

[First Reprint]

## **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)**

**Co-Sponsored by:**

**Assemblywomen Murphy and Speight**

### **SYNOPSIS**

Establishes “Resiliency and Environmental System Investment Charge Program.”

### **CURRENT VERSION OF TEXT**

As reported by the Assembly Appropriations Committee on December 4, 2023, with amendments.



**(Sponsorship Updated As Of: 12/7/2023)**

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

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
 not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly AAP committee amendments adopted December 4, 2023.

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

4 “RESIC” means the Resiliency and Environmental System  
5 Investment Charge program, established pursuant to P.L. ,

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

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

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

14 a. non-revenue producing;

15 b. specifically identified by the utility within its petition in  
16 support of a RESIC;

17 c. not already being recovered through current base rates, as set  
18 by the utility’s most recent base rate case proceeding or through  
19 another infrastructure surcharge mechanism; and

20 d. approved by the board for inclusion in a RESIC in response  
21 to the utility’s petition.

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

26 “RESIC period” means the period of time between the effective  
27 date of the foundational filing and the rate effective date of the next  
28 base rate case.

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

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

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

44 “Restoration costs” means costs necessary to restore construction  
45 to preconstruction condition or as dictated by federal, State, county,  
46 or municipal laws, rules, ordinances, orders, or regulations,  
47 including, but not limited to, paving, sidewalks, curbing,

1 landscaping, and traffic control costs for RESIC-eligible projects  
2 approved in a foundational filing.

3 “Revenue factor” means a gross-up for the associated revenue  
4 taxes, uncollectibles, board assessment, and Division of Rate  
5 Counsel assessment, adjusted to properly reflect the revenue  
6 required to generate the agreed upon rate of return.

7 “Utility” means a water utility and wastewater utility as defined  
8 in this section.

9 “Wastewater treatment service” means the management of  
10 wastewater and includes any activity related to the collection,  
11 storage, transport, handling, delivery, processing, treatment, or  
12 disposal of wastewater, and other similar activities.

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

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

23

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

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

30 (2) installation of new distribution, production, treatment, or  
31 other plant or equipment to further resiliency, health, safety, or  
32 environmental protection for the utility’s customers or employees,  
33 or the public; <sup>1</sup>**[or]**<sup>1</sup>

34 (3) replacement of existing distribution, production, treatment,  
35 or other plant or equipment to maintain, enhance, or improve the  
36 existing resiliency, health, safety, or environmental protection of  
37 the utility’s customers or employees, or the public<sup>1</sup>; or

38 (4) replacement of treatment media including, but not limited to,  
39 granular activated carbon and anionic exchange resin and new  
40 treatment media, and related tanks, pumps, instrumentation,  
41 controls, and electrical equipment for both existing and emerging  
42 chemical elements and compounds<sup>1</sup>.

43 b. Restoration costs associated with an eligible project pursuant  
44 to paragraph (1) of subsection a. of this section and approved  
45 through a utility’s RESIC foundational filing, made pursuant to  
46 subsection b. of section 3 of P.L. , c. (C. ) (pending before  
47 the Legislature as this bill), may be recovered if the costs were  
48 incurred not more than 18 months after the eligible project’s in-

1 service date and were included in a normally scheduled semi-annual  
2 RESIC filing.

3 <sup>1</sup>c. Notwithstanding any provision of this section to the  
4 contrary, a utility may only seek recovery through the  
5 implementation of a RESIC rate for costs that may be recorded in  
6 the applicable accounts set forth in the uniform system of accounts  
7 adopted by the National Association of Regulatory Utility  
8 Commissioners for the following categories of expenses: lake, river,  
9 and other intakes; wells and springs; power generation equipment;  
10 pumping equipment; water treatment plant equipment; distribution  
11 reservoirs and standpipes; communication equipment; wastewater  
12 pumping equipment; wastewater treatment and disposal equipment;  
13 and wastewater communication equipment.<sup>1</sup>

14  
15 3. a. (1) The board shall authorize the implementation of a  
16 RESIC by a utility to recover costs associated with RESIC-eligible  
17 projects through an approved RESIC rate.

18 (2) A utility that offers more than one regulated service may file  
19 a joint petition to establish a RESIC that includes RESIC-eligible  
20 projects for multiple regulated services or separate petitions to  
21 establish a separate RESIC for water and wastewater services,  
22 respectively. If a utility files separate petitions, each RESIC  
23 approved by the board shall be subject to its own respective RESIC-  
24 cap.

25 b. To obtain authorization to implement a RESIC, the utility  
26 shall submit a foundational filing to the board. Whether filed  
27 separately or concurrently with a base rate case, the utility shall  
28 submit the following information with the foundational filing:

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

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

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

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

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

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

46 (7) the estimated rate impact of the proposed RESIC on  
47 customers of the utility.

1 c. In considering a utility's foundational filing in support of a  
2 RESIC, the board may require the utility to provide any  
3 supplemental information that the board deems necessary to  
4 evaluate the utility's foundational filing.

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

9 e. A RESIC foundational filing shall not be approved unless a  
10 utility has had its base rates set by the board within the past three  
11 years and any prior RESIC rate was reset to zero through the  
12 current or prior base rate case. After a utility's RESIC rate has  
13 been reset to zero, a new foundational filing shall be approved  
14 before a new RESIC rate recovery may occur. A RESIC  
15 foundational filing may be approved concurrently with the setting  
16 of new base rates.

17 f. The board shall act on each foundational filing no later than  
18 120 calendar days after receiving the completed filing, except that if  
19 the foundational filing is submitted concurrent with a base rate case  
20 or during the pendency of a base rate case, the board may delay  
21 action until the effective date of the board's approval of the base  
22 rate case.

23  
24 4. a. Following board approval of the utility's foundational  
25 filing, each subsequent RESIC filing made by a utility shall include  
26 the following:

27 (1) a detailed description of all RESIC-eligible projects placed  
28 in-service, which description shall clearly identify any projects that  
29 are carried over from a prior RESIC period or from a prior RESIC  
30 recovery period, any restoration costs sought for projects placed in-  
31 service, and the in-service date for the projects associated with the  
32 restoration costs;

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

36 (3) a schedule comparing the:

37 (a) total spending on RESIC-eligible projects to date for the  
38 RESIC recovery period, and eligible project spending by  
39 foundational filing project identification number or blanket-project  
40 category;

41 (b) actual cost of completed RESIC-eligible projects for the  
42 RESIC recovery period with the estimated costs for the projects  
43 contained in the most recent foundational filing or any amendment  
44 thereto;

45 (c) in-service date of completed RESIC-eligible projects  
46 compared to the estimated in-service date of RESIC-eligible  
47 projects set forth in the foundational filing; and

1 (d) actual revenues collected through the RESIC assessment,  
2 compared with the actual revenue requirement of the RESIC-  
3 eligible projects during the RESIC recovery period, and the  
4 resultant RESIC under- or over-recovery amounts; and

5 (4) a proposed RESIC schedule outlining the RESIC rate,  
6 determined pursuant to P.L. , c. (C. ) (pending before the  
7 Legislature as this bill), and detailed information demonstrating that  
8 the proposed RESIC rate meets those requirements. The schedule  
9 shall include either a proposed schedule for returning to customers  
10 any over-recovery in the prior RESIC recovery period, including  
11 interest at the adjusted weighted average cost of capital, or a  
12 proposed schedule for recovering from customers any under-  
13 recovery in the prior RESIC recovery period. The over-recovery,  
14 including interest, or under-recovery shall be credited or charged to  
15 customers during the next RESIC recovery period. This  
16 information shall support the RESIC rate calculation, with  
17 documentation, detailed financial analyses, and other relevant  
18 information, showing all assumptions and calculations. All  
19 supporting financial information shall be presented in a manner to  
20 allow the board to evaluate whether the calculations meet the  
21 requirements of P.L. , c. (C. ) (pending before the  
22 Legislature as this bill).

23 b. RESIC filings shall be filed with the board on a semi-annual  
24 basis, commencing six months after the effective date of the  
25 foundational filing. A utility shall submit a semi-annual RESIC  
26 filing to the board within 15 calendar days of the scheduled  
27 conclusion of the RESIC recovery period. A RESIC filing shall be  
28 reviewed by the board and the Division of Rate Counsel. The  
29 utility may recover the interim surcharge associated with the  
30 RESIC-eligible projects placed in-service, including restoration  
31 costs during the RESIC recovery period, beginning 45 calendar  
32 days after the receipt of the complete semi-annual RESIC filing.

33 c. To the extent permitted under section 2 of P.L. ,  
34 c. (C. ) (pending before the Legislature as this bill), a utility's  
35 expenditures made prior to the board's approval of a RESIC shall  
36 be eligible for cost recovery so long as the expenditures were  
37 included in the RESIC foundational filing.

38 d. The semi-annual RESIC filings may include changes or  
39 updates to any information provided in the foundational filing,  
40 provided that the utility has a reasonable expectation that the  
41 change shall occur during the RESIC recovery period, which project  
42 changes may include, but shall not be limited to, additions,  
43 replacements, or deferral projects that are otherwise RESIC-  
44 eligible.

45 e. Rates approved by the board for recovery of expenditures  
46 under a RESIC shall be:

47 (1) accelerated and recovered through a separate clause of the  
48 utility's board-approved tariff;

1 (2) subject to annual reconciliation based on a reconciliation  
2 period consisting of the 12 months completed prior to the utility's  
3 next RESIC filing. The revenue received through the RESIC rate  
4 for the reconciliation period shall be compared to the utility's costs  
5 associated with RESIC-eligible projects for that period. The  
6 difference between revenue and costs shall be recouped or credited,  
7 as appropriate, through the RESIC rate included in the RESIC  
8 filing; and

9 (3) provisional and subject to refund and interest. The prudence  
10 of RESIC expenditures shall be determined by the board in the  
11 utility's next base rate case.

12 f. A utility shall file its next rate base case not later than three  
13 years after the board's approval of the RESIC start date, except that  
14 the board, in its discretion, may require a utility to file its next base  
15 rate case within a shorter period.

16 g. A utility may continue to file for cost recovery of RESIC-  
17 eligible projects during the approved RESIC period notwithstanding  
18 the filing of the utility's next base rate case.

19  
20 5. a. If RESIC-eligible project plant additions are placed in-  
21 service during the test year of a utility's base rate case, and the  
22 plant additions are not recovered as part of a routine RESIC filing,  
23 then the plant additions shall be considered as part of the base rate  
24 case proceeding and included in the plant additions, consistent with  
25 existing board rules.

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

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

33  
34 6. a. All carryover costs permitted by this section and included  
35 in a RESIC rate shall be included in the calculation of the RESIC-  
36 cap.

37 b. Notwithstanding any other provision of this section to the  
38 contrary, when a utility has commenced work on a RESIC-eligible  
39 project, but the eligible project has not been placed in-service  
40 during the period captured under an initial foundational filing, the  
41 eligible project may be considered a valid RESIC-eligible project in  
42 a subsequent foundational filing that is filed with the board prior to  
43 the resetting of rates under the initial foundational filing when the  
44 RESIC-eligible project began.

45 c. When a RESIC-eligible project is placed in-service by a  
46 utility between the close of the test year and the effective date of  
47 rates in the base rate case, the utility may recover the costs of the  
48 project, as authorized by a board order approving a foundational



1 filing, in the first RESIC filing under the board's new foundational  
2 filing order and included in the RESIC-cap.

3 d. Unrecovered restoration costs of a project that was placed  
4 in-service during one foundational filing may be carried over and  
5 recovered in a subsequent foundational filing and included in a  
6 timely semi-annual RESIC filing, provided that the restoration costs  
7 shall otherwise be within the timeframe set forth in P.L. ,  
8 c. (C. ) (pending before the Legislature as this bill).

9  
10 7. a. The revenues to be recovered through the RESIC rate  
11 shall be calculated as follows:

12 (1) the eligible net investment shall equal the eligible  
13 investment, less the per-book accumulated depreciation amount  
14 recorded for the eligible projects, and adjusted for the recorded  
15 accumulated deferred income tax amount for the eligible projects;

16 (2) the eligible net investment shall be multiplied by the pre-tax  
17 adjusted weighted average cost of capital, plus depreciation  
18 expense, the sum of which shall be multiplied by the revenue factor,  
19 plus or minus the RESIC under-recovery or over-recovery amount,  
20 the product of which shall equal the RESIC revenue requirement  
21 recovery amount; and

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

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

33  
34 8. a. If a utility has a board-approved RESIC, the utility shall  
35 identify and list the amount owed by the customer, based on the  
36 RESIC rate calculated in accordance with section 7 of P.L. ,  
37 c. (C. ) (pending before the Legislature as this bill), separately  
38 on a customer's utility bill. The RESIC rate shall be reflected in  
39 bills issued on and after the effective date of the first RESIC filing  
40 and may be adjusted on the basis of subsequent RESIC filings, no  
41 more frequently than every six months, up to an amount not to  
42 exceed the RESIC-cap over the RESIC period.

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

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

46

47 9. This act shall take effect immediately.