

ASSEMBLY, No. 4791

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED OCTOBER 17, 2022

Sponsored by:

Assemblyman JAMES J. KENNEDY

District 22 (Middlesex, Somerset and Union)

Assemblywoman SHAMA A. HAIDER

District 37 (Bergen)

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

SYNOPSIS

Establishes “Resiliency and Environmental System Investment Charge Program.”

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT establishing the “Resiliency and Environmental System
2 Investment Charge Program” for cost recovery of certain
3 investments made by certain utilities and supplementing Title 48
4 of the Revised Statutes.

5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8

9 1. As used in P.L. , c. (C.) (pending before the
10 Legislature as this bill):

11 “Adjusted weighted average cost of capital” means the weighted
12 average of the debt and equity components of a utility’s capital
13 structure, where the equity component shall equal the equity rate
14 approved by the board in the utility’s most recent base rate case and
15 the debt component shall equal the approved embedded long-term
16 cost of debt (LTD), which component shall be adjusted semi-
17 annually to reflect the actual embedded cost of LTD at the end of
18 the RESIC recovery period, and which component shall not include
19 short-term debt.

20 “Board” means the Board of Public Utilities or any successor
21 agency.

22 “Depreciation expense” means the amount equal to the total
23 amount of RESIC eligible investments, multiplied by the weighted
24 composite depreciation rate on those assets utilizing depreciation
25 rates, as most recently approved by the board.

26 “In-service” means when a RESIC-eligible project has been
27 substantially completed, is functioning in its intended purpose, and
28 is used and useful for the provision of utility service.

29 “Pre-tax adjusted weighted average cost of capital” means the
30 adjusted weighted average cost of capital calculated on a pre-
31 income tax basis.

32 “Requirement” means a decision or regulation imposed on a
33 utility by the State, including any political subdivision thereof, or
34 the federal government, in connection with any of the following:

35 a. the “Federal Water Pollution Control Act Amendments of
36 1972” (33 U.S.C. s.1251 et seq.);

37 b. the federal “Safe Drinking Water Act” (42 U.S.C. 300f et
38 seq.);

39 c. any other law, order, or regulation administered by the
40 United States Environmental Protection Agency, the United States
41 Army Corps of Engineers, the United States Department of
42 Transportation, the United States Department of Homeland
43 Security, the New Jersey Office of Homeland Security and
44 Preparedness, the New Jersey Department of Transportation, or the
45 New Jersey Department of Environmental Protection; or

46 d. a regulation imposed by any local government unit related to
47 the provision of water or wastewater service, or both, or imposing
48 more stringent standards than those adopted by law.

1 “RESIC” means the Resiliency and Environmental System
2 Investment Charge program, established pursuant to P.L. ,
3 c. (C.) (pending before the Legislature as this bill).

4 “RESIC-cap” or “cap” means the maximum amount of RESIC
5 revenues that a utility may recover, during the period the RESIC
6 rate is in effect, through the assessment or surcharge computed
7 pursuant to P.L. , c. (C.) (pending before the Legislature as
8 this bill).

9 “RESIC-eligible project” or “eligible project” means a water or
10 wastewater system project, or both, with projected costs that are:

- 11 a. non-revenue producing;
- 12 b. specifically identified by the utility within its petition in
13 support of a RESIC;
- 14 c. not already being recovered through current base rates, as set
15 by the utility’s most recent base rate case proceeding or through
16 another infrastructure surcharge mechanism; and
- 17 d. approved by the board for inclusion in a RESIC in response
18 to the utility’s petition.

19 “RESIC filing” means the semi-annual filing made by a utility
20 pursuant to section 4 of P.L. , c. (C.) (pending before the
21 Legislature as this bill) for each RESIC recovery period, which
22 filing contains actual data for the RESIC recovery period.

23 “RESIC period” means the period of time between the effective
24 date of the foundational filing and the rate effective date of the next
25 base rate case.

26 “RESIC rate” means the surcharge added to a utility customer’s
27 bill, calculated pursuant to the provisions of P.L. , c. (C.)
28 (pending before the Legislature as this bill), which rate shall be
29 assessed on the basis of meter charges or meter equivalent basis,
30 and which shall remain in effect for the duration of the RESIC
31 period.

32 “RESIC recovery period” means the six-month period preceding
33 each RESIC filing submitted pursuant to subsection b. of section 4
34 of P.L. , c. (C.) (pending before the Legislature as this
35 bill), provided that the RESIC-eligible project for which filing is
36 submitted shall be completed and in-service during this period.

37 “RESIC revenue requirement recovery amount” means the total
38 eligible amount to be recovered through the RESIC rate, as
39 calculated pursuant to section 7 of P.L. , c. (C.) (pending
40 before the Legislature as this bill).

41 “Restoration costs” means costs necessary to restore construction
42 to preconstruction condition or as dictated by federal, State, county,
43 or municipal laws, rules, ordinances, orders, or regulations,
44 including, but not limited to, paving, sidewalks, curbing,
45 landscaping, and traffic control costs for RESIC-eligible projects
46 approved in a foundational filing.

47 “Revenue factor” means a gross-up for the associated revenue
48 taxes, uncollectibles, board assessment, and Division of Rate

1 Counsel assessment, adjusted to properly reflect the revenue
2 required to generate the agreed upon rate of return.

3 “Utility” means a water utility and wastewater utility as defined
4 in this section.

5 “Wastewater treatment service” means the management of
6 wastewater and includes any activity related to the collection,
7 storage, transport, handling, delivery, processing, treatment, or
8 disposal of wastewater, and other similar activities.

9 “Wastewater utility” means an investor-owned public utility, as
10 defined in R.S.48:2-13, that provides wastewater treatment service,
11 or a municipal public utility that provides wastewater treatment
12 service to more than 1,000 billed customers in another municipality.

13 “Water utility” means an investor-owned public utility, as
14 defined in R.S.48:2-13, that provides water service, or a municipal
15 public utility that provides water service to more than 1,000 billed
16 customers in another municipality and charges a different rate to
17 customers inside the municipality than it charges customers outside
18 of the municipality.

19

20 2. a. A utility may seek recovery through the implementation
21 of a RESIC rate for any cost made, or to be made, by a utility,
22 which cost is related to the:

23 (1) direct or indirect compliance with one or more requirements,
24 including, but not limited to, addressing both existing and emerging
25 chemical elements or compounds;

26 (2) installation of new distribution, production, treatment, or
27 other plant or equipment to further resiliency, health, safety, or
28 environmental protection for the utility’s customers or employees,
29 or the public; or

30 (3) replacement of existing distribution, production, treatment,
31 or other plant or equipment to maintain, enhance, or improve the
32 existing resiliency, health, safety, or environmental protection of
33 the utility’s customers or employees, or the public.

34 b. Restoration costs associated with an eligible project pursuant
35 to paragraph (1) of subsection a. of this section and approved
36 through a utility’s RESIC foundational filing, made pursuant to
37 subsection b. of section 3 of P.L. , c. (C.) (pending before
38 the Legislature as this bill), may be recovered if the costs were
39 incurred not more than 18 months after the eligible project’s in-
40 service date and were included in a normally scheduled semi-annual
41 RESIC filing.

42

43 3. a. (1) The board shall authorize the implementation of a
44 RESIC by a utility to recover costs associated with RESIC-eligible
45 projects through an approved RESIC rate.

46 (2) A utility that offers more than one regulated service may file
47 a joint petition to establish a RESIC that includes RESIC-eligible
48 projects for multiple regulated services or separate petitions to

1 establish a separate RESIC for water and wastewater services,
2 respectively. If a utility files separate petitions, each RESIC
3 approved by the board shall be subject to its own respective RESIC-
4 cap.

5 b. To obtain authorization to implement a RESIC, the utility
6 shall submit a foundational filing to the board. Whether filed
7 separately or concurrently with a base rate case, the utility shall
8 submit the following information with the foundational filing:

9 (1) projected annual capital expenditures on RESIC-eligible
10 projects for a three-year period, identified by major categories of
11 expenditures;

12 (2) actual annual capital expenditures on RESIC-eligible
13 projects for the previous three years, identified by major categories
14 of expenditures;

15 (3) an engineering evaluation and report identifying the specific
16 projects to be included in the proposed RESIC, with descriptions of
17 project objectives, detailed cost estimates, and the estimated in-
18 service dates for each project;

19 (4) vintage, condition, or other similarly relevant and reasonably
20 available information about the eligible infrastructure that is being
21 rehabilitated or replaced, if applicable;

22 (5) a forecast of RESIC-eligible capital expenditures for a three-
23 year period setting forth annual planned capital expenditures;

24 (6) the maximum dollar amount, in aggregate, the utility seeks
25 to recover through the RESIC under the foundational filing; and

26 (7) the estimated rate impact of the proposed RESIC on
27 customers of the utility.

28 c. In considering a utility's foundational filing in support of a
29 RESIC, the board may require the utility to provide any
30 supplemental information that the board deems necessary to
31 evaluate the utility's foundational filing.

32 d. Before the board approves a RESIC, the board shall conduct
33 a public hearing in the utility's service territory, notice of which
34 shall contain the maximum dollar amount the utility seeks to
35 recover through its RESIC and the utility's estimated rate impact.

36 e. A RESIC foundational filing shall not be approved unless a
37 utility has had its base rates set by the board within the past three
38 years and any prior RESIC rate was reset to zero through the
39 current or prior base rate case. After a utility's RESIC rate has
40 been reset to zero, a new foundational filing shall be approved
41 before a new RESIC rate recovery may occur. A RESIC
42 foundational filing may be approved concurrently with the setting
43 of new base rates.

44 f. The board shall act on each foundational filing no later than
45 120 calendar days after receiving the completed filing, except that if
46 the foundational filing is submitted concurrent with a base rate case
47 or during the pendency of a base rate case, the board may delay

1 action until the effective date of the board's approval of the base
2 rate case.

3

4 4. a. Following board approval of the utility's foundational
5 filing, each subsequent RESIC filing made by a utility shall include
6 the following:

7 (1) a detailed description of all RESIC-eligible projects placed
8 in-service, which description shall clearly identify any projects that
9 are carried over from a prior RESIC period or from a prior RESIC
10 recovery period, any restoration costs sought for projects placed in-
11 service, and the in-service date for the projects associated with the
12 restoration costs;

13 (2) aggregate information capturing blanket-type RESIC-
14 eligible infrastructure, if any, to be rehabilitated or replaced and the
15 actual annual costs of the blanket-type replacement programs;

16 (3) a schedule comparing the:

17 (a) total spending on RESIC-eligible projects to date for the
18 RESIC recovery period, and eligible project spending by
19 foundational filing project identification number or blanket-project
20 category;

21 (b) actual cost of completed RESIC-eligible projects for the
22 RESIC recovery period with the estimated costs for the projects
23 contained in the most recent foundational filing or any amendment
24 thereto;

25 (c) in-service date of completed RESIC-eligible projects
26 compared to the estimated in-service date of RESIC-eligible
27 projects set forth in the foundational filing; and

28 (d) actual revenues collected through the RESIC assessment,
29 compared with the actual revenue requirement of the RESIC-
30 eligible projects during the RESIC recovery period, and the
31 resultant RESIC under- or over-recovery amounts; and

32 (4) a proposed RESIC schedule outlining the RESIC rate,
33 determined pursuant to P.L. , c. (C.) (pending before the
34 Legislature as this bill), and detailed information demonstrating that
35 the proposed RESIC rate meets those requirements. The schedule
36 shall include either a proposed schedule for returning to customers
37 any over-recovery in the prior RESIC recovery period, including
38 interest at the adjusted weighted average cost of capital, or a
39 proposed schedule for recovering from customers any under-
40 recovery in the prior RESIC recovery period. The over-recovery,
41 including interest, or under-recovery shall be credited or charged to
42 customers during the next RESIC recovery period. This
43 information shall support the RESIC rate calculation, with
44 documentation, detailed financial analyses, and other relevant
45 information, showing all assumptions and calculations. All
46 supporting financial information shall be presented in a manner to
47 allow the board to evaluate whether the calculations meet the

- 1 requirements of P.L. , c. (C.) (pending before the
2 Legislature as this bill).
- 3 b. RESIC filings shall be filed with the board on a semi-annual
4 basis, commencing six months after the effective date of the
5 foundational filing. A utility shall submit a semi-annual RESIC
6 filing to the board within 15 calendar days of the scheduled
7 conclusion of the RESIC recovery period. A RESIC filing shall be
8 reviewed by the board and the Division of Rate Counsel. The
9 utility may recover the interim surcharge associated with the
10 RESIC-eligible projects placed in-service, including restoration
11 costs during the RESIC recovery period, beginning 45 calendar
12 days after the receipt of the complete semi-annual RESIC filing.
- 13 c. To the extent permitted under section 2 of P.L. ,
14 c. (C.) (pending before the Legislature as this bill), a utility's
15 expenditures made prior to the board's approval of a RESIC shall
16 be eligible for cost recovery so long as the expenditures were
17 included in the RESIC foundational filing.
- 18 d. The semi-annual RESIC filings may include changes or
19 updates to any information provided in the foundational filing,
20 provided that the utility has a reasonable expectation that the
21 change shall occur during the RESIC recovery period, which project
22 changes may include, but shall not be limited to, additions,
23 replacements, or deferral projects that are otherwise RESIC-
24 eligible.
- 25 e. Rates approved by the board for recovery of expenditures
26 under a RESIC shall be:
- 27 (1) accelerated and recovered through a separate clause of the
28 utility's board-approved tariff;
- 29 (2) subject to annual reconciliation based on a reconciliation
30 period consisting of the 12 months completed prior to the utility's
31 next RESIC filing. The revenue received through the RESIC rate
32 for the reconciliation period shall be compared to the utility's costs
33 associated with RESIC-eligible projects for that period. The
34 difference between revenue and costs shall be recouped or credited,
35 as appropriate, through the RESIC rate included in the RESIC
36 filing; and
- 37 (3) provisional and subject to refund and interest. The prudence
38 of RESIC expenditures shall be determined by the board in the
39 utility's next base rate case.
- 40 f. A utility shall file its next rate base case not later than three
41 years after the board's approval of the RESIC start date, except that
42 the board, in its discretion, may require a utility to file its next base
43 rate case within a shorter period.
- 44 g. A utility may continue to file for cost recovery of RESIC-
45 eligible projects during the approved RESIC period notwithstanding
46 the filing of the utility's next base rate case.

1 5. a. If RESIC-eligible project plant additions are placed in-
2 service during the test year of a utility's base rate case, and the
3 plant additions are not recovered as part of a routine RESIC filing,
4 then the plant additions shall be considered as part of the base rate
5 case proceeding and included in the plant additions, consistent with
6 existing board rules.

7 b. Notwithstanding any other provisions of P.L. , c. (C.)
8 (pending before the Legislature as this bill) to the contrary, a utility
9 may continue to make RESIC-eligible investments and collect the
10 RESIC rate during a pending rate case filed in accordance with
11 existing board rules.

12 c. RESIC rates shall be included in base rates during a utility's
13 subsequent base rate case, and the RESIC rate shall be reset to zero.
14

15 6. a. All carryover costs permitted by this section and included
16 in a RESIC rate shall be included in the calculation of the RESIC-
17 cap.

18 b. Notwithstanding any other provision of this section to the
19 contrary, when a utility has commenced work on a RESIC-eligible
20 project, but the eligible project has not been placed in-service
21 during the period captured under an initial foundational filing, the
22 eligible project may be considered a valid RESIC-eligible project in
23 a subsequent foundational filing that is filed with the board prior to
24 the resetting of rates under the initial foundational filing when the
25 RESIC-eligible project began.

26 c. When a RESIC-eligible project is placed in-service by a
27 utility between the close of the test year and the effective date of
28 rates in the base rate case, the utility may recover the costs of the
29 project, as authorized by a board order approving a foundational
30 filing, in the first RESIC filing under the board's new foundational
31 filing order and included in the RESIC-cap.

32 d. Unrecovered restoration costs of a project that was placed
33 in-service during one foundational filing may be carried over and
34 recovered in a subsequent foundational filing and included in a
35 timely semi-annual RESIC filing, provided that the restoration costs
36 shall otherwise be within the timeframe set forth in P.L. ,
37 c. (C.) (pending before the Legislature as this bill).
38

39 7. a. The revenues to be recovered through the RESIC rate
40 shall be calculated as follows:

41 (1) the eligible net investment shall equal the eligible
42 investment, less the per-book accumulated depreciation amount
43 recorded for the eligible projects, and adjusted for the recorded
44 accumulated deferred income tax amount for the eligible projects;

45 (2) the eligible net investment shall be multiplied by the pre-tax
46 adjusted weighted average cost of capital, plus depreciation
47 expense, the sum of which shall be multiplied by the revenue factor,
48 plus or minus the RESIC under-recovery or over-recovery amount,

1 the product of which shall equal the RESIC revenue requirement
2 recovery amount; and

3 (3) the RESIC revenue requirement recovery amount shall be
4 divided by the number of meters and meter equivalents, weighted
5 by meter capacity ratio, the product of which shall equal the RESIC
6 rate per customer.

7 b. The revenues to be recovered through the RESIC rate shall
8 not exceed the RESIC-cap, which amount shall not exceed five
9 percent of the utility's total annual revenue, as established in the
10 utility's most recent base rate decision, and such revenues shall be
11 adjusted in accordance with a purchased water or wastewater
12 adjustment clause approved by the board pursuant to chapter 9 of
13 Title 14 of the New Jersey Administrative Code.

14

15 8. a. If a utility has a board-approved RESIC, the utility shall
16 identify and list the amount owed by the customer, based on the
17 RESIC rate calculated in accordance with section 7 of P.L. ,

18 c. (C.) (pending before the Legislature as this bill), separately
19 on a customer's utility bill. The RESIC rate shall be reflected in
20 bills issued on and after the effective date of the first RESIC filing
21 and may be adjusted on the basis of subsequent RESIC filings, no
22 more frequently than every six months, up to an amount not to
23 exceed the RESIC-cap over the RESIC period.

24 b. A customer's bill shall reflect the RESIC rate calculated
25 pursuant to paragraph (3) of subsection a. of section 7 of P.L. ,

26 c. (C.) (pending before the Legislature as this bill).

27

28 9. This act shall take effect immediately.

29

30

31

STATEMENT

32

33 This bill establishes the "Resiliency and Environmental System
34 Investment Charge Program"(RESIC), which creates a regulatory
35 mechanism that enables water and wastewater utilities (utilities) to
36 recover the costs of investment in certain non-revenue producing
37 utility system components that enhance water and wastewater
38 system resiliency, environmental compliance, safety, and public
39 health.

40 The bill authorizes a utility to petition the Board of Public
41 Utilities (BPU) concerning RESIC activities through the submission
42 of a foundational filing. A utility that offers more than one
43 regulated service may file a joint foundational filing for a RESIC
44 that includes infrastructure investments for multiple regulated
45 services or separate foundational filings to establish a separate
46 RESIC for each regulated service offered by the utility. If a utility
47 files separate foundational filings, each RESIC approved by the
48 BPU would be subject to its own respective spending cap.

1 Under the RESIC program, after approval of the foundational
2 filing, a utility may charge customers up to the RESIC-cap amount
3 for the costs of installing, rehabilitating, improving, or replacing
4 utility system infrastructure in accordance with the bill.

5 The bill provides that if a utility has a BPU-approved RESIC, the
6 utility is required to identify and list the amount owed by the
7 customer, based on the RESIC rate calculated in accordance with
8 the bill, separately on a customer's utility bill. The RESIC rate is to
9 be reflected in bills issued on and after the effective date of the first
10 RESIC filing and may be adjusted on the basis of subsequent
11 RESIC filings no more frequently than every six months, up to an
12 amount not to exceed the RESIC-cap over the RESIC period.