

1 **H. B. 4641**

2
3 (By Delegates Cowles, Andes, Householder, Snuffer,
4 Nelson, Walters, Hall, R. Phillips, Stowers and Craig)

5
6 [Introduced February 20, 2012; referred to the

7 Committee on Energy, Industry and Labor, Economic Development and
8 Small Business then Finance.]

**FISCAL
NOTE**

9
10 A BILL to amend and reenact §24-2F-5 of the Code of West Virginia,
11 1931, as amended, relating to awarding credits for use of
12 alternative and renewable energy resources; and to remove
13 language which sets a ceiling on the percentage of credits
14 that can be used to meet compliance requirements from the
15 generation or purchase of electricity generated from natural
16 gas.

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

18 That §24-2F-5 of the Code of West Virginia, 1931, as amended,
19 be amended and reenacted to read as follows:

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

21 **§24-2F-5. Alternative and renewable energy portfolio standard;**
22 **compliance assessments.**

23 (a) *General rule.* -- Each electric utility doing business in
24 this state ~~shall be~~ is required to meet the alternative and
25 renewable energy portfolio standards set forth in this section. In

1 order to meet these standards, an electric utility each year shall
2 own an amount of credits equal to a certain percentage of
3 electricity, as set forth in subsections (c) and (d) of this
4 section, sold by the electric utility in the preceding year to
5 retail customers in West Virginia.

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

20 (c) *Twenty-five percent by 2025.* -- On and after January 1,
21 2025, an electric utility shall each year own credits in an amount
22 equal to at least twenty-five percent of the electric energy sold
23 by the electric utility to retail customers in this state in the
24 preceding calendar year.

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

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

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

12 (e) *Double-counting of credits prohibited.* -- Any portion of
13 electricity generated from an alternative or renewable energy
14 resource facility that is used to meet another state's alternative
15 energy, advanced energy, renewable energy or similar energy
16 portfolio standard may not be used to meet the requirements of this
17 section. An electric utility that is subject to an alternative
18 energy, advanced energy, renewable energy or similar energy
19 portfolio standard in any other state shall list, in the
20 alternative and renewable energy portfolio standard compliance plan
21 required under section six of this article, any such requirements
22 and ~~shall~~ indicate how it satisfied those requirements. The
23 electric utility shall provide in the annual progress report
24 required under section six of this article any additional

1 information required by the commission to prevent double-counting
2 of credits.

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

11 (g) *Compliance assessments.* --

12 (1) On or after January 1, 2015, and each year thereafter, the
13 commission shall determine whether each electric utility doing
14 business in this state is in compliance with this section. If,
15 after notice and a hearing, the commission determines that an
16 electric utility has failed to comply with an alternative and
17 renewable energy portfolio standard, the commission shall impose a
18 compliance assessment on the electric utility which shall equal at
19 least the lesser of the following:

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

23 (B) Two hundred percent of the average market value of credits
24 sold in a given year multiplied by the number of additional credits

1 needed to meet the alternative and renewable energy portfolio
2 standard for that year.

3 (2) Compliance assessments collected by the commission
4 pursuant to this subsection shall be deposited into the Alternative
5 and Renewable Energy Resources Research Fund established in section
6 eleven of this article.

7 (h) *Force majeure*. --

8 (1) Upon its own initiative or upon the request of an electric
9 utility, the commission may modify the portfolio standard
10 requirements of an electric utility in a given year or years or
11 recommend to the Legislature that the portfolio standard
12 requirements be eliminated if the commission determines that
13 alternative or renewable energy resources are not reasonably
14 available in the marketplace in sufficient quantities for the
15 electric utility to meet the requirements of this article.

16 (2) In making its determination, the commission shall consider
17 whether the electric utility made good faith efforts to acquire
18 sufficient credits to comply with the requirements of this article.
19 Such good faith efforts ~~shall~~ include, but are not limited to,
20 banking excess credits, seeking credits through competitive
21 solicitations and seeking to acquire credits through long-term
22 contracts. The commission shall assess the availability of credits
23 on the open market. The commission may also require that the
24 electric utility solicit credits before a request for modification

1 may be granted.

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

5 (4) Commission modification of an electric utility's portfolio
6 standard requirements ~~shall~~ apply only to the portfolio standard in
7 the year or years modified by the commission. Commission
8 modification may not automatically reduce an electric utility's
9 alternative and renewable energy portfolio standard requirements in
10 future years.

11 (5) If the commission modifies an electric utility's portfolio
12 standard requirements, the commission may also require the electric
13 utility to acquire additional credits in subsequent years
14 equivalent to the requirements reduced by the commission in
15 accordance with this subsection.

16 (i) *Termination.* -- The provisions of this section ~~shall~~ have
17 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.