

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021**

**SESSION LAW 2021-149
SENATE BILL 211**

AN ACT TO ENCOURAGE INVESTMENT IN REGULATED WATER AND SEWER SYSTEMS BY AUTHORIZING THE USE OF A WATER AND SEWER INVESTMENT PLAN RATE-MAKING MECHANISM FOR ESTABLISHING RATES OF REGULATED WATER AND SEWER UTILITIES AND TO OTHERWISE AMEND RATE ADJUSTMENT MECHANISMS FOR WATER AND SEWER IMPROVEMENTS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Article 7 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"§ 62-133.1B. Water and Sewer Investment Plan rate-making mechanism authorized.

(a) Notwithstanding the methods for fixing water and sewer rates under G.S. 62-133 or G.S. 62-133.1, upon application by a water or sewer utility in a general rate proceeding, the Commission may approve a Water and Sewer Investment Plan. A Water and Sewer Investment Plan, as filed by a water or sewer utility, shall include performance-based metrics that benefit customers and ensure the provision of safe, reliable, and cost-effective service by the water or sewer utility. For purposes of this section, "Water and Sewer Investment Plan" means a plan under which the Commission sets water or sewer base rates, revenue requirements through banding of authorized returns as provided in this section, and authorizes annual rate changes for a three-year period based on reasonably known and measurable capital investments and anticipated reasonable and prudent expenses approved under the plan without the need for a base rate proceeding during the plan period.

(b) The Commission may approve a Water and Sewer Investment Plan proposed by a water or sewer utility only upon a finding by the Commission that the plan results in rates that are just and reasonable and are in the public interest. In reviewing any application under this section, the Commission shall consider whether the water or sewer utility's application, as proposed, (i) establishes rates that are fair both to the customer and to the water or sewer utility, (ii) reasonably ensures the continuation of safe and reliable utility services, (iii) will not result in sudden substantial rate increases to customers annually or over the term of the plan, (iv) is representative of the utility's operations over the plan term, and (v) is otherwise in the public interest. In approving an application submitted under this section, the Commission may impose any conditions in the implementation of a Water and Sewer Investment Plan that the Commission considers necessary to ensure that the utility complies with the plan, and that the plan and associated rates are just, reasonable, and in the public interest, and the plan reasonably ensures the provision of safe, reliable, and cost-effective service to customers.

(c) Any rate adjustment allowed under a Water and Sewer Investment Plan approved pursuant to this section shall not, on an annual basis for years two and three of the plan, exceed five percent (5%) of the utility's North Carolina retail jurisdictional gross revenues for the preceding plan year. Upon a petition to the Commission, the Commission may consider the addition of unplanned emergency capital investments that must be undertaken during a plan term to address risk of noncompliance with primary drinking water or effluent standards, or to mitigate



cyber or physical security risks, even if such expenditures would cause the above-referenced cap to be exceeded.

(d) Any rate adjustment mechanism authorized pursuant to G.S. 62-133.12 or G.S. 62-133.12A shall be discontinued during the term of any Water and Sewer Investment Plan. The utility may file for a rate adjustment mechanism authorized pursuant to G.S. 62-133.12, which shall not become effective before the end of the Water and Sewer Investment Plan. No capital improvements recovered through a Water and Sewer Investment Plan may be included for recovery in a rate adjustment mechanism authorized pursuant to G.S. 62-133.12.

(e) The Commission shall, after notice and an opportunity for interested parties to be heard, issue an order ruling on the water or sewer utility's request to adjust base rates under G.S. 62-133, denying or approving, with or without modifications, a water or sewer utility's proposed Water and Sewer Investment Plan. An approved plan shall be effective no later than the end of the maximum suspension period pursuant to G.S. 62-134(b).

(f) At any time, for good cause shown and after an opportunity for hearing, the Commission may modify or terminate an approved Water and Sewer Investment Plan if modification or termination is determined to be in the public interest.

(g) The Commission shall establish banding of authorized returns on equity for Water and Sewer Investment Plans approved pursuant to this section. For purposes of this section, "banding of authorized returns" means a rate mechanism under which the Commission sets an authorized return on equity for a water or sewer utility that acts as a midpoint and then applies a low- and high-end range of returns to that midpoint under which a water or sewer utility will not overearn if within the high-end range and will not underearn if within the low-end range. Any banding of the water or sewer utility's authorized return shall not exceed 100 basis points above or below the midpoint.

(1) If a water or sewer utility exceeds the high-end range of the band that is approved by the Commission, the water or sewer utility shall refund or credit earnings above that high-end range to customers in a manner to be prescribed by rules adopted by the Commission pursuant to subsection (i) of this section.

(2) If a water or sewer utility falls below the low-end range of the band that is approved by the Commission, the utility may file a general rate case.

(h) The Commission shall annually review a water or sewer utility's earnings to ensure the utility is not earning in excess of its allowable return on equity for reasonable and prudent costs to provide service. For purposes of measuring a water or sewer utility's earnings under any mechanisms, plans, or settlements approved under this section, the utility shall make an annual filing that sets forth the utility's earned return on equity for the prior 12-month period.

(i) The Commission shall adopt rules to implement the requirements of this section, including rules to:

(1) Establish procedures for filing a Water and Sewer Investment Plan under this section.

(2) Require reporting on an annual basis of performance-based metrics and evaluation of those metrics' results to ensure the utility continues to perform in a safe, reliable, and cost-effective manner.

(3) Develop banding of authorized returns. In setting a midpoint authorized rate of return on equity for banding of authorized returns pursuant to this section, the Commission may consider any decreased or increased risk to a water or sewer utility that may result from having an approved Water and Sewer Investment Plan.

(4) Establish a procedure for the water or sewer utility to annually refund or credit to customers excess earnings above the high end of the authorized band of returns.

(5) Establish a methodology to annually review the costs subject to the adjustment mechanism, including the opportunity for public hearings.

(j) On or before July 1, 2026, the Commission shall report to the Joint Legislative Commission on Energy Policy on the impacts of each Water and Sewer Investment Plan approved by the Commission pursuant to this section for a water or sewer utility. At a minimum, the report shall include a Plan's impact on rates for customers of the applicable utility, the number of customers disconnected for nonpayment in the four years prior to Commission approval of a Plan for the applicable utility, the number of utility customers disconnected for nonpayment after approval and implementation of the Plan to the date the report is submitted, and the amount of utility earnings under an approved plan. In consultation with the Department of Environmental Quality, the Commission shall also report on any impacts to drinking water quality of utility customers or to surface or groundwater resources from Plans implemented by water and sewer utilities. The report may include any other information the Commission deems relevant, and shall include any Commission recommendations for legislative action."

SECTION 1.(b) G.S. 62-133.1 reads as rewritten:

"§ 62-133.1. Small water and sewer utility rates.

(a) In fixing the rates for any water or sewer utility, the Commission may fix such rates on the ratio of the operating expenses to the operating revenues, such ratio to be determined by the Commission, unless the utility requests that such rates be fixed under ~~G.S. 62-133(b)~~, G.S. 62-133(b) or G.S. 62-133.1B. Nothing in this subsection shall be held to extinguish any remedy or right not inconsistent herewith. This subsection shall be in addition to other provisions of this Chapter which relate to public utilities generally, except that in cases of conflict between such other provisions, this section shall prevail for water and sewer utilities.

...."

SECTION 1.(c) The Commission shall adopt rules as required by G.S. 62-133.1B(i), as enacted by Section 1(a) of this act, no later than 120 days after the date this act becomes law.

SECTION 2. G.S. 62-133.12 reads as rewritten:

"§ 62-133.12. Rate adjustment mechanism based on investment in repair, improvement, and replacement of water and sewer facilities.

(a) The Commission may approve a rate adjustment mechanism in a general rate proceeding pursuant to G.S. 62-133 to allow a water or sewer public utility to recover through a system improvement charge the incremental depreciation expense and capital costs associated with the utility's reasonable and prudently incurred investment in eligible water and sewer system improvements. The Commission shall approve a rate adjustment mechanism authorized by this section only upon a finding that the mechanism is in the public interest. The frequency and manner of rate adjustments under the mechanism shall be as prescribed by the Commission.

(b) For purposes of this section, "eligible water system improvements" or "eligible sewer system improvements" shall include only those improvements found necessary by the Commission to enable the water or sewer utility to provide safe, reliable, and efficient service in accordance with applicable water quality and effluent standards.

(c) For purposes of this section, "eligible water system improvements" means:

- (1) Distribution system mains, valves, utility service lines (including meter boxes and appurtenances), meters, ~~and hydrants~~ hydrants, hydro tanks, and pumping equipment installed as in-kind replacements.
- (2) Main extensions installed to eliminate dead ends and to implement solutions to regional water supply in order to comply with primary and, upon specific Commission approval, secondary drinking water standards.
- (3) Equipment and infrastructure installed to comply with primary drinking water standards.

- (4) Equipment and infrastructure installed at the direction of the Commission to comply with secondary drinking water ~~standards~~standards or other health or environmental standards established by federal, State, or local governments.
- (5) Unreimbursed costs of relocating facilities due to ~~highway~~roadway projects.
- (d) For the purposes of this section, "eligible sewer system improvements" means:
 - (1) Collection main extensions installed to implement solutions to wastewater problems.
 - (2) ~~Improvements necessary to reduce inflow and infiltration to the collection system to comply with applicable State and federal law and regulations.~~
 - (3) Unreimbursed costs of relocating facilities due to ~~highway construction or relocation~~roadway projects.
 - (4) ~~Pumps,~~ Replacement or improvement of force mains, gravity mains, service lines, pumps, motors, blowers, and other electrical or mechanical equipment installed as in-kind replacements for customers equipment.

(e) The Commission shall provide for audit and reconciliation procedures, including measures for refunds of any over-collections under the system improvement charge with interest pursuant to G.S. 62-130(e).

(f) The Commission may eliminate or modify any rate adjustment mechanism authorized pursuant to this section upon a finding that it is not in the public interest.

(g) Cumulative system improvement charges for a water or sewer utility pursuant to a rate adjustment mechanism approved by the Commission under this section may not exceed ~~five percent (5%)~~seven and one-half percent (7.5%) of the total annual service revenues approved by the Commission in the water or sewer utility's last general rate case. Unreimbursed costs incurred for projects that are eligible under subdivisions (c)(5) and (d)(3) of this section shall be exempt from the percentage limitation imposed by this subsection on cumulative system improvement charges based upon annual service revenues. Accumulated depreciation for eligible water or sewer system improvements shall be updated in each filing submitted by a utility within the same docket."

SECTION 3. Section 1(a) of this act is effective when it becomes law and applies to any rate-making mechanisms, designs, plans, or settlements filed by a water or sewer utility on or after the date that rules adopted pursuant to G.S. 62-133.1B(i), as enacted by Section 1(a) of this act, become effective. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 1st day of September, 2021.

s/ Phil Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 10:09 a.m. this 10th day of September, 2021