

VIRGINIA ACTS OF ASSEMBLY -- 2010 RECONVENED SESSION

CHAPTER 846

An Act to amend the Code of Virginia by adding in Title 23 a chapter numbered 26, consisting of sections numbered 23-299 through 23-302, relating to Virginia Universities Clean Energy Development and Economic Stimulus Foundation.

[H 928]

Approved April 21, 2010

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 23 a chapter numbered 26, consisting of sections numbered 23-299 through 23-302, as follows:

CHAPTER 26.

VIRGINIA UNIVERSITIES CLEAN ENERGY DEVELOPMENT AND ECONOMIC STIMULUS FOUNDATION.

§ 23-299. *Virginia Universities Clean Energy Development and Economic Stimulus Foundation created; purpose; structure.*

A. *There is hereby created the Virginia Universities Clean Energy Development and Economic Stimulus Foundation (Foundation) established as a body corporate and political subdivision of the Commonwealth which, with the cooperation and assistance of the universities, shall identify, obtain, disburse, and administer funding for the following purposes: (i) research and development of alternative fuels, clean energy production, and related technologies; (ii) support of economic development projects in economically disadvantaged areas; and (iii) provision of assistance in the commercialization of alternative fuels and clean energy technologies developed with funds administered by the Foundation.*

B. *The Foundation shall have, and is vested with, all of the politic and corporate powers as are set forth in this chapter. The Foundation shall have only those powers and duties as enumerated in this chapter.*

C. *The Foundation shall operate as a not-for-profit corporate entity and all funding made available to the Foundation shall be used solely for the purposes set forth in this chapter and shall be provided from such sources as specified in this chapter. No public funds shall be used for the work of the Foundation, which shall not be construed as an agency of the Commonwealth.*

D. *The Foundation shall be exempt from the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.).*

E. *The exercise of the powers granted by this chapter shall be in all respects for the benefit of the citizens of the Commonwealth and for the promotion of their welfare, convenience, and prosperity.*

F. *The Foundation shall be performing an essential governmental function in the exercise of the powers conferred upon it by this chapter, and the property of the Foundation and its income and operations shall be exempt from taxation or assessments upon any property acquired or used by the Foundation under the provisions of this chapter.*

§ 23-300. *Membership of the Board; terms; vacancies; officers; meetings, etc.*

A. *The Foundation shall be governed by a Board of Directors composed of eight members as follows: the president of the University of Virginia or his designee; the president of Virginia Polytechnic Institute and State University or his designee; the president of one of the other institutions included in the Virginia Coastal Energy Research Consortium, pursuant to § 67-600 of the Code of Virginia, or his designee; one nonlegislative citizen member who shall represent public service companies providing energy to consumers, to be appointed by the Governor; three nonlegislative citizen members to be appointed by the Speaker of the House of Delegates; and one nonlegislative citizen member to be appointed by the Senate Committee on Rules.*

Nonlegislative citizen members appointed by the Speaker of the House of Delegates and the Senate Committee on Rules shall have specialized background and expertise on one or more of the following subjects: environmental or conservation issues; financing and commercialization of newly developed technologies or products; energy production issues; or scientific research methodologies and protocols.

B. *There shall be no limitation on the terms of Board members and they shall serve at the pleasure of the appointing authority, except for the president of the other institutions included in the Virginia Coastal Energy Research Consortium, which shall rotate among the member institutions on an annual basis.*

C. *The Board shall appoint from its membership a chairman and a vice-chairman, both of whom shall serve in such capacities at the pleasure of the Board. The chairman, or in his absence, the vice-chairman, shall preside at all meetings of the Board. The meetings of the Board shall be held on the call of the chairman or whenever the majority of the members so request. The Board shall meet not less than twice annually. A majority of members of the Board serving at any one time shall constitute a*

quorum for the transaction of business. Notwithstanding any other provision of law, the Board may meet, conduct business, and vote by means of electronic communication.

§ 23-301. Powers and duties of the Board.

A. The Board shall have the power to:

- 1. Adopt, use, and alter at will an official seal;*
- 2. Make bylaws for the management and regulation of its affairs;*
- 3. Sue and be sued;*
- 4. Maintain an office at such place or places within the Commonwealth as it may designate;*
- 5. Accept, hold, and administer moneys, grants, securities, or other property transferred, given, or bequeathed to the Foundation, absolutely or in trust, for the purposes for which the Foundation is created;*
- 6. Determine how moneys provided to the Foundation are to be distributed and to authorize grants, loans, or other distributions of such moneys for the purposes set forth in this chapter;*
- 7. Make and execute contracts and all other instruments and agreements necessary or convenient for the exercise of its powers and functions;*
- 8. Invest its funds as provided in this chapter or permitted by applicable law;*
- 9. Expend from such funds as are available to it a reasonable amount for personnel, operations, and administration of the Foundation; and*
- 10. Do any lawful act necessary or appropriate to carry out the powers herein granted or reasonably implied, including use of whatever lawful means may be necessary and appropriate to recover any payments wrongfully made from the funds available to the Foundation.*

B. The Board shall employ on a full-time, part-time, or contract basis such personnel as may be necessary to ensure that the purposes of this chapter are achieved, including, but not limited to, a chief executive officer, legal counsel, and chief research policy officer.

C. The Board and such staff as may be employed shall have the following duties:

- 1. Establish procedures by which persons seeking funds from the Foundation may make application for an award of such fund;*
- 2. Actively seek out and encourage appropriate projects; and*
- 3. Actively seek out and expend all reasonable efforts to obtain funds from all available sources.*

D. Any proposed projects funded by the Foundation shall be consistent with the purposes set forth in this chapter.

E. The Board shall report its activities annually by December 1 to the Governor, the Speaker of the House, and the Senate Committee on Rules.

§ 23-302. Evaluation of proposals; due diligence; participation by universities.

A. All requests seeking funds from the Foundation shall be thoroughly evaluated utilizing the criteria set forth in subsection B of this section. The Board and such staff as may be employed shall participate in the evaluation and may utilize such additional assistance as they determine necessary. The universities shall provide expertise for the evaluation process as requested by the Board.

B. Each funding request shall be evaluated according to the extent to which it meets a substantial portion of the following criteria as appropriate to the project or technology proposed:

- 1. Whether, and to what extent, the proposed project will identify, develop, and facilitate production and marketing of alternative fuels, clean energy sources, reduced dependence on foreign energy supplies, more affordable energy, discovery and development of raw materials necessary for energy production, or other similar improvements in energy creation, production, distribution, and affordability;*
- 2. Whether, and to what extent, the proposed project will aid in economic revitalization of economically disadvantaged areas;*
- 3. The scientific and technological value and viability of the proposed project;*
- 4. The likelihood that the proposed project will fully realize its stated objectives;*
- 5. The cost of the proposed project in relation to its reasonably foreseeable economic impact;*
- 6. Whether, and to what extent, the proposed project will likely result in a commercially viable outcome;*
- 7. The effort and time necessary to commercialize outcomes of the proposed project;*
- 8. Whether, and to what extent, the requesting entity has utilized other available funding sources; and*
- 9. Such other criteria as the Board may determine.*

C. The Board shall determine whether a funding request sufficiently meets the criteria established and the purposes of this chapter, and if so, the appropriate amount of funding to be provided. Funding shall be awarded only to those proposed projects that best meet the established criteria and purposes of this chapter.

D. Any member of the Board who has a personal interest in any transaction before the Board shall be disqualified from participating in that transaction, and shall forthwith make disclosure of the existence of his interest, including the full name and address of the business involved, and his disclosure shall also be reflected in the public records of the Board for five years in the office of the administrative head of the Board or, if the Board has a clerk, in the clerk's office.