

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact § 45.1-394 of the Code of Virginia; to amend the Code of Virginia by
2 adding in Title 59.1 a chapter numbered 22.8, consisting of sections numbered 59.1-284.25,
3 59.1-284.26, and 59.1-284.27; and to repeal §§ 45.1-392, 45.1-393, and 45.1-394 of the Code of
4 Virginia, relating to the establishment of the Clean Energy Manufacturing Incentive Grant
5 Program.

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That § 45.1-394 of the Code of Virginia is amended and reenacted and that the Code of**
8 **Virginia is amended by adding in Title 59.1 a chapter numbered 22.8, consisting of sections**
9 **numbered 59.1-284.25, 59.1-284.26, and 59.1-284.27, as follows:**

10 § 45.1-394. Biofuels Production Incentive Grant Program.

11 A. For the purposes of this section:

12 "Advanced biofuels" means a fuel derived from any cellulose, hemicellulose, or lignin that is
13 derived from renewable biomass, or algae.

14 "Biodiesel fuel" means a fuel composed of mono-alkyl esters of long chain fatty acids derived
15 from vegetable oils or animal fats, designated B100, and meeting the requirements of ASTM D6751.

16 "Biofuels" means neat biodiesel fuel, neat green diesel fuel, or neat ethanol fuel that is not
17 blended with a traditional fuel such as gasoline or diesel.

18 "Ethanol fuels" means fermentation alcohol derived from agricultural products, including
19 potatoes, cereal grains, dry mill corn, whey, and sugar beets; forest products; or other renewable
20 resources, including residue and waste generated from the production, processing, and marketing of
21 agricultural products, forest products, and other renewable resources, that:

- 22 1. Meets all applicable ASTM specifications; and
- 23 2. Is denatured as specified in 27 C.F.R. Parts 20 and 21.

24 "Feedstock" means the agricultural or other renewable resources, whether plant or animal
25 derived, used to produce biofuels.

26 "Green diesel fuel" means a fuel produced from nonfossil renewable resources, including
27 agricultural or silvicultural plants; animal fats; residue and waste generated from the production,
28 processing, and marketing of agricultural products; silvicultural products; and other renewable resources,
29 and meeting applicable ASTM specifications.

30 "Producer" means any person, entity, or agricultural cooperative association, as defined in the
31 Agricultural Cooperative Association Act (§ 13.1-312 et seq.) that, in a calendar year, produces in the
32 Commonwealth at least one million gallons of biofuels using feedstock originating domestically within
33 the United States.

34 B. A producer of neat advanced biofuels commencing qualifying sales on or after January 1,
35 2008, but before January 1, 2011, shall be eligible to receive a biofuels production incentive grant in an
36 amount equal to \$0.125 for each gallon of neat advanced biofuels sold by it in the calendar year
37 beginning with calendar year 2008. A producer of non-advanced neat biofuels shall be eligible to receive
38 a biofuels production incentive grant in an amount equal to \$0.10 for each gallon of neat biofuels sold
39 by it in the calendar year beginning with calendar year 2008. To be eligible for an incentive grant in any
40 given calendar year, the producer shall have produced in the Commonwealth at least one million gallons
41 of neat biofuels in such year. In addition, any producer producing neat biofuels prior to January 1, 2008,
42 shall be eligible for an incentive grant for neat biofuel sales in the respective calendar year only if its
43 production in the Commonwealth of neat biofuels for such calendar year exceeds its production in the
44 Commonwealth of neat biofuels in the 2007 calendar year by at least one million gallons, and if it
45 maintains production at a minimum of that level in future years. A producer shall be eligible for a grant
46 from the Biofuels Production Fund (the Fund) established under § 45.1-393 only for each gallon of neat
47 biofuels that it produces in the Commonwealth on or after January 1, 2008, which gallon has also been
48 sold by the producer to customers. Grants awarded under this section shall be paid from the Fund.

49 C. In the event applications for grants pursuant to subsection B exceed the total amount of
50 money allocated in the Fund, grant payments shall be apportioned among eligible producers pro rata
51 based upon the total qualifying gallons of neat biofuels sold in the respective calendar year by all such
52 eligible producers.

53 D. Any producer eligible to apply for a grant pursuant to this section shall provide evidence in
54 the form of production reports, satisfactory to the Director, that the producer met the neat biofuels
55 production requirements provided under this section for the respective calendar year. The producer shall
56 also provide evidence in the form of sales reports, satisfactory to the Director, of the number of
57 qualifying gallons of neat biofuels sold by the producer to customers in the respective calendar year.
58 Such reports shall be filed no later than March 31 following the calendar year in which the producer sold
59 the qualifying gallons of neat biofuels. Failure to meet the filing deadline shall render the applicant
60 ineligible to receive a grant. The postmark cancellation shall govern the date of the filing determination
61 unless the Director has approved an alternative means of filing.

62 No producer shall be eligible to receive grants pursuant to this section for qualifying sales made
63 in more than six calendar years. No grants provided pursuant to this section may be made after the fiscal
64 year ending June 30, 2017.

65 E. The Director shall certify to the Comptroller the grant amount a producer of neat biofuels is
66 eligible to receive in a given calendar year. Payments shall be paid by check issued by the State
67 Treasurer on warrant of the Comptroller.

68 F. The Director, upon presenting appropriate credentials, may examine the records, books,
69 invoices, bills of lading, storage and production facilities, and other applicable documents to determine
70 whether the production and sale of neat biofuels meet the requirements for grants as set forth in this
71 section.

72 CHAPTER 22.8.

73 CLEAN ENERGY MANUFACTURING INCENTIVE GRANT PROGRAM.

74 § 59.1-284.25. Definitions.

75 As used in this chapter, unless the context requires a different meaning:

76 "Advanced biofuels" means a fuel derived from any cellulose, hemicellulose, or lignin that is
77 derived from renewable biomass or algae.

78 "Authority" means the Virginia Economic Development Partnership Authority established in §
79 2.2-2234.

80 "Biodiesel fuel" means a fuel composed of mono-alkyl esters of long chain fatty acids derived
81 from vegetable oils or animal fats, designated B100, and meeting the requirements of ASTM D6751.

82 "Biofuels" means neat biodiesel fuel, neat green diesel fuel, or neat ethanol fuel that is not
83 blended with a traditional fuel such as gasoline or diesel.

84 "Capital investment" means an investment in real property, tangible personal property, or both,
85 within the Commonwealth that is capitalized.

86 "Clean energy manufacturer" means (i) a manufacturer whose primary function is to manufacture
87 or assemble equipment, systems, or products used to produce renewable or nuclear energy, or products
88 used for energy conservation, storage, or grid efficiency purposes, so long as such the manufacturer is
89 not a public service corporation as defined in § 56-1 that recovers its costs pursuant to § 56-585.1, or (ii)
90 a producer of biofuels.

91 "Eligible entity" means any clean energy manufacturer meeting the requirements of subsection A
92 of § 59.1-284.27 or a wind energy supplier that directly supports a clean energy manufacturer in the
93 wind energy industry and meets the requirements of subsection A of § 59.1-284.27.

94 "Ethanol fuels" means fermentation alcohol derived from agricultural products, including
95 potatoes, cereal grains, dry mill corn, whey, and sugar beets; forest products; or other renewable
96 resources, including residue and waste generated from the production, processing, and marketing of
97 agricultural products, forest products, and other renewable resources, that:

- 98 1. Meets all applicable ASTM specifications; and
- 99 2. Is denatured as specified in 27 C.F.R. Parts 20 and 21.

100 "Feedstock" means the agricultural or other renewable resources, whether plant or animal
101 derived, used to produce biofuels.

102 "Fund" means the Clean Energy Manufacturing Incentive Grant Fund established pursuant to §
103 59.1-284.26.

104 "Green diesel fuel" means a fuel produced from nonfossil renewable resources, including
105 agricultural or silvicultural plants; animal fats; residue and waste generated from the production,

106 processing, and marketing of agricultural products; silvicultural products; and other renewable resources,
107 and meeting applicable ASTM specifications.

108 "Memorandum of understanding" means an agreement among the Authority, an eligible entity,
109 and the Director setting forth the requirements for capital investment; the creation of new full-time jobs;
110 and the amount and duration of the grant payments.

111 "New full-time job" means employment (i) of an indefinite duration created as the direct result of
112 capital investment, (ii) for which the average annual wage is at least equal to the prevailing average
113 annual wage in the locality where the clean energy manufacturer is to locate or expand, (iii) for which
114 the standard fringe benefits are paid by the clean energy manufacturer, and (iv) that requires a minimum
115 of either 1,680 hours per year or 35 hours of any employee's time per week for the entire normal year of
116 such manufacturer's operations. For the purposes of this definition, a "normal year" consists of a
117 minimum of 48 weeks. Positions that are seasonal or temporary and positions created when a job
118 function is shifted from an existing location in the Commonwealth shall not qualify as new full-time
119 jobs under this section. Other positions, including those of indefinite duration and supplemental
120 employees of affiliates, subsidiaries, joint ventures, contractors, or subcontractors may be considered
121 new full-time jobs if so designated in the memorandum of understanding.

122 "President" means the President and Chief Executive Officer of the Authority.

123 "Renewable energy" means the same as that term is defined in § 56-576.

124 "Secretary" means the Secretary of Commerce and Trade.

125 "Wind energy supplier" means a basic sector manufacturer, installer, operator or other type of
126 provider that directly supports a clean energy manufacturer in the wind energy industry located in the
127 Commonwealth.

128 § 59.1-284.26. Clean Energy Manufacturing Incentive Grant Fund.

129 There is hereby created in the state treasury a special nonreverting fund to be known as the Clean
130 Energy Manufacturing Incentive Grant Fund, hereafter referred to as "the Fund." The Fund shall be
131 established on the books of the Comptroller. The Fund shall consist of such moneys as may be
132 appropriated to it by the General Assembly. Moneys in the Fund shall be used solely for the purposes of

133 providing grants to certain clean energy manufacturers and wind energy suppliers as specified in § 59.1-
134 284.27. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants
135 issued by the Comptroller upon written request signed by the President of the Authority.

136 § 59.1-284.27. Clean Energy Manufacturing Incentive Grant Program.

137 A. A clean energy manufacturer shall be eligible to receive a clean energy manufacturing grant
138 for up to six years if it: (i) commences or expands operations in the Commonwealth on or after July 1,
139 2011; (ii) makes a capital investment in the Commonwealth on or after July 1, 2011, in an amount
140 greater than \$50 million; (iii) creates at least 200 new full-time jobs on or after July 1, 2011; and (iv)
141 enters into a memorandum of understanding setting forth, at a minimum, the requirements for capital
142 investment and the creation of new full-time jobs. Notwithstanding clauses (ii) and (iii), the Governor
143 may reduce the capital investment and new full-time job thresholds if the eligible entity's manufacturing
144 or assembly facility is located in a locality with an unemployment rate for the latest year prior to the
145 execution of the memorandum of understanding for which such data is available that is at least 1.25
146 times the final statewide average unemployment rate for that year. A wind energy supplier shall be
147 eligible to receive a clean energy manufacturing grant for up to six years if, on or after July 1, 2011, and
148 in addition to the requirements of clauses (i) and (iv), it makes a capital investment in the
149 Commonwealth in an amount greater than \$10 million and creates at least 30 new full-time jobs.

150 B. The grants shall be paid from the Fund subject to appropriation, and the aggregate amount of
151 grants awarded and outstanding at any time shall not exceed \$36 million. The Authority shall conduct a
152 return on investment analysis to determine the appropriate amount and duration of grant payments
153 before entering into a memorandum of understanding.

154 C. Any eligible entity shall provide an annual report to the Authority, in a form approved by and
155 satisfactory to it, detailing clean energy product and supply operations in the Commonwealth. The report
156 shall be submitted no later than April 1 for the previous calendar year and, at the discretion of the
157 Authority or as stated in the memorandum of understanding, failure to meet the filing deadline shall
158 render the applicant ineligible to receive a grant for that year. The postmark cancellation shall govern
159 the date of filing determination unless the Authority has approved an alternative means of filing.

160 D. The Authority may inspect the records, books, and other applicable documents and evidence
161 to verify whether the clean energy manufacturer or wind energy supplier meets the requirements for
162 eligibility set forth in this section and the memorandum of understanding.

163 E. The Authority shall allocate moneys from the Fund in the following order of priority: (i)
164 unpaid grant amounts carried forward from prior years because eligible entities did not receive the full
165 amount of any grant to which they were eligible in a prior year and (ii) other eligible entities. If the
166 moneys available for grant payments in the Fund are less than the amount of grants to which eligible
167 entities are eligible, the moneys shall be apportioned pro rata among eligible entities, based upon the
168 amount of the grant to which an entity is eligible and the amount of moneys in the Fund available for
169 allocation to such eligible entities.

170 F. If an entity is allocated less than the full amount of a grant to which it is eligible in any year, it
171 shall not be eligible for the deficiency in that year, but the unpaid portion of the grant to which it was
172 eligible shall be carried forward to the following year, during which it shall be in the first class of
173 priority as provided in clause (i) of subsection E.

174 G. The Authority shall assist the Secretary with developing guidelines to implement the
175 provisions of this chapter and present such guidelines to the Chairmen of the Senate Finance and House
176 Appropriations Committees. The guidelines may provide for different grant awards based upon the type
177 of clean energy product manufactured, supplied, or assembled or biofuel produced. Actions of the
178 Authority and the Secretary relating to the development of guidelines and the allocation and awarding of
179 grants under this section shall be exempt from the provisions of the Administrative Process Act (§ 2.2-
180 4000 et seq.) pursuant to subdivision B 4 of § 2.2-4002.

181 **2. That § 45.1-392 of the Code of Virginia is repealed.**

182 **3. That §§ 45.1-393 and 45.1-394 of the Code of Virginia are repealed effective July 1, 2017.**

183 **4. That any producer that was qualified to receive a grant from the Biofuels Production Fund**
184 **during the 2010-2012 biennium shall continue to receive payments in accordance with § 45.1-394,**
185 **provided such producer continues to meet all criteria for eligibility.**

186 **5. That no grants under § 59.1-284.27 shall be paid to an eligible entity before July 1, 2012.**

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