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By: **Senator Middleton**

Introduced and read first time: February 24, 2005

Assigned to: Rules

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A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Energy Administration - Energy Efficiency and Economic**  
3 **Development Loan Program**

4 FOR the purpose of establishing the Energy Efficiency and Economic Development  
5 Loan Program in the Maryland Energy Administration; establishing the  
6 purpose of the Program; establishing the duties of the Administration in relation  
7 to the Program; requiring a borrower to file a certain application to obtain a loan  
8 under the Program; requiring the application to contain certain information;  
9 providing for the authorized uses of the Fund; requiring each borrower to make  
10 a certain contribution to a certain project and to document certain cost savings;  
11 providing certain terms for loans made under the Program; requiring a borrower  
12 to provide certain assurance for the repayment of a loan made under the  
13 Program; establishing that loans may be made in conjunction with certain other  
14 financial assistance; establishing the Energy Efficiency and Economic  
15 Development Loan Program Fund; requiring the Administration to administer  
16 the Fund; providing that the fund is a special, nonlapsing fund not subject to a  
17 certain law; requiring the Treasurer to hold the Fund and the Comptroller to  
18 account for the Fund; providing for the funding of the Fund; authorizing the  
19 Fund to be used for certain purposes; requiring the Fund to be invested in a  
20 certain manner; requiring the investment earnings from the Fund and the  
21 repayment of principal on loans made from the Fund to be paid to the Fund;  
22 authorizing the Administration to enter into certain contracts with certain  
23 parties; prohibiting a person from knowingly making or causing to be made  
24 certain false statements; establishing that a certain violation is a misdemeanor;  
25 establishing certain penalties; requiring money from the Energy Overcharge  
26 Restitution Fund to be expended for certain energy efficiency and economic  
27 development loans; defining certain terms; and generally relating to the Energy  
28 Efficiency and Economic Development Loan Program.

29 BY repealing and reenacting, with amendments,  
30 Article - State Finance and Procurement  
31 Section 7-315  
32 Annotated Code of Maryland  
33 (2001 Replacement Volume and 2004 Supplement)

1 BY adding to  
2 Article - State Government  
3 Section 9-20A-01 through 9-20A-09, inclusive, to be under the new subtitle  
4 "Subtitle 20A. Energy Efficiency and Economic Development Loan  
5 Program"  
6 Annotated Code of Maryland  
7 (2004 Replacement Volume)

8 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
9 MARYLAND, That the Laws of Maryland read as follows:

10 **Article - State Finance and Procurement**

11 7-315.

12 (a) There is an Energy Overcharge Restitution Fund.

13 (b) (1) The Fund is a continuing, nonlapsing fund that is not subject to the  
14 provisions of § 7-302 of this subtitle.

15 (2) There shall be credited to the Fund:

16 (i) all federal fund revenues consisting of refunds received by the  
17 State from any source as a direct or indirect result of litigation or administrative  
18 proceedings prosecuted by the U.S. Department of Energy to redress violations of  
19 federal petroleum pricing regulations under the Emergency Petroleum Allocation Act,  
20 15 U.S.C. §§ 751 through 756, and the Energy Policy and Conservation Act, 15 U.S.C.  
21 §§ 757 through 760H; and

22 (ii) all special fund revenues received and accepted as a gift under §  
23 2-201 of this article that are expressly given for the purpose of energy assistance or  
24 weatherization for individuals in this State.

25 (3) Revenues received by the State as a result of claims representing  
26 purchases by the State are excluded from the Fund.

27 (c) The Treasurer shall:

28 (1) invest and reinvest the Fund in the same manner as other State  
29 funds; and

30 (2) credit any investment earnings to the Fund.

31 (d) Expenditures from the Fund shall be made by:

32 (1) an appropriation in the annual State budget; or

1 (2) a budget amendment in accordance with § 7-209 of this title,  
2 provided that any budget amendment shall be submitted to and approved by the  
3 Legislative Policy Committee prior to the expenditure or obligation of funds.

4 (e) In accordance with the provisions of subsection (f) of this section, the  
5 Director of the Maryland Energy Administration or the designee of the Director shall:

6 (1) administer the Fund;

7 (2) develop plans, prepare and submit proposals to the Governor for  
8 Fund use, and undertake any action that is necessary to obtain for the Fund all  
9 energy overcharge refunds and judgment awards to which the citizens of the State  
10 have a legal entitlement;

11 (3) assess and determine the respective needs of the citizens of the State  
12 and develop recommendations for the allocation and disbursement of funds in  
13 accordance with those needs pursuant to the provisions of subsection (f) of this  
14 section;

15 (4) conduct public hearings at least twice a year at times and places the  
16 Director or the designee of the Director determines; and

17 (5) perform other duties as may be assigned by the Governor.

18 (f) (1) The Fund shall be expended subject to any restrictions on its use or  
19 other limitations on its allocation that are:

20 (i) expressly provided by statute; or

21 (ii) required as a condition of the acceptance of funds.

22 (2) The Fund shall be expended:

23 (i) for emergency energy assistance provided under Article 41, §  
24 6-406(1) of the Code;

25 (ii) for energy assistance programs provided under Article 41, §  
26 6-406(2) of the Code;

27 (iii) for energy assistance and weatherization programs provided  
28 under Article 83B, § 4-202, and Title 9, Subtitle 20 of the State Government Article;

29 (iv) for energy extension service and low income home energy  
30 programs provided under 42 U.S.C. §§ 7001 through 7011 and 8621 through 8629;

31 (v) for other energy assistance or weatherization programs meeting  
32 the federal restitutive objectives governing the distribution of overcharge refunds to  
33 the states;

34 (vi) for any other program within the definition of "energy  
35 conservation programs" as provided by Pub. L. No. 97-377, 96 Stat. 1830, § 155 (1982)

1 and subsequent amendments, including the State Energy Efficiency Programs  
2 Improvement Act of 1990, Pub. Law No. 101-440;

3 (vii) FOR ENERGY EFFICIENCY AND ECONOMIC DEVELOPMENT  
4 LOANS PROVIDED UNDER TITLE 9, SUBTITLE 20A OF THE STATE GOVERNMENT  
5 ARTICLE;

6 (VIII) for community energy loans provided under Title 9, Subtitle 21  
7 of the State Government Article; or

8 [(viii)] (IX) for any other purpose required as a condition of their  
9 acceptance.

10 (3) In addition to the provisions of paragraph (2) of this subsection,  
11 priority shall be given to the energy assistance and weatherization programs.

12 (4) Disbursements from the Fund to programs funded by the State or  
13 with federal funds administered by the State shall be used solely to supplement, and  
14 not to supplant, funds otherwise available for such programs under federal or State  
15 law.

16 **Article - State Government**

17 **SUBTITLE 20A. ENERGY EFFICIENCY AND ECONOMIC DEVELOPMENT LOAN**  
18 **PROGRAM.**

19 9-20A-01.

20 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
21 INDICATED.

22 (B) "ADMINISTRATION" MEANS THE MARYLAND ENERGY ADMINISTRATION.

23 (C) "BORROWER" MEANS AN ELIGIBLE BUSINESS SELECTED TO RECEIVE A  
24 LOAN UNDER THIS PROGRAM.

25 (D) "ELIGIBLE BUSINESS" MEANS A COMMERCIAL ENTERPRISE OR BUSINESS:

26 (1) THAT IS INCORPORATED IN THE STATE; OR

27 (2) WHOSE PRINCIPAL OWNERS ARE STATE RESIDENTS AND THE  
28 BUSINESS OF WHICH IS PRINCIPALLY CARRIED OUT IN THE STATE.

29 (E) "ENERGY COST SAVINGS" MEANS THE ACTUAL REDUCTION IN OPERATING  
30 EXPENSES RESULTING FROM THE IMPROVED ENERGY EFFICIENCY GENERATED BY  
31 AN ENERGY CONSERVATION PROJECT FINANCED UNDER THE PROGRAM.

32 (F) "FUND" MEANS THE ENERGY EFFICIENCY AND ECONOMIC DEVELOPMENT  
33 LOAN PROGRAM FUND.

1 (G) "PROGRAM" MEANS THE ENERGY EFFICIENCY AND ECONOMIC  
2 DEVELOPMENT LOAN PROGRAM.

3 (H) (1) "PROJECT" MEANS ONE OR MORE IMPROVEMENTS OR  
4 MODIFICATIONS THAT ENHANCE THE ENERGY EFFICIENCY AND REDUCE THE  
5 OPERATING EXPENSES OF A STRUCTURE.

6 (2) "PROJECT" INCLUDES START UP OPPORTUNITIES FOR NEW  
7 BUSINESSES IF THE LOAN WOULD ENHANCE THE ENERGY EFFICIENCY OF THE  
8 BORROWER'S BUSINESS.

9 (3) "PROJECT" DOES NOT INCLUDE IMPROVEMENTS OR MODIFICATIONS  
10 FOR ENERGY CONSERVATION IN STRUCTURES USED PRIMARILY FOR RELIGIOUS OR  
11 FRATERNAL ACTIVITIES.

12 9-20A-02.

13 THERE IS AN ENERGY EFFICIENCY AND ECONOMIC DEVELOPMENT LOAN  
14 PROGRAM IN THE MARYLAND ENERGY ADMINISTRATION.

15 9-20A-03.

16 THE PURPOSE OF THE PROGRAM IS TO PROVIDE FINANCIAL ASSISTANCE IN  
17 THE FORM OF LOW INTEREST LOANS TO SELECTED MARYLAND BUSINESSES TO  
18 PROMOTE:

19 (1) ENERGY CONSERVATION;

20 (2) ENERGY EFFICIENCY;

21 (3) ENERGY RELATED ECONOMIC DEVELOPMENT; AND

22 (4) STABILITY IN BUSINESS, COMMERCIAL, AND INDUSTRIAL SECTORS.

23 9-20A-04.

24 THE ADMINISTRATION SHALL:

25 (1) MANAGE, SUPERVISE, AND ADMINISTER THE PROGRAM;

26 (2) ADOPT REGULATIONS TO ENSURE THAT LOANS ARE PROVIDED ONLY  
27 TO PROJECTS THAT CARRY OUT THE PURPOSE OF THE PROGRAM;

28 (3) ATTACH SPECIFIC TERMS TO ANY LOAN THAT ARE CONSIDERED  
29 NECESSARY TO ENSURE THAT THE PURPOSE OF THE PROGRAM IS FULFILLED; AND

30 (4) DEVELOP PROCEDURES FOR MONITORING PROJECTS TO ASSESS  
31 WHETHER THE IMPROVEMENTS OR MODIFICATIONS MADE BY AN ELIGIBLE  
32 BUSINESS HAVE RESULTED IN A MEASURABLE REDUCTION IN ENERGY  
33 CONSUMPTION.

1 9-20A-05.

2 (A) (1) TO RECEIVE A LOAN UNDER THE PROGRAM A BORROWER MUST FILE  
3 AN APPLICATION WITH THE ADMINISTRATION.

4 (2) IF THE BORROWER IS A CORPORATION, THE APPLICATION MUST BE  
5 SIGNED BY THE CHIEF OPERATING OFFICER OR AN AUTHORIZED COMPANY  
6 OFFICIAL.

7 (B) THE APPLICATION SHALL CONTAIN ANY INFORMATION THE  
8 ADMINISTRATION DETERMINES IS NECESSARY, INCLUDING:

9 (1) THE PROJECTED COST TO ACCOMPLISH OR INSTALL A PROPOSED  
10 PROJECT;

11 (2) THE AMOUNT OF ENERGY A PROPOSED PROJECT IS EXPECTED TO  
12 SAVE OVER A DEFINED PERIOD OF TIME AFTER COMPLETION OF THE PROJECT;

13 (3) THE AMOUNT OF ENERGY COST SAVINGS EXPECTED TO BE  
14 GENERATED OVER A DEFINED PERIOD OF TIME AFTER COMPLETION OF THE  
15 PROJECT; AND

16 (4) A DESCRIPTION OF THE BORROWER'S CONTRIBUTION TO A  
17 PROPOSED PROJECT AS REQUIRED BY § 9-20A-06 OF THIS SUBTITLE.

18 9-20A-06.

19 (A) LOANS FROM THE FUND MAY BE USED FOR:

20 (1) THE COSTS OF IMPLEMENTING PROJECTS, INCLUDING THE COSTS  
21 OF ALL NECESSARY:

22 (I) TECHNICAL ASSESSMENTS;

23 (II) STUDIES;

24 (III) SURVEYS;

25 (IV) PLANS AND SPECIFICATIONS; AND

26 (V) START-UP, ARCHITECTURAL, ENGINEERING, OR OTHER  
27 SPECIAL SERVICES; AND

28 (2) THE COSTS OF CONSTRUCTION, REHABILITATION, OR  
29 MODIFICATION, INCLUDING THE PURCHASE AND INSTALLATION OF ANY NECESSARY  
30 MACHINERY, EQUIPMENT, OR FURNISHINGS.

31 (B) EACH BORROWER SHALL MAKE A CONTRIBUTION TO A PROJECT THAT IS  
32 OF A TYPE AND AMOUNT ACCEPTABLE TO THE ADMINISTRATION.

1 (C) THE BORROWER MUST DOCUMENT THAT THE ANTICIPATED ENERGY COST  
2 SAVINGS OVER A DEFINED PERIOD AFTER THE COMPLETION OF THE PROJECT ARE  
3 GREATER THAN THE COST OF THE PROJECT.

4 (D) LOANS MADE UNDER THE PROGRAM SHALL:

5 (1) BE REPAYABLE BY THE BORROWER FROM SPECIFIED REVENUES  
6 THAT MAY INCLUDE THE ENERGY COST SAVINGS GENERATED BY A PROJECT;

7 (2) BEAR INTEREST AT A RATE THAT THE ADMINISTRATION  
8 DETERMINES TO BE NECESSARY AND REASONABLE FOR THE PROJECT; AND

9 (3) BE REPAYABLE IN ACCORDANCE WITH A SCHEDULE THAT THE  
10 ADMINISTRATION SETS, WHICH MAY BE ON A DEFERRED PAYMENT BASIS.

11 (E) (1) A BORROWER SHALL PROVIDE ASSURANCES FOR THE REPAYMENT  
12 OF A LOAN.

13 (2) THE ASSURANCES:

14 (I) SHALL INCLUDE A PROMISSORY NOTE; AND

15 (II) MAY INCLUDE SUPERIOR OR SUBORDINATE MORTGAGE LIENS,  
16 GUARANTEES OF REPAYMENT, OR OTHER FORMS OF COLLATERAL.

17 (F) LOANS MAY BE MADE IN CONJUNCTION WITH, OR IN ADDITION TO,  
18 FINANCIAL ASSISTANCE PROVIDED THROUGH OTHER STATE OR FEDERAL  
19 PROGRAMS.

20 9-20A-07.

21 (A) THERE IS AN ENERGY EFFICIENCY AND ECONOMIC DEVELOPMENT LOAN  
22 PROGRAM FUND.

23 (B) THE ADMINISTRATION SHALL ADMINISTER THE FUND.

24 (C) (1) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT SUBJECT  
25 TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

26 (2) THE TREASURER SHALL HOLD THE FUND AND THE COMPTROLLER  
27 SHALL ACCOUNT FOR THE FUND.

28 (D) THE FUND CONSISTS OF:

29 (1) MONEY APPROPRIATED IN THE STATE BUDGET TO THE PROGRAM,  
30 INCLUDING MONEY APPROPRIATED TO THE ENERGY OVERCHARGE RESTITUTION  
31 FUND;

32 (2) MONEY RECEIVED FROM ANY PUBLIC OR PRIVATE SOURCE;

33 (3) INTEREST AND INVESTMENT EARNINGS ON THE FUND; AND

1 (4) REPAYMENTS AND PREPAYMENTS OF PRINCIPAL AND INTEREST ON  
2 LOANS MADE FROM THE FUND.

3 (E) THE FUND MAY BE USED ONLY:

4 (1) TO PAY THE EXPENSES OF THE PROGRAM; AND

5 (2) TO PROVIDE LOANS TO ELIGIBLE BORROWERS AND PROJECTS.

6 (F) (1) THE TREASURER SHALL INVEST THE MONEY OF THE FUND IN THE  
7 SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.

8 (2) ANY INVESTMENT EARNINGS OF THE FUND SHALL BE PAID INTO  
9 THE FUND.

10 (3) ANY REPAYMENT OF PRINCIPAL AND INTEREST ON LOANS MADE  
11 FROM THE FUND SHALL BE PAID INTO THE FUND.

12 9-20A-08.

13 THE ADMINISTRATION MAY ENTER INTO CONTRACTS WITH THIRD PARTIES TO  
14 MAKE, SERVICE, OR SETTLE LOANS MADE UNDER THIS SUBTITLE.

15 9-20A-09.

16 (A) A PERSON MAY NOT KNOWINGLY MAKE OR CAUSE TO BE MADE ANY FALSE  
17 STATEMENT OR REPORT IN ANY DOCUMENT REQUIRED TO BE FURNISHED TO THE  
18 ADMINISTRATION BY ANY AGREEMENT RELATING TO FINANCIAL ASSISTANCE.

19 (B) A PERSON APPLYING FOR FINANCIAL ASSISTANCE MAY NOT KNOWINGLY  
20 MAKE OR CAUSE TO BE MADE ANY FALSE STATEMENT FOR THE PURPOSE OF  
21 INFLUENCING ANY ACTION OF THE ADMINISTRATION ON AN APPLICATION FOR  
22 FINANCIAL ASSISTANCE OR FOR THE PURPOSE OF INFLUENCING ANY ACTION OF  
23 THE ADMINISTRATION AFFECTING FINANCIAL ASSISTANCE ALREADY PROVIDED.

24 (C) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR  
25 AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$50,000 OR  
26 IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
28 October 1, 2005.