



Memorandum

TO: The Virginia Alternative and Renewable Energy Association (VA-AREA)
FROM: Ken Hutcheson
RE: 2009 General Assembly Report
DATE: March 4, 2009

The 2009 session of the Virginia General Assembly adjourned on Saturday, February 28, 2009, upon completion of the revisions to the 2008-2010 State Budget. By any measuring stick, it was a banner session for renewable and alternative energy and fuels, but there is much more that can and will be accomplished in the coming years.

The VA-AREA played a meaningful role during the 2009 General Assembly Session and our hard work paid off in several instances. Together, James Pickral, Anne Leigh Kerr and I represented the renewable energy industry in stakeholder meetings, monitored committee hearings (testifying when appropriate), and shared the association's perspective with legislators on a daily basis.

From our discussions, it is clear that many members of the General Assembly understand the great potential renewable energy and alternative fuels has as an economic engine for Virginia in addition to the positive environmental impact. They were also excited to learn of the association's formation and welcomed hearing from us. That said, we have our work cut out for us to further educate members on the tremendous promise this industry has to attract investment, innovation and, most importantly, new jobs to Virginia.

Unfortunately, the dismal budget situation coupled with a dose of partisan politics led to the defeat of several meaningful efforts to further incentivize the development, commercialization and use of renewable energy and biofuels in Virginia. As a result, legislation addressing regulatory barriers or regulatory enhancements found greater success this session as there was little or no fiscal impact to the Commonwealth for most of these bills.

Highlighted below are the key renewable energy and biofuels legislation that passed and are likely to be signed by Governor Kaine, many of which we played a key role helping to pass:

[HB 1975](#) & [SB 1058](#) (Del. L. Ware & Sen. Whipple)

Green Roofs

Authorizes counties, cities, and towns to grant incentives or provide regulatory flexibility to encourage the use of green roofs in the construction, repair, or remodeling of residential and commercial buildings.

Virginia Alternative and Renewable Energy Association

Memorandum
March 4, 2009
Page 2 of 6

[HB 1994](#) (Del. Bulova) **Voluntary RPS**

Establishes a goal for investor-owned incumbent electric utilities to have 15 percent of their total electric energy sales in the base year be from renewable energy sources in calendar year 2025.

[HB 2001](#) & [SB 1186](#) (Del. Cosgrove & Sen. Hanger) **Expanded Biofuels Production Incentive**

The Virginia Biofuels Production Incentive Grant Program was reformed to encourage development of biofuel from non-food crops. Facilities that annually produce one million gallons of biofuel from non-food crops such as winter cover crops, cellulose or algae, are now eligible for a grant of \$0.125 per gallon, compared to only \$0.10 for fuels made from feedstock.

[HB 2002](#) & [SB 1427](#) (Del. Cosgrove & Sen. Hanger) **Sustainable Biofuels Production**

Encourages the production of sustainably produced biofuels made from traditional agricultural crops as part of Virginia's comprehensive energy plan.

[HB 2152](#) (Del. Rust) **Stand-by Service Charges**

Directs the State Corporation Commission to adopt regulations that require an electric utility to provide a rate for stand-by service to customers that operate a cogeneration facility that generates renewable power.

[HB 2155](#) (Del. Toscano & Del. Poisson) **Net Energy Metering**

Authorizes utilities to elect a capacity limit for participation by nonresidential customers in the net energy metering program that exceeds the existing limit of 500 kW. The measure also permits customers who are served on time-of-use tariffs that have electricity supply demand charges contained within the electricity supply portion of the time-of-use tariff to participate as customer-generators. In addition, the measure provides that a participating customer-generator owns any renewable energy certificate associated with its generation of electricity, and provides for a one-time option to sell the certificates to its supplier at a rate established by the State Corporation Commission. The utility's costs of acquiring the certificates shall be reasonable under the Renewable Energy Portfolio Standard rate adjustment clause or through the supplier's fuel adjustment clause.

[HB 2165](#) (Del. Lohr) **Small Agriculture Biomass Conversion Permitting**

Allows farmers to engage in the small-scale production of biofuels in areas zoned agricultural without a special exception or special use permit.

[HB 2171](#) (Del. Vanderhye) **Farm Waste to Energy**

Excludes any farm or aggregation of farms that owns and operates facilities within the Commonwealth for the generation of electric energy from waste-to-energy technology, including methane digesters, from regulation as a public utility, public service corporation, or public service company.

Memorandum
March 4, 2009
Page 3 of 6

[HB 2172](#) (Del. Hogan) **Rights of Way**

Establishes procedures for the operator of an eligible non-utility renewable energy facility that produces not more than 2 megawatts of electricity from a renewable energy source, not more than 5,000 mmBtus/hour of steam from a renewable energy source, or landfill gas from a solid waste management facility, to connect the facility to the transmission grid pipeline or to customers, as applicable, by co-locating distribution facilities with those of public service corporations and by occupying public rights-of-way through a procedure that requires the payment of a public rights-of-way use fee to the affected locality or the Department of Transportation.

[HB 2175](#) & [SB 1347](#) (Del. Hogan, Del. Miller, Sen. Wagner & Sen. Puckett)

Small Renewable Energy Projects Permit by Rule

Directs the Department of Environmental Quality to develop a permit or permits by rule for the construction and operation of small renewable energy projects that have a maximum capacity of 100 megawatts if they generate electricity from sunlight, wind, or falling water, wave motion, tides, or geothermal power, or 20 megawatts if they generate electricity from biomass, energy from waste, or municipal solid waste.

[HB 2268](#) (Del. Poindexter) **Biomass Definition**

Provides that the term "biomass," as used in the definition of renewable energy includes both sustainable and non-sustainable biomass and provides that the definitions thereof shall be liberally construed.

[HB 2371](#) (Del. Nutter) **Real Time Rates**

Directs the State Corporation Commission to conduct a proceeding to establish two pilot programs for certain customers that generate electricity from renewable generation facilities. One program addresses dynamic rates for power purchases by eligible customer/renewable generators. The second pilot addresses rates at which participating customers are provided the opportunity to sell electricity to a participating utility at dynamic rates. Participating utilities are required to include on customers' bills a statement of the amount of the charges that results from the implementation of this act.

[HB 2417](#) (Del. Bouchard) **Covenants**

Clarifies that community associations may amend solar covenants to remove or relax restrictions on the use of any solar collection device provided such amendment is adopted by the membership of the community association in accordance with the association's governing documents.

[HB 2576](#) (Del. May) **Waste to Energy Projects**

Expands the definition of a "qualifying project" under the Public-Private Education Facilities and Infrastructure Act of 2002 to include any solid waste management facility that produces electric energy derived from solid waste.

Memorandum
March 4, 2009
Page 4 of 6

[SB 1212](#) (Sen. Deeds) **Clean Energy Financing**

Grants localities the authority to authorize, by ordinance, contracts to provide loans for the initial acquisition and installation of clean energy improvements.

[SB 1339](#) (Sen. Herring) **Omnibus Electric Utility Regulation**

Establishes a fourth voluntary renewable portfolio standard goal of 15 percent by 2025. The measure also (i) requires investor-owned electric utilities to develop tariffs offering dynamic rates that vary in accordance with the utility's costs of providing electricity seasonally, daily, and throughout each day; and (ii) requires that rates for utility payments to eligible customer-generators under a net energy metering program be based on the utility's avoided generation costs and the average market value of the renewable attributes for the customer-generator's facility. The measure will become effective if reenacted by the 2010 Session.

[SB 1349](#) (Sen. Wagner) **Mid-Atlantic Offshore Wind Energy Infrastructure Development Compact**

Establishes the Mid-Atlantic Offshore Wind Energy Infrastructure Development Compact. Under the bill, the party states to the compact will be Virginia, Delaware, Maryland, New Jersey, and New York. The purposes of the compact are (i) to study, develop, and promote coordinated research and planning of the design, construction, utility interconnection, financing, and operation of offshore wind energy infrastructure and operations directly adjacent to the shores of the party states, (ii) to coordinate federal, state, and local government efforts, and (iii) seek funding.

[SB 1350](#) (Sen. Wagner) **Subaqueous Lands**

Provides the Marine Resources Commission with the authority to lease subaqueous lands for the purpose of generating electrical energy from wave or tidal action, currents, offshore winds, or thermal or salinity gradients and transmit energy from such sources to shore and requires that any leases require a royalty.

[SB 1357](#) (Sen. Hanger) **Clean fuel vehicle job creation tax credit**

Expands the clean fuel vehicle job creation tax credit to include jobs created associated with the production of cellulosic biofuels, the conversion of vehicles from traditional fuels to cellulosic biofuels, and the manufacture of components for vehicles that utilize cellulosic biofuels.

Notable Failed Legislation

[HB 2094](#) / [SB 1141](#) (Del. Pollard & Sen. Lucas) Renewable Energy Income Tax Credits

[HB 2157](#) / [SB 1146](#) (Del. Toscano & Sen. Whipple) 2% State Fleet Biodiesel Requirement

[HB 2235](#) / [SB 1215](#) (Del. Valentine & Sen. Deeds) Clean Energy Manufacturing Incentive Grant

Virginia Alternative and Renewable Energy Association

Memorandum
March 4, 2009
Page 5 of 6

[HB 2374](#) (Del. Englin) Renewable Energy Job Tax Credit

[HB 2404](#) (Del. Bell) VA Universities Clean Energy Development & Economic Stimulus Foundation

[HB 2562](#) / [SB 1216](#) (Del. Bouchard & Sen. Deeds) Retail Sales Tax Exemption

[HB 2572](#) (Del. Caputo) Energy-efficient Equipment Income Tax Deduction

[HB 2573](#) (Del. Caputo) Energy-efficient Equipment Income Tax Credit

[SB 913](#) (Sen. Stuart) Biomass Cap Removal

[SB 1065](#) (Sen. Puller) Wind Energy Drying Devices (Clothesline Bill)

[SB 1124](#) (Sen. Petersen) Commercial Clean Energy Production Tax Credit

[SB 1125](#) (Sen. Petersen) Renewable Energy Jobs Income Tax Credit

[SB 1231](#) (Sen. Barker) Energy-efficient Equipment Income Tax Credit

BUDGET ITEMS

On December 17, 2008, Governor Kaine proposed new funding for three renewable energy programs as part of his “Renew Virginia” initiative. He proposed a \$2 million Clean Energy Manufacturing Incentive; a \$2 million combined individual and corporate income tax credit for the installation of solar photovoltaic, solar thermal, and small wind systems; and he proposed a retail sales tax exemption amounting to just over \$321,000 in FY 2010 for the purchase of solar photovoltaic and thermal systems as well as small wind systems.

All three budget proposals failed to earn a spot in the revised budget. While this outcome was unfortunate on several fronts, it was not unexpected. VA-AREA will continue to work with legislators and the policy staff of the Administration to make the case for incentives in the renewable energy and biofuels industry.

Governor Kaine is to be commended for advancing the renewable energy and biofuels agenda through his Renew Virginia initiative. Secretary of Natural Resources L. Preston Bryant and Department of Mines, Minerals and Energy Director Steve Walz also deserve recognition for their tireless efforts to advance the Renew Virginia agenda. Unfortunately, many of the Kaine Administration’s worthy proposals fell short, but the ideas remain and will provide a solid foundation for future progress.

Virginia Alternative and Renewable Energy Association

Memorandum
March 4, 2009
Page 6 of 6

It should also be noted that there were several legislators who really engaged on these issues and elevated the dialogue at the General Assembly on the agenda we advocated. A special thank you should be extended to Delegates Joe Bouchard, John Cosgrove, Clarke Hogan, Albert Pollard, David Toscano and Senators Creigh Deeds, Chap Petersen, Frank Wagner and Mary Margaret Whipple.

Moving forward, we will track this legislation through the Reconvened (“Veto”) Session set for April 8, 2009, and report back to you should any new developments on this front occur. In the coming months, Chairman Marty Williams, the interim Board of Directors and the Troutman Sanders team will also begin to plan a conference slated for the fall, monitor activities at the federal level, and get the formal structure of the association in place. As always, we are appreciative of your involvement and welcome your ideas and feedback.