# Department of Legislative Services

Maryland General Assembly
2023 Session

## FISCAL AND POLICY NOTE
## First Reader

House Bill 310 (Delegate Rosenberg)

Environment and Transportation and
Economic Matters

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**Environment and Energy - Investment in Communities With Low- to Moderate-Income Households**

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This bill requires the Maryland Department of the Environment (MDE), by December 1, 2023, to develop policies and recommendations to require at least 40% of overall spending on specified programs, projects, and investments to benefit communities with low- to moderate-income households. State and local governmental units, in consultation with MDE, other specified State agencies, and the Commission on Environmental Justice and Sustainable Communities (CEJSC) must, to the extent practicable, invest or direct available and relevant programmatic resources in a manner designed to achieve the investment to benefit communities with low- and moderate-income households. In addition, federal funds appropriated for specified programs and agencies (most of which relate to water quality and water pollution remediation) must also be prioritized to provide funding to communities low- to moderate-income households. The bill also establishes related annual reporting requirements.

## Fiscal Summary

**State Effect:** General fund expenditures increase by $610,200 in FY 2024, and special fund expenditures increase by $154,800 in FY 2024. Future years reflect annualization, inflation, and ongoing costs. State expenditures (all/multiple fund types) may be affected beginning in FY 2025, and federal fund revenues may decrease beginning in FY 2025.

| (in dollars) | FY 2024 | FY 2025 | FY 2026 | FY 2027 | FY 2028 |
|---|---|---|---|---|---|
| FF Revenue | $0 | (-) | (-) | (-) | (-) |
| GF Expenditure | $610,200 | $732,700 | $764,900 | $798,600 | $840,300 |
| SF Expenditure | $154,800 | $184,400 | $192,600 | $201,100 | $211,700 |
| GF/SF Exp. | $0 | -/(-) | -/(-) | -/(-) | -/(-) |
| Net Effect | ($765,000) | (-) | (-) | (-) | (-) |

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** Local expenditures may be affected as a result of the bill's funding prioritization requirements. Local revenues may also be affected, but any such impact cannot be reliably estimated at this time.

**Small Business Effect:** Potential meaningful.

## Analysis

**Bill Summary:** The bill defines "low- to moderate-income household" as a household located in a census tract with an average median income at or below 80% of the average median income for the State.

*Policies and Recommendations to Prioritize Spending*

By December 1, 2023, MDE must develop policies and recommendations to require at least 40% of overall spending on specified programs, projects, and investments to be benefit communities with low- to moderate-income households.

The policies and recommendations developed by MDE apply in each fiscal year, starting with fiscal 2025, to spending on programs, projects, and investments in the areas of (1) green infrastructure; (2) climate change; (3) clean energy and energy efficiency; (4) clean transportation; (5) affordable and sustainable housing; (6) training and workforce development related to specified topics; (7) remediation and reduction of legacy pollution; and (8) critical clean water and waste infrastructure. The spending on programs, projects, and investments includes those programs, projects, and investments that are wholly or partially funded under (1) the Small, Minority, and Women-Owned Business Account (SMWOBA) within the Department of Commerce; (2) the Clean Energy Workforce Account within the Maryland Department of Labor (MDL); and (3) the Jane E. Lawton Conservation Loan Program (JELLP), the Strategic Energy Investment Program (SEIP), and the Maryland Offshore Wind Business Development Fund (MOWBDF) within the Maryland Energy Administration (MEA).

To achieve the investment in communities with low- to moderate-income households, MDE must conduct public information-gathering sessions in different areas of the State to solicit input from communities with low- to moderate-income households and the public. After conducting the public consultation, MDE must work with CEJSC to develop specific recommendations to identify and provide assistance to communities with low- to moderate-income households, including legislative and regulatory changes to achieve the required investment.

By October 1, 2025, and every two years thereafter, MDE (1) must review its guidelines and recommendations, as specified, and (2) may recommend modifications based on new data and other information. By October 1, 2025, and annually thereafter, MDE must submit a report of its activities and recommendations to the Governor and the General Assembly.

*State and Local Governments – Investment in Communities with Low- to Moderate-income Households*

State and local governmental units, in consultation with MDE, CEJSC, the Public Service Commission, and MEA, must, to the extent practicable, invest or direct available and relevant programmatic resources in a manner designed to achieve the investment to benefit communities with low- to moderate-income households, as required by the bill.

*Prioritization of the Use of Federal Funding for Specified Projects*

The bill identifies several programs administered by MEA and MDE and requires any federal funds that are appropriated for MEA, MDE or these programs, either in the budget bill or by budget amendment, to be prioritized in a manner that provides funding to communities with low- to moderate-income households. However, this provision does not apply to a program or activity to the extent that the requirement conflicts with federal law or regulations for that program or activity.

The Department of Budget and Management (DBM), in coordination with the appropriate State units, must submit an annual report to specified committees of the General Assembly by December 31, 2023, and annually thereafter. The report must provide information on the amount of federal funds that are appropriated for (1) green infrastructure; (2) climate change; (3) clean energy and energy efficiency; (4) clean transportation; (5) affordable and sustainable housing; (6) training and workforce development related to specified topics; (7) remediation and reduction of legacy pollution; and (8) critical clean water and waste infrastructure. The report also must provide information on the share of funds directed to overburdened communities pursuant to the bill.

**Current Law:**

*Strategic Energy Investment Program and Fund*

SEIP within MEA has the stated purpose of decreasing energy demand and increasing energy supply to promote affordable, reliable, and clean energy to fuel Maryland's future prosperity. The program is supported by the Strategic Energy Investment Fund (SEIF), which was established by Chapters 127 and 128 of 2008, primarily to contain revenue generated from the sale of carbon dioxide emission allowances under the Regional Greenhouse Gas Initiative. The allocation of revenue has been altered several times in budget reconciliation legislation. The current allocation requires (1) at least 50% for energy assistance; (2) at least 20% for energy efficiency and conservation (at least one-half for low- and moderate-income programs); (3) at least 20% for renewable and clean energy, energy-related education and outreach, resiliency, and climate change programs; and (4) up to 10%, but no more than $5.0 million, for administrative expenses.

*Commission on Environmental Justice and Sustainable Communities*

CEJSC within MDE is tasked with advising State government agencies on environmental justice and related community issues. To this end, CEJSC (1) uses data sets and mapping tools to review and analyze the environmental justice implications of current State policy, laws, and regulations; (2) assesses the adequacy of State and local laws, permits and actions, and policies to address the issue of environmental justice and sustainable communities; (3) coordinates with the Children's Environmental Health and Protection Advisory Council, the Maryland Office of Minority Health and Health Disparities, and the Commission on Climate Change on recommendations to further environmental justice and sustainable communities; (4) coordinates with MDE to adopt a methodology to identify communities disproportionately affected by climate impacts, develops specific strategies to address certain related issues, and establishes goals for the percentage of State funding for greenhouse gas emission reduction measures that should be used for the benefit of disproportionately affected communities; (5) recommends options to the Governor and the General Assembly for addressing issues, concerns, or problems related to environmental justice; and (6) recommends options to the Secretary of the Environment for ensuring that MDE is making progress in advancing the human right to safe, clean, affordable, and accessible water for consumption, cooking, sanitation, health, and recreation purposes.

*Small, Minority, and Women-Owned Businesses Account*

SMWOBA, which was established in 2007, is a special, nonlapsing fund that is administered by Commerce. The purpose of the account is to provide investment capital and loans to small, minority, and women-owned businesses in the State.

The distribution of video lottery terminal (VLT) proceeds differs by each video lottery facility. However, a small percentage of gross VLT proceeds is distributed to SMWOBA in Commerce each fiscal year. Commerce then provides grants from SMWOBA to eligible fund managers – in practice, mostly a mixture of county development corporations and private firms. The fund managers then provide investment capital and loans to small, minority, and women-owned businesses in the State. Fund managers must allocate at least 50% of available funds to eligible businesses in the jurisdictions and communities surrounding the State's video lottery facilities. Funds repaid to the fund managers over time do not accrue to SMWOBA – they are held by the fund managers, outside of the State budget, to be used to provide additional rounds of assistance.

SMWOBA also receives funding from SEIF in increasing increments through fiscal 2028 to fund access to capital for small, minority, women-owned, or veteran-owned businesses in the clean energy industry in the State.

*The Employment Advancement Right Now Program and the Clean Energy Workforce Account*

The Maryland Employment Advancement Right Now (EARN) program, administered by MDL, was established in 2013 to create industry-led partnerships to advance the skills of the State's workforce, grow the State's economy, and increase sustainable employment for working families. Specifically, the program provides general fund grants on a competitive basis for industry partnerships, workforce training programs, and job readiness and skills training.

Chapter 757 of 2019 requires MEA to use SEIF to invest in pre-apprenticeship, youth apprenticeship, and registered apprenticeship programs to establish career paths in the clean energy industry under the EARN program. Subject to specified requirements, starting in fiscal 2021, $1.5 million must be transferred for grants to pre-apprenticeship jobs training programs, and $6.5 million must be transferred for grants to youth and registered apprenticeship jobs training programs until all amounts are spent. Chapter 757 also established the Clean Energy Workforce Account in the EARN program to receive and disburse the transfers as grants.

*Jane E. Lawton Conservation Loan Program*

The stated purpose of JELLP within MEA is to provide financial assistance in the form of low-interest and zero-interest loans to nonprofit organizations, local jurisdictions, State agencies, and eligible businesses for projects 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.

*Maryland Offshore Wind Business Development Fund*

Chapter 3 of 2013 (The Maryland Offshore Wind Energy Act) established MOWBDF within MEA to (1) provide financial assistance, business development assistance, and employee training opportunities to emerging businesses in the State to prepare them to participate in the emerging offshore wind industry and (2) encourage emerging businesses in the State to participate in the emerging offshore wind industry. In addition to other sources of revenue, developers of approved offshore wind projects must each deposit $6.0 million into the fund over about two years. MEA is authorized to use the fund to carry out the purposes of the fund and for implementation costs.

**State Fiscal Effect:**

*State Administrative Costs*

State expenditures increase significantly for known administrative costs for MDE, MEA, and Commerce to implement the bill. General fund expenditures for MDE and Commerce increase by a total of $610,178 and special fund expenditures for MEA increase by $154,834 in fiscal 2024 to hire a combined 10 employees to implement the bill, as discussed below. The bill also creates significant operational and administrative burdens on several other agencies, in particular for DBM to collect data and write and present the required annual report. However, exact estimates of those impacts are unknown at this time.

*Maryland Department of the Environment Administrative Costs:* General fund expenditures for MDE increase by $544,358 in fiscal 2024, which accounts for the bill's October 1, 2023 effective date. This estimate reflects the cost of hiring six natural resource planners and one administrative aide to (1) develop the required policies and recommendations; (2) coordinate with other agencies and entities; (3) conduct the public information-gathering sessions; (4) biannually review the guidelines and recommendations that are developed; (5) develop and submit the required annual report; and (6) evaluate MDE expenditures and prioritize funding as required under the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- the bill creates an annual cycle of data collection and biannual program review requirements; and
- the policy considerations required under the bill are complex and necessitate coordination with multiple agencies and entities to both develop and review the policies and guidelines.

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|---|---:|
| Positions | 7.0 |
| Salaries and Fringe Benefits | $460,402 |
| Vehicle Purchase | 24,593 |
| Operating Expenses | 59,363 |
| **Total FY 2024 MDE Admin. Costs** | **$544,358** |

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

*Maryland Energy Administration Administrative Costs:* SEIF special fund expenditures for MEA increase by $154,834 in fiscal 2024, which accounts for the bill's October 1, 2023 effective date. This estimate reflects the cost of hiring two financial analysts to (1) consult and work with MDE as necessary to coordinate and provide assistance to communities with low- to moderate-income households; (2) conduct necessary program review and develop new policies; (3) meet the bill's requirements to invest or direct available and relevant programmatic resources in a manner designed to achieve the priorities identified for communities with low- to moderate-income households under the bill; (4) prioritize federal funding appropriated to affected MEA-administered programs as required; and (5) collect data for the required annual reporting. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- the bill creates an annual cycle of data collection and biannual program review requirements; and
- MEA administers a number of programs that are either explicitly or likely affected by the bill, many of which have subprograms or other distinct categories within them; accordingly, the bill creates new responsibilities for MEA that cannot be handled with existing staff.

| | |
|---|---:|
| Positions | 2.0 |
| Salaries and Fringe Benefits | $140,016 |
| Operating Expenses | 14,818 |
| **Total FY 2024 MEA Admin. Costs** | **$154,834** |

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. To the extent SEIF does not have sufficient funding to cover these costs, general funds may be necessary to cover these costs in the out-years.

*Administrative Costs for Commerce*: General fund expenditures for Commerce increase by $65,820 in fiscal 2024, which assumes implementation costs for Commerce begin January 1, 2024, in order for Commerce to be able to incorporate MDE's policies and recommendations for SMWOBA spending beginning in fiscal 2025. This estimate reflects the cost of hiring one administrator to (1) conduct necessary program review and develop new policies; (2) provide oversight over SMWOBA expenditures; (3) ensure compliance with the bill's priority funding requirements; and (4) collect and report any necessary annual report data to DBM.

| | |
|---|---|
| Position | 1.0 |
| Salary and Fringe Benefits | $58,676 |
| Operating Expenses | 7,144 |
| **Total FY 2024 Commerce Admin. Costs** | **$65,820** |

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

*Priority Spending to Benefit Communities with Low- and Moderate-income Households and New Requirements*

Overall impacts from the mandated priority spending to benefit communities with low- and moderate-income households are unclear because the bill has potentially far-reaching impacts that have indeterminate impacts on spending and may result in a decrease in federal fund revenues. For some affected programs, overall finances are likely not affected, but funding is redirected as a result of the bill's requirements. For other programs, the added restrictions under the bill may mean that fewer funds are able to be spent. Ultimately, overall impacts are difficult to estimate and depend in part on the policies and guidelines developed under the bill. These impacts begin in fiscal 2025. Some of the potential impacts are discussed below.

The bill changes the priority for spending under a broad variety of programs, projects, and investments in the areas of (1) green infrastructure; (2) climate change; (3) clean energy and energy efficiency; (4) clean transportation; (5) affordable and sustainable housing; (6) training and workforce development related to specified topics; (7) remediation and reduction of legacy pollution; and (8) critical clean water and waste infrastructure. Additionally, to the extent that there are insufficient programs, projects, and investments that benefit communities with low- and moderate-income households, mandating that at least 40% of overall spending for these efforts be used to benefit communities with low- and moderate-income households may restrict the ability of affected agencies to fully use available funding. For example, for grant and loan programs, if less than 40% of applicants are applying for funding that benefits communities with low- and moderate-income households, then an agency may be unable to fully issue grant or loan funding in a given year due to lack of eligible applicants. These impacts would begin in fiscal 2025.

MDL notes, for example, that the bill's additional spending restrictions likely make it more challenging to spend funds under the EARN Maryland programs through the Clean Energy Workforce Account. MDL notes the department currently has $8.0 million in available funding under the Clean Energy Workforce Account that MDL has been unable to award due to stringent grant recipient restrictions. The restrictions under the bill likely make this even more challenging.

According to the fiscal 2024 budget as introduced, the amount of federal funding alone that could be affected for just the *listed* agency and program budget codes could be nearly $155.0 million. Thus, the universe of potential affected funding is significant. It should be noted that the extent to which priority uses identified under the bill conflict with federal law or regulations for affected programs or activities is unknown. Nevertheless, it is likely challenging to use some of the federal funding for affected programs, projects, and investments to benefit communities with low- and moderate-income households.

In conclusion, State expenditures (all/multiple fund types) may increase to implement the bill's requirements, but may decrease to the extent agencies are not able to spend funding in a manner required by the bill. As noted above, federal fund revenues may decrease to the extent any agencies forego applying for federal grant funds as a result of the bill's changes. However, any such impacts cannot be reliably predicted.

**Local Fiscal Effect:** The bill requires local governmental units, to the extent practicable, to invest or direct specified programmatic resources in order to achieve the priorities established for communities with low- and moderate-income households. Thus, spending on affected local programs may also be redirected under the bill. Similar to the impact on affected State agencies described above, the bill may restrict a local government's ability to efficiently and effectively use available funding.

**Small Business Effect:** Under the bill, some small businesses likely benefit from an increase in funding, while others receive less funding. Since, taken together, the affected programs have considerable funding, the impact could be meaningful. However, without more detail on the priority spending policies and guidelines developed and the identification of communities with low- and moderate-income households, a reliable estimate of the bill's impact on small businesses cannot be made at this time.

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## Additional Information

**Prior Introductions:** Similar legislation has been introduced within the last three years. See HB 1033 of 2022 and HB 1310 of 2021.

**Designated Cross File:** None.

**Information Source(s):** Department of Commerce; Maryland Association of Counties; Maryland Department of Emergency Management; Maryland Municipal League; Maryland Department of Agriculture; Department of Budget and Management; Maryland Department of the Environment; Maryland Department of Health; Department of Housing and Community Development; Department of Human Services; Maryland Department of Labor; Department of Natural Resources; Maryland Department of Transportation;

Maryland Energy Administration; Public Service Commission; Department of Legislative Services

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