

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 3480

**FISCAL
NOTE**

By Delegate J. Cannon

[Introduced March 18, 2025; referred to the
Committee on Energy and Public Works then
Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended by adding two new sections
2 designated §24-2-22 and §24-2-23, relating to the establishment of the "Resiliency and
3 Environmental System Investment Charge Program"; defining terms; requiring a petition
4 be filed for approval of a plan to establish an SEI to recover SEI costs associated with
5 service enhancement improvements and providing directives on the plan; permitting for
6 the recovery of costs for certain investments made by certain utilities; clarifying what an
7 order shall include; providing for a hearing; and authorizing utilities to use regulatory
8 accounting for acquired systems.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-22. Resiliency and Environmental System Investment Charge Program.

1 (a) As used in this section:

2 (1) "Pretax return" means the revenues necessary to:

3 (A) Produce net operating income equal to the utility's weighted cost of capital multiplied by
4 investments in service enhancement improvements;

5 (B) Pay state and federal income taxes on the net operating income calculated under §24-
6 2-22(a)(1)(A) of this code; and

7 (C) Pay state utility receipts associated with SEI revenues.

8 The cost of common equity to be used in the calculation of the pretax return shall be the
9 most recent determination by the Public Service Commission in a general rate proceeding of the
10 eligible utility. The debt component shall equal the approved embedded long-term cost of debt,
11 which component shall debt adjusted semi-annually to reflect the actual embedded cost of long-
12 term debt.

13 (2) "SEI" means a system enhancement improvement charge.

14 (3) "SEI revenues" means revenues produced through a SEI and excluding revenues from
15 all other rates and charges.

(4) "SEI costs" means costs that a utility incurs in connection with a service enhancement improvement, both while the improvement is under construction and post in service, including the following:

(A) Depreciation expenses;

(B) Operation and maintenance expenses;

(C) Restoration costs;

(D) Property taxes to be paid by the utility based upon the first assessment date following the placement in service of the eligible addition; and

(E) Pretax return.

The term does not include fines or penalties assessed against or imposed on a utility for violating laws, regulations, or consent decrees.

(5) "Utility" means a "public utility" as defined in §24-1-2 of this code, which provides water utility or wastewater utility services.

(6) "Service enhancement improvement" means a water or wastewater utility project that:

(A) Replaces or extends the useful life of existing infrastructure;

(B) Installs new utility infrastructure to further resiliency, health, safety, or environmental protection for the utility's customers or employees or the public;

(C) Relocates utility infrastructure to accommodate public improvement projects to the extent the relocation costs are not otherwise reimbursed through the public improvement project; and

(D) Do not include projects intended solely for customer growth;

The costs of which were not recovered in the water or wastewater utility's base rates in its most recent general rate case.

(b) A utility shall petition the Public Service Commission for approval of a plan to establish an SEI to recover SEI costs associated with service enhancement improvements.

(1) In its petition, the utility shall submit the following information to the Public Service

Commission in support of its SEI plan:

(A) Projected annual capital expenditures identified by major categories of expenditures of service enhancement improvements included in the plan and for which such information is reasonably available at the time of filing the petition;

(B) Estimated operation and maintenance costs resulting from the service enhancement improvements;

(C) Vintage, condition, or other similar and reasonably available information about the existing infrastructure that is being replaced;

(D) An engineering evaluation and report identifying the specific projects to be included in the proposed SEI plan, with descriptions of project objectives, detailed cost estimates, and the estimated in-service dates for each project;

(E) Proposed rate schedules establishing an SEI that will be timely updated to recover SEI revenues necessary to reimburse the utility for SEI costs; and

(F) The estimated rate impact of the proposed SEI on the utility's customers.

(c) The Public Service Commission shall dismiss a petition filed under §24-2-22(b) of this code, by a utility that has not had its base rates set by the commission for the same type of utility service within the past five years.

(d) Following notice and hearing, and not more than 210 days after the utility petitions the Public Service Commission under §24-2-22(b) of this code, the Public Service Commission shall issue an order on the petition. The order from the Public Service Commission shall include the following:

(1) A finding of the best estimate of the cost of the eligible improvements included in the plan;

(2) A determination whether the public convenience and necessity require or will require the eligible improvements included in the plan; and

(3) A determination whether the estimated costs of the eligible improvements included in

the plan are justified by incremental benefits attributable to the plan.

If the Public Service Commission determines that the SEI plan is reasonable, the Public Service Commission shall approve the plan and authorize the SEI for the SEI costs resulting from the plan.

(e) A utility shall file its next base rate case not later than five years after the date the Public Service Commission approves a SEI plan pursuant to this section.

(f) A utility that operates both a water and wastewater utility may establish separate plans for water and wastewater SEI plans and such plans may be presented to the Public Service Commission through different petitions.

(g) Following board approval of the utility's SEI plan, a utility may file a petition to implement a SEI to produce revenues necessary to recovery SEI costs incurred. A utility may file a petition under this subsection not more than one time every six months. A petition filed to implement a SEI shall include the following:

(1) A breakdown of costs for each service enhancement improvement project for which SEI revenue recovery is sought, which description shall clearly identify the status of completion of such projects, the actual costs incurred and the in-service or estimated in-service date;

(2) Any changes to the cost estimate of service enhancement improvement projects; and an explanation for the reason the costs changed;

(3) Aggregate information capturing service enhancement improvements performed under blanket-type work project orders and the actual annual costs of the blanket-type replacement programs;

(4) Schedules that identify:

(A) Total spending on service enhancement improvement projects to date for the SEI recovery period including eligible project spending by project or blanket category;

(B) Actual costs of completing service enhancement improvement projects for the SEI recovery period compared to the estimated costs for the projects included in the approved SEI

94 plan with an explanation for any material changes in such costs;

95 (C) In-service date of completed service enhancement improvement projects compared to
96 the estimated in-service dates of service enhancement improvement projects set forth in the plan;
97 and

98 (D) Actual revenues collected through the SEI, the revenue requirement of the service
99 enhancement improvement projects during the SEI recovery period and any under- or over-
100 recovery of SEI revenues.

101 (5) A proposed SEI rate schedule; and

102 (6) Any updates to the SEI plan.

103 (h) A utility's expenditures made prior to the Public Service Commission's approval of a SEI
104 plan or SEI shall be eligible for cost recovery so long as the expenditures were included in the
105 SEI plan.

106 (i) A petition to implement or change a SEI may include changes or updates to any
107 information provided in the SEI plan, provided that the utility has a reasonable expectation that the
108 change will occur during the SEI recovery period. Project changes may include, but shall not be
109 limited to, additions, replacements, deferral projects or projects for water or wastewater systems
110 acquired by the utility that were not identified at the time a petition was filed under subsection (b)
111 that otherwise qualify as a service enhancement improvement.

112 (1) Not more than 120 days after a utility files a petition under §24-2-22(i) of this code to
113 implement or change a SEI, the Public Service Commission shall conduct a hearing and issue an
114 order on the petition.

115 (2) If the Public Service Commission determines that the petition satisfies the requirements
116 of this section and any additions to the SEI plan are reasonable and necessary, the Public Service
117 Commission shall approve the petition, including:

118 (A) Capital expenditures; and

119 (B) Timely recover of SEI costs through a SEI.

(j) A utility may continue to file for additional SEIs throughout the period of the SEI plan notwithstanding the filing of the utility's next base rate case. The utility shall modify an SEI to remove recovery of any SEI costs that are included in base rates established in such utility's base rate case.

(k) The SEI revenues to be recovered through the SEI shall not exceed five percent of the utility's total annual revenue, as established in the utility's most recent base rate decision, and such revenues shall be adjusted in accordance with a purchased water or wastewater adjustment. If a utility has a separate water and wastewater utility and has presented separate SEI plans pursuant to §24-2-22(b) of this code, the utility's total annual water and wastewater revenues shall be separated and the five percent limitation shall be applied separately to the water and wastewater annual revenues.

§24-2-23 Water and Wastewater System Acquisitions.

(a) As used in this section:

(1) "Acquired system" means a water or wastewater system whose acquisition by a utility has been approved by the commission.

(2) "Costs" means all reasonable expenses incurred to operate an acquired system, including but not limited to:

(A) Operation and maintenance expenses; or

(B) Depreciation of the total rate base for the acquired system approved by the commission;

(C) Property and other federal or state taxes;

(D) A return on the rate base of the acquired system at the rate of return approved by the commission in the utility's last base rate proceeding.

(3) "Regulatory accounting" means accounting to create a:

(A) Regulatory asset to recover the positive difference; or

(B) Regulatory liability to recover the negative difference between the costs and the

15 revenues incurred over each 12-month calendar period after the acquired system is reflected in
16 the utility's rate base or a shorter period if the regulatory asset will be reflected in the utility's rates
17 prior to the end of any 12-month calendar period. The utility shall net any regulatory asset against
18 any regulatory liability.

19 (4) "Revenue requirement" means the total amount of revenues the commission has
20 authorized the utility to recover through retail rates in its most recent base rate proceeding.

21 (5) "Revenues" means all proceeds received by the utility from the customers served by
22 the acquired system during a 12-month period used for regulatory accounting.

23 (6) "Utility" means a "public utility" as defined in §24-1-2 of this code, which provides water
24 utility or wastewater utility services.

25 (b) A utility shall be authorized to utilize regulatory accounting for an acquired system
26 beginning on the date the utility takes possess of the acquired system until the cost resulting from
27 the acquired system are reflected in the utility's revenue requirement. If the regulatory accounting
28 results in a regulatory asset, the regulatory asset shall be included in the utility's rate base at the
29 time of its next rate case and shall earn a return based on the rate of return determined in the rate
30 case. If the regulatory accounting results in a regulatory liability, the regulatory liability shall be
31 included as an offset to the utility's rate base at the time of its next rate case.

32 (c) The regulatory asset or liability resulting from the regulatory accounting shall be
33 amortized over a period of not less than 10 years.

NOTE: The purpose of this bill is to create the "System Enhancement and Improvement Program", require a petition be filed for approval of a plan to establish an SEI to recover SEI costs associated with service enhancement improvements and provide directives on the plan, permit for the recovery of costs for certain investments made by certain utilities, and authorize utilities to use regulatory accounting for acquired systems.

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