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SENATE BILL NO. 1186

Offered January 14, 2009

Prefiled January 13, 2009

A BILL to amend and reenact § 45.1-394 of the Code of Virginia, relating to the Biofuels Production Incentive Grant Program.

Patron—Hanger

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 45.1-394 of the Code of Virginia is amended and reenacted as follows:

§ 45.1-394. Biofuels Production Incentive Grant Program.

A. For the purposes of this section:

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

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

"Cellulosic biofuels" means biofuels derived from winter cover crops, cellulose, hemicellulose, lignin oil, and algae.

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

1. Meets all applicable ASTM specifications; and

2. Is denatured as specified in 27 C.F.R. Parts 20 and 21.

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

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

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

B. A producer of neat *cellulosic* biofuels commencing qualifying sales on or after January 1, ~~2007~~*2008*, shall be eligible to receive a biofuels production incentive grant in an amount equal to $0.10 for each gallon of neat *cellulosic* biofuels sold by it in the calendar year beginning with calendar year ~~2007~~*2008*. *A producer of non-cellulosic neat biofuels shall be eligible to receive a biofuels production incentive grant in an amount equal to $0.075 for each gallon of neat biofuels sold by it in the calendar year beginning with calendar year 2008.* To be eligible for an incentive grant ~~for neat biofuels sales~~ in any given calendar year, the producer shall have produced in the Commonwealth at least ~~two~~*one* million gallons of neat biofuels in such year. In addition, any producer producing neat biofuels prior to January 1, ~~2007~~*2008*, shall be eligible for an incentive grant for neat biofuel sales in the respective calendar year only if its production in the Commonwealth of neat biofuels for such calendar year exceeds its production in the Commonwealth of neat biofuels in the ~~2006~~*2007* calendar year by at least ~~two~~*one* million gallons, and if it maintains production at a minimum of that level in future years. A producer shall be eligible for a grant from the Biofuels Production Fund (the Fund) established under § 45.1-393 only for each gallon of neat biofuels that it produces in the Commonwealth on or after January 1, ~~2007~~*2008*, which gallon has also been sold by the producer to customers. Grants awarded under this section shall be paid from the Fund.

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

D. Any producer eligible to apply for a grant pursuant to this section shall provide evidence in the form of production reports, satisfactory to the Director, that the producer met the neat biofuels production requirements provided under this section for the respective calendar year. The producer shall

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also provide evidence in the form of sales reports, satisfactory to the Director, of the number of qualifying gallons of neat biofuels sold by the producer to customers in the respective calendar year. Such reports shall be filed no later than March 31 following the calendar year in which the producer sold the qualifying gallons of neat biofuels. Failure to meet the filing deadline shall render the applicant ineligible to receive a grant. The postmark cancellation shall govern the date of the filing determination unless the Director has approved an alternative means of filing.

No producer shall be eligible to receive grants pursuant to this section for qualifying sales made in more than six calendar years.

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

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