

VIRGINIA ACTS OF ASSEMBLY -- 2014 SESSION

CHAPTER 725

An Act to amend the Code of Virginia by adding in Chapter 26 of Title 45.1 sections numbered 45.1-395 and 45.1-396, relating to grants for placing into service renewable energy property.

[S 653]

Approved April 6, 2014

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 26 of Title 45.1 sections numbered 45.1-395 and 45.1-396 as follows:

§ 45.1-395. Grants for placing into service renewable energy property.

A. For the purposes of this section, unless the context requires a different meaning:

"Annual program cap" means the total amount of grant funds appropriated by the General Assembly for the respective fiscal year. Subject to appropriation by the General Assembly, the annual program cap shall be \$10 million for fiscal year 2015-2016.

"Annual project payout threshold" means an amount that is equal to 2.5 percent of the annual program cap but shall not be less than \$125,000 or in excess of \$250,000.

"Division" means the Division of Energy of the Department.

"Individual piece of renewable energy property" means (i) one or more pieces of renewable energy property with a single utility interconnection point regardless of the number of parcels of land on which the property is located or (ii) more than one piece of renewable energy property on the same parcel of land each with a single utility interconnection point. For purposes of this definition, a parcel of land is such parcel as established by the real estate tax assessment.

"Renewable energy" means energy derived from sunlight, wind, falling water, biomass, sustainable or otherwise (the definitions of which shall be liberally construed), energy from waste, landfill gas, municipal solid waste, wave motion, tides, or geothermal power, and does not include energy derived from coal, oil, natural gas, or nuclear power.

"Renewable energy property" means property located in the Commonwealth that produces renewable energy and related devices necessary for collecting, controlling, storing, exchanging, conditioning, or converting such energy.

B. In addition to all other responsibilities, the Division shall administer the grant program created under this section.

C. 1. Beginning with fiscal year 2015-2016 and fiscal years thereafter, a person placing into service an individual piece of renewable energy property during the fiscal year shall be eligible for a grant. Subject to the requirements of this section being met, the grant shall equal 35 percent of the costs paid or incurred by the person to place the renewable energy property into service, not to exceed \$2.5 million for any individual piece of renewable energy property. No grant shall be allowed for costs paid or incurred related to renewable energy property that has generated electricity in the 12 months preceding the date of the grant application. No grant shall be allowed for renewable energy property paid for by utility ratepayer funds.

2. In the case of a grant that would not have been in excess of the annual project payout threshold if paid on the date that the renewable energy property was placed into service, the grant shall be paid within 90 days immediately following the receipt of all documentation required by the Division to demonstrate that such property was placed into service. For all other grant awards, the grant shall be paid in three equal calendar year installments as follows: within 90 days immediately following the receipt of all documentation required by the Division to demonstrate that such property was placed into service and in each of the next two succeeding calendar years.

As a condition of the payment of a grant, a person shall make available for inspection upon request of the Division all relevant and applicable documents to determine whether the renewable energy property placed into service by the person meets the requirements for the payment of a grant.

D. If in one of the three calendar years in which the installment of a grant accrues the renewable energy property is disposed of, taken out of service, or moved out of the Commonwealth, the related grant payment shall be forfeited for such year (and the grantee shall be liable for the repayment of any grant previously paid during the year) and each installment year thereafter.

E. The Division shall develop procedures for the allocation of grants. Except as otherwise provided in this subsection, the Division shall not allocate more than \$10 million in grants in any fiscal year of the Commonwealth. At a minimum, a person seeking a grant shall submit an application to the Division that includes (i) adequate demonstration of site control; (ii) if required, an interconnection application filed with the local utility within the preceding 12 months; (iii) adequate demonstration of the right to consume or sell the energy produced by the renewable energy property to a third party; and (iv) a

refundable deposit equal to 10 percent of the requested grant amount. The Division shall within 30 days after receipt of a complete application review such application and approve the same for an allocation of a grant if it determines that it meets all requirements. The person shall then have 12 months from the date of allocation of a grant to place the renewable energy property into service. If the person fails to place the renewable energy property into service within such 12-month period, then the person's grant allocation shall expire and the allocated grant amount shall be added to the current fiscal year allocation of grants. The deposit shall be refunded upon (a) a written determination by the Division to reject the application, (b) payment of any grant pursuant to this section to which the deposit relates, or (c) 12 months plus one day from the allocation of any grant to which the deposit relates, whichever is earlier. Actions by the Division relating to the allocation and awarding of grants under this section shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

F. For purposes of determining whether renewable energy property has been placed into service, the Division shall use the federal guideline for when property is placed into service as set forth in Treasury Regulations Section 1.46-3(d)(1) and Treasury Regulations Section 1.167(a)-11(e)(1).

G. The person shall submit with its grant application all documentation as reasonably required by the Division, including but not limited to documentation related to any other state tax credits or grants pertaining to renewable energy for which the person has applied. All such documents appropriately identified by the person shall be considered confidential and proprietary.

H. The Division shall develop and update as necessary guidelines implementing the provisions of this section. The guidelines shall set forth metrics for measuring the economic impact from placing into service renewable energy property, which may include measures for capital investment and jobs directly or indirectly created or retained as a result of placing the property into service. Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Guidelines implementing the provisions of this section shall be made publicly available no later than December 1, 2014.

I. The amount of the grant that a person is otherwise eligible to receive for renewable energy property shall be reduced to the extent that the person claims a state tax credit under Virginia law or receives a grant under a different Virginia grant program for (i) costs paid or incurred with regard to the acquisition of the renewable energy property or (ii) energy generated by the renewable energy property.

J. All grants under this section are subject to sufficient moneys being appropriated by the General Assembly to the Renewable Energy Property Grant Fund established under § 45.1-396 for payment of the same, and the Comptroller shall not draw any warrants to issue checks for this grant program without such appropriation.

K. The grants that may be paid under this section shall be paid from the Renewable Energy Property Grant Fund established under § 45.1-396.

L. By December 1 each year beginning in 2015, the Division shall provide a written report to the General Assembly evaluating the economic impact in the preceding 12 months, or such longer period of time as the Division deems appropriate, from renewable energy property placed into service for which grants were paid under this section. The evaluation shall apply the metrics set forth in the guidelines for measuring the economic impact of such renewable energy property. The evaluation shall also estimate the amount of non-renewable energy that would have been utilized if such renewable energy property had not been placed into service.

§ 45.1-396. Renewable Energy Property Grant Fund established.

There is hereby created in the state treasury a special nonreverting fund to be known as the Renewable Energy Property Grant Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys as may be appropriated to it by the General Assembly shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for purposes of providing grants to persons placing renewable energy property into service as specified in § 45.1-395 and to reimburse the Division for its reasonable costs incurred in administering the grant program established under such section. The reimbursement for reasonable costs each year shall not exceed the lesser of (i) \$200,000 or (ii) five percent of the annual program cap. The Fund shall be administered by the Director. 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.

2. That the provisions of this act shall not become effective unless reenacted by the 2015 General Assembly.