

[Third Reprint]

ASSEMBLY, No. 4791

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED OCTOBER 17, 2022

Sponsored by:

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District 18 (Middlesex)

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District 36 (Bergen and Passaic)

Co-Sponsored by:

Assemblywomen Murphy, Speight and Senator Johnson

SYNOPSIS

Establishes “Resiliency and Environmental System Investment Charge Program.”

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on January 4, 2024, with amendments.



(Sponsorship Updated As Of: 1/8/2024)

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 Legislature
10 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 cost
16 of debt (LTD), which component shall be adjusted semi-annually to
17 reflect the actual embedded cost of LTD at the end of the RESIC
18 recovery period, and which component shall not include short-term
19 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 rates,
25 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 is
28 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-income
31 tax basis.

32 “Requirement” means a decision or regulation imposed on a utility
33 by the State, including any political subdivision thereof, or the federal
34 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 seq.);
38 c. any other law, order, or regulation administered by the United
39 States Environmental Protection Agency, the United States Army
40 Corps of Engineers, the United States Department of Transportation,
41 the United States Department of Homeland Security, the New Jersey
42 Office of Homeland Security and Preparedness, the New Jersey
43 Department of Transportation, or the New Jersey Department of
44 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:

¹Assembly AAP committee amendments adopted December 4, 2023.

²Senate floor amendments adopted December 21, 2023.

³Senate SBA committee amendments adopted January 4, 2024.

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 rate is
9 in effect, through the assessment or surcharge computed pursuant to
10 P.L. , c. (C.) (pending before the Legislature as this bill).

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

13 a. non-revenue producing;

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

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

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

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

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

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

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

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

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

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

5 “Utility” means a water utility and wastewater utility as defined in
6 this section.

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

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

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

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

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

27 (2) installation of new distribution, production, treatment, or
28 other plant or equipment to further resiliency, health, safety, or
29 environmental protection for the utility’s customers or employees,
30 or the public; ¹[or]¹

31 (3) replacement of existing distribution, production, treatment,
32 or other plant or equipment to maintain, enhance, or improve the
33 existing resiliency, health, safety, or environmental protection of
34 the utility’s customers or employees, or the public¹; or

35 (4) ³[replacement of]³ treatment media ³replacement,³ including
36 ³[, but not limited to,]³ granular activated carbon and anionic
37 exchange ³[resin and]³ resins, as well as³ new treatment media, and
38 related tanks, pumps, instrumentation, controls, and electrical
39 equipment for both existing and emerging chemical elements and
40 compounds¹.

41 b. Restoration costs associated with an eligible project pursuant
42 to paragraph (1) of subsection a. of this section and approved
43 through a utility’s RESIC foundational filing, made pursuant to
44 subsection b. of section 3 of P.L. , c. (C.) (pending before
45 the Legislature as this bill), may be recovered if the costs were
46 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 ¹c. 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.¹

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. ³(1)³ The revenues to be recovered through the RESIC rate
27 shall not exceed the RESIC-cap, which amount shall not exceed
28 ³[five] a maximum³ percent ³, as set forth in paragraph (2) of this
29 subsection,³ of the utility's total annual revenue, as established in
30 the utility's most recent base rate decision, and such revenues shall
31 be adjusted in accordance with a purchased water or wastewater
32 adjustment clause approved by the board pursuant to chapter 9 of
33 Title 14 of the New Jersey Administrative Code.

34 ³(2) The RESIC-cap shall not exceed the following amounts,
35 subject to the methodology set forth in paragraph (1) of this
36 subsection:

37 (a) at the time of the utility's initial foundational filing, two and
38 one half percent of the utility's total annual revenue;

39 (b) at the time of the utility's second foundational filing, three
40 and one half percent of the utility's total annual revenue;

41 (c) at the time of the utility's third foundational filing, four and
42 one half percent of the utility's total annual revenue; and

43 (d) for each foundational filing thereafter, five percent of the
44 utility's total annual revenue.³

45
46 8. a. If a utility has a board-approved RESIC, the utility shall
47 identify and list the amount owed by the customer, based on the
48 RESIC rate calculated in accordance with section 7 of P.L. ,

- 1 c. (C.) (pending before the Legislature as this bill), separately
2 on a customer's utility bill. The RESIC rate shall be reflected in
3 bills issued on and after the effective date of the first RESIC filing
4 and may be adjusted on the basis of subsequent RESIC filings, no
5 more frequently than every six months, up to an amount not to
6 exceed the RESIC-cap over the RESIC period.
- 7 b. A customer's bill shall reflect the RESIC rate calculated
8 pursuant to paragraph (3) of subsection a. of section 7 of P.L. ,
9 c. (C.) (pending before the Legislature as this bill).
- 10
- 11 9. This act shall take effect immediately.