

# VIRGINIA ACTS OF ASSEMBLY -- 2007 SESSION

## CHAPTER 789

*An Act to amend and reenact §§ 67-900, 67-901, 67-902, and 67-1000 through 67-1003 of the Code of Virginia and to amend and reenact the eighth and ninth enactments of Chapter 939 of the Acts of Assembly of 2006, relating to renewable energy production and solar and wind energy system acquisition grants.*

[S 1152]

Approved March 23, 2007

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

#### **1. That §§ 67-900, 67-901, 67-902, and 67-1000 through 67-1003 of the Code of Virginia are amended and reenacted as follows:**

##### **§ 67-900. 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 Renewable Electricity Production Grant Fund established pursuant to § 67-902.

"Qualified energy resources" means ~~the same as that term is defined by Internal Revenue Code § 45(e)(1), and includes~~ solar, wind, closed-loop biomass, organic, livestock, and poultry waste resources and lignin and other organic by-products of kraft pulping processes, bark, chip rejects, sawdust, fines and other wood waste, regardless of the point of origin.

"Qualified Virginia facility" means a facility located in the Commonwealth that uses qualified energy resources to produce electricity, *and that is originally placed in service on or after January 1, 2007.*

##### **§ 67-901. Eligibility for grants for production of qualified energy resources.**

Subject to appropriation of sufficient moneys in the Fund, an eligible corporation may receive a grant payable from the Fund for certain kilowatt hours of electricity produced after December 31, ~~2005~~ 2006. The grant amount shall be \$.0085 for each kilowatt hour of electricity (i) produced by the corporation from qualified energy resources at a qualified Virginia facility and (ii) sold and transmitted into the electric grid, or used in production by a qualified Virginia facility, in a calendar year. Grant amounts shall be based on each such kilowatt hour of electricity sold or used in production by a qualified Virginia facility beginning with calendar year ~~2006~~ 2007.

##### **§ 67-902. Renewable Electricity Production Grant Fund.**

A. There is hereby established in the state treasury a special nonreverting fund to be known as the 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.

C. The Department shall not allocate an amount in excess of the moneys available in the Fund for the payment of grants.

D. 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, subject to appropriation of sufficient moneys in the Fund.

E. 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.

F. In no case shall the Department certify grants from the Fund for kilowatts of electricity produced prior to January 1, 2006 2007.

G. 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.

#### CHAPTER 10.

#### SOLAR AND WIND ENERGY SYSTEM ACQUISITION GRANT PROGRAM.

§ 67-1000. 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~~ *System Acquisition Grant Fund* established pursuant to § 67-1002.

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

"Photovoltaic property" means 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.

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

"Wind-powered electrical generator" means an electrical generating unit that (i) has a capacity of not more than 10 kilowatts, (ii) uses wind as its total source of fuel, (iii) is located on the individual's or corporation's premises, and (iv) is intended primarily to offset all or part of the individual's or corporation's own electricity requirements, and (v) *meets applicable performance and quality standards as specified by the Department.*

§ 67-1001. Eligibility for grants for installation of photovoltaic property, solar water heating property, and wind-powered electrical generators.

A. Subject to appropriation of sufficient moneys in the Fund, beginning with calendar year 2006 2007, an eligible individual or corporation may receive a grant payable from the Fund for a portion of the cost of photovoltaic property, solar water heating property, or wind-powered electrical generators placed in service during the calendar year by such individual or corporation. The grant amount shall be 15% of the total installed cost of photovoltaic property, solar water heating property, or wind-powered electrical generators but shall not exceed an aggregate total of:

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

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

§ 67-1002. Solar and Wind Energy System Acquisition Grant Fund.

A. There is hereby established in the state treasury a special nonreverting fund to be known as the ~~Photovoltaic, Solar, and Wind Energy Utilization~~ *System Acquisition 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 individuals or 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 to applicants in the order in which their applications are received, until all funds allocated for that fiscal year are expended.

C. The Department shall not allocate an amount in excess of the moneys available in the Fund for the payment of grants.

D. 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 individuals and corporations, and (ii) certify to the Comptroller and each eligible grant applicant the amount of the grant allocated to such applicant.

Payment of such grants shall be made by the State Treasurer on warrant of the Comptroller within 60 days of such certification.

E. 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 individual or 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.

F. In no case shall the Department certify grants from the Fund for photovoltaic property, solar water heating property, or wind-powered electrical generators placed in service prior to January 1, 2006 2007.

G 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.

§ 67-1003. Requirements for grants generally.

A. The Department shall establish an application process by which eligible individuals and corporations shall apply for a grant under this chapter, as follows:

1. *Eligible individuals and corporations may submit an application before the equipment is installed. In this case, the Department, within 14 days of receiving the application, shall notify the applicant as to whether sufficient moneys remain in the Fund to satisfy a potential grant award to the applicant. The Department shall reserve such funds for the applicant for the calendar year in which the applicant applies.*

2. The application shall be filed with the director of the Department no later than March 31 ~~each~~ of the 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~~ *In order to receive payment of grant funds, the applicant* 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 eighth enactment of Chapter 939 of the Acts of Assembly of 2006 is amended and reenacted as follows:**

**8. That if the Fund established under § 67-902 of the Code of Virginia does not receive a deposit of general funds, nongeneral funds, grant funds, or other funds before July 1, 2009, then the provisions of Chapter 9 (§ 67-900 et seq.) of Title 67 (§ 67-900 et seq.) shall expire on July 1, 2009 not become effective until appropriations are made to the Renewable Electricity Production Grant Fund.**

**3. That the ninth enactment of Chapter 939 of the Acts of Assembly of 2006 is amended and reenacted as follows:**

**9. That if the Fund established under § 67-1002 of the Code of Virginia does not receive a deposit of general funds, nongeneral funds, grant funds, or other funds before July 1, 2009, then the provisions of Chapter 10 (§ 67-1000 et seq.) of Title 67 (§ 67-1000 et seq.) shall expire on July 1, 2009 not become effective until appropriations are made to the Solar and Wind Energy System Acquisition Grant Fund.**