

1 **H. B. 2564**

2
3 (By Delegates J. Nelson, Smith, R., Walters, Pasdon,
4 Sumner, Phillips, R., Ferns, Phillips, L., Raines,
5 Eldridge and Arvon)

6
7 [Introduced February 20, 2013; referred to the
8 Committee on Energy, Industry and Labor, Economic
9 Development and Small Business then the Judiciary.]

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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 the Alternative and Renewable
13 Energy Portfolio Act; delaying implementation of the act.

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

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

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

18 **§24-2F-5. Alternative and renewable energy portfolio standard;**
19 **compliance assessments.**

20 (a) *General rule.* -- Each electric utility doing business in
21 this state shall be required to meet the alternative and renewable
22 energy portfolio standards set forth in this section. In order to
23 meet these standards, an electric utility each year shall own an
24 amount of credits equal to a certain percentage of electricity, as
25 set forth in subsections (c) and (d) of this section, sold by the

1 electric utility in the preceding year to retail customers in West
2 Virginia.

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

17 (c) *Twenty-five percent by 2025.* -- On and after January 1,
18 2025, an electric utility shall each year own credits in an amount
19 equal to at least twenty-five percent of the electric energy sold
20 by the electric utility to retail customers in this state in the
21 preceding calendar year.

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

23 (1) For the period beginning January 1, 2015, and ending
24 December 31, 2019, an electric utility shall each year own credits

1 in an amount equal to at least ten percent of the electric energy
2 sold by the electric utility to retail customers in this state in
3 the preceding calendar year; and

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

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

24 (f) *Carryover.* -- An electric utility may apply any credits

1 that are in excess of the alternative and renewable energy
2 portfolio standard in any given year to the requirements for any
3 future year portfolio standard: *Provided*, That the electric
4 utility determines to the satisfaction of the commission that such
5 credits were in excess of the portfolio standard in a given year
6 and that such credits have not previously been used for compliance
7 with a portfolio standard.

8 (g) *Compliance assessments.* --

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

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

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

24 (2) Compliance assessments collected by the commission

1 pursuant to this subsection shall be deposited into the Alternative
2 and Renewable Energy Resources Research Fund established in section
3 eleven of this article.

4 (h) *Force majeure.* --

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

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

23 (3) If an electric utility requests a modification of its
24 portfolio standard requirements, the commission shall make a

1 determination as to the request within sixty days.

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

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

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

15 (j) *Modification of effective date.* -- The provisions of this
16 section shall have no force and effect so long as any coal is
17 imported into the United States.

NOTE: This bill amends a portion of the Alternative and Renewable Energy Portfolio Act to provide the bill's provisions shall not be effective so long as coal is imported to the United States.

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