GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL DRH30248-MH-27B

Short Title:	Repeal Renewable Energy Portfolio Standard.	(Public)
Sponsors:	Representative Pittman.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE BURDEN OF HIGH ENERGY COSTS ON THE CITIZENS OF NORTH CAROLINA BY ELIMINATING RENEWABLE ENERGY PORTFOLIO STANDARDS AND TO PROVIDE FOR COST RECOVERY BY PUBLIC UTILITIES FOR CERTAIN COSTS OF COMPLIANCE WITH RENEWABLE ENERGY PORTFOLIO STANDARDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-2(a) reads as rewritten:

"**§ 62-2. Declaration of policy.**

(a) Upon investigation, it has been determined that the rates, services and operations of public utilities as defined herein, are affected with the public interest and that the availability of an adequate and reliable supply of electric power and natural gas to the people, economy and government of North Carolina is a matter of public policy. It is hereby declared to be the policy of the State of North Carolina:

(1) To provide fair regulation of public utilities in the interest of the public;

(2) To promote the inherent advantage of regulated public utilities;

(3) To promote adequate, reliable and economical utility service to all of the citizens and residents of the State;

(3a) To assure that necessary resources ~~necessary~~ are available at reasonable cost to meet future growth through the provision of adequate, reliable utility ~~service include use of the entire spectrum of demand-side options,~~ service, including but not limited to conservation, load management and efficiency programs, as additional sources of energy supply and/or energy demand reductions. To that end, to require energy planning and fixing of rates in a manner to result in the least cost mix of generation and demand-reduction measures which is achievable, including consideration of appropriate rewards to utilities for efficiency and conservation which decrease utility bills;

(4) To provide just and reasonable rates and charges for public utility services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices and consistent with long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy;

(4a) To assure that facilities necessary to meet future growth can be financed by the utilities operating in this State on terms which are reasonable and fair to both the customers and existing investors of such utilities; and to that end to authorize fixing of rates in such a manner as to result in lower costs of new

facilities and lower rates over the operating lives of such new facilities by making provisions in the rate-making process for the investment of public utilities in plants under construction;

(5) To encourage and promote harmony between public utilities, their users and the environment;

(6) To foster the continued service of public utilities on a well-planned and coordinated basis that is consistent with the level of energy needed for the protection of public health and safety and for the promotion of the general welfare as expressed in the State energy policy;

~~(7) To seek to adjust the rate of growth of regulated energy supply facilities serving the State to the policy requirements of statewide development;~~

(8) To cooperate with other states and with the federal government in promoting and coordinating interstate and intrastate public utility service and reliability of public utility energy supply;

(9) To facilitate the construction of facilities in and the extension of natural gas service to unserved areas in order to promote the public welfare throughout the State and to that end to authorize the creation of expansion funds for natural gas local distribution companies or gas districts to be administered under the supervision of the North Carolina Utilities Commission; and

(10) To promote the development of ~~renewable energy and energy efficiency through the implementation of a Renewable Energy and Energy Efficiency Portfolio Standard (REPS) that will do all of the following:~~

~~a. Diversify the resources used to reliably meet the energy needs of consumers in the State.~~

~~b. Provide greater energy security through the use of indigenous energy resources available within the State.~~

~~c. Encourage private investment in renewable energy and energy efficiency.~~

~~d. Provide improved air quality and other benefits to energy consumers and citizens of the State.~~the lowest cost electric power that will promote economic growth by providing public utilities the choice to use any type of energy resource free of State interference or control."

SECTION 2. G.S. 62-133.8 reads as rewritten:

"**§ 62-133.8. Renewable ~~Energy and Energy Efficiency Portfolio Standard (REPS).~~Energy.**

(a) Definitions. – As used in this section:

~~(1) "Combined heat and power system" means a system that uses waste heat to produce electricity or useful, measurable thermal or mechanical energy at a retail electric customer's facility.~~

(2) "Demand-side management" means activities, programs, or initiatives undertaken by an electric power supplier with customer approval or by its customers to shift the timing of electricity use from peak to nonpeak demand periods. "Demand-side management" includes, but is not limited to, load management, electric system equipment and operating controls, direct load control, and interruptible load.

(3) "Electric power supplier" means a public utility, an electric membership corporation, or a municipality that sells electric power to retail electric power customers in the State.

(3a) "Electricity demand reduction" means a measurable reduction in the electricity demand of a retail electric customer that is voluntary, under the real-time control of both the electric power supplier and the retail electric

customer, and measured in real time, using two-way communications devices that communicate on the basis of standards.

(4) "Energy efficiency measure" means an equipment, physical, or program change implemented after January 1, 2007, that results in less energy used to perform the same function. "Energy efficiency measure" includes, but is not limited to, energy produced from a combined heat and power system that uses nonrenewable energy resources. "Energy efficiency measure" does not include demand-side management.

(5) "New renewable energy facility" means a renewable energy facility that either:

a. Was placed into service on or after January 1, 2007.

b. Delivers or has delivered electric power to an electric power supplier pursuant to a contract with NC GreenPower Corporation that was entered into prior to January 1, 2007.

c. Is a hydroelectric power facility ~~with a generation capacity of 10 megawatts or less~~ that delivers electric power to an electric power supplier.

~~(6) "Renewable energy certificate" means a tradable instrument that is equal to one megawatt hour of electricity or equivalent energy supplied by a renewable energy facility, new renewable energy facility, or reduced by implementation of an energy efficiency measure that is used to track and verify compliance with the requirements of this section as determined by the Commission. A "renewable energy certificate" does not include the related emission reductions, including, but not limited to, reductions of sulfur dioxide, oxides of nitrogen, mercury, or carbon dioxide.~~

(7) "Renewable energy facility" means a ~~facility, other than a hydroelectric power facility with a generation capacity of more than 10 megawatts,~~ facility that either:

a. Generates electric power by the use of a renewable energy resource.

b. Generates useful, measurable combined heat and power derived from a renewable energy resource.

c. Is a solar thermal energy facility.

(8) "Renewable energy resource" means a solar electric, solar thermal, ~~wind,~~ hydropower, geothermal, or ocean current or wave energy resource; a biomass resource, including agricultural waste, animal waste, wood waste, spent pulping liquors, combustible residues, combustible liquids, combustible gases, energy crops, or landfill methane; waste heat derived from a renewable energy resource and used to produce electricity or useful, measurable thermal energy at a retail electric customer's facility; or hydrogen derived from a renewable energy ~~resource. "Renewable energy resource" does not include peat, a fossil fuel, or nuclear energy resource.~~resource, peat, nuclear energy, or a fossil fuel.

~~(b) Renewable Energy and Energy Efficiency Standards (REPS) for Electric Public Utilities.~~

~~(1) Each electric public utility in the State shall be subject to a Renewable Energy and Energy Efficiency Portfolio Standard (REPS) according to the following schedule:~~

~~Calendar Year~~	~~REPS Requirement~~
~~2012~~	~~3% of 2011 North Carolina retail sales~~
~~2015~~	~~6% of 2014 North Carolina retail sales~~
~~2018~~	~~10% of 2017 North Carolina retail sale~~

2021 and thereafter	12.5% of 2020 North Carolina retail sales

(2) An electric public utility may meet the requirements of this section by any one or more of the following:

a. Generate electric power at a new renewable energy facility.

b. Use a renewable energy resource to generate electric power at a generating facility other than the generation of electric power from waste heat derived from the combustion of fossil fuel.

c. Reduce energy consumption through the implementation of an energy efficiency measure; provided, however, an electric public utility subject to the provisions of this subsection may meet up to twenty-five percent (25%) of the requirements of this section through savings due to implementation of energy efficiency measures. Beginning in calendar year 2021 and each year thereafter, an electric public utility may meet up to forty percent (40%) of the requirements of this section through savings due to implementation of energy efficiency measures.

d. Purchase electric power from a new renewable energy facility. Electric power purchased from a new renewable energy facility located outside the geographic boundaries of the State shall meet the requirements of this section if the electric power is delivered to a public utility that provides electric power to retail electric customers in the State; provided, however, the electric public utility shall not sell the renewable energy certificates created pursuant to this paragraph to another electric public utility.

e. Purchase renewable energy certificates derived from in-State or out-of-state new renewable energy facilities. Certificates derived from out-of-state new renewable energy facilities shall not be used to meet more than twenty-five percent (25%) of the requirements of this section, provided that this limitation shall not apply to an electric public utility with less than 150,000 North Carolina retail jurisdictional customers as of December 31, 2006.

f. Use electric power that is supplied by a new renewable energy facility or saved due to the implementation of an energy efficiency measure that exceeds the requirements of this section for any calendar year as a credit towards the requirements of this section in the following calendar year or sell the associated renewable energy certificates.

g. Electricity demand reduction.

(c) Renewable Energy and Energy Efficiency Standards (REPS) for Electric Membership Corporations and Municipalities.

(1) Each electric membership corporation or municipality that sells electric power to retail electric power customers in the State shall be subject to a Renewable Energy and Energy Efficiency Portfolio Standard (REPS) according to the following schedule:

Calendar Year	**REPS Requirement**
2012	3% of 2011 North Carolina retail sales
2015	6% of 2014 North Carolina retail sales
2018 and thereafter	10% of 2017 North Carolina retail sales

(2) An electric membership corporation or municipality may meet the requirements of this section by any one or more of the following:

a. Generate electric power at a new renewable energy facility.

b. Reduce energy consumption through the implementation of demand-side management or energy efficiency measures.

~~c. Purchase electric power from a renewable energy facility or a hydroelectric power facility, provided that no more than thirty percent (30%) of the requirements of this section may be met with hydroelectric power, including allocations made by the Southeastern Power Administration.~~

~~d. Purchase renewable energy certificates derived from in-State or out-of-state renewable energy facilities. An electric power supplier subject to the requirements of this subsection may use certificates derived from out-of-state renewable energy facilities to meet no more than twenty-five percent (25%) of the requirements of this section.~~

~~e. Acquire all or part of its electric power through a wholesale purchase power agreement with a wholesale supplier of electric power whose portfolio of supply and demand options meets the requirements of this section.~~

~~f. Use electric power that is supplied by a new renewable energy facility or saved due to the implementation of demand-side management or energy efficiency measures that exceeds the requirements of this section for any calendar year as a credit towards the requirements of this section in the following calendar year or sell the associated renewable energy certificates.~~

~~g. Electricity demand reduction.~~

~~(d) Compliance With REPS Requirement Through Use of Solar Energy Resources. For calendar year 2018 and for each calendar year thereafter, at least two-tenths of one percent (0.2%) of the total electric power in kilowatt hours sold to retail electric customers in the State, or an equivalent amount of energy, shall be supplied by a combination of new solar electric facilities and new metered solar thermal energy facilities that use one or more of the following applications: solar hot water, solar absorption cooling, solar dehumidification, solar thermally driven refrigeration, and solar industrial process heat. The terms of any contract entered into between an electric power supplier and a new solar electric facility or new metered solar thermal energy facility shall be of sufficient length to stimulate development of solar energy; provided, the Commission shall develop a procedure to determine if an electric power supplier is in compliance with the provisions of this subsection if a new solar electric facility or a new metered solar thermal energy facility fails to meet the terms of its contract with the electric power supplier. As used in this subsection, "new" means a facility that was first placed into service on or after January 1, 2007. The electric power suppliers shall comply with the requirements of this subsection according to the following schedule:~~

~~Calendar Year~~	~~Requirement for Solar Energy Resources~~
~~2010~~	~~0.02%~~
~~2012~~	~~0.07%~~
~~2015~~	~~0.14%~~
~~2018~~	~~0.20%~~

~~(e) Compliance With REPS Requirement Through Use of Swine Waste Resources. For calendar year 2018 and for each calendar year thereafter, at least two-tenths of one percent (0.2%) of the total electric power in kilowatt hours sold to retail electric customers in the State shall be supplied, or contracted for supply in each year, by swine waste. The electric power suppliers, in the aggregate, shall comply with the requirements of this subsection according to the following schedule:~~

~~Calendar Year~~	~~Requirement for Swine Waste Resources~~
~~2012~~	~~0.07%~~

~~2015~~	~~0.14%~~
~~2018~~	~~0.20%~~

~~(f) Compliance With REPS Requirement Through Use of Poultry Waste Resources. – For calendar year 2014 and for each calendar year thereafter, at least 900,000 megawatt hours of the total electric power sold to retail electric customers in the State or an equivalent amount of energy shall be supplied, or contracted for supply in each year, by poultry waste combined with wood shavings, straw, rice hulls, or other bedding material. The electric power suppliers, in the aggregate, shall comply with the requirements of this subsection according to the following schedule:~~

~~Calendar Year~~	~~Requirement for Poultry Waste Resources~~
~~2012~~	~~170,000 megawatt hours~~
~~2013~~	~~700,000 megawatt hours~~
~~2014~~	~~900,000 megawatt hours~~

(g) Control of Emissions. – As used in this subsection, Best Available Control Technology (BACT) means an emissions limitation based on the maximum degree a reduction in the emission of air pollutants that is achievable for a facility, taking into account energy, environmental, and economic impacts and other costs. A biomass combustion process at any new renewable energy facility that delivers electric power to an electric power supplier shall meet BACT. The Environmental Management Commission shall determine on a case-by-case basis the BACT for a facility that would not otherwise be required to comply with BACT pursuant to the Prevention of Significant Deterioration (PSD) emissions program. The Environmental Management Commission ~~may~~ shall adopt rules to implement this subsection. In adopting rules, the Environmental Management Commission shall take into account cumulative and secondary impacts associated with the concentration of biomass facilities in close proximity to one another. In adopting rules the Environmental Management Commission shall provide for the manner in which a facility that would not otherwise be required to comply with BACT pursuant to the PSD emissions programs shall meet the BACT requirement. ~~This subsection shall not apply to a facility that qualifies as a new renewable energy facility under sub-subdivision b. of subdivision (5) of subsection (a) of this section.~~Being a naturally occurring atmospheric gas that is necessary to the health of plant life and enables the production of oxygen by plant life, which is necessary to sustain animal life, carbon dioxide shall not be considered an air pollutant for the purposes of this section.

(h) Cost Recovery and Customer Charges. –

(1) For the purposes of this subsection, the term "incremental costs" means all reasonable and prudent costs incurred prior to July 1, 2021, by an electric power supplier to:

a. Comply with the requirements of former subsections (b), (c), (d), (e), and (f) of this section that are in excess of the electric power supplier's avoided costs other than those costs recovered pursuant to G.S. 62-133.9.

~~b. Fund research that encourages the development of renewable energy, energy efficiency, or improved air quality, provided those costs do not exceed one million dollars ($1,000,000) per year.~~

c. Comply with any federal mandate that is similar to the requirements of former subsections (b), (c), (d), (e), and (f) of this section that exceed the costs that the electric power supplier would have incurred under those subsections in the absence of the federal mandate.

d. Provide incentives to customers, including program costs, incurred pursuant to G.S. 62-155(f).

(2) All reasonable and prudent costs incurred prior to July 1, 2021, by an electric power supplier to comply with any federal mandate that is similar to the requirements of former subsections (b), (c), (d), (e), and (f) of this section, including, but not limited to, the avoided costs associated with a federal mandate that exceeds the avoided costs that the electric power supplier would have incurred pursuant to former subsections (b), (c), (d), (e), and (f) of this section in the absence of the federal mandate, shall be recovered by the electric power supplier in an annual rider charge assessed in accordance with the schedule set out in subdivision (4) of this subsection increased by the Commission on a pro rata basis to allow for full and complete recovery of all reasonable and prudent costs incurred to comply with the federal mandate.

(3) Except as provided in subdivision (2) of this subsection, the total annual incremental cost to be incurred by an electric power supplier and recovered from the electric power supplier's retail customers shall not exceed an amount equal to the per-account annual charges set out in subdivision (4) of this subsection applied to the electric power supplier's total number of customer accounts determined as of December 31 of the previous calendar year. ~~An electric power supplier shall be conclusively deemed to be in compliance with the requirements of subsections (b), (c), (d), (e), and (f) of this section if the electric power supplier's total annual incremental costs incurred equals an amount equal to the per-account annual charges set out in subdivision (4) of this subsection applied to the electric power supplier's total number of customer accounts determined as of December 31 of the previous calendar year.~~ The total annual incremental cost recoverable by an electric power supplier from an individual customer shall not exceed the per-account charges set out in subdivision (4) of this subsection except as these charges may be adjusted in subdivision (2) of this subsection.

(4) An electric power supplier shall be allowed to recover the incremental costs incurred prior to July 1, 2021, to comply with the requirements of former subsections (b), (c), (d), (e), and (f) of this section ~~and fund research as provided in subdivision (1) of this subsection~~ through an annual rider not to exceed the following per-account annual charges:

Customer Class	**2008-2011**	**2012-2014**	**2015 and thereafter**
Residential per account	$10.00	$12.00	$27.00
Commercial per account	$50.00	$150.00	$150.00
Industrial per account	$500.00	$1,000.00	$1,000.00

(5) The Commission shall adopt rules to establish a procedure for the annual assessment of the per-account charges set out in this subsection to an electric public utility's customers to allow for timely recovery of all reasonable and prudent costs of compliance with the requirements of former subsections (b), (c), (d), (e), and (f) of this ~~section and to fund research as provided in subdivision (1) of this subsection.~~ section. The Commission shall ensure that the costs to be recovered from individual customers on a per-account basis pursuant to subdivisions (2) and (3) of this subsection are in the same proportion as the per-account annual charges for each customer class set out in subdivision (4) of this subsection.

(6) After July 1, 2021, the Commission shall allow recovery under the annual rider described in this subsection only for the reasonable and prudent costs incurred prior to July 1, 2021. For the purposes of this subsection, "costs incurred prior to July 1, 2021," includes the following:

a. Costs under renewable energy purchase contracts entered into prior to July 1, 2021.

b. The costs of construction of renewable energy facilities for which a certificate of public convenience and necessity has been issued by the Commission prior to July 1, 2021.

(i) Adoption of Rules. – The Commission shall adopt rules to implement the provisions of this section. In developing rules, the Commission shall:

(1) Provide for the monitoring of compliance with and enforcement of the requirements of this section.

~~(2) Include a procedure to modify or delay the provisions of subsections (b), (c), (d), (e), and (f) of this section in whole or in part if the Commission determines that it is in the public interest to do so. The procedure adopted pursuant to this subdivision shall include a requirement that the electric power supplier demonstrate that it made a reasonable effort to meet the requirements set out in this section.~~

(3) Ensure that energy credited toward compliance with the ~~provisions~~ former renewable energy portfolio standards of this section not be credited toward any other purpose, including another renewable energy portfolio standard or voluntary renewable energy purchase program in this State or any other state.

(4) Establish standards for interconnection of renewable energy facilities and other nonutility-owned generation with a generation capacity of 10 megawatts or less to an electric public utility's distribution system; provided, however, that the Commission shall adopt, if appropriate, federal interconnection standards. ~~The standards adopted pursuant to this subdivision shall include an expedited review process for swine and poultry waste-to-energy projects of two megawatts (MW) or less and other measures necessary and appropriate to achieve the objectives of subsections (e) and (f) of this section.~~

(5) Ensure that the owner and operator of each renewable energy facility that delivers electric power to an electric power supplier is in substantial compliance with all federal and state laws, regulations, and rules for the protection of the environment and conservation of natural resources.

~~(6) Consider whether it is in the public interest to adopt rules for electric public utilities for net metering of renewable energy facilities with a generation capacity of one megawatt or less.~~

(7) Develop procedures to track and account for renewable energy certificates, including ownership of renewable energy certificates that are derived from a customer owned renewable energy facility as a result of any action by a customer of an electric power supplier that is independent of a program sponsored by the electric power supplier.

(j) Report. – No later than October 1 of each year, the Commission shall submit a report ~~on the activities taken by the Commission to implement, and by electric power suppliers to comply with, the requirements of this section~~ to the Governor, the Environmental Review Commission, and the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, and the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic ~~Resources. The report shall include any public comments received regarding direct, secondary, and cumulative environmental impacts of the implementation of the requirements of this section. In developing the report, the Commission shall consult with the Department of Environmental Quality.~~Resources regarding the cost impact on the production and transmission of electricity for electric power suppliers and their retail customers resulting from the use of renewable resources.

(k) Tracking of Renewable Energy ~~Certificates. No later than July 1, 2010, the~~ Certificates. – The Commission shall develop, implement, and maintain an Internet Web site for the online tracking of renewable energy certificates ~~in order to verify the compliance of electric power suppliers with the REPS requirements of this section~~ and to facilitate the establishment of a market for the purchase and sale of renewable energy certificates.

~~(l) The owner, including an electric power supplier, of each renewable energy facility or new renewable energy facility, whether or not required to obtain a certificate of public convenience and necessity pursuant to G.S. 62-110.1, that intends for renewable energy certificates it earns to be eligible for use by an electric power supplier to comply with G.S. 62-133.8 shall register the facility with the Commission. Such an owner shall file a registration statement in the form prescribed by the Commission and remit to the Commission the fee required pursuant to G.S. 62-300(a)(16).~~"

SECTION 3. Notwithstanding any order of the North Carolina Utilities Commission, including orders arising out of any general rate case involving an electric public utility, no electric public utility in the State that purchases power from a small power producer, as that term is defined under G.S. 62-3 pursuant to the Order Establishing Standard Rates and Contract Terms for Qualifying Facilities issued by the North Carolina Utilities Commission on October 11, 2017, in the matter of Biennial Determination of Avoided Cost Rates for Electric Utility Purchases from Qualifying Facilities – 2016, Docket No. E-100, SUB 148, shall charge its retail customers a rate higher than the rate the electric public utility would have charged based on the lowest cost electric generation available to the electric public utility.

SECTION 4. This act becomes effective July 1, 2021.