

# VIRGINIA ACTS OF ASSEMBLY -- 2014 SESSION

## CHAPTER 669

*An Act to amend and reenact § 45.1-394 of the Code of Virginia and to amend and reenact the second enactment of Chapter 652 of the Acts of Assembly of 2006, relating to the Biofuels Production Incentive Grant Program.*

[H 1025]

Approved April 6, 2014

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

**1. That § 45.1-394 of the Code of Virginia is amended and reenacted as follows:**

**§ 45.1-394. (Repealed effective July 1, 2017) Biofuels Production Incentive Grant Program.**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 *advanced biofuels* or 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. 1. A producer of non-advanced neat advanced biofuels or neat biofuels, including but not limited to such biofuels derived from cereal grains, 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 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 for each gallon of the same that it produces in the Commonwealth. A However, 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 advanced biofuels or neat biofuels that it produces in the Commonwealth on or after January 1, 2008 2014, which gallon has also been sold by the producer to customers.~~

~~2. The grant for neat advanced biofuels or neat biofuels produced in the Commonwealth and subsequently sold to customers shall equal (i) \$0.04 per gallon for sales to customers in calendar year 2014, (ii) \$0.03 per gallon for sales to customers in calendar year 2015, and (iii) \$0.025 per gallon for sales to customers in calendar year 2016 and for the period January 1, 2017, through June 30, 2017.~~

~~3. Each producer applying for a grant under this section for 2015 production of neat advanced biofuels or neat biofuels shall make a good faith effort to produce the same using feedstock that is not derived from corn or the corn kernel, stalk, or any other part of the plant. Further, no grant shall be awarded for neat advanced biofuels or neat biofuels produced in 2016 or thereafter using feedstock derived from corn or the corn kernel, stalk, or any other part of the plant.~~

*No person shall be eligible for any grants pursuant to this section if the person, or an affiliate of the person, was the recipient of a grant under the Clean Energy Manufacturing Incentive Grant Program (§ 59.1-284.25 et seq.).*

*4. In no case shall the Director of the Division of Energy approve more than \$1.5 million in grants in each of fiscal years 2014-2015, 2015-2016, and 2016-2017. Grants awarded under this section shall be paid from the Fund.*

*C. In the event applications for grants pursuant to subsection B as approved by the Director of the Division of Energy 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 advanced biofuels or 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 of the Division of Energy, 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 advanced biofuels or 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 shall be paid under this section for neat advanced biofuels or neat biofuels sold on or after July 1, 2017.*

*E. The Director of the Division of Energy shall determine the amount of the grant payable to each qualifying producer. The Director shall then certify to the Comptroller the grant amount a each 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 advanced biofuels or neat biofuels meet the requirements for grants as set forth in this section.*

**2. That the second enactment of Chapter 652 of the Acts of Assembly of 2006 is amended and reenacted as follows:**

**2. That no grant shall be paid pursuant to the provisions of this act for any neat biofuel sold on or after January 1, 2017 § 45.1-394 of the Code of Virginia for neat advanced biofuels or neat biofuels sold on or after July 1, 2017.**