

1 **Senate Bill No. 529**

2 (By Senator Barnes)

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4 [Introduced February 7, 2012; referred to the Committee on

5 Energy, Industry and Mining; and then to the Committee on

6 Economic development.]

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11 A BILL to amend and reenact §24-2F-5 of the Code of West Virginia,

12 1931, as amended, relating to awarding credits for use of

13 alternative and renewable energy resources; and removing

14 language which sets a ceiling on the percentage of credits

15 that can be used to meet compliance requirements from the

16 generation or purchase of electricity generated from natural

17 gas.

18 *Be it enacted by the Legislature of West Virginia:*

19 That §24-2F-5 of the Code of West Virginia, 1931, as amended,

20 be amended and reenacted to read as follows:

21 **ARTICLE 2F. ALTERNATIVE AND RENEWABLE ENERGY PORTFOLIO STANDARD.**

22 **§24-2F-5. Alternative and renewable energy portfolio standard;**

23 **compliance assessments.**

1 (a) *General rule.* -- Each electric utility doing business in
2 this state ~~shall be~~ is required to meet the alternative and
3 renewable energy portfolio standards set forth in this section. In
4 order to meet these standards, an electric utility each year shall
5 own an amount of credits equal to a certain percentage of
6 electricity, as set forth in subsections (c) and (d) of this
7 section, sold by the electric utility in the preceding year to
8 retail customers in West Virginia.

9 (b) *Counting of credits towards compliance.* -- For the purpose
10 of determining an electric utility's compliance with the
11 alternative and renewable energy portfolio standards set forth in
12 subsections (c) and (d) of this section, each credit ~~shall equal~~ is
13 equal to one megawatt hour of electricity sold by an electric
14 utility in the preceding year to retail customers in West Virginia.
15 ~~Furthermore,~~ A credit may not be used more than once to meet the
16 requirements of this section ~~No more than ten percent of the~~
17 ~~credits used each year to meet the compliance requirements of this~~
18 ~~section may be credits acquired from the generation or purchase of~~
19 ~~electricity generated from natural gas.~~ and no more than ten
20 percent of the credits used each year to meet the compliance
21 requirements of this section may be credits acquired from the
22 generation or purchase of electricity generated from supercritical
23 technology.

1 (c) *Twenty-five percent by 2025.* -- On and after January 1,
2 2025, an electric utility shall each year own credits in an amount
3 equal to at least twenty-five percent of the electric energy sold
4 by the electric utility to retail customers in this state in the
5 preceding calendar year.

6 (d) *Interim portfolio standards.* --

7 (1) For the period beginning January 1, 2015, and ending
8 December 31, 2019, an electric utility shall each year own credits
9 in an amount equal to at least ten percent of the electric energy
10 sold by the electric utility to retail customers in this state in
11 the preceding calendar year; and

12 (2) For the period beginning January 1, 2020, and ending
13 December 31, 2024, an electric utility shall each year own credits
14 in an amount equal to at least fifteen percent of the electric
15 energy sold by the electric utility to retail customers in this
16 state in the preceding calendar year.

17 (e) *Double-counting of credits prohibited.* -- Any portion of
18 electricity generated from an alternative or renewable energy
19 resource facility that is used to meet another state's alternative
20 energy, advanced energy, renewable energy or similar energy
21 portfolio standard may not be used to meet the requirements of this
22 section. An electric utility that is subject to an alternative
23 energy, advanced energy, renewable energy or similar energy

1 portfolio standard in any other state shall list, in the
2 alternative and renewable energy portfolio standard compliance plan
3 required under section six of this article, any such requirements
4 and ~~shall~~ indicate how it satisfied those requirements. The
5 electric utility shall provide in the annual progress report
6 required under section six of this article any additional
7 information required by the commission to prevent double-counting
8 of credits.

9 (f) *Carryover.* -- An electric utility may apply any credits
10 ~~that are~~ in excess of the alternative and renewable energy
11 portfolio standard in any given year to the requirements for any
12 future year portfolio standard ~~—Provided, That~~ so long as the
13 electric utility determines to the satisfaction of the commission
14 that ~~such~~ the credits were in excess of the portfolio standard in
15 a given year and ~~that such credits~~ have not previously been used
16 for compliance with a portfolio standard.

17 (g) *Compliance assessments.* --

18 (1) On or after January 1, 2015, and each year thereafter, the
19 commission shall determine whether each electric utility doing
20 business in this state is in compliance with this section. If,
21 after notice and a hearing, the commission determines that an
22 electric utility has failed to comply with an alternative and
23 renewable energy portfolio standard, the commission shall impose a

1 compliance assessment on the electric utility which shall equal at
2 least the lesser of the following:

3 (A) Fifty dollars multiplied by the number of additional
4 credits that would be needed to meet an alternative and renewable
5 energy portfolio standard in a given year; or

6 (B) Two hundred percent of the average market value of credits
7 sold in a given year multiplied by the number of additional credits
8 needed to meet the alternative and renewable energy portfolio
9 standard for that year.

10 (2) Compliance assessments collected by the commission
11 pursuant to this subsection shall be deposited into the Alternative
12 and Renewable Energy Resources Research Fund established in section
13 eleven of this article.

14 (h) *Force majeure*. --

15 (1) Upon its own initiative or upon the request of an electric
16 utility, the commission may modify the portfolio standard
17 requirements of an electric utility in a given year or years or
18 recommend to the Legislature that the portfolio standard
19 requirements be eliminated if the commission determines that
20 alternative or renewable energy resources are not reasonably
21 available in the marketplace in sufficient quantities for the
22 electric utility to meet the requirements of this article.

23 (2) In making its determination, the commission shall consider

1 whether the electric utility made good faith efforts to acquire
2 sufficient credits to comply with the requirements of this article.
3 Such good faith efforts ~~shall~~ include, but are not limited to,
4 banking excess credits, seeking credits through competitive
5 solicitations and seeking to acquire credits through long-term
6 contracts. The commission shall assess the availability of credits
7 on the open market. The commission may also require that the
8 electric utility solicit credits before a request for modification
9 may be granted.

10 (3) If an electric utility requests a modification of its
11 portfolio standard requirements, the commission shall make a
12 determination as to the request within sixty days.

13 (4) Commission modification of an electric utility's portfolio
14 standard requirements ~~shall~~ apply only to the portfolio standard in
15 the year or years modified by the commission. Commission
16 modification may not automatically reduce an electric utility's
17 alternative and renewable energy portfolio standard requirements in
18 future years.

19 (5) If the commission modifies an electric utility's portfolio
20 standard requirements, the commission may also require the electric
21 utility to acquire additional credits in subsequent years
22 equivalent to the requirements reduced by the commission in
23 accordance with this subsection.

1 (i) *Termination.* -- The provisions of this section ~~shall~~ have
2 no force and effect after June 30, 2026.

NOTE: The purpose of this bill is to remove language from the code that sets a ceiling on the percentage of credits that an electricity utility can use from the generation or purchase of electricity generated from natural gas to meet compliance requirements for use of alternative and renewable energy sources.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.