



SPONSOR: Sen. Townsend & Rep. Mulrooney  
Reps. Baumbach, Keeley, Mitchell, Osienski

DELAWARE STATE SENATE  
149th GENERAL ASSEMBLY

SENATE BILL NO. 135

AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE RELATING TO THE PUBLIC SERVICE COMMISSION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1           Section 1. Amend Title 26, Chapter 13 of the Delaware Code by making deletions as shown by strikethrough and  
2     insertions as shown by underline as follows:

3           § 1309. Recovery of costs of source-water projects in rates of public utilities.

4           In the case of a public utility subject to the jurisdiction of the Public Service Commission, upon the determination  
5 by the Commission that a watershed enhancement project confirmed as useful in protecting source water in a report of the  
6 Water Infrastructure Advisory Council has been placed into service by the public utility and is used and useful in the  
7 provision of public utility services, the Commission may allow the public utility to recover, in its rates, its reasonable and  
8 prudently incurred capital and ongoing operating costs for such project. Nothing in this section precludes the Commission  
9 from authorizing an allowance for funds used during construction of any such enhancement project.

10          Section 2. Amend § 302, Title 26 of the Delaware Code by making deletions as shown by strikethrough and  
11     insertions as shown by underline as follows:

12          § 302. Determination of rate base.

13          (a)The Commission may, from time to time, ascertain and determine the rate base of any public utility whenever,  
14     in the judgment of the Commission, it is necessary so to do for the purpose of carrying out this chapter, and in making such  
15     determination the Commission may have access to and use any books, documents, or records in the possession of any  
16     department, board, commission or agency of this State or any political subdivision thereof. In ascertaining and determining  
17     the rate base, the Commission may determine every fact, matter, or thing which, in its judgment, does or may have any  
18     bearing thereon.

19          (b)If a water utility is not, pursuant to § 122(3)c. of Title 16, under review concerning its water system's ability to  
20     provide adequate service to its customers under its present certificates of public convenience and necessity or subject to a  
21     review by the Commission of the appropriate rates to be charged by the water utility in light of the quality of service being  
22     provided to its customers, the Commission will include in the utility's rate base, treat as used and useful utility plant, and,

23 accordingly, allow to be fully recovered in the utility's rates without imputation of revenues, all costs which are incurred by  
24 the water utility, in the exercise of its good faith business judgment, in constructing facilities (including without limitation  
25 supply, treatment and transmission facilities) to serve the needs of existing customers or of persons who are reasonably  
26 anticipated by the water utility to be its customers within 3 years from the date used by the Commission to recognize rate  
27 base in the rate proceeding. The number of customers reasonably anticipated to be added within that 3-year period will  
28 consist of customer projections which are relied on by the utility and are generated by professional engineers or planners,  
29 governmental or regulatory agencies, officials or authorities, or the water utility itself, and which are not arbitrary and  
30 capricious. If the water utility does not, by the end of the 3-year period after the date used by the Commission to recognize  
31 rate base in the rate proceeding, reach at least 75% of the total number of customers originally anticipated to be served by  
32 the facilities, the Commission may only then require the water utility to impute revenues and then only to the extent of the  
33 number of customers it originally anticipated to be served by the facilities but who have not, as of the end of the 3-year  
34 period, been added. This section does not apply to watershed enhancement projects as defined under §1309 of this title.

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36 (c) If a water utility is not, pursuant to § 122(3)c. of Title 16, under review concerning its water system's ability to  
37 provide adequate service to its customers under its present certificates of public convenience and necessity or subject to a  
38 review by the Commission of the appropriate rates to be charged by the water utility in light of the quality of service being  
39 provided to its customers, the Commission may include in the utility's rate base, treat as used and useful utility plant, and,  
40 accordingly, allow to be fully recovered in the utility's rates without imputation of revenues, all costs which are incurred by  
41 the water utility, in the exercise of its good faith business judgment, in investments in watershed enhancement projects  
42 under terms specifically articulated under § 1309 of this title to serve the needs of existing customers or of persons who are  
43 reasonably anticipated by the water utility to be its customers within 3 years from the date used by the Commission to  
44 recognize rate base in the rate proceeding. The number of customers reasonably anticipated to be added within that 3-year  
45 period will consist of customer projections which are relied on by the utility and are generated by professional engineers or  
46 planners, governmental or regulatory agencies, officials or authorities, or the water utility itself, and which are not arbitrary  
47 and capricious. If the water utility does not, by the end of the 3-year period after the date used by the Commission to  
48 recognize rate base in the rate proceeding, reach at least 75% of the total number of customers originally anticipated to be  
49 served by the facilities, the Commission may only then require the water utility to impute revenues and then only to the  
50 extent of the number of customers it originally anticipated to be served by the facilities but who have not, as of the end of  
51 the 3-year period, been added.

### SYNOPSIS

In addition to legislation codifying the recommendations of the Clean Water & Flood Abatement Task Force, other important steps around clean water and clean-water infrastructure should be taken. This bill is intended to promote long-term freshwater security by facilitating private-sector investments in watershed enhancement projects designed to protect high-quality drinking water for Delaware. The bill provides that the Public Service Commission may allow a public utility to recover, in its rates, its reasonable and prudently incurred capital and ongoing operating costs for watershed enhancement projects that are: 1) confirmed as useful in protecting source water by Delaware's Water Infrastructure Advisory Council; 2) placed into service; and 3) used and useful in the provision of public utility service. The bill also provides that the Commission may authorize an allowance of funds used during the construction of such project. This bill is timely in that private-sector entities actively are considering such investments in areas that will improve Delaware's water supply and freshwater resources, and in that Delaware advocates are receiving national recognition and funding for the development of these models.

Author: Senator Townsend