

# VIRGINIA ACTS OF ASSEMBLY -- 2011 RECONVENED SESSION

## CHAPTER 864

*An Act 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.*

[S 1360]

Approved April 6, 2011

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

8. Establish the conditions under which state public bodies may procure diesel fuel containing, at a minimum, two percent, by volume, biodiesel fuel or green diesel fuel, as defined in ~~§ 45.1-394~~

§ 59.1-284.25, for use in on-road internal combustion engines. The conditions shall take into consideration the availability of such fuel and the variability in cost of biodiesel fuel with respect to unblended diesel fuel.

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

§ 45.1-394. Biofuels Production Incentive Grant Program.

A. For the purposes of this section:

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

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

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

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

1. Meets all applicable ASTM specifications; and
2. Is denatured as specified in 27 C.F.R. Parts 20 and 21.

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

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

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

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

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

D. Any producer eligible to apply for a grant pursuant to this section shall provide evidence in the form of production reports, satisfactory to the Director, that the producer met the neat biofuels production requirements provided under this section for the respective calendar year. The producer shall also provide evidence in the form of sales reports, satisfactory to the Director, of the number of qualifying gallons of neat biofuels sold by the producer to customers in the respective calendar year. Such reports shall be filed no later than March 31 following the calendar year in which the producer sold the qualifying gallons of neat biofuels. Failure to meet the filing deadline shall render the applicant ineligible to receive a grant. The postmark cancellation shall govern the date of the filing determination unless the Director has approved an alternative means of filing.

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

E. The Director shall certify to the Comptroller the grant amount a producer of neat biofuels is

eligible to receive in a given calendar year. Payments shall be paid by check issued by the State Treasurer on warrant of the Comptroller.

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

#### CHAPTER 22.8.

#### CLEAN ENERGY MANUFACTURING INCENTIVE GRANT PROGRAM.

§ 59.1-284.25. *Definitions.*

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

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

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

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

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

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

*"Clean energy manufacturer" means (i) 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 the manufacturer is not a public service corporation as defined in § 56-1 that recovers its costs pursuant to § 56-585.1, or (ii) a producer of biofuels.*

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

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

- 1. Meets all applicable ASTM specifications; and*
- 2. Is denatured as specified in 27 C.F.R. Parts 20 and 21.*

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

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

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

*"Memorandum of understanding" means a performance agreement entered into by an eligible entity and the Commonwealth setting forth the requirements for capital investment, the creation of new full-time jobs, and the amount and duration of the grant payments.*

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

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

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

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

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

§ 59.1-284.26. *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 and wind energy suppliers as specified in § 59.1-284.27. 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 President of the Authority.

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

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

B. 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 \$36 million. The Authority shall conduct a return on investment analysis to determine the appropriate amount and duration of grant payments before entering into a memorandum of understanding.

C. Any eligible entity shall provide an annual report to the Authority, in a form approved by and satisfactory to it, detailing clean energy product and supply operations in the Commonwealth. The report shall be submitted no later than April 1 for the previous calendar year and, at the discretion of the Authority 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 postmark cancellation shall govern the date of filing determination unless the Authority has approved an alternative means of filing.

D. The Authority may inspect the clean energy manufacturer's or wind energy supplier's records, books, and other applicable documents and evidence to verify whether the requirements for eligibility set forth in this section and the memorandum of understanding have been met.

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

F. If an entity is allocated less than the full amount of a grant to which it is eligible in any year, it 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 to the following year, during which it shall be in the first class of priority as provided in subsection E.

G. The Authority shall assist the Secretary with developing guidelines to implement the provisions of this chapter and present such guidelines to the Chairmen of the Senate Finance and House Appropriations Committees. The guidelines may provide for different grant awards based upon the type of clean energy product manufactured, supplied, or assembled or biofuel produced. Actions of the Authority and the Secretary relating to the development of guidelines and 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.) pursuant to subdivision B 4 of § 2.2-4002.

**2. That § 45.1-392 of the Code of Virginia is repealed effective July 1, 2013.**

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

**4. That any producer that was qualified to receive a grant from the Biofuels Production Fund, established pursuant to § 45.1-393, during the 2010-2012 biennium shall continue to receive payments in accordance with § 45.1-394 of the Code of Virginia, provided such producer continues to meet all criteria for eligibility.**

**5. That no grants under § 59.1-284.27 of the Code of Virginia shall be paid to an eligible entity before July 1, 2012.**

**6. That solar photovoltaic manufacturing grants based on sales made in 2011 shall not exceed \$1 million and claims in excess of that amount shall be prorated among applicants as provided in subsection E of § 45.1-392 of the Code of Virginia.**