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HOUSE BILL NO. 1025

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources
on January 29, 2014)

(Patron Prior to Substitute—Delegate Ingram)

A BILL 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.

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 (Repealed effective July 1, 2017) Biofuels Production Incentive Grant Program.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. 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 up to \$0.10 for each gallon of *neat advanced biofuels* or 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 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. Grants awarded under this section shall be paid from the Fund.

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.).

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.

HOUSE SUBSTITUTE

HB1025H1

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

70 No producer shall be eligible to receive grants pursuant to this section for qualifying sales made in
71 more than six calendar years. No grants ~~provided pursuant to this section may be made after the fiscal~~
72 ~~year ending June 30, 2017 shall be paid under this section for neat advanced biofuels or neat biofuels~~
73 ~~sold on or after July 1, 2017.~~

74 E. *The Director of the Division of Energy shall determine the amount of the grant payable to each*
75 *qualifying producer.* The Director shall then certify to the Comptroller the grant amount a *each* producer
76 of ~~neat~~ biofuels is eligible to receive in a given calendar year. Payments shall be paid by check issued
77 by the State Treasurer on warrant of the Comptroller.

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

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

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