Maryland Energy Administration – Capital

Capital Budget Summary

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

Program	2017 Approp.	2018 Approp.	2019 Request	2020 Estimate	2021 Estimate	2022 Estimate	2023 Estimate
Jane E. Lawton Conservation Loan Program	$1.500	$0.850	$0.850	$0.850	$0.850	$0.850	$0.850
State Agency Loan Program	3.200	1.700	1.200	1.200	1.200	1.200	1.200
Total	**$4.700**	**$2.550**	**$2.050**	**$2.050**	**$2.050**	**$2.050**	**$2.050**

Fund Source	2017 Approp.	2018 Approp.	2019 Request	2020 Estimate	2021 Estimate	2022 Estimate	2023 Estimate
PAYGO SF	$3.700	$2.550	$2.050	$2.050	$2.050	$2.050	$2.050
PAYGO FF	1.000	0.000	0.000	0.000	0.000	0.000	0.000
Total	**$4.700**	**$2.550**	**$2.050**	**$2.050**	**$2.050**	**$2.050**	**$2.050**

FF: federal funds
PAYGO: pay-as-you-go
SF: special funds

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Summary of Issues

Potential for Merging the Jane E. Lawton Loan Program and the State Agency Loan Program: The Maryland Energy Administration (MEA) has experienced difficulties in encumbering funds in the Jane E. Lawton Conservation Loan Program (JELLP), since its inception. In fiscal 2017, the program encumbered less than $100,000 of its $1.5 million appropriation. MEA has been more successful encumbering funds in the State Agency Loan Program (SALP) and, at times, has more funding requests than the appropriation or available fund balance could support. MEA was asked to review the potential for merging the two programs to increase the flexibility and efficiency of the use of the funds. SB 26 (a departmental bill) proposes to make the statutory changes needed to merge the programs by allowing the JELLP to be used for State agencies.

Summary of Recommended PAYGO Actions

1. Concur with Governor’s allowance for the Jane E. Lawton Conservation Loan Program.

2. Concur with Governor’s allowance for the State Agency Loan Program.

Program Description

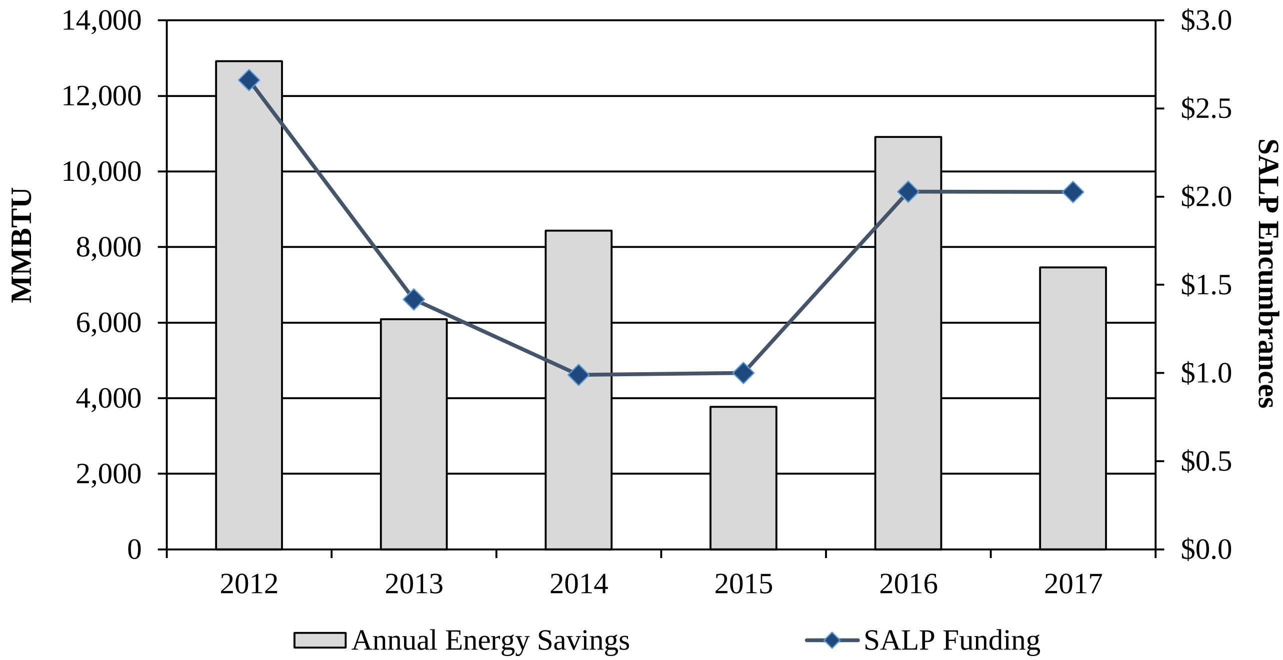
MEA administers two revolving loan programs. Chapters 466 and 467 of 2008 created the JELLP, which consolidated two formerly separate programs (the Community Energy Loan Program and the Energy Efficiency and Economic Development Program). The JELLP supports energy efficiency and conservation projects for nonprofits, local government agencies, and businesses through low interest rate loans or credit enhancements. Though, to date, no credit enhancements have been provided. Interest rates for loans are negotiated individually with borrowers. In fiscal 2019, the average interest rate is expected to be about 2%. The second loan program, the SALP, provides zero-interest loans with a 1% administrative fee to State agencies for energy conservation projects, primarily in partnership with energy performance contracts. MEA reports that by the end of fiscal 2016, energy performance contracts and the SALP helped State agencies to reduce energy consumption by 11.45% compared to a 2008 baseline.

These programs were initially capitalized with funds from the Energy Overcharge Restitution Fund; the JELLP received these funds in 1989 and 1990 and the SALP in 1991 and 1997. Since that time, the programs have received additional capitalization from the Strategic Energy Investment Fund (SEIF) (both the JELLP and the SALP) and State Energy Program funds available from the American Recovery and Reinvestment Act of 2009 (ARRA) (SALP only). A portion of the capitalization in the JELLP from the SEIF was transferred to the General Fund in fiscal 2015.

Performance Measures and Outputs

Since fiscal 2008, the SALP has provided 34 loans totaling more than $17.0 million. These loans have generated estimated energy cost savings of $83.0 million. The trend of annual energy savings for the SALP typically, but not always, follows the trend of encumbrances, as shown in **Exhibit 1**. In recent years, there have been two exceptions, where the trend in encumbrances was not matched by the energy savings (fiscal 2014 and 2017). In fiscal 2014, annual energy savings increased despite a decline in encumbrances. In fiscal 2017, annual energy savings decreased by 31.6% despite encumbrances holding relatively level. These outliers typically occur when a project has unusually large savings. For example, MEA reports that, in fiscal 2016, SALP loans funded several lighting projects, which tend to have higher savings per dollar than other types of energy efficiency projects.

Exhibit 1
SALP Energy Savings versus Encumbrances
Fiscal 2012-2017
($ in Millions)



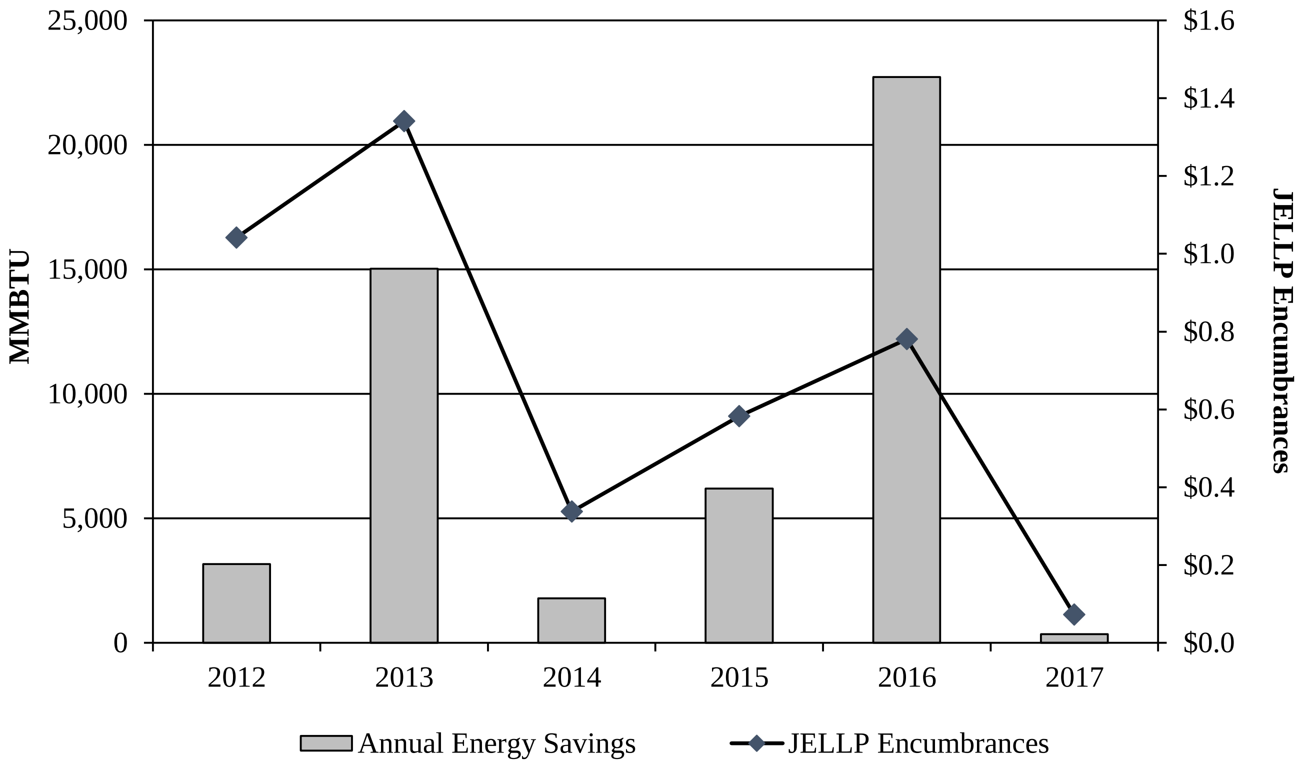
MMBTU: million British Thermal Units
SALP: State Agency Loan Program

Note: Fiscal 2017 savings figure does not match the published Managing for Results submission in the Governor's Budget Books. The Maryland Energy Administration explained that an error occurred in calculating the savings of fiscal 2017 projects. To the extent possible, encumbrances have been reduced based on canceled encumbrances. Fiscal 2013 encumbrances and savings do not account for loans paid that were completed in previous years.

Source: Maryland Energy Administration; Department of Budget and Management; Governor's Budget Books

In total, through fiscal 2017, the JELLP and its predecessor programs have made 81 loans totaling $22.6 million to 40 nonprofit organizations, 28 local governments, and 13 private businesses. These loans have generated an estimated $54.5 million in energy cost savings. As shown in **Exhibit 2**, in the JELLP, the change in annual energy savings typically tracks with the change in the level of annual encumbrances. However, the magnitude of the change can vary substantially. This occurs when a project has unusually large savings compared to the dollar value. For example, MEA indicated that 1 loan in fiscal 2016 included seven measures and was more extensive than is typical of the JELLP, resulting in an unusually high level of savings in that year. In fiscal 2017, both the annual energy savings and level of encumbrances were lower than at any prior point.

Exhibit 2
JELLP Energy Savings versus Encumbrances
Fiscal 2012-2017
($ in Millions)



JELLP: Jane E. Lawton Conservation Loan Program
MMBTU: million British Thermal Units

Note: To the extent possible, encumbrances have been reduced based on canceled encumbrances.

Source: Maryland Energy Administration

Budget Overview

MEA's fiscal 2019 pay-as-you go (PAYGO) allowance totals $2.05 million, a decrease of $500,000 compared to the fiscal 2018 working appropriation, but consistent with the funding level programmed in the 2017 *Capital Improvement Program* (CIP). In total, the fiscal 2019 allowance consists of $1.2 million for the SALP and $850,000 for the JELLP. The fiscal 2019 allowance, as does the fiscal 2018 working appropriation, contains only special funds from the respective revolving loan funds. The 2018 CIP level funds both programs through the planning period.

The fiscal 2019 allowance continues to fund both programs separately, and the 2018 CIP continues to treat the programs separately through the planning period. However, as discussed further in Issue 1, legislation has been introduced that would merge the programs.

Federal Funds in the SALP

The 2018 CIP includes no federal fund spending in the SALP through the planning period. MEA has indicated that it has had difficulty using the federal funds in the SALP because the funds carry a number of requirements that make them difficult to lend (such as Buy American, wage requirements, environmental reviews, and reporting requirements). The requirements continue to follow the funds as the loans are repaid and lent again. At the close of fiscal 2017, MEA had $886,174 in federal funds available in the SALP fund. However, because there is no plan to use these funds, the balance of federal funds is expected to grow as previously issued federal fund loans are repaid, to $1.6 million in fiscal 2018 and $2.3 million in fiscal 2019. By fiscal 2023, the federal fund balance in the SALP is expected to total $5.5 million. Even with the proposed merger, MEA cautioned that the federal funds in the SALP must be maintained separately because the use of these funds for the program was approved by the U.S. Department of Energy specifically for State agency projects.

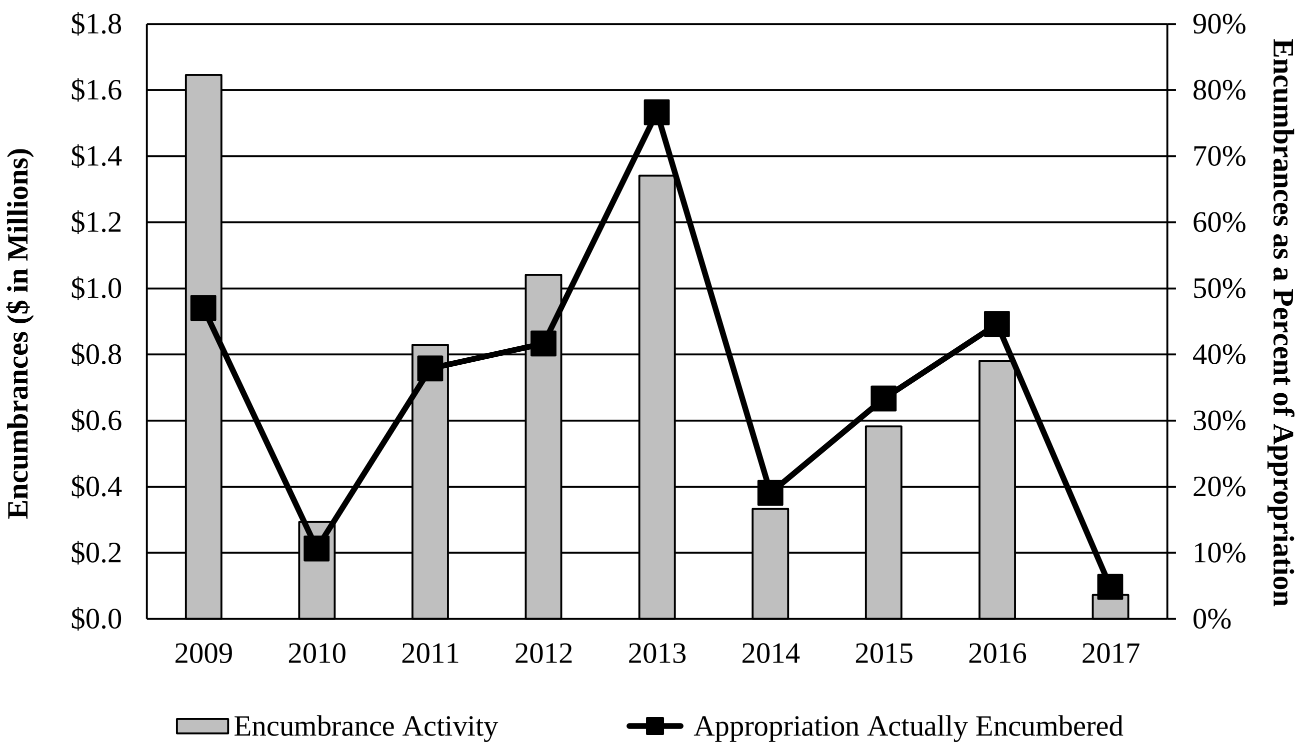
In fiscal 2017, MEA planned to replace most of the ARRA capitalization with special funds from the SEIF. The federal funds would have then been used for grants for energy efficiency projects for State agencies. Declining revenue from the Regional Greenhouse Gas Initiative carbon dioxide emission allowance auctions, the primary funding source for the SEIF, led to the cancellation of this planned fund swap. However, without the fund swap, MEA has no immediate plans to use these funds. MEA indicates that it is still considering options for removing the federal ARRA funds from the SALP. **MEA should comment on when it plans on addressing the federal fund issue in the SALP so that the federal funds do not remain unused indefinitely.**

Issues

1. Potential for Merging the Jane E. Lawton Loan Program and the State Agency Loan Program

Since the program's creation, MEA has had difficulty encumbering funds in the JELLP to the level of its appropriation. As shown in **Exhibit 3**, in fiscal 2009, the JELLP's most successful year in terms of the dollar amount of encumbrances, MEA encumbered a total of $1.6 million. Only in fiscal 2013 was MEA able to encumber more than 50% of its appropriation after accounting for cancellations. In fiscal 2017, MEA encumbered less than 5.0% of the JELLP appropriation. This low level of encumbrances occurred even with a decrease in the appropriation compared to prior years.

Exhibit 3
Jane E. Lawton Conservation Loan Program Encumbrances
Fiscal 2009-2017
($ in Millions)



Note: Encumbrance levels account for any cancellations of encumbrances to the extent possible.

Source: Maryland Energy Administration; Governor's Budget Books; Department of Legislative Services

The JELLP has maintained a high fund balance in recent years, largely due to the failure to encumber funds at the level of appropriation. At the close of fiscal 2016, the JELLP fund balance was $4.3 million, as shown in **Exhibit 4**. The Budget Reconciliation and Financing Act (BRFA) of 2017 transferred $3.0 million of the JELLP fund balance to the SALP. Even with the transfer, the fiscal 2017 closing balance of JELLP was approximately $2.1 million. Given the encumbrance history, the full balance is unlikely to be necessary to support the program.

MEA has been more successful in encumbering funds for the SALP during the same time period. MEA has encumbered more than 50% of the SALP appropriation in every year since fiscal 2009 and more than 80% in four years. Despite relatively high demand for the program, out-year funding plans for the program have been limited by the fund balance. The transfer of funds from the JELLP due to the BRFA of 2017 improved the special fund outlook temporarily. During the 2017 session, the balance was expected to be less than $500,000 at the close of fiscal 2017. However, as shown in **Exhibit 5**, the fiscal 2017 closing fund balance was $4.1 million. A constrained spending plan remains necessary to ensure a sufficient balance remains for the program through the planning period.

Exhibit 4
Jane E. Lawton Loan Program Fund Balance History
Fiscal 2016-2023

	2016 Actual	2017 Actual	2018 Estimated	2019 Estimated	2020 Estimated	2021 Estimated	2022 Estimated	2023 Estimated
Beginning Balance	**$4,107,286**	**$4,307,509**	**$2,084,414**	**$2,102,648**	**$2,092,635**	**$2,171,966**	**$2,253,783**	**$2,161,242**
Revenue								
General Funds	$0	$0	$0	$0	$0	$0	$0	$0
Loan Repayment	931,588	756,232	843,864	815,374	904,471	906,709	732,100	793,291
Investment Interest	52,863	74,002	24,370	24,613	24,860	25,108	25,359	25,613
Transfer In (Out) Other Funds	0	-3,000,000	0	0	0	0	0	0
Closing Fees Collected	0	0	0	0	0	0	0	0
Cancellation of Encumbrances	0	19,250	0	0	0	0	0	0
Total Revenue	**$984,451**	**-$2,150,516**	**$868,234**	**$839,987**	**$929,331**	**$931,817**	**$757,459**	**$818,904**
Total Available Funds	**$5,091,737**	**$2,156,993**	**$2,952,648**	**$2,942,635**	**$3,021,966**	**$3,103,783**	**$3,011,242**	**$2,980,146**
Expenditures and Encumbrances								
Loans	$784,228	$72,579	$850,000	$850,000	$850,000	$850,000	$850,000	$850,000
Ending Balance	**$4,307,509**	**$2,084,414**	**$2,102,648**	**$2,092,635**	**$2,171,966**	**$2,253,783**	**$2,161,242**	**$2,130,146**

Source: Maryland Energy Administration

Exhibit 5
State Agency Loan Program Special Fund Balance
Fiscal 2016-2023

	2016 Actual	2017 Actual	2018 Estimated	2019 Estimated	2020 Estimated	2021 Estimated	2022 Estimated	2023 Estimated
Beginning Special Fund Revenue	**$797,248**	**$856,832**	**$4,056,631**	**$3,294,828**	**$2,851,722**	**$2,504,121**	**$2,268,442**	**$2,163,595**
Revenue								
Special Fund Loan Repayment	$1,094,470	$1,089,231	$871,470	$689,500	$784,331	$895,572	$1,025,717	$1,146,917
Special Fund Interest	29,989	58,326	66,727	67,394	68,068	68,749	69,436	70,131
Special Fund Transfer in	0	3,000,000	0	0	0	0	0	0
Special Fund Cancellation of Encumbrances	0	252,242	0	0	0	0	0	0
Total Special Fund Revenue	**$1,124,459**	**$4,399,799**	**$938,197**	**$756,894**	**$852,399**	**$964,321**	**$1,095,153**	**$1,217,048**
Total Special Funds Available	**$1,921,707**	**$5,256,631**	**$4,994,828**	**$4,051,722**	**$3,704,121**	**$3,468,442**	**$3,363,595**	**$3,380,643**
Expenditures and Encumbrances								
Special Fund Loans	$1,064,875	$1,200,000	$1,700,000	$1,200,000	$1,200,000	$1,200,000	$1,200,000	$1,200,000
Special Fund Ending Balance	**$856,832**	**$4,056,631**	**$3,294,828**	**$2,851,722**	**$2,504,121**	**$2,268,442**	**$2,163,595**	**$2,180,643**

Source: Maryland Energy Administration

Potential Program Merger

Due to the high balance but low demand in the JELLP and low balance but high demand in the SALP, MEA was asked to examine the potential for merging the JELLP and the SALP to improve the flexibility and efficiency of the funds. Committee narrative in the 2017 *Joint Chairmen's Report* requested MEA, in conjunction with the Department of Budget and Management, to review the potential for merging the programs and report on legislation that would be required and any program changes that would be necessary to complete such a merger.

Legislation

MEA described several changes that would be necessary in statute to complete a merger. Currently, only the JELLP is established in statute. MEA explained that the JELLP statute would need to be amended to expand the eligible borrower categories in the JELLP to include State agencies. MEA also noted that the statute would need to clarify who within the State agency would have the authority to approve the application. MEA also explained that legislation would need to authorize the agency to offer different interest rates and lending terms to different categories of borrowers. State agency loans are offered with no interest while the JELLP loans offered to other borrowers carry interest. MEA also states legislation should remove any statutory references to the SALP.

Although unrelated, MEA indicates that the JELLP statute needs to be amended to eliminate a section of the statute related to a recent Supreme Court decision. MEA, in consultation with the Office of the Attorney General, believes a subparagraph in the JELLP statute that prohibits funding for projects that would be installed in a structure used primarily for religious or fraternal activities must be eliminated due to *Trinity Lutheran Church of Columbia, Inc. v. Comer, Director, Missouri, Department of Natural Resources*, No. 15-577 (2017). The case centered on funding available in Missouri's Scrap Tire Program that was denied to Trinity Lutheran, not because it was not eligible for the program but because that state's constitution prohibits providing state funding to religious entities and, therefore, it could not provide funds to a church. The Supreme Court decision held that prohibiting funding to Trinity Lutheran solely because it was a church violated the rights of Trinity Lutheran under the Free Exercise Clause of the First Amendment because it denied an otherwise available public benefit on account of its religious status.

SB 26 (departmental legislation) proposes to make necessary statutory changes, primarily to the existing JELLP statute, to institute a merger of the programs. The legislation would:

- remove the SALP fund from those funds exempt from having interest transferred to the General Fund (the only existing statutory reference to the SALP);

- add a definition of a State agency;

- add State agencies to the list of eligible borrowers in the JELLP and include State agencies as potential program beneficiaries;

- add a clarification that the head of the State agency must sign an application for a loan;

- add an exemption for State agencies for documenting that anticipated energy savings are greater than the cost of the project and certain provisions related to the repayment and interest on loans; and

- remove from the definition of a project the specification that a project does not mean improvements or modifications for energy conservation or renewable energy generation in structures used primarily for religious or fraternal activities.

SB 26 passed the Senate on third reading on January 18, 2018. As of this writing, the legislation is awaiting action in the House of Delegates.

Other Changes

MEA also noted a few nonstatutory changes that would be needed to merge the two programs. Current regulations specify that 20% of the JELLP's annual budget be reserved initially for nonprofit organizations. MEA suggests that the amount initially reserved for nonprofits should be altered to an amount equivalent to the funding currently reserved under the JELLP. In fiscal 2018, $170,000 was the amount initially reserved for this purpose.

In addition, MEA expects to develop a method for assuring private entities have a chance to apply for funding before that funding is used entirely by State agencies. Under the JELLP, private entities have additional underwriting criteria that State agencies will not be subject to, such as securing collateral. This underwriting process takes time. MEA expects that this issue can be addressed through regulations or guidelines. MEA also will need to conform regulations to the statutory changes. **MEA should comment on its plans for making this assurance to businesses while still maintaining the flexibility in funding for State agencies that the merger is intended to provide.**

MEA notes that some activities would still need to occur separately. For example, MEA explains that outreach would need to be completed separately because of the various target markets.

Operating Budget Impact Statement

Consolidated Administrative Expenses – All Programs

	FY 2017 Actual	FY 2018 Estimated	FY 2019 Estimated
Sources			
Special Funds			
Strategic Energy Investment Fund	$26,125	$25,000	$25,000
Subtotal – Special Funds	***$26,125***	***$25,000***	***$25,000***
Total Funds	**$26,125**	**$25,000**	**$25,000**
Uses:			
Direct Expense	$0	$0	$0
Indirect Expenses (legal, marketing, asset management)	26,125	25,000	25,000
Total Direct and Indirect Expenses	**$26,125**	**$25,000**	**$25,000**

MEA no longer pays operating expenses related to either the JELLP or the SALP out of the revolving loan funds. The programs are managed by staff who also manage other programs or work on other activities. These programs are only part of the responsibilities of the positions. MEA does not separately identify the portion of the salaries associated with its PAYGO programs. Therefore, no direct salary expenses are identified by MEA for either program.

MEA does fund legal and technical support for the JELLP with funds from the SEIF, approximately $24,000 in fiscal 2019. MEA also indicates that a limited amount of funding in fiscal 2019 (approximately $1,000) is used for interagency agreements with the Department of General Services and the Department of Commerce to conduct underwriting activities associated with these loans.

PAYGO Recommended Actions

1. Concur with Governor's allowance to provide $850,000 in special funds for the Jane E. Lawton Conservation Loan Program.

2. Concur with Governor's allowance to provide $1.2 million in special funds for the State Agency Loan Program.

Proposed Use of Available Funds

SALP: MEA reports that as of January 30, 2018, two loan commitments have been made. In total, these projects would use $155,899, or 9.2% of the $1.7 million appropriation.

- Canal Place Preservation and Development Authority ($60,174); and

- University of Maryland Center for Environmental Science ($95,725).

JELLP: No loans have been executed through January 30, 2018, although the agency reports that it has discussed loans with some entities.

Fiscal 2019 Projects

Fiscal 2019 projects will be determined at a later date, as applications are received.