

CHAPTER 467

(House Bill 1301)

AN ACT concerning

The Jane E. Lawton Loan Program

FOR the purpose of establishing the Jane E. Lawton Conservation Loan Program; establishing the Jane E. Lawton Conservation Fund to finance the Program; consolidating certain programs administered by the Maryland Energy Administration into the Program; consolidating certain funds into the Fund; providing for the management and composition of the Fund; providing the powers and duties of the Administration with respect to the Program; providing that entities seeking loans under the Program comply with certain application procedures; establishing the purposes for which loans made under the Program may be used; providing that borrowers that receive loans under the Program must document that the anticipated energy cost savings over a defined period after the completion of the project funded by the loan are greater than the cost of the project; providing for repayment of the loans; authorizing the Administration to enter into contracts with third parties to make, service, or sell loans under this Act; prohibiting false statements to be made in applications for loans and providing certain penalties for entities that violate the prohibition; defining certain terms; providing that certain assets, liabilities, and obligations of the programs subject to repeal by this Act shall remain the assets, liabilities, and obligations of the fund established by this Act; and generally relating to the Jane E. Lawton Conservation Loan Program and Conservation Fund.

BY repealing

Article – State Government

Section 9–20A–01 through 9–20A–09 and the subtitle “Subtitle 20A. Energy Efficiency and Economic Development Loan Program”; and 9–2101 through 9–2109 and the subtitle “Subtitle 21. Community Energy Loan Program”

Annotated Code of Maryland

(2004 Replacement Volume and 2007 Supplement)

BY adding to

Article – State Government

Section 9–20A–01 through 9–20A–09 to be under the new subtitle “Subtitle 20A. Jane E. Lawton Conservation Loan Program”

Annotated Code of Maryland

(2004 Replacement Volume and 2007 Supplement)

Preamble

WHEREAS, Given current rates of energy consumption, Maryland may face electricity shortages as early as 2011; and

WHEREAS, Consumption of energy, particularly energy created by fossil fuels, is directly linked to emission of harmful pollutants that create health risks and contribute to global warming; and

WHEREAS, Technology to reduce the consumption of energy and utilization of fossil fuels by State agencies, municipalities, and the private sector does exist, but implementing such technology requires significant capital expenditure; and

WHEREAS, The late Delegate Jane E. Lawton was a tireless advocate for protection of our environment and long supported energy efficiency and conservation measures; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 9-20A-01 through 9-20A-09 and the subtitle "Subtitle 20A. Energy Efficiency and Economic Development Loan Program"; and Section(s) 9-2101 through 9-2109 and the subtitle "Subtitle 21. Community Energy Loan Program" of Article - State Government of the Annotated Code of Maryland be repealed.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article - State Government

SUBTITLE 20A. THE JANE E. LAWTON CONSERVATION LOAN PROGRAM.

9-20A-01.

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

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

(C) "BORROWER" MEANS AN ELIGIBLE LOCAL JURISDICTION, NONPROFIT ORGANIZATION, OR ELIGIBLE BUSINESS THAT APPLIES AND QUALIFIES FOR A LOAN UNDER THIS PROGRAM.

(D) “ELIGIBLE BUSINESS” MEANS A COMMERCIAL ENTERPRISE OR BUSINESS:

(1) THAT IS INCORPORATED IN THE STATE; OR

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

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

(F) “FUND” MEANS THE JANE E. LAWTON CONSERVATION FUND.

(G) (1) “LOCAL JURISDICTION” MEANS ANY COUNTY OR MUNICIPALITY OF THE STATE.

(2) “LOCAL JURISDICTION” INCLUDES A BOARD OF EDUCATION OF A COUNTY OR MUNICIPALITY.

(H) “MUNICIPALITY” MEANS ANY MUNICIPAL CORPORATION IN THE STATE THAT IS SUBJECT TO THE PROVISIONS OF ARTICLE XI-E OF THE MARYLAND CONSTITUTION OR ANY DULY AUTHORIZED AGENCY OR INSTRUMENTALITY OF THE MUNICIPALITY.

(I) “NONPROFIT ORGANIZATION” MEANS A CORPORATION, FOUNDATION, SCHOOL, HOSPITAL, OR OTHER LEGAL ENTITY, NO PART OF THE NET EARNINGS OF WHICH INURE TO THE BENEFIT OF ANY PRIVATE SHAREHOLDER OR INDIVIDUAL HOLDING AN INTEREST IN THE ENTITY.

(J) “PROGRAM” MEANS THE JANE E. LAWTON CONSERVATION LOAN PROGRAM.

(K) (1) “PROJECT” MEANS ONE OR MORE IMPROVEMENTS OR MODIFICATIONS THAT ENHANCE THE ENERGY EFFICIENCY AND REDUCE THE OPERATING EXPENSES OF A STRUCTURE.

(2) “PROJECT” INCLUDES START-UP OPPORTUNITIES FOR NEW BUSINESSES IF THE LOAN WOULD ENHANCE THE ENERGY EFFICIENCY OF THE BORROWER’S BUSINESS.

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

9-20A-02.

THERE IS A JANE E. LAWTON CONSERVATION LOAN PROGRAM IN THE ADMINISTRATION.

9-20A-03.

THE PURPOSE OF THE PROGRAM IS TO PROVIDE 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 BUSINESS, COMMERCIAL, AND INDUSTRIAL SECTORS.**

9-20A-04.

THE ADMINISTRATION SHALL:

- (1) MANAGE, SUPERVISE, AND ADMINISTER THE PROGRAM;**
- (2) ADOPT REGULATIONS TO ENSURE THAT LOANS ARE PROVIDED ONLY TO PROJECTS THAT CARRY OUT THE PURPOSE OF THE PROGRAM;**
- (3) ATTACH SPECIFIC TERMS TO ANY LOAN THAT ARE CONSIDERED NECESSARY TO ENSURE THAT THE PURPOSE OF THE PROGRAM IS FULFILLED; AND**
- (4) DEVELOP PROCEDURES FOR MONITORING PROJECTS TO ASSESS WHETHER THE IMPROVEMENTS OR MODIFICATIONS MADE BY AN ELIGIBLE ENTITY OR BUSINESS THAT HAD RECEIVED A LOAN UNDER THE PROGRAM HAVE RESULTED IN A MEASURABLE REDUCTION IN ENERGY CONSUMPTION.**

9-20A-05.

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

(2) IF THE BORROWER IS AN ELIGIBLE BUSINESS, THE APPLICATION MUST BE SIGNED BY THE CHIEF OPERATING OFFICER OR AN AUTHORIZED OFFICER OF THE BUSINESS.

(3) IF THE BORROWER IS A LOCAL JURISDICTION, THE APPLICATION MUST BE SIGNED BY THE CHIEF ELECTED OFFICER OF THE COUNTY OR MUNICIPALITY, OR IF NONE, BY THE GOVERNING BODY OF THE COUNTY OR MUNICIPALITY IN WHICH THE PROJECT IS LOCATED.

(4) IF THE BORROWER IS A PUBLIC SCHOOL, THE APPLICATION MUST BE SIGNED BY THE BOARD OF EDUCATION OF THE COUNTY IN WHICH THE PROJECT IS LOCATED.

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

(1) THE PROJECTED COST TO ACCOMPLISH A PROPOSED PROJECT;

(2) IF APPLICABLE, THE AMOUNT OF ENERGY OR FUEL A PROPOSED PROJECT IS EXPECTED TO SAVE OVER A DEFINED PERIOD OF TIME AFTER COMPLETION OF THE PROJECT;

(3) THE ANTICIPATED ENVIRONMENTAL BENEFITS IN THE FORM OF REDUCED EMISSIONS OR POLLUTION ATTRIBUTABLE TO THE PROPOSED PROJECT;

(4) THE AMOUNT OF COST SAVINGS EXPECTED TO BE GENERATED OVER A DEFINED PERIOD OF TIME AFTER COMPLETION OF THE PROPOSED PROJECT;

(5) A DESCRIPTION OF THE BORROWER'S CONTRIBUTION TO A PROPOSED PROJECT AS REQUIRED BY § 9-20A-06 OF THIS SUBTITLE; AND

(6) ANY ADDITIONAL INFORMATION RELATING TO THE BORROWER OR THE PROPOSED PROJECT THAT MAY BE REQUIRED BY THE ADMINISTRATION IN ORDER TO ADMINISTER THE PROGRAM.

9-20A-06.

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

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

(I) TECHNICAL ASSESSMENTS;

(II) STUDIES;

(III) SURVEYS;

(IV) PLANS AND SPECIFICATIONS; AND

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

(2) THE COSTS OF PROCURING NECESSARY TECHNOLOGY, EQUIPMENT, LICENSES, OR MATERIALS; AND

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

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

(C) IF THE SOLE OR PRIMARY PURPOSE OF THE PROJECT IS TO REDUCE ENERGY CONSUMPTION, THE BORROWER MUST DOCUMENT THAT THE ANTICIPATED ENERGY COST SAVINGS OVER A DEFINED PERIOD AFTER THE COMPLETION OF THE PROJECT ARE GREATER THAN THE COST OF THE PROJECT.

(D) LOANS MADE UNDER THE PROGRAM SHALL:

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

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

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

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

(2) THE ASSURANCES:

(I) SHALL INCLUDE A PROMISSORY NOTE; AND

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

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

9-20A-07.

(A) THERE IS A JANE E. LAWTON CONSERVATION FUND.

(B) THE ADMINISTRATION SHALL ADMINISTER THE FUND.

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

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

(D) THE FUND CONSISTS OF:

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

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

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

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

(E) THE FUND MAY BE USED ONLY:

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

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

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

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

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

(G) (1) THE ADMINISTRATION SHALL ANNUALLY RESERVE A PORTION OF THE MONEY FROM THE FUND THAT IS AVAILABLE FOR FINANCIAL ASSISTANCE UNDER THE PROGRAM FOR LOANS TO NONPROFIT ORGANIZATIONS.

(2) IN A FISCAL YEAR IN WHICH REQUESTS FOR FINANCIAL ASSISTANCE FROM NONPROFIT ORGANIZATIONS ARE LESS THAN THE AMOUNT OF MONEY RESERVED UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE ADMINISTRATION MAY MAKE THE UNENCUMBERED OR NONCOMMITTED PORTION OF THE RESERVE AVAILABLE TO OTHER BORROWERS IN THE PROGRAM.

9-20A-08.

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

9-20A-09.

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

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

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

SECTION 3. AND BE IT FURTHER ENACTED, That:

(a) the assets, liabilities, and obligations of the Community Energy Loan Program and the Energy Efficiency and Economic Development Loan Program, as repealed by Section 1 of this Act, are continued as the assets, liabilities, and obligations of the Jane E. Lawton Conservation Loan Program enacted by Section 2 of this Act; and

(b) any loan transacted under the Community Energy Loan Program and the Energy Efficiency and Economic Development Loan Program, as repealed by Section 1 of this Act, that was made on or before the effective date of this Act shall remain valid after the effective date of this Act and may be terminated, completed, consummated, or enforced as required or allowed under the Jane E. Lawton Conservation Loan Program, as enacted by Section 2 this Act, as though the repeal had not occurred.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2008.

Approved by the Governor, May 13, 2008.