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**SENATE BILL NO. 270**

Offered January 11, 2006

Prefiled January 10, 2006

*A BILL to amend and reenact § 58.1-609.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 58.1-2423.2, by adding in Title 59.1 a chapter numbered 22.5, consisting of sections numbered 59.1-284.20, 59.1-284.21, and 59.1-284.22, and by adding in Title 59.1 a chapter numbered 22.6, consisting of sections numbered 59.1-284.23 through 59.1-284.26, relating to grants, sales and use tax exemptions, and tax refunds for purchasing or using energy efficient goods or producing electricity from certain qualified energy resources.*

Patron—Whipple

Referred to Committee on Finance

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

**1. That § 58.1-609.1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 58.1-2423.2, by adding in Title 59.1 a chapter numbered 22.5, consisting of sections numbered 59.1-284.20, 59.1-284.21, and 59.1-284.22, and by adding in Title 59.1 a chapter numbered 22.6, consisting of sections numbered 59.1-284.23 through 59.1-284.26, as follows:**

§ 58.1-609.1. Governmental and commodities exemptions.

The tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not apply to the following:

1. Fuels which are subject to the tax imposed by Chapter 22 (§ 58.1-2200 et seq.) of this title. Persons who are refunded any such fuel tax shall, however, be subject to the tax imposed by this chapter, unless such taxes would be specifically exempted pursuant to any provision of this section.

2. Motor vehicles, trailers, semitrailers, mobile homes and travel trailers.

3. Gas, electricity, or water when delivered to consumers through mains, lines, or pipes.

4. Tangible personal property for use or consumption by the Commonwealth, any political subdivision of the Commonwealth, or the United States. This exclusion shall not apply to sales and leases to privately owned financial and other privately owned corporations chartered by the United States. Further, this exemption shall not apply to tangible personal property which is acquired by the Commonwealth or any of its political subdivisions and then transferred to private businesses for their use in a facility or real property improvement to be used by a private entity or for nongovernmental purposes other than tangible personal property acquired by the Herbert H. Bateman Advanced Shipbuilding and Carrier Integration Center and transferred to a Qualified Shipbuilder as defined in the third enactment of Chapter 790 of the 1998 Acts of the General Assembly.

5. Aircraft subject to tax under Chapter 15 (§ 58.1-1500 et seq.) of this title.

6. Motor fuels and alternative fuels for use in a commercial watercraft upon which a fuel tax is refunded pursuant to § 58.1-2259.

7. Sales by a government agency of the official flags of the United States, the Commonwealth of Virginia, or of any county, city or town.

8. Materials furnished by the State Board of Elections pursuant to §§ 24.2-404 through 24.2-407.

9. Watercraft as defined in § 58.1-1401.

10. Tangible personal property used in and about a marine terminal under the supervision of the Virginia Port Authority for handling cargo, merchandise, freight and equipment. This exemption shall apply to agents, lessees, sublessees or users of tangible personal property owned by or leased to the Virginia Port Authority and to property acquired or used by the Authority or by a nonstock, nonprofit corporation that operates a marine terminal or terminals on behalf of the Authority.

11. Sales by prisoners confined in state correctional facilities of artistic products personally made by the prisoners as authorized by § 53.1-46.

12. Tangible personal property for use or consumption by the Virginia Department for the Blind and Vision Impaired or any nominee, as defined in § 51.5-60, of such Department.

13. [Expired.]

14. Tangible personal property sold to residents and patients of the Virginia Veterans Care Center at a canteen operated by the Department of Veterans Services.

15. Tangible personal property for use or consumption by any nonprofit organization whose members include the Commonwealth and other states and which is organized for the purpose of fostering interstate cooperation and excellence in government.

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59 16. Tangible personal property purchased for use or consumption by any soil and conservation  
60 district which is organized in accordance with the provisions of Article 3 (§ 10.1-506 et seq.) of Chapter  
61 5 of Title 10.1.

62 17. Beginning September 1, 2004, (i) tangible personal property sold or leased to Alexandria Transit  
63 Company, Greater Lynchburg Transit Company, GRTC Transit System, or Greater Roanoke Transit  
64 Company that is owned, operated, or controlled by any county, city, or town, or any combination  
65 thereof, that provides public transportation services, and/or (ii) tangible personal property sold or leased  
66 to any county, city, or town, or any combination thereof, that is transferred to any of the companies set  
67 forth in clause (i) owned, operated, or controlled by any county, city, or town, or any combination  
68 thereof, that provides public transportation services.

69 18. Beginning January 1, 2007, the following items of tangible personal property: (i) clothes  
70 washers, room air conditioners, dishwashers, and standard size refrigerators that meet or exceed the  
71 applicable energy star efficiency requirements developed by the United States Environmental Protection  
72 Agency and the United States Department of Energy; (ii) any fuel cell that (a) generates electricity and  
73 heat using an electrochemical process, (b) has an electricity-only generation efficiency greater than  
74 35%, and (c) has a generating capacity of at least two kilowatts; (iii) any natural gas heat pump that  
75 has a coefficient of performance of at least 1.25 for heating and at least 0.70 for cooling; (iv) any  
76 electric heat pump hot water heater that yields an energy factor of at least 1.7; (v) any electric heat  
77 pump that has a heating system performance factor of at least 8.0 and a cooling seasonal energy  
78 efficiency ratio of at least 13.0; (vi) any central air conditioner that has a cooling seasonal energy  
79 efficiency ratio of at least 13.5; and (vii) any advanced natural gas water heater that has an energy  
80 factor of at least 0.65.

81 § 58.1-2423.2. Refund for motor vehicles using clean special fuels.

82 A. If a motor vehicle is (i) manufactured to use clean special fuels, as defined in § 46.2-749.3, and  
83 uses such fuels as a source of propulsion; (ii) converted or retrofitted to use such clean special fuels  
84 within 180 days after the date of titling in the Commonwealth, and uses such fuels as a source of  
85 propulsion; or (iii) a hybrid gasoline/electric powered motor vehicle that is propelled primarily by  
86 electric charge, the vehicle owner may apply, on or after January 1, 2007, for a refund of a portion of  
87 the motor vehicle sales and use tax paid by such person pursuant to subdivisions A 1, A 2, A 3, or A 5  
88 of § 58.1-2402. In no event shall a refund be paid for such tax on a mobile office, or on a  
89 manufactured home as defined in § 36-85.3.

90 B. The refund provided under this section for the eligible motor vehicles described in subsection A  
91 shall equal one-half of the motor vehicle sales and use tax paid by the vehicle owner pursuant to  
92 subdivisions A 1, A 2, A 3, or A 5 of § 58.1-2402, up to a maximum of \$500 in tax paid on each such  
93 motor vehicle. In addition, no person shall receive more than \$5,000 in refunds in any calendar year  
94 under this section. The refund provided under this section shall be applicable to such motor vehicle  
95 sales and use taxes paid by vehicle owners on or after January 1, 2007, but prior to January 1, 2011.

96 C. The claim for refund shall be in such form as the Commissioner shall prescribe and shall include  
97 documentation to verify that the conversion or retrofitting of the motor vehicle to use such clean special  
98 fuels, if applicable, took place within 180 days after the date of titling in the Commonwealth. The claim  
99 for refund shall be filed with the Commissioner within one year from the date on which such taxes were  
100 paid.

## 101 CHAPTER 22.5.

### 102 RENEWABLE ELECTRICITY PRODUCTION GRANT PROGRAM.

103 § 59.1-284.20. Definitions.

104 A. As used in this chapter, unless the context clearly requires otherwise:

105 "Corporation" means an entity subject to the tax imposed by Article 10 (§ 58.1-400 et seq.) of  
106 Chapter 3 of Title 58.1.

107 "Department" means the Department of Mines, Minerals and Energy.

108 "Fund" means the Renewable Electricity Production Grant Fund.

109 "Qualified energy resources" means the same as that term is defined by Internal Revenue Code § 45.

110 "Qualified Virginia facility" means a facility located in the Commonwealth that uses qualified energy  
111 resources to produce electricity.

112 B. Subject to appropriation of sufficient moneys in the Fund, an eligible corporation may receive a  
113 grant payable from the Fund for certain kilowatts of electricity produced on or after January 1, 2006.  
114 The grant amount shall be \$0.0085 for each kilowatt hour of electricity (i) produced by the corporation  
115 from qualified energy resources at a qualified Virginia facility and (ii) sold in a calendar year. Grant  
116 amounts shall be based on each such kilowatt hour of electricity sold beginning with calendar year  
117 2006 and ending with such kilowatt hours of electricity sold during calendar year 2010.

118 § 59.1-284.21. Renewable Electricity Production Grant Fund.

119 A. There is hereby established in the state treasury a special nonreverting fund to be known as the  
120 Renewable Electricity Production Grant Fund. The Fund shall consist of such moneys as may be

appropriated by the General Assembly from time to time. Any moneys deposited to or remaining in the Fund during or at the end of each fiscal year or biennium, including interest thereon, shall not revert to the general fund but shall remain in the Fund and be available for allocation under this chapter in ensuing fiscal years. Interest on all moneys in the Fund shall remain in the Fund and be credited to it. The Fund shall be used solely for the payment of the grants provided under this chapter. The Department shall administer the Fund.

B. The Department shall allocate moneys from the Fund in the following order of priority: (i) first to unpaid grant amounts carried forward from prior years because eligible corporations did not receive the full amount of any grant to which they were eligible in a prior year pursuant to this chapter and (ii) then to other approved applicants. If the moneys in the Fund are less than the amount of grants to which approved applicants in any class of priority are eligible, the moneys in the Fund shall be apportioned pro rata among eligible applicants in such class, based upon the amount of the grant to which an approved applicant is eligible and the amount of money in the Fund available for allocation to such class. The Department shall not allocate an amount in excess of the moneys available in the Fund for the payment of grants.

C. Beginning in calendar year 2007, by June 30 of each year, the Department shall (i) determine the amount of the grants to be allocated to eligible corporations, and (ii) certify to the Comptroller and each eligible corporation the amount of the grant allocated to such corporation. Payment of such grants shall be made by the State Treasurer on warrant of the Comptroller within 60 days of such certification.

D. If a grant recipient is allocated less than the full amount of a grant to which it is eligible in any year pursuant to this chapter, such corporation shall not be eligible for the deficiency in that year, but the unpaid portion of the grant to which it was eligible shall be carried forward by the Department to the following year, during which it shall be in the first class of priority as provided in clause (i) of subsection B.

E. In no case shall the Department certify grants from the Fund for kilowatt hours of electricity produced prior to January 1, 2006, or sold after December 31, 2010.

F. Actions of the Department relating to the allocation and awarding of grants shall be exempt from the provisions of the Administrative Process Act pursuant to subdivision B 4 of § 2.2-4002.

§ 59.1-284.22. Requirements for grants generally.

A. The Department shall establish an application process by which eligible corporations shall apply for a grant under this chapter. An application for a grant under this chapter shall not be approved until the Department has verified that the electricity has been produced from qualified energy resources at a qualified Virginia facility.

The application shall be filed with the director of the Department no later than March 31 each year following the calendar year in which such kilowatts of electricity were sold. Failure to meet the filing deadline shall render the applicant ineligible to receive a grant for such kilowatts of electricity sold in the prior calendar year. For filings by mail, the postmark cancellation shall govern the date of the filing determination.

B. The application shall provide evidence, satisfactory to the Department, of the number of kilowatts of electricity produced by the corporation from qualified energy resources at a qualified Virginia facility that were sold by such corporation in the prior calendar year.

C. As a condition of receipt of a grant, an eligible corporation shall make available to the Department for inspection, upon request, all relevant and applicable documents to determine whether the requirements for the receipt of grants as set forth in this chapter have been satisfied. All such documents appropriately identified by the eligible corporation shall be considered confidential and proprietary.

D. A corporation receiving a grant for the production and sale of kilowatts of electricity under this chapter may not use the production or sale of such kilowatts of electricity as the basis for claiming any other grant or credit against taxes, as provided under the Code of Virginia or in an appropriations act.

#### CHAPTER 22.6.

#### PHOTOVOLTAIC, SOLAR, AND WIND ENERGY UTILIZATION GRANT PROGRAM.

§ 59.1-284.23. Definitions.

As used in this chapter, unless the context clearly requires otherwise:

"Corporation" means an entity subject to the tax imposed by Article 10 (§ 58.1-400 et seq.) of Chapter 3 of Title 58.1.

"Department" means the Department of Mines, Minerals and Energy.

"Fund" means the Photovoltaic, Solar, and Wind Energy Utilization Grant Fund.

"Individual" means the same as that term is defined in § 58.1-302.

"Photovoltaic property" means solar energy property that uses a solar photovoltaic process to generate electricity and that meets applicable performance and quality standards and certification requirements in effect at the time of acquisition of the property, as specified by the Department.

182 "Solar energy property" means equipment that uses solar energy to (i) generate electricity, (ii) heat  
183 or cool a structure or provide hot water for use associated with a structure, or (iii) provide solar  
184 process heat. Solar energy property does not include a swimming pool, hot tub, or any other storage  
185 medium that has a function other than storage.

186 "Solar water heating property" means solar energy property that, when installed in connection with a  
187 structure, uses solar energy for the purpose of providing hot water for use associated with the structure  
188 and meets applicable performance and quality standards and certification requirements in effect at the  
189 time of acquisition of the property, as specified by the Department.

190 "Wind-powered electrical generator" means an electrical generating unit that (i) has a capacity of  
191 not more than 10 kilowatts, (ii) uses wind as its total source of fuel, (iii) is located on the individual's  
192 or corporation's premises, and (iv) is intended primarily to offset all or part of the individual's or  
193 corporation's own electricity requirements.

194 § 59.1-284.24. Grant program.

195 Subject to appropriation of sufficient moneys in the Fund, beginning with calendar year 2006  
196 through calendar year 2010, an eligible individual or corporation may receive a grant payable from the  
197 Fund for a portion of the cost of photovoltaic property, solar water heating property, or wind-powered  
198 electrical generators placed in service during the calendar year by such individual or corporation. The  
199 grant amount shall be 15% of the total installed cost of photovoltaic property, solar water heating  
200 property, or wind-powered electrical generators but shall not exceed an aggregate total of:

- 201 1. \$2,000 for each system of photovoltaic property;
- 202 2. \$1,000 for each system of solar water heating property; and
- 203 3. \$1,000 for each system of wind-powered electrical generators.

204 Persons or entities placing in service photovoltaic property, solar water heating property, or  
205 wind-powered electrical generators for or on behalf of another person or entity shall not be eligible to  
206 receive a grant for such property.

207 § 59.1-284.25. Photovoltaic, Solar, and Wind Energy Utilization Grant Fund.

208 A. There is hereby established in the state treasury a special nonreverting fund to be known as the  
209 Photovoltaic, Solar, and Wind Energy Utilization Grant Fund. The Fund shall consist of such moneys as  
210 may be appropriated by the General Assembly from time to time. Any moneys deposited to or remaining  
211 in the Fund during or at the end of each fiscal year or biennium, including interest thereon, shall not  
212 revert to the general fund but shall remain in the Fund and be available for allocation under this  
213 chapter in ensuing fiscal years. Interest on all moneys in the Fund shall remain in the Fund and be  
214 credited to it. The Fund shall be used solely for the payment of the grants provided under this chapter.  
215 The Department shall administer the Fund.

216 B. The Department shall allocate moneys from the Fund in the following order of priority: (i) first to  
217 unpaid grant amounts carried forward from prior years because eligible individuals or corporations did  
218 not receive the full amount of any grant to which they were eligible in a prior year pursuant to this  
219 chapter and (ii) then to other approved applicants. If the moneys in the Fund are less than the amount  
220 of grants to which approved applicants in any class of priority are eligible, the moneys in the Fund  
221 shall be apportioned pro rata among eligible applicants in such class, based upon the amount of the  
222 grant to which an approved applicant is eligible and the amount of money in the Fund available for  
223 allocation to such class. The Department may not allocate an amount in excess of the moneys available  
224 in the Fund for the payment of grants.

225 C. Beginning in calendar year 2007, by June 30 of each year, the Department shall (i) determine the  
226 amount of the grants to be allocated to eligible individuals and corporations and (ii) certify to the  
227 Comptroller and each eligible grant applicant the amount of the grant allocated to such applicant.  
228 Payment of such grants shall be made by the State Treasurer on warrant of the Comptroller within 60  
229 days of such certification.

230 D. If a grant recipient is allocated less than the full amount of a grant to which it is eligible in any  
231 year pursuant to this chapter, such individual or corporation shall not be eligible for the deficiency in  
232 that year, but the unpaid portion of the grant to which it was eligible shall be carried forward by the  
233 Department to the following year, during which it shall be in the first class of priority as provided in  
234 clause (i) of subsection B.

235 E. In no case shall the Department certify grants from the Fund for photovoltaic property, solar  
236 water heating property, or wind-powered electrical generators placed in service (i) prior to January 1,  
237 2006, or (ii) after December 31, 2010.

238 F. Actions of the Department relating to the allocation and awarding of grants shall be exempt from  
239 the provisions of the Administrative Process Act pursuant to subdivision B 4 of § 2.2-4002.

240 § 59.1-284.26. Requirements for grants generally.

241 A. The Department shall establish an application process by which eligible individuals and  
242 corporations shall apply for a grant under this chapter. The application shall be filed with the director  
243 of the Department no later than March 31 each year following the calendar year in which such

property was placed in service. Failure to meet the filing deadline shall render the applicant ineligible to receive a grant for photovoltaic property, solar water heating property, or wind-powered electrical generators placed in service in the prior calendar year. For filings by mail, the postmark cancellation shall govern the date of the filing determination.

B. The application shall provide evidence, satisfactory to the Department, of the total installed cost of each system of photovoltaic property, solar water heating property, or wind-powered electrical generators placed in service by such individual or corporation in the prior calendar year.

C. As a condition of receipt of a grant, an eligible individual or corporation shall make available to the Department for inspection, upon request, all relevant and applicable documents to determine whether the requirements for the receipt of grants as set forth in this chapter have been satisfied.

D. An individual or corporation receiving a grant pursuant to this chapter for a system of photovoltaic property, solar water heating property, or wind-powered electrical generators may not use such system as the basis for claiming any other grant or credit against taxes, as provided under the Code of Virginia or in an appropriation act.

**2. That the provisions of this act relating to refunds of motor vehicle sales and use taxes shall not apply to any taxable transaction occurring prior to January 1, 2007.**

**3. That the Tax Commissioner and the Commissioner of the Department of Motor Vehicles shall promulgate regulations, in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), for purposes of carrying out the provisions of this act.**

**4. That the Tax Commissioner, the Commissioner of the Department of Motor Vehicles, and the Director of the Department of Mines, Minerals and Energy, in consultation with manufacturers, retailers, local government officials and other interested groups, shall develop voluntary labeling and public information materials to identify products eligible for the sales tax exemptions provided under this act.**