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SENATE BILL NO. 850
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Labor and Commerce
on February 6, 2025)
(Patron Prior to Substitute—Senator Surovell)

A *BILL* to amend the Code of Virginia by adding in Title 56 a chapter numbered 31, consisting of sections numbered 56-626 and 56-627, relating to water utilities and wastewater utilities; eligible infrastructure replacement and enhancement; cost recovery.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 56 a chapter numbered 31, consisting of sections numbered 56-626 and 56-627, as follows:

CHAPTER 31.

ELIGIBLE INFRASTRUCTURE REPLACEMENT AND ENHANCEMENT.

§ 56-626. Definitions.

As used in this chapter, unless the context requires a different meaning:

"EIRE" means eligible infrastructure replacement and enhancement.

"EIRE plan" means a plan filed by a utility that identifies proposed eligible infrastructure projects and an EIRE rider.

"EIRE rider" means a recovery mechanism that will allow for recovery of the eligible infrastructure costs, through a separate mechanism from the customer rates established in a rate case using the cost of service methodology set forth in § 56-235.2.

"Eligible infrastructure" means water utility projects or wastewater utility projects that maintain or enhance safety, reliability, or efficiency or that facilitate compliance with state or federal environmental requirements. Eligible infrastructure does not include (i) the investment in water utility or wastewater utility infrastructure included in the utility's rate base in its most recent rate case or (ii) projects designed primarily to serve new customers and increase revenues.

"Eligible infrastructure costs" includes the following:

1. Return on investment. In calculating the return on investment, the Commission shall use the utility's regulatory capital structure as calculated utilizing the weighted average cost of capital, including the cost of debt and the cost of equity used in determining the utility's base rates in effect during the construction period of the water or wastewater utility project. If the utility's cost of capital has not been changed by order of the Commission within the preceding five years, the Commission may require the utility to file an updated weighted average cost of capital, and the utility may propose an updated weighted average cost of capital. The utility may recover the external costs associated with establishing its updated weighted average cost of capital through the EIRE rider. Such external costs shall include legal costs and consultant costs;

2. A revenue conversion factor, which factor, including income taxes and an allowance for bad debt expense, shall be applied to the required operating income resulting from the eligible infrastructure costs;

3. Depreciation. In calculating depreciation, the Commission shall use the utility's current depreciation rates specific to the applicable asset;

4. Property taxes;

5. Carrying costs on the over-recovery or under-recovery of the eligible infrastructure costs. In calculating the carrying costs, the Commission shall use the utility's regulatory capital structure as determined in subdivision 1 of the definition of eligible infrastructure costs;

6. Unreimbursed costs of relocating facilities due to highway projects; and

7. Operation and maintenance expenses that the Commission determines are associated with eligible infrastructure and that were not included in the revenue requirement of the utility last approved by the Commission.

"Investment" means costs incurred on eligible infrastructure projects including planning, development, removal, and construction costs; costs of infrastructure associated therewith; and an allowance for funds used during construction. In calculating the allowance for funds used during construction, the Commission shall use the utility's actual regulatory capital structure as determined in subdivision 1 of the definition of eligible infrastructure costs.

"In-kind replacement" means replacement with new materials or equipment designed, constructed, and sized to meet current industry standards and to comply with federal, state, and local regulation.

"Utility" means water utility or wastewater utility.

"Wastewater utility" means an investor-owned public service company engaged in the business of furnishing wastewater service to the public.

"Wastewater utility project" includes:

1. Non-growth-related collection main extensions;

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- 60 2. Facilities necessary to comply with applicable state and federal laws and regulations;
 61 3. Improvements that enable compliance with National Pollutant Discharge Elimination System permits;
 62 4. Unreimbursed costs of relocating facilities due to highway construction or relocation projects; and
 63 5. In-kind replacement of pumps, motors, blowers, tanks, or mechanical equipment.

64 "Water utility" means an investor-owned public service company engaged in the business of furnishing
 65 water service to the public.

66 "Water utility project" includes:

67 1. In-kind replacement of transmission or distribution system mains as well as replacement of valves,
 68 utility service lines, including meter boxes and appurtenances, meters, including radio frequency meters, and
 69 hydrants connected to a replaced transmission or distribution system main;

70 2. Non-growth-related main extensions installed to eliminate dead ends that will address primary and
 71 secondary drinking water standards as defined by the Department of Environmental Quality, the Department
 72 of Health, and the federal Environmental Protection Agency;

73 3. Equipment and facilities installed to address primary and secondary drinking water standards as
 74 defined by the Department of Environmental Quality, the Department of Health, and the federal
 75 Environmental Protection Agency; and

76 4. Unreimbursed costs of relocating facilities due to highway projects.

77 **§ 56-627. Filing of petition with Commission to establish or amend EIRE plan and rider; cost recovery;**
 78 **procedure.**

79 A. Notwithstanding any provision of law to the contrary, a utility may petition the Commission for the
 80 approval of an EIRE plan as provided in this chapter. Such a plan shall (i) provide for a timeline for
 81 completion of the proposed eligible infrastructure projects, the estimated costs of the eligible infrastructure
 82 projects, and a schedule for recovery of the related eligible infrastructure costs through the EIRE rider and
 83 (ii) demonstrate that the EIRE plan is prudent and reasonable. The Commission may approve the initial
 84 petition for establishment of an EIRE plan and EIRE rider after such notice and opportunity for hearing as
 85 the Commission may prescribe, subject to the provisions of this chapter.

86 B. The Commission shall approve or deny, within 180 days, a utility's initial petition for approval of an
 87 EIRE plan. A petition filed pursuant to this section shall not require the filing of rate case schedules. The
 88 Commission shall approve or deny, within 120 days, a utility's application to amend a previously approved
 89 plan. If the Commission denies such a plan or amendment, it shall set forth with specificity the reasons for
 90 such denial, and the utility shall have the right to refile, without prejudice, an amended plan or amendment
 91 within 60 days after such denial. The Commission shall thereafter have 60 days to approve or deny the
 92 amended plan or amendment. The time period for Commission review provided for in this subsection shall
 93 not apply if the EIRE plan is filed in conjunction with a rate case using the cost of service methodology
 94 pursuant to § 56-235.2.

95 C. Any EIRE plan and EIRE rider that is submitted to and approved by the Commission shall be allocated
 96 and charged in accordance with § 56-235.11 and appropriate cost causation principles to avoid any undue
 97 cross subsidization between rate classes not otherwise permitted by statute.

98 D. No other revenue requirement or ratemaking issues may be examined in consideration of the
 99 application filed pursuant to the provisions of this chapter.

100 E. At the end of each 12-month period during which the EIRE rider is in effect, the utility shall reconcile
 101 the difference between the recognized eligible infrastructure costs and the amounts recovered under the EIRE
 102 rider and shall submit the reconciliation and a proposed EIRE rider adjustment to the Commission to recover
 103 or refund the difference, as appropriate, through an adjustment to the EIRE rider. The Commission shall
 104 approve or deny, within 90 days, a utility's proposed EIRE rider adjustment.

105 F. A utility that has an approved EIRE petition pursuant to this section shall file revised rate schedules to
 106 reset the EIRE rider to zero when new base rates and charges that incorporate eligible infrastructure costs
 107 previously reflected in the currently effective EIRE rider become effective.

108 G. If the Commission approves (i) an updated weighted average cost of capital for use in calculating the
 109 return on investment, (ii) the carrying costs on the over-recovery or under-recovery of the eligible
 110 infrastructure costs, (iii) the allowance for funds used during construction, or (iv) any combination thereof,
 111 such weighted average cost of capital shall be used only for the purpose of the eligible infrastructure costs
 112 for the EIRE rider and shall not be used for any purpose in any other proceeding.

113 **2. That the provisions of this act shall expire on July 1, 2035.**

114 **3. That each water or wastewater utility that receives approval for an eligible infrastructure**
 115 **replacement and enhancement (EIRE) rider pursuant to § 56-627 of the Code of Virginia, as created by**
 116 **this act, shall provide a proposed earnings test in each annual informational filing or base rate**
 117 **proceeding filed with the State Corporation Commission (the Commission) on or before December 1,**
 118 **2030. The Commission's review of such earnings test in any such filing or proceeding shall be**
 119 **conducted for informational purposes only; shall not be used to approve, deny, or adjust a proposed**
 120 **EIRE rider or adjustment; and shall be in addition to and separate from the Commission's review of**

121 such utility's earnings and base rates. On or before December 1, 2030, the Commission shall provide a
122 status report on the implementation of Chapter 31 (§ 56-626 et seq.) of Title 56 of the Code of Virginia,
123 as created by this act, to the Chairs of the House Committee on Labor and Commerce, the Senate
124 Committee on Commerce and Labor, and the State Water Commission. Such report shall include the
125 results of the earnings test required by this enactment.