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## SENATE BILL NO. 129

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance  
on January 27, 2010)

(Patrons Prior to Substitute—Senators Stosch and Deeds [SB171])

A BILL to amend the Code of Virginia by adding sections numbered 45.1-392.1 and 45.1-392.2, and to repeal § 45.1-392 of the Code of Virginia, relating to the establishment of the Clean Energy Manufacturing Incentive Grant Program.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 45.1-392.1 and 45.1-392.2 as follows:

§ 45.1-392.1. Clean Energy Manufacturing Incentive Grant Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the Clean Energy Manufacturing Incentive Grant Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. The Fund shall consist of such moneys as may be appropriated to it by the General Assembly. Moneys in the Fund shall be used solely for the purposes of providing grants to certain clean energy manufacturers as specified in § 45.1-392.2. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director of the Department of Mines, Minerals and Energy.

§ 45.1-392.2. Clean Energy Manufacturing Incentive Grant Program.

A. For the purposes of this section:

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

"Clean energy manufacturer" means a manufacturer whose primary function is to manufacture or assemble equipment, systems, or products used to produce renewable or nuclear energy, or products used for energy conservation, storage, or grid efficiency purposes, so long as such manufacturer is not a public service corporation as defined in § 56-1 that recovers its costs pursuant to § 56-585.1.

"Clean energy products" means the equipment, services, goods, systems, and related functions produced by a clean energy manufacturer.

"Eligible entity" means any clean energy manufacturer meeting the requirements of subsection B.

"Fund" means the Clean Energy Manufacturing Incentive Grant Fund established pursuant to § 45.1-392.1.

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

"Renewable energy" means the same as "renewable energy" as defined in § 56-576.

B. Any clean energy manufacturer shall be eligible to receive a clean energy manufacturing grant for up to six years if it: (i) commences or expands operations in the Commonwealth on or after January 1, 2010; (ii) makes a capital investment in the Commonwealth on or after January 1, 2010, in an amount greater than \$50 million in real and tangible personal property related to the manufacture or assembly of clean energy products; (iii) creates at least 200 full-time jobs that pay at least the prevailing wage, as defined in § 2.2-115, in the locality where the clean energy manufacturer commences or expands its operations to manufacture or assemble clean energy products; and (iv) enters into a memorandum of understanding setting forth the requirements for capital investment and the creation of new full-time jobs. Notwithstanding clauses (ii) and (iii), the Governor may reduce the capital investment and job creation thresholds if the eligible entity of such development is located in a locality with an unemployment rate that is at least 1.25 times the state average.

C. The grants shall be paid from the Fund subject to appropriation, and the aggregate amount of grants awarded and outstanding at any time shall not exceed \$25 million. The Director, with the assistance of the Authority, shall conduct a return on investment analysis to determine the amount and duration of grant payments before entering into a memorandum of understanding.

D. Any eligible entity shall provide an annual report to the Director, in a form approved by and satisfactory to him, detailing clean energy product operations in the Commonwealth. The report shall be submitted no later than March 31 for the previous calendar year and, at the discretion of the Director or as stated in the memorandum of understanding, failure to meet the filing deadline shall render the applicant ineligible to receive a grant for that year. The U.S. Postal Service postmark cancellation shall govern the date of filing determination unless the Director has approved an alternative means of filing.

E. The Director may inspect the records, books, and other applicable documents and evidence to

60 *verify whether the clean energy manufacturer meets the requirements for eligibility set forth in this*  
61 *section and the memorandum of understanding.*

62 *F. The Director shall allocate moneys from the Fund in the following order of priority: (i) unpaid*  
63 *grant amounts carried forward from prior years because eligible entities did not receive the full amount*  
64 *of any grant to which they were eligible in a prior year and (ii) other eligible entities. If the moneys*  
65 *available for grant payments in the Fund are less than the amount of grants to which eligible entities*  
66 *are eligible, the moneys shall be apportioned pro rata among eligible entities, based upon the amount of*  
67 *the grant to which an eligible entity is eligible and the amount of money in the Fund available for*  
68 *allocation to such eligible entities.*

69 *G. If an entity is allocated less than the full amount of a grant to which it is eligible in any year, it*  
70 *shall not be eligible for the deficiency in that year, but the unpaid portion of the grant to which it was*  
71 *eligible shall be carried forward by the Director to the following year, during which it shall be in the*  
72 *first class of priority as provided in clause (i) of subsection F.*

73 *H. Actions of the Director or the Authority relating to the allocation and awarding of grants under*  
74 *this section shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.)*  
75 *pursuant to subdivision B 4 of § 2.2-4002.*

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

77 **3. That the Director of the Department of Mines, Minerals and Energy and the Virginia Economic**  
78 **Development Partnership Authority shall assist the Secretary of Commerce and Trade to develop**  
79 **guidelines to implement the provisions of this act and present such guidelines to the Chairmen of**  
80 **the Senate Finance and House Appropriations Committees. The guidelines shall be exempt from**  
81 **the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).**

82 **4. That no grants under this section shall be paid to an eligible entity before July 1, 2012.**