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SENATE BILL NO. 63

Offered January 11, 2006

Prefiled January 5, 2006

A *BILL to amend the Code of Virginia by adding sections numbered 58.1-608.1:1 and 58.1-2423.2, by adding in Title 59.1 a chapter numbered 22.5, consisting of sections numbered 59.1-284.20, 59.1-284.21, and 59.1-284.22, and by adding in Title 59.1 a chapter numbered 22.6, consisting of sections numbered 59.1-284.30, 59.1-284.31, and 59.1-284.32, relating to grants and tax refunds for purchasing or using energy efficient goods or producing electricity from certain qualified energy resources.*

Patron—Whipple

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 58.1-608.1:1 and 58.1-2423.2, by adding in Title 59.1 a chapter numbered 22.5, consisting of sections numbered 59.1-284.20, 59.1-284.21, and 59.1-284.22, and by adding in Title 59.1 a chapter numbered 22.6, consisting of sections numbered 59.1-284.30, 59.1-284.31, and 59.1-284.32, as follows:

§ 58.1-608.1:1. Refund authorized for certain energy-efficient property.

A. Any organization or person may apply to the Department of Taxation for a refund of a portion of the taxes imposed by this chapter or pursuant to the authority granted in § 58.1-605 or 58.1-606 that are paid by such organization or person on or after January 1, 2007, on the following tangible personal property:

1. Clothes washers, room air conditioners, dishwashers, and standard size refrigerators that meet or exceed the applicable energy star efficiency requirements developed by the United States Environmental Protection Agency and the United States Department of Energy;

2. A fuel cell that (i) generates electricity and heat using an electrochemical process, (ii) has an electricity-only generation efficiency greater than 30% percent, and (iii) has a generating capacity of at least two kilowatts;

3. A natural gas heat pump that has a coefficient of performance of at least 1.25 for heating and at least 0.70 for cooling;

4. An electric heat pump hot water heater that yields an energy factor of at least 2.0;

5. An electric heat pump that has a heating system performance factor of at least 8.0 and a cooling seasonal energy efficiency ratio of at least 13.0;

6. A closed-loop ground source heat pump with an energy efficiency ratio of at least 14.1;

7. An open-loop ground source heat pump with an energy efficiency ratio of at least 16.2;

8. A central air conditioner that has a cooling seasonal energy efficiency ratio of at least 13.5; and

9. An advanced natural gas water heater that has an energy factor of at least 0.65.

B. The Department of Taxation may require that such organization or person submit sales tax receipts along with the refund application to qualify for the refund authorized pursuant to this section. The refund application shall be filed with the Department of Taxation within one year from the date on which such taxes were paid.

C. The refund provided under this section for each item of tangible personal property included in subsection A shall equal the amount of tax paid by such organization or person for such item, up to a maximum of \$500 in tax paid for the item, as such tax is imposed under the provisions of this chapter, including any tax imposed pursuant to the authority granted in § 58.1-605 or 58.1-606. In addition, for each of the items listed in subdivisions A 1 through A 7, no organization or person shall receive more than \$5,000 in refunds for such items in any calendar year. The refund provided under this section shall be applicable to purchases of such items made on or after January 1, 2007, but prior to January 1, 2011.

D. The amount of such refund attributable to the tax authorized under § 58.1-605 or 58.1-606 shall be deducted from the respective locality's share of the net revenue distributable pursuant to subsection C of § 58.1-638. Such deduction from a locality's share of the net revenue distributable shall occur in the month following the month in which such refund has been issued.

E. The provisions of this section shall not apply to any organization or person to the extent that such organization or person already is exempt from the taxes imposed on tangible personal property by this chapter or pursuant to the authority granted in § 58.1-605 or 58.1-606.

§ 58.1-2423.2. Refund for motor vehicles using clean special fuels.

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59 A. If a motor vehicle is (i) manufactured to use clean special fuels, as defined in § 46.2-749.3, and
60 uses such fuels as a source of propulsion; (ii) converted or retrofitted to use such clean special fuels
61 within 180 days after the date of titling in the Commonwealth, and uses such fuels as a source of
62 propulsion; or (iii) a hybrid gasoline/electric-powered motor vehicle that is propelled primarily by
63 electric charge, the vehicle owner may apply, on or after January 1, 2007, for a refund of a portion of
64 the motor vehicle sales and use tax paid by such person pursuant to subdivision A 1, A 2, or A 6 of
65 § 58.1-2402. In no event shall a refund be paid for such tax on a mobile office as defined under
66 § 58.1-2401, or on a manufactured home as defined under § 36-85.3.

67 B. The refund provided under this section for the eligible motor vehicles described in subsection A
68 shall equal one-half of the motor vehicle sales and use tax paid by the vehicle owner pursuant to
69 subdivision A 1, A 2, or A 6 of § 58.1-2402, up to a maximum of \$500 in tax paid on each such motor
70 vehicle. In addition, no person shall receive more than \$5,000 in refunds in any calendar year under
71 this section. The refund provided under this section shall be applicable to such motor vehicle sales and
72 use taxes paid by vehicle owners on or after January 1, 2007, but prior to January 1, 2011.

73 C. The claim for refund shall be in such form as the Commissioner shall prescribe and shall include
74 documentation to verify that the conversion or retrofitting of the motor vehicle to use such clean special
75 fuels, if applicable, took place within 180 days after the date of titling in the Commonwealth. The claim
76 for the refund shall be filed with the Commissioner within one year from the date on which such taxes
77 were paid.

78 CHAPTER 22.5.

79 RENEWABLE ELECTRICITY PRODUCTION GRANT PROGRAM.

80 § 59.1-284.20. Definitions.

81 A. As used in this chapter, unless the context clearly requires otherwise:

82 "Corporation" means an entity subject to the tax imposed by Article 10 (§ 58.1-400 et seq.) of
83 Chapter 3 of Title 58.1.

84 "Department" means the Department of Mines, Minerals and Energy.

85 "Fund" means the Renewable Electricity Production Grant Fund.

86 "Qualified energy resources" means the same as that term is defined by Internal Revenue Code § 45.

87 "Qualified Virginia facility" means a facility located in the Commonwealth that uses qualified energy
88 resources to produce electricity.

89 B. Subject to appropriation of sufficient moneys in the Fund, an eligible corporation may receive a
90 grant payable from the Fund for certain kilowatts of electricity produced after December 31, 2005. The
91 grant amount shall be 0.85 cents for each kilowatt of electricity (i) produced by the corporation from
92 qualified energy resources at a qualified Virginia facility and (ii) sold in a calendar year. Grant
93 amounts shall be based on each such kilowatt of electricity sold beginning with calendar year 2006 and
94 ending with such kilowatts of electricity sold during calendar year 2010.

95 § 59.1-284.21. Renewable Electricity Production Grant Fund.

96 A. There is hereby established in the state treasury a special nonreverting fund to be known as the
97 Renewable Electricity Production Grant Fund. The Fund shall consist of such moneys as may be
98 appropriated by the General Assembly from time to time. Any moneys deposited to or remaining in the
99 Fund during or at the end of each fiscal year or biennium, including interest thereon, shall not revert to
100 the general fund but shall remain in the Fund and be available for allocation under this chapter in
101 ensuing fiscal years. Interest on all moneys in the Fund shall remain in the Fund and be credited to it.
102 The Fund shall be used solely for the payment of the grants provided under this chapter. The
103 Department shall administer the Fund.

104 B. The Department shall allocate moneys from the Fund in the following order of priority: (i) first to
105 unpaid grant amounts carried forward from prior years because eligible corporations did not receive
106 the full amount of any grant to which they were eligible in a prior year pursuant to this chapter and (ii)
107 then to other approved applicants. If the moneys in the Fund are less than the amount of grants to
108 which approved applicants in any class of priority are eligible, the moneys in the Fund shall be
109 apportioned pro rata among eligible applicants in such class, based upon the amount of the grant to
110 which an approved applicant is eligible and the amount of money in the Fund available for allocation
111 to such class.

112 The Department may not allocate an amount in excess of the moneys available in the Fund for the
113 payment of grants.

114 C. Beginning in calendar year 2007, by June 30 of each year, the Department shall (i) determine the
115 amount of the grants to be allocated to eligible corporations and (ii) certify to the Comptroller and
116 each eligible corporation the amount of the grant allocated to such corporation. Payment of such grants
117 shall be made by the State Treasurer on warrant of the Comptroller within 60 days of such certification.

118 D. If a grant recipient is allocated less than the full amount of a grant to which it is eligible in any
119 year pursuant to this chapter, such corporation shall not be eligible for the deficiency in that year, but
120 the unpaid portion of the grant to which it was eligible shall be carried forward by the Department to

the following year, during which it shall be in the first class of priority as provided in clause (i) of subsection B.

E. In no case shall the Department certify grants from the Fund for kilowatts of electricity produced prior to January 1, 2006, or sold after December 31, 2010.

F. Actions of the Department relating to the allocation and awarding of grants shall be exempt from the provisions of the Administrative Process Act pursuant to subdivision B 4 of § 2.2-4002.

§ 59.1-284.22. Requirements for grants generally.

A. The Department shall establish an application process by which eligible corporations shall apply for a grant under this chapter. An application for a grant under this chapter shall not be approved until the Department has verified that the electricity has been produced from qualified energy resources at a qualified Virginia facility.

The application shall be filed with the director of the Department no later than March 31 each year following the calendar year in which such kilowatts of electricity were sold. Failure to meet the filing deadline shall render the applicant ineligible to receive a grant for such kilowatts of electricity sold in the prior calendar year. For filings by mail, the postmark cancellation shall govern the date of the filing determination.

B. The application shall provide evidence, satisfactory to the Department, of the number of kilowatts of electricity produced by the corporation from qualified energy resources at a qualified Virginia facility that were sold by such corporation in the prior calendar year.

C. As a condition of receipt of a grant, an eligible corporation shall make available to the Department for inspection upon request all relevant and applicable documents to determine whether the requirements for the receipt of grants as set forth in this chapter have been satisfied. All such documents appropriately identified by the eligible corporation shall be considered confidential and proprietary.

D. A corporation receiving a grant for the production and sale of kilowatts of electricity under this chapter may not use the production or sale of such kilowatts of electricity as the basis for claiming any other grant or credit against taxes, as provided under the Code of Virginia or in an appropriation act.

CHAPTER 22.6.

PHOTOVOLTAIC, SOLAR, AND WIND ENERGY UTILIZATION GRANT PROGRAM.

§ 59.1-284.30. Definitions.

A. As used in this chapter, unless the context clearly requires otherwise:

"Corporation" means an entity subject to the tax imposed by Article 10 (§ 58.1-400 et seq.) of Chapter 3 of Title 58.1.

"Department" means the Department of Mines, Minerals and Energy.

"Fund" means the Photovoltaic, Solar, and Wind Energy Utilization Grant Fund.

"Individual" means the same as that term is defined in § 58.1-302.

"Photovoltaic property" means solar energy property that uses a solar photovoltaic process to generate electricity and that meets applicable performance and quality standards and certification requirements in effect at the time of acquisition of the property, as specified by the Department.

"Solar energy property" means equipment that uses solar energy (i) to generate electricity, (ii) to heat or cool a structure or provide hot water for use in a structure, or (iii) to provide solar process heat. Solar energy property does not include a swimming pool, hot tub, or any other storage medium that has a function other than storage.

"Solar water heating property" means solar energy property that, when installed in connection with a structure, uses solar energy for the purpose of providing hot water for use within the structure and meets applicable performance and quality standards and certification requirements in effect at the time of acquisition of the property, as specified by the Department.

"Wind-powered electrical generator" means an electrical generating unit that (i) has a capacity of not more than 10 kilowatts, (ii) uses wind as its total source of fuel, (iii) is located on the individual's or corporation's premises, and (iv) is intended primarily to offset all or part of the individual's or corporation's own electricity requirements.

B. Subject to appropriation of sufficient moneys in the Fund, beginning with calendar year 2006 through calendar year 2010, an eligible individual or corporation may receive a grant payable from the Fund for a portion of the cost of photovoltaic property, solar water heating property, or wind-powered electrical generators placed in service during the calendar year by such individual or corporation. The grant amount shall be 15% of the total installed cost of photovoltaic property, solar water heating property, or wind-powered electrical generators but shall not exceed an aggregate total of:

1. \$2,000 for each system of photovoltaic property;
2. \$1,000 for each system of solar water heating property; and
3. \$1,000 for each system of wind-powered electrical generators.

Persons or entities placing in service photovoltaic property, solar water heating property, or

182 wind-powered electrical generators for or on behalf of another person or entity shall not be eligible to
183 receive a grant for such property.

184 § 59.1-284.31. Photovoltaic, Solar, and Wind Energy Utilization Grant Fund.

185 A. There is hereby established in the state treasury a special nonreverting fund to be known as the
186 Photovoltaic, Solar, and Wind Energy Utilization Grant Fund. The Fund shall consist of such moneys as
187 may be appropriated by the General Assembly from time to time. Any moneys deposited to or remaining
188 in the Fund during or at the end of each fiscal year or biennium, including interest thereon, shall not
189 revert to the general fund but shall remain in the Fund and be available for allocation under this
190 chapter in ensuing fiscal years. Interest on all moneys in the Fund shall remain in the Fund and be
191 credited to it. The Fund shall be used solely for the payment of the grants provided under this chapter.
192 The Department shall administer the Fund.

193 B. The Department shall allocate moneys from the Fund in the following order of priority: (i) first to
194 unpaid grant amounts carried forward from prior years because eligible individuals or corporations did
195 not receive the full amount of any grant to which they were eligible in a prior year pursuant to this
196 chapter and (ii) then to other approved applicants. If the moneys in the Fund are less than the amount
197 of grants to which approved applicants in any class of priority are eligible, the moneys in the Fund
198 shall be apportioned pro rata among eligible applicants in such class, based upon the amount of the
199 grant to which an approved applicant is eligible and the amount of money in the Fund available for
200 allocation to such class.

201 The Department may not allocate an amount in excess of the moneys available in the Fund for the
202 payment of grants.

203 C. Beginning in calendar year 2007, by June 30 of each year, the Department shall (i) determine
204 the amount of the grants to be allocated to eligible individuals and corporations, and (ii) certify to the
205 Comptroller and each eligible grant applicant the amount of the grant allocated to such applicant.
206 Payment of such grants shall be made by the State Treasurer on warrant of the Comptroller within 60
207 days of such certification.

208 D. If a grant recipient is allocated less than the full amount of a grant to which it is eligible in any
209 year pursuant to this chapter, such individual or corporation shall not be eligible for the deficiency in
210 that year, but the unpaid portion of the grant to which it was eligible shall be carried forward by the
211 Department to the following year, during which it shall be in the first class of priority as provided in
212 clause (i) of subsection B.

213 E. In no case shall the Department certify grants from the Fund for photovoltaic property, solar
214 water heating property, or wind-powered electrical generators placed in service (i) prior to January 1,
215 2006, or (ii) after December 31, 2010.

216 F. Actions of the Department relating to the allocation and awarding of grants shall be exempt from
217 the provisions of the Administrative Process Act pursuant to subdivision B 4 of § 2.2-4002.

218 § 59.1-284.32. Requirements for grants generally.

219 A. The Department shall establish an application process by which eligible individuals and
220 corporations shall apply for a grant under this chapter. The application shall be filed with the director
221 of the Department no later than March 31 each year following the calendar year in which such
222 property was placed in service. Failure to meet the filing deadline shall render the applicant ineligible
223 to receive a grant for photovoltaic property, solar water heating property, or wind-powered electrical
224 generators placed in service in the prior calendar year. For filings by mail, the postmark cancellation
225 shall govern the date of the filing determination.

226 B. The application shall provide evidence, satisfactory to the Department, of the total installed cost
227 of each system of photovoltaic property, solar water heating property, or wind-powered electrical
228 generators placed in service by such individual or corporation in the prior calendar year.

229 C. As a condition of receipt of a grant, an eligible individual or corporation shall make available to
230 the Department for inspection upon request all relevant and applicable documents to determine whether
231 the requirements for the receipt of grants as set forth in this chapter have been satisfied.

232 D. An individual or corporation receiving a grant pursuant to this chapter for a system of
233 photovoltaic property, solar water heating property, or wind-powered electrical generators may not use
234 such system as the basis for claiming any other grant or credit against taxes, as provided under the
235 Code of Virginia or in an appropriation act.

236 2. That the provisions of this act relating to refunds of state and local retail sales and use taxes
237 and motor vehicle sales and use taxes shall not apply to any taxable transaction occurring prior to
238 January 1, 2007.

239 3. That the Tax Commissioner, the Commissioner of the Department of Motor Vehicles, and the
240 Director of the Department of Mines, Minerals and Energy shall promulgate regulations, in
241 accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) for the
242 purposes of carrying out the provisions of this act.

243 4. That the Tax Commissioner, the Commissioner of the Department of Motor Vehicles, and the

244 director of the Department of Mines, Minerals and Energy, in consultation with manufacturers,
245 retailers, local government officials and other interested groups, shall develop voluntary labeling
246 and public information materials to identify products eligible for the tax refunds provided under
247 this act.