

# 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.

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

19 (A) Depreciation expenses;

20 (B) Operation and maintenance expenses;

21 (C) Restoration costs;

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

24 (E) Pretax return.

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

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

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

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

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

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

35 and

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

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

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

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

42 Commission in support of its SEI plan:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

89 (4) Schedules that identify:

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

92 (B) Actual costs of completing service enhancement improvement projects for the SEI  
93 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 of 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.

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

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

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

1 (a) As used in this section:

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

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

6 (A) Operation and maintenance expenses; or

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

9 (C) Property and other federal or state taxes;

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

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

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

14 (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.