The bill also expands the purposes of JELLP to include reduction of greenhouse gas emissions and repeals specified language under JELLP due to a recent U.S. Supreme Court decision. **The bill takes effect June 1, 2019, and applies only prospectively.**

## Fiscal Summary

**State Effect:** The bill does not directly affect the overall amount appropriated for SALP and JELLP (expected to be consolidated under JELLP under this bill) each fiscal year. Special fund expenditures and revenues may increase, however, as a result of greater utilization of appropriated amounts and collection of additional application fees.

**Local Effect:** The bill does not directly affect local government finances.

**Small Business Effect:** The Maryland Energy Administration (MEA) has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services (DLS) concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

## Analysis

**Bill Summary:** The bill includes State agencies as eligible borrowers under JELLP but makes State agencies exempt from certain requirements applicable to other borrowers under JELLP. The requirements State agencies are exempt from are (1) that a borrower document that anticipated energy cost savings from the project, over a defined period, are greater than the total cost of the project; (2) that loans bear interest and be repayable from specified revenues and in accordance with a schedule that MEA sets; and (3) that a borrower provide assurances for the repayment of the loan. The bill also correspondingly clarifies the purposes of the program to include providing financial assistance in the form of *zero interest*, as well as low interest, loans.

The bill repeals a reference to the SALP Fund which allows for any interest income of the fund to be retained in the fund and not accrue to the general fund.

The bill repeals a provision under JELLP that currently makes projects in structures used primarily for religious or fraternal activities ineligible for loan funding.

**Current Law:** JELLP is established in statute for the purpose of providing financial assistance in the form of low-interest loans to nonprofit organizations, local jurisdictions, and eligible businesses for projects in order to (1) promote energy conservation; (2) reduce consumption of fossil fuels; (3) improve energy efficiency; and (4) enhance energy-related economic development and stability in the nonprofit, commercial, and industrial sectors. The statutory provisions governing the program establish a Jane E. Lawton Conservation Fund to support the program and address, among other things, (1) MEA's duties in administering the program; (2) borrower requirements; and (3) allowable uses of loan funding.

While the SALP Fund is referred to in statute to allow for interest income to be retained in the fund, SALP is not formally established in statute or in State regulations.

**Background:**

*JELLP and SALP*

JELLP supports energy efficiency and conservation projects for nonprofits, local government agencies, and businesses through low-interest rate (currently 2%) loans. SALP provides zero-interest loans with a 1% administrative fee to State agencies for energy conservation projects. The fiscal 2019 budget and the Governor's proposed fiscal 2020 budget each include $850,000 and $1.2 million for JELLP and SALP, respectively.

*Budget Committees' Request for Consideration of a Merger*

In the 2017 *Joint Chairmen's Report*, the budget committees requested that MEA, in conjunction with the Department of Budget and Management, review the potential for merging JELLP and SALP and report on legislation that would be required and any program changes that would be necessary to complete such a merger. The report indicated that since the creation of JELLP from the merger of prior programs, it had experienced difficulties in encumbering funds. SALP had been more successful in encumbering funds and, in fiscal 2017, received requests totaling more than its appropriation. Despite the high demand, the funds planned in the 2017 *Capital Improvement Program* for SALP were limited by the fund balance. (The Budget Reconciliation and Financing Act of 2017 (Chapter 23) authorized the transfer of $3 million from the Jane E. Lawton Conservation Fund to the State Agency Loan Program Fund.) The committees were interested in improving the efficiency of both programs by considering the options for merging the programs.

The DLS analysis of MEA's proposed fiscal 2019 capital budget, during the 2018 session, provides more detail on recent funding and energy savings activity under JELLP and SALP. The DLS analysis of MEA's proposed fiscal 2020 operating budget also discusses JELLP and SALP, and the proposed consolidation of the programs (pgs. 29-32).

*MEA's Response*

MEA's December 2017 report in response to the budget committees' request indicated that merging SALP and JELLP could provide benefits such as (1) increased flexibility in funding worthwhile capital projects around the State and (2) the centralization of energy loan annual budgeting and reporting activities for capital programs occurring within MEA. The report identified legislative changes to statutory language related to JELLP that would be needed in order to successfully merge the SALP and JELLP programs, including making State agencies eligible borrowers under JELLP. Necessary (nonlegislative) program changes and considerations related to loan program funding sources are also discussed in the report.

*Structures Used Primarily for Religious or Fraternal Activities*

In MEA's December 2017 report, the agency also identified a need to repeal the statutory language that makes projects in structures used primarily for religious or fraternal activities ineligible for loan funding under JELLP, because of the U.S. Supreme Court decision *Trinity Lutheran Church of Columbia, Inc. v. Comer*, No. 15-577 (June 26, 2017). The court, in that case, held that a government policy categorically disqualifying churches and other religious organizations from receiving funding under a government grant program violated the rights of the Trinity Lutheran Church under the Free Exercise Clause of the First Amendment.

**State Fiscal Effect:** Assuming the appropriations for SALP and JELLP are combined into a single appropriation for JELLP (with State agencies included as eligible borrowers under JELLP, pursuant to this bill) going forward, there may be greater utilization of the overall appropriated amount since the full amount will be available to all four categories of borrowers (State agencies, nonprofit organizations, local jurisdictions, and eligible businesses). In addition, repealing the provision under JELLP that currently makes projects in structures used primarily for religious or fraternal activities ineligible for loan funding may add to the demand for funding and allow for greater utilization of appropriated funding.

Greater utilization of appropriated funding results both in increased special fund expenditures to disburse the loan funding and increased special fund revenues in future years from repayment of the loan funding. Special fund revenues may also increase minimally due to application fees from any applications for funding of projects in structures used primarily for religious or fraternal activities.

---

## Additional Information

**Prior Introductions:** SB 26 of 2018, a similar bill, passed in the Senate but received an unfavorable report from the House Economic Matters Committee.

**Cross File:** None.

**Information Source(s):** Maryland Energy Administration; Maryland State Department of Education; Baltimore City Community College; University System of Maryland; Morgan State University; St. Mary's College of Maryland; Department of Budget and Management; Maryland Department of the Environment; Department of General Services; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Department of Legislative Services

**Fiscal Note History:** First Reader - February 5, 2019
an/lgc Third Reader - March 19, 2019
Revised - Amendment(s) - March 19, 2019
Revised - Updated Information - March 19, 2019

---

Analysis by: Scott D. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

**ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES**

**TITLE OF BILL:** The Jane E. Lawton Conservation Loan Program - Expansion of Eligible Borrowers Act

**BILL NUMBER:** HB 170

**PREPARED BY:** Tyler Butler, Policy Manager

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

_X_ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

**OR**

___ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS