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**SENATE BILL NO. 1229**

Offered January 12, 2011

Prefiled January 12, 2011

A *BILL to amend and reenact §§ 2.2-1111 and 45.1-394 of the Code of Virginia; to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 22.8, consisting of sections numbered 59.1-284.25, 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 Virginia, relating to the establishment of the Clean Energy Manufacturing Incentive Grant Program.*

Patrons—Deeds and Petersen; Delegate: Surovell

Referred to Committee on Finance

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

**1. That §§ 2.2-1111 and 45.1-394 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 22.8, consisting of sections numbered 59.1-284.25, 59.1-284.26, and 59.1-284.27, as follows:**

§ 2.2-1111. Purchases to be made in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.) and regulations of Division; exempt purchases.

A. All purchases made by any department, division, officer or agency of the Commonwealth shall be made in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.) and such regulations as the Division may prescribe.

B. The regulations adopted by the Division shall:

1. Include a purchasing plan that shall be on file at the Division and shall be available to the public upon request;

2. Require that before any public body procures any computer system, equipment or software, it shall consider whether the proposed system, equipment or software is capable of producing products that facilitate the rights of the public to access official records under the Freedom of Information Act (§ 2.2-3700 et seq.) or other applicable law;

3. Require state public bodies to procure only shielded outdoor light fixtures and provide for waivers of this requirement when the Division determines that a bona fide operational, temporary, safety or specific aesthetic need is indicated or that such fixtures are not cost effective over the life cycle of the fixtures. For the purposes of this subdivision, "shielded outdoor light fixture" means an outdoor light fixture that is (i) fully shielded so that no light rays are emitted by the installed fixture above the horizontal plane or (ii) constructed so that no more than two percent of the total luminaire lumens in the zone of 90 to 180 degrees vertical angle is permitted, if the related output of the luminaire is greater than 3200 lumens. In adopting regulations under this subdivision, the Division shall consider national standards for outdoor lighting as adopted by the Illuminating Engineering Society of North America (IESNA).

For any project initiated on or after July 1, 2003, the Virginia Department of Transportation shall design all lighting systems in accordance with current IESNA standards and recommended practices. The lighting system shall utilize fixtures that minimize glare, light trespass, and skyglow, all as defined by the IESNA, while still providing a comfortable, visually effective, safe, and secure outdoor environment in a cost-effective manner over the life cycle of the lighting system;

4. Establish the conditions under which a public body may use, as a basis for the procurement of goods and nonprofessional services, a particular vendor's contract-pricing that has been negotiated and accepted by the U.S. General Services Administration;

5. Establish procurement preferences for products containing recycled oil (including reprocessed and refined oil products) and recycled antifreeze no later than December 31, 2002;

6. Establish conditions under which a public body shall demonstrate a good faith effort to ensure that state contracts or subcontracts for goods or services that involve the manual packaging of bulk supplies or the manual assemblage of goods where individual items weigh less than 50 pounds be offered to nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported employment services serving the handicapped;

7. Require that on or before October 1, 2009, and every two years thereafter, the Director of the Department of General Services shall solicit from each state agency and public institution of higher education a list of procurements falling under the Department's authority that were competed with the private sector that appear on the Commonwealth Competition Council's commercial activities list and were, until that time, being performed by each state agency and public institution of higher education

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59 during the previous two years, and the outcome of that competition. The Director shall make the lists  
60 available to the public on the Department of General Services' website; and

61 8. Establish the conditions under which state public bodies may procure diesel fuel containing, at a  
62 minimum, two percent, by volume, biodiesel fuel or green diesel fuel, as defined in  
63 ~~§ 45.1-394~~ § 59.1-284.25, for use in on-road internal combustion engines. The conditions shall take into  
64 consideration the availability of such fuel and the variability in cost of biodiesel fuel with respect to  
65 unblended diesel fuel.

66 C. The Division may make, alter, amend or repeal regulations relating to the purchase of materials,  
67 supplies, equipment, nonprofessional services, and printing, and may specifically exempt purchases  
68 below a stated amount or particular agencies or specified materials, equipment, nonprofessional services,  
69 supplies and printing.

70 § 45.1-394. Biofuels Production Incentive Grant Program.

71 A. For the purposes of this section:

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

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

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

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

82 1. Meets all applicable ASTM specifications; and

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

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

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

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

94 B. A producer of neat advanced biofuels commencing qualifying sales on or after January 1, 2008,  
95 *but before September 30, 2011*, shall be eligible to receive a biofuels production incentive grant in an  
96 amount equal to \$0.125 for each gallon of neat advanced biofuels sold by it in the calendar year  
97 beginning with calendar year 2008. A producer of non-advanced neat biofuels shall be eligible to receive  
98 a biofuels production incentive grant in an amount equal to \$0.10 for each gallon of neat biofuels sold  
99 by it in the calendar year beginning with calendar year 2008. To be eligible for an incentive grant in  
100 any given calendar year, the producer shall have produced in the Commonwealth at least one million  
101 gallons of neat biofuels in such year. In addition, any producer producing neat biofuels prior to January  
102 1, 2008, shall be eligible for an incentive grant for neat biofuel sales in the respective calendar year  
103 only if its production in the Commonwealth of neat biofuels for such calendar year exceeds its  
104 production in the Commonwealth of neat biofuels in the 2007 calendar year by at least one million  
105 gallons, and if it maintains production at a minimum of that level in future years. A producer shall be  
106 eligible for a grant from the Biofuels Production Fund (the Fund) established under § 45.1-393 only for  
107 each gallon of neat biofuels that it produces in the Commonwealth on or after January 1, 2008, which  
108 gallon has also been sold by the producer to customers. Grants awarded under this section shall be paid  
109 from the Fund.

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

114 D. Any producer eligible to apply for a grant pursuant to this section shall provide evidence in the  
115 form of production reports, satisfactory to the Director, that the producer met the neat biofuels  
116 production requirements provided under this section for the respective calendar year. The producer shall  
117 also provide evidence in the form of sales reports, satisfactory to the Director, of the number of  
118 qualifying gallons of neat biofuels sold by the producer to customers in the respective calendar year.  
119 Such reports shall be filed no later than March 31 following the calendar year in which the producer  
120 sold the qualifying gallons of neat biofuels. Failure to meet the filing deadline shall render the applicant

121 ineligible to receive a grant. The postmark cancellation shall govern the date of the filing determination  
122 unless the Director has approved an alternative means of filing.

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

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

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

132 CHAPTER 22.8.

133 CLEAN ENERGY MANUFACTURING INCENTIVE GRANT PROGRAM.

134 § 59.1-284.25. Definitions.

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

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

138 "Authority" means the Virginia Economic Development Partnership Authority established in  
139 § 2.2-2234.

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

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

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

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

151 "Eligible entity" means any clean energy manufacturer meeting the requirements of subsection A of  
152 § 59.1-284.27 or any wind energy supplier that directly supports a clean energy manufacturer in the  
153 wind energy industry and meets the requirements of subsection A of § 59.1-284.27.

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

158 1. Meets all applicable ASTM specifications; and

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

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

162 "Fund" means the Clean Energy Manufacturing Incentive Grant Fund established pursuant to  
163 § 59.1-284.26.

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

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

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

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

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

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

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

188 § 59.1-284.26. Clean Energy Manufacturing Incentive Grant Fund.

189 There is hereby created in the state treasury a special nonreverting fund to be known as the Clean  
190 Energy Manufacturing Incentive Grant Fund, hereafter referred to as "the Fund." The Fund shall be  
191 established on the books of the Comptroller. The Fund shall consist of such moneys as may be  
192 appropriated to it by the General Assembly. Moneys in the Fund shall be used solely for the purposes of  
193 providing grants to certain clean energy manufacturers and wind energy suppliers as specified in  
194 § 59.1-284.27. Expenditures and disbursements from the Fund shall be made by the State Treasurer on  
195 warrants issued by the Comptroller upon written request signed by the President of the Authority.

196 § 59.1-284.27. Clean Energy Manufacturing Incentive Grant Program.

197 A. A clean energy manufacturer shall be eligible to receive a clean energy manufacturing grant for  
198 up to six years if it (i) commences or expands operations in the Commonwealth on or after July 1,  
199 2011; (ii) makes a capital investment in the Commonwealth on or after July 1, 2011, in an amount  
200 greater than \$50 million; (iii) creates at least 200 new full-time jobs on or after July 1, 2011; and (iv)  
201 enters into a memorandum of understanding setting forth, at a minimum, the requirements for capital  
202 investment and the creation of new full-time jobs. Notwithstanding clauses (ii) and (iii), the Governor  
203 may reduce the capital investment and new full-time job thresholds if the eligible entity's manufacturing  
204 or assembly facility is located in a locality with an unemployment rate for the latest year prior to the  
205 execution of the memorandum of understanding for which such data is available that is at least 1.25  
206 times the final statewide average unemployment rate for that year. A wind energy supplier shall be  
207 eligible to receive a clean energy manufacturing grant for up to six years if, on or after July 1, 2011,  
208 and in addition to the requirements of clauses (i) and (iv), it makes a capital investment in the  
209 Commonwealth in an amount greater than \$10 million and creates at least 30 new full-time jobs.

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

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

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

223 E. The Authority shall allocate moneys from the Fund in the following order of priority: first to  
224 unpaid moneys carried forward from prior years because eligible entities did not receive the full amount  
225 of any money to which they were eligible in a prior year and second to other eligible entities. If the  
226 moneys available for grant payments in the Fund are less than the amount of grants to which eligible  
227 entities are eligible, the moneys shall be apportioned pro rata among eligible entities, based upon the  
228 amount of the grant to which an entity is eligible and the amount of moneys in the Fund available for  
229 allocation to such eligible entities.

230 F. If an entity is allocated less than the full amount of a grant to which it is eligible in any year, it  
231 shall not be eligible for the deficiency in that year, but the unpaid portion of the grant to which it was  
232 eligible shall be carried forward to the following year, during which it shall be in the first class of  
233 priority as provided in subsection E.

234 G. The Authority shall assist the Secretary with developing guidelines to implement the provisions of  
235 this chapter and present such guidelines to the Chairmen of the Senate Finance and House  
236 Appropriations Committees. The guidelines may provide for different grant awards based upon the type  
237 of clean energy product manufactured, supplied, or assembled or biofuel produced. Actions of the  
238 Authority and the Secretary relating to the development of guidelines and the allocation and awarding  
239 of grants under this section shall be exempt from the provisions of the Administrative Process Act  
240 (§ 2.2-4000 et seq.) pursuant to subdivision B 4 of § 2.2-4002.

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

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

243 4. That any producer that was qualified to receive a grant from the Biofuels Production Fund,

244 established pursuant to § 45.1-393, during the 2010-2012 biennium shall continue to receive  
245 payments in accordance with § 45.1-394 of the Code of Virginia, provided such producer continues  
246 to meet all criteria for eligibility.  
247 5. That no grants under § 59.1-284.27 of the Code of Virginia shall be paid to an eligible entity  
248 before July 1, 2012.  
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