

D13A1302
Maryland Energy Administration – PAYGO

Pay-As-You-Go Capital Budget Summary

(\$ in Millions)

	<i>FY 2008 Approp.</i>	<i>FY 2009 Approp.</i>	<i>FY 2010 Allowance</i>	<i>Percent Change</i>	<i>DLS Recommd.</i>
The Jane E. Lawton Conservation Loan Program	\$1.500	\$3.500	\$6.750	92.9%	\$6.750
State Agency Loan Program	1.500	1.800	\$3.250	80.6%	3.250
Total	\$3.000	\$5.300	\$10.000	88.7%	\$10.000

Fund Source					
Special	\$3.000	5.300	\$10.000	88.7%	\$10.000
Total	\$3.000	\$5.300	\$10.000	88.7%	\$10.000

* The fiscal 2009 appropriation includes \$2.3 million for the Jane E. Lawton Conservation Loan Program and \$0.8 million for the State Agency Loan Program from the Strategic Energy Investment Fund added to the appropriation by budget amendment. The Strategic Energy Investment Fund is the repository for the carbon dioxide allowance auction revenues received as part of Maryland's involvement in the 10-state cooperative Regional Greenhouse Gas Initiative.

Summary of Issues

Delays in Meeting State Energy Reduction Plan: The Department of General Services (DGS), in cooperation with the Maryland Energy Administration (MEA), must set energy performance standards to reduce the average energy consumption in State buildings from the level in fiscal 2005 by 5% in fiscal 2009 and by 10% in fiscal 2010 (Chapter 427 of 2006). However, no information has been forthcoming about the current status of meeting the average energy consumption in State buildings reduction of 5%. **The Department of Legislative Services (DLS) recommends that MEA comment on the status of reducing average energy consumption in State buildings 5% by fiscal 2009 and 10% by fiscal 2010, and the role that the State Agency Loan Program (SALP) is expected to play in these required reductions.**

Regulations Proposed for the Jane E. Lawton Loan Program: MEA reports that new regulations for the Jane E. Lawton Loan Program (JELLP) will come out the week of February 23, 2009, and that these regulations will become effective March 19, 2009. Changes include the elimination of a seven-year simple payback period limit. These changes to the regulations are of concern given the

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August 2008 Office of Legislative Audits report on MEA. **DLS recommends that MEA comment on the rationale for changing the timing limitations for JELLP and how MEA plans to ensure greater accountability for both repayments and energy savings.**

Substantial Funding Increases Possible in Fiscal 2010: The fiscal 2010 allowance includes substantial increases in funding for JELLP and SALP from the Strategic Energy Investment Fund (SEIF). In addition, there is possible funding from the American Recovery and Reinvestment Act of 2009. The need for and ability to use this funding is not clear. **DLS recommends that MEA comment on the level of need for the Jane E. Lawton Loan Program and State Agency Loan Program relative to the influx of funding expected, and on the administrative and programmatic capacity for handling this influx within the 18-month time period.**

Summary of Recommended Actions

1. Concur with Governor's allowance.

Overview

MEA currently administers two revolving loan programs:

- JELLP was created by Chapters 466 and 467 of 2008 from the consolidation of two formerly separate programs: the Community Energy Loan Program (CELP) and the Energy Efficiency and Economic Development Loan Program. JELLP provides low-interest rate financing for energy conservation efforts implemented by nonprofits, local government agencies, and businesses; and
- SALP provides zero-interest loans to State agencies for energy conservation projects.

MEA's fiscal 2010 pay-as-you-go budget allowance of \$10.0 million in special funds is \$4.7 million greater than the fiscal 2009 working appropriation. The fiscal 2009 working appropriation, in turn, is greater than the fiscal 2009 legislative appropriation.

A budget amendment processed in January 2009 brought in revenue from the Strategic Energy Investment Fund. The Strategic Energy Investment Fund is the repository for \$34.4 million received in the September and December 2008 auctions of carbon dioxide allowances as part of Maryland's involvement in the 10-state cooperative Regional Greenhouse Gas Initiative (RGGI). Out-year funding from the Strategic Energy Investment Fund is programmed in the 2009 *Capital Improvement Program* for JELLP and SALP.

The Budget Reconciliation and Financing Act (BRFA) of 2009 changes the distribution of funding from the SEIF and ties into a contingent reduction in the fiscal 2010 operating budget. This change in the distribution potentially reduces the amount of funding for JELLP and SALP in fiscal 2010 and 2011. The current distribution from the SEIF is 17% for the Department of Human Resources (DHR), while the BRFA of 2009 would increase this allocation to "up to 50%" and accordingly, reduce the distribution to programs overseen by MEA from 46.0 to 17.5%. In addition, the BRFA of 2009 is the vehicle for a \$35.6 million general fund contingent reduction in the fiscal 2010 operating budget for DHR.

As a result of the change in the distribution of the SEIF, the allocation for MEA's programs is reduced by an estimated \$35.6 million in fiscal 2010 and potentially reduced in fiscal 2011 as well. This could significantly impact the State funding from RGGI proceeds for JELLP and SALP. However, MEA anticipates receiving approximately \$57.5 million in federal stimulus funding

through the American Recovery and Reinvestment Act of 2009, which it anticipates being able to use to supplant the reduced allocation from the SEIF. For instance, MEA plans on using \$10.0 million in federal stimulus funding to expand the SALP.

The original capitalization and periodic source of transferred funds for additional loan activity for JELLP and SALP – the Energy Overcharge Restitution Fund (EORF) – is almost depleted. Therefore, the auction revenue from the sale of carbon dioxide allowances is the likely source of annual revenues for these two programs.

The EORF is composed of federal court settlement monies from oil and gas producers who have violated federal regulations. As of January 31, 2008, the EORF balance was \$460,589 in unencumbered funding. This balance takes into account a budget amendment for \$218,591 that has been submitted to the Department of Budget and Management (DBM) but not yet received by DLS. MEA has budgeted \$400,152 for fiscal 2010; therefore, the unencumbered fund balance is projected to be \$60,437 at the end of fiscal 2010.

MEA notes that before a loan is approved, any JELLP or SALP project must be designed so that the savings from avoided energy costs covers associated loan costs. MEA disburses funds based on post-work invoices. MEA requires JELLP projects to make semi-annual repayments and SALP projects to make annual repayments, and it may recover funds if a project is not completed.

Overview Issues

1. Delays in Meeting State Energy Reduction Plan

DGS, in cooperation with MEA, must set energy performance standards to reduce the average energy consumption in State buildings from the baseline level in fiscal 2005, by 5% in fiscal 2009 and by 10% in fiscal 2010 (Chapter 427 of 2006). Chapter 427 is the third such measure to set energy performance standards in recent years.

By December 31, 2007, each State agency was to have conducted an analysis of the gas and electric consumption in each of the buildings under its jurisdiction, and by July 1, 2008, each State agency was to have upgraded its energy conservation plan, developed in consultation with MEA and DGS, to achieve the performance standards. This does not appear to have occurred as the energy data is still being collected.

DGS sent out a request for proposals for a contractor to develop a database in which energy data for each agency would be collected. However, the development of this database has been delayed, and as of January 2009, DGS has only received aggregate State building energy use data for calendar 2007 (despite the required baseline of calendar 2005) and only has disaggregated data beginning for calendar 2008. The plan is for DGS to verify billing information and to work with MEA on establishing baselines for the agencies representing 90% of DBM's utility budget through March 2009; however, no information has been forthcoming about the current status of meeting the average energy consumption reduction goals.

DLS recommends that MEA comment on the status of reducing average energy consumption in State buildings, 5% by fiscal 2009 and 10% by fiscal 2010, and the role that the SALP is expected to play in these required reductions.

2. Regulations Proposed for Jane E. Lawton Loan Program

MEA reports that new regulations for JELLP will come out the week of February 23, 2009, and that these regulations will become effective March 19, 2009. The new regulations add the requirement that security or collateral for any loan to a nonprofit organization or business be provided; although, a waiver is allowed. The new regulations also reduce the reserve requirement for nonprofit organizations from 25 to 20%. In addition, the regulations eliminate the following provisions:

- five-year interest – evidence of a fee simple ownership interest or a leasehold interest of at least five years longer than the repayment period for the loan be provided;
- seven-year simple payback period limit – less than seven years for the project cost divided by the projected annual energy cost savings;
- nine-year limit – repayment of principal and interest in nine years; and
- county limit – not more than 40% of the annual amount of funds available for loans be provided to any one county.

MEA reports that elimination of the 7-year simple payback period limit will expand the types of projects that will be eligible for funding. DLS notes that elimination of the 9-year limit means that the constitutional requirement on State obligations being less than 15 years will provide an upper bound to the loan period.

These changes to the regulations are of concern given the August 2008 Office of Legislative Audits report on MEA. The audit found that MEA did not have a process in place to ensure timely repayments for CELP loans and to obtain information that would enable MEA to assess whether the loans resulted in energy savings. For instance, MEA had not taken actions to require semi-annual payments from two loans as of December 2007; although, MEA has since referred these two loan recipients to the Central Collections unit for repayment. MEA also notes that it will monitor loans at a minimum each quarter and that repayment will be monitored semi-annually with the loan repayments.

DLS recommends that MEA comment on the rationale for changing the timing limitations for JELLP and how MEA plans to ensure greater accountability for both repayments and energy savings.

3. Substantial Funding Increases Possible in Fiscal 2010

The fiscal 2010 allowance includes substantial increases in funding for JELLP and SALP from the Strategic Energy Investment Fund. In addition, there is possible funding from the American Recovery and Reinvestment Act of 2009. The need for and ability to use this funding is not clear.

Strategic Energy Investment Fund

The Healthy Air Act of 2006 (Chapters 23 and 301) required the Governor to include the State in the Regional Greenhouse Gas Initiative (RGGI), a coalition created to design a regional cap-and-trade program to reduce emissions of greenhouse gases from certain power plants in the region. The centerpiece of RGGI is the Carbon Dioxide Budget Trading Program, which will result in a 2018 annual power plant emissions budget that is 10% smaller than the initial 2009 annual emissions budget.

Chapters 127 and 128 established SEIF within MEA to receive the RGGI auction proceeds. Pursuant to the Acts, the fund must be distributed as follows:

- at least 46.0% for energy efficiency, conservation, and demand response programs (of which at least one-half must target the low-income residential sector with no cost to participants and the moderate-income residential sector);
- 23.0% to provide rate relief to residential customers;
- 17.0% transferred to the Department of Human Resources (DHR) for electricity assistance programs;
- up to 10.5% for renewable and clean energy programs and initiatives, energy-related public education and outreach, and climate change programs; and
- up to 3.5% (but not more than \$4.0 million) for MEA administration.

A fiscal 2009 budget amendment brought in additional appropriations from the first and second RGGI auctions on September 25, 2008, and December 17, 2008. While the actual revenue was \$34.4 million, a budget amendment for only \$26.4 million was processed due to the uncertainty about the revenue from the second auction. As part of the budget amendment, JELLP received \$2.3 million and SALP received \$0.8 million.

In fiscal 2010, MEA's pay-as-you-go budget includes \$6.75 million for JELLP and \$3.25 million for SALP. This reflects an increase of \$5.25 million for JELLP and \$2.25 million for SALP relative to the fiscal 2010 amount programmed in the 2008 *Capital Improvement Program*, the majority of which is from anticipated allocations from SEIF.

Federal Stimulus Funding

MEA anticipates receiving \$57.5 million as part of the American Recovery and Reinvestment Act of 2009. The funding will come through the State Energy Program from the U.S. Department of Energy and is part of \$3.1 billion that will be provided for shovel-ready projects and will need to be spent within 18 months. At this point, it is not clear how much, if any, of the federal stimulus funding will be available for JELLP, but MEA assumes that some portion will be eligible for use on SALP projects and has tentatively programmed \$10.0 million for this purpose. MEA anticipates that the federal regulations for use of the State Energy Program federal stimulus funding will be available in mid-March 2009.

DLS recommends that MEA comment on the level of need for the Jane E. Lawton Loan Program and State Agency Loan Program relative to the increased funding levels for fiscal 2010 and beyond, and on the administrative and programmatic capacity for handling this funding within the 18-month time period.

The Jane E. Lawton Conservation Loan Program (Statewide)

PAYGO SF **\$6,750,000** **Recommendation: Approve**

Program Description: The Jane E. Lawton Loan Program (JELLP) was created by Chapter 467 of 2008 by consolidating the existing Community Energy Loan Program (CELP) and Energy Efficiency and Economic Development Loan Program. JELLP is a non-lapsing, revolving loan fund that provides low-interest loans for energy conservation project design and installation. The Maryland Energy Administration (MEA) makes these loans to nonprofit organizations, local governments, and eligible businesses; school system and local government applications are given the highest priority. The program was capitalized in fiscal 1989 and 1990 with \$3.2 million from the Energy Overcharge Restitution Fund. Substantial capitalization is also provided in fiscal 2009 and 2010 through the revenues from the Strategic Energy Investment Fund, which is the repository for the revenue from the sale of carbon dioxides allowances as part of Maryland’s involvement in the Regional Greenhouse Gas Initiative (RGGI). Interest rates for JELLP are individually negotiated with borrowers. Rates are guaranteed to be below market rates and may go as low as 0%; however, the average rate is anticipated to be about 3%.

JELLP allows borrowers to use the cost savings generated by the energy efficiency improvements as the primary source of revenue for repaying loans. On average, it takes participants approximately four years to achieve the energy cost savings necessary to pay for the cost of the loan. According to the Department of Budget and Management, through June 30, 2008, JELLP and its precursor programs have loaned \$16.1 million for 59 projects (26 local governments, 32 nonprofit organizations, and one business) providing for a total estimated annual savings of \$4.0 million and cumulative savings of \$20.3 million.

Prior Authorization and Capital Improvement Program

Authorization Request

(\$ in Millions)

Fund Source	2008 <i>Approp.</i>	2009 <i>Approp.</i>	2010 <i>Allowance</i>	2011 <i>Estimate</i>	2012 <i>Estimate</i>	2013 <i>Estimate</i>	2014 <i>Estimate</i>
PAYGO SF	\$1.500	\$3.500	\$6.750	\$3.250	\$3.250	\$3.750	\$4.000
Total	\$1.500	\$3.500	\$6.750	\$3.250	\$3.250	\$3.750	\$4.000

MEA submitted a budget amendment in fiscal 2009 for \$2.3 million in RGGI carbon dioxide allowance auction revenue. This budget amendment increased the fiscal 2009 JELLP appropriation

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to \$3.5 million from \$1.2 million. The fiscal 2010 allowance of \$6.75 million also reflects an increase in funding due to RGGI; the 2008 *Capital Improvement Program* (CIP) included \$1.5 million for fiscal 2010 for the former CELP. In contrast, the 2009 CIP estimates \$3.25 million in fiscal 2011 increasing to \$4.0 million in fiscal 2014 for the five-year planning period.

Jane E. Lawton Loan Program Fund Data

Fund History

	<i>FY 2008 Actual</i>	<i>FY 2009 Estimated</i>	<i>FY 2010 Estimated</i>
Beginning Balance	\$109,725	-\$147,524	\$1,184,419
Revenue			
General Funds	\$0	\$0	\$0
Loan Repayment	1,056,622	1,084,612	1,712,902
Investment Interest	113,978	116,383	183,802
Transfer from Other Funds	0	3,700,000	5,000,000
Closing Fees Collected	1,500	0	0
Cancellation of Encumbrances	122,320	0	0
Total Revenue	\$1,294,420	\$4,900,995	\$6,896,704
Total Available	\$1,404,145	\$4,753,471	\$8,081,123
Encumbrances			
Loans*	\$1,500,000	\$3,500,000	\$6,750,000
Operating Expenses	51,669	69,052	71,475
Total Encumbrances	\$1,551,669	\$3,569,052	\$6,821,475
Ending Balance	-\$147,524	\$1,184,419	\$1,259,648

*Loans made as of 2/20/09 = \$264,655 (1 project totaling \$1.5 million split between fiscal 2008 and 2009)

The Fund History chart reflects a negative ending balance for fiscal 2008. MEA explains that this is due to encumbrances exceeding available cash but that it is not a concern because not all of the money is expensed at the time the loan is executed. Other revenue changes are as follows:

- transfers from other funds – the fiscal 2009 amount of \$3.7 million reflects \$2.3 million from the allocation from the Strategic Energy Investment Fund in fiscal 2009, \$500,000 in fiscal 2008 deficiency funding that inadvertently was not processed in fiscal 2008, and \$900,000 from the State Agency Loan Program (SALP) due to the requirement that \$900,000 in total must be transferred to JELLP as part of the remedying of \$900,000 in transfers from

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the former CELP to SALP in previous years that the Attorney General concluded were not legitimate; and the fiscal 2010 amount of \$5.0 million reflects the allocation from the Strategic Energy Investment Fund;

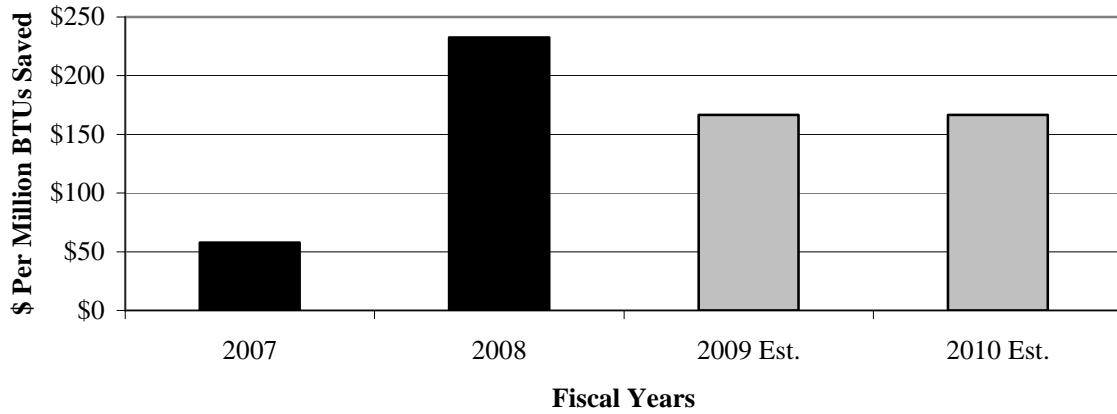
- closing fees collected – two loans were executed in fiscal 2008 with closing fees of \$750 per loan; and
- cancellation of encumbrances – the fiscal 2008 funding of \$122,320 for the Montgomery Housing Partnerships project was cancelled because the funding was not needed.

Program Analysis and Performance

MEA's Managing for Results plan incorporates new performance data for JELLP, which addresses a deficiency in MEA's submission from prior years. **Exhibit 1** shows that there was a substantial increase in the cost per million British thermal units (BTUs) saved between fiscal 2007 and 2008. MEA explains that the increased cost for energy savings can be attributed to leveraging of funding – projects vary in terms of the amount of funding leveraged; therefore, in fiscal 2008, the cost of achieving energy savings increased partially due to a lower amount of leveraging of projects by the loan recipients. In contrast, in fiscal 2007, lighting retrofit improvements by Montgomery County received a JELLP loan, but the majority of spending was made by Montgomery County, equating to a higher amount of leveraging.

The Department of Legislative Services (DLS) recommends that MEA comment on how projects are chosen in terms of the possible leveraging and in terms of the BTUs saved.

Exhibit 1
State Spending on JELLP Per Energy Unit Saved
Fiscal 2007-2010



BTU: British thermal unit
JELLP: Jane E. Lawton Loan Program

Source: Governor's Budget Books, Fiscal 2010

Recommended Actions

1. Concur with Governor's allowance.

Fiscal 2010 Proposed Projects

MEA reports that new regulations for JELLP will not come out until the week of February 23, 2009, and that these regulations will not become effective until March 19, 2009. In the meantime, MEA has solicited projects with a deadline of March 16, 2009. **DLS recommends that MEA comment on the anticipated mix of local government, nonprofit, and business project applications and the level of interest expressed so far.**

Fiscal 2009 Authorized Projects Status

The budget committees were concerned that a partnership with the nonprofit Reinvestment Fund proposed in the fiscal 2009 allowance indicated a change in pattern and practice. Therefore, a report was requested on the nature of the projects to be supported and of the relationship between the former CELP and the Reinvestment Fund. MEA reports that it will have no relationship with the Reinvestment Fund in either fiscal 2009 or 2010.

No project updates have been provided for the fiscal 2009 projects.

DLS recommends that MEA comment on the status of fiscal 2009 projects and why a status update for fiscal 2009 projects was not provided.

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MEA submitted a budget amendment in fiscal 2009 for \$0.8 million in RGGI carbon dioxide allowance auction revenue. This budget amendment increased the SALP appropriation to \$1.8 million from \$1.0 million. The fiscal 2010 allowance of \$3.25 million also reflects an increase in funding due to RGGI; the 2008 *Capital Improvement Program* (CIP) included \$1.0 million for fiscal 2010. In contrast, the 2009 CIP estimates approximately \$2.25 million in funding through the five-year planning period. **MEA should be prepared to discuss the projected need for SALP funding through the five-year planning period.**

State Agency Loan Program Fund Data

Fund History

	<i>FY 2008 Actual</i>	<i>FY 2009 Estimated</i>	<i>FY 2010 Estimated</i>
Beginning Balance	\$306,763	\$1,112,786	\$13,835
Revenue			
General Funds	\$0	\$0	\$0
Loan Repayment	694,847	753,582	1,364,022
Investment Interest	139,892	77,467	99,785
Transfer from Other Funds*	500,000	-100,000	2,000,000
Cancellation of Encumbrances	983,254	0	0
Total Revenue	\$2,317,993	\$731,049	\$3,463,807
Total Available	\$2,624,756	\$1,843,835	\$3,477,642
Encumbrances			
Loans*	\$1,487,344	\$1,800,000	\$3,250,000
Operating Expenses	24,626	30,000	30,000
Total Encumbrances	\$1,511,970	\$1,830,000	\$3,280,000
Ending Balance	\$1,112,786	\$13,835	\$197,642

*Loans made as of 2/20/09 = \$500,000 (1 project)

The Fund History chart reflects the following:

- transfer from other funds – the fiscal 2008 amount of \$500,000 reflects a deficiency appropriation from EORF; the fiscal 2009 negative \$100,000 adjustment reflects a net decrease due to an \$800,000 budget amendment from the Strategic Energy Investment Fund minus \$900,000 that must be transferred to the Jane E. Lawton Loan Program (JELLP) as part of the remedying of \$900,000 in transfers from the former Community Energy Loan Program to SALP in previous years that the Attorney General concluded were not legitimate; the fiscal 2010 amount of \$2.0 million reflects the allocation from the Strategic Energy Investment Fund;

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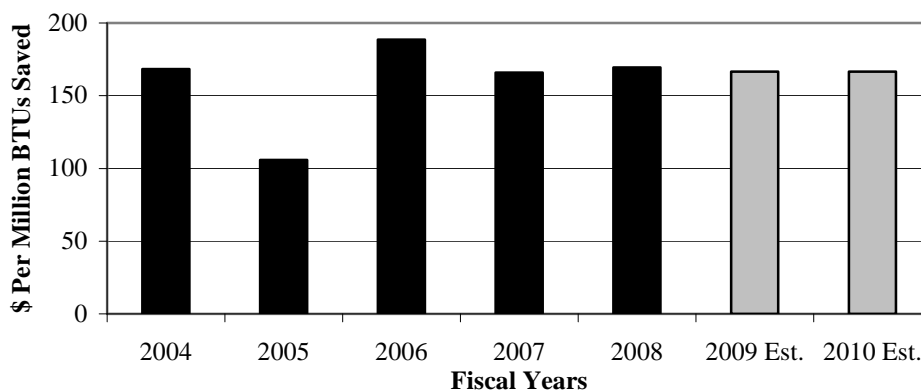
- cancellation of encumbrances – a \$983,254 cancellation occurred in fiscal 2008 because (1) a fiscal 2005 loan to the University of Maryland, College Park for \$847,344 was cancelled then re-encumbered in fiscal 2008; and (2) a fiscal 2008 loan of \$135,910 to the University of Maryland Center for Environmental Science was no longer needed when the project was cancelled.

In addition to the above cancellation of \$135,910, MEA reports that the cancellation history for SALP is as follows: \$19,717 in fiscal 1996; \$79,498 in fiscal 1999; \$593,982 in fiscal 2003; \$301,119 in fiscal 2005, and \$627,059 in fiscal 2007. **The Department of Legislative Services recommends that MEA comment on the reasons for the substantial amount of cancellations in recent years and what actions MEA is taking to reduce the occurrence of cancelled encumbrances.**

Program Analysis and Performance

The State spending on SALP per energy unit saved is shown in **Exhibit 2**. It is likely that the decrease between fiscal 2004 and 2005 reflects a focus on projects that cost less per British thermal unit (BTU) saved such as for natural gas or heating oil; although, it is also possible that there was a greater amount of leveraging in fiscal 2005. The overall cost per BTU saved appears to be expected to stay around \$160 through fiscal 2010.

Exhibit 2
State Spending on SALP per Energy Unit Saved
Fiscal 2004-2010



BTU: British thermal unit
SALP: State Agency Loan Program

Source: Governor's Budget Books, Fiscal 2007-2010

Recommended Actions

1. Concur with Governor's Allowance.

Fiscal 2010 Proposed Projects

<u>Project</u>	<u>Location</u>	<u>Amount</u>	<u>Status</u>
Department of General Services (DGS), Annapolis Energy Performance Contract	Annapolis	\$200,000	Working with DGS to finalize cash flow for loan agreement. Project will move to fiscal 2009 if new funds become available through the Strategic Energy Investment Fund (SEIF).
Department of Public Safety and Correctional Services – Jessup Facility Energy Performance Contract	Jessup	75,000	Working with DGS to finalize cash flow for loan agreement. Project will move to fiscal 2009 if new funds become available through SEIF.
Total		\$275,000	

Fiscal 2009 Authorized Projects Status

<u>Project</u>	<u>Location</u>	<u>Amount</u>	<u>Status</u>
University of Maryland, College Park (UMCP)	College Park	\$500,000	Loan executed. Waiting for College Park to sign the acceptance certificate.
University of Baltimore	Baltimore	300,000	Working with the Department of General Services (DGS) to finalize cash flow for loan agreement.
Maryland Department of Agriculture	Annapolis	200,000	Working with DGS to finalize cash flow for loan agreement.
UMCP Desktop Thin Client project	College Park	15,000	Potential project should additional State Agency Loan Program (SALP) funds become available through the Strategic Energy Investment Fund (SEIF).
UMCP Classroom Lighting project	College Park	900,000	Potential project should additional SALP funds become available through SEIF.
UMCP Office Lighting Project	College Park	1,200,000	Potential project should additional SALP funds become available through SEIF.
UMCP Fume Hood Improvement Project	College Park	95,000	Potential project should additional SALP funds become available through SEIF.
UMCP HVAC Variable Frequency Drive project	College Park	500,000	Potential project should additional SALP funds become available through SEIF.
Total		\$3,710,000	