SENATE DOCKET, NO. 1031 FILED ON: 1/20/2011

SENATE . . . . . No. 1667

The Commonwealth of Massachusetts

PRESENTED BY:

Barry R. Finegold

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act relative to water company infrastructure projects..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Barry R. Finegold	☐ *[District]* ☐
John P. Fresolo	*16th Worcester*
Rhonda Nyman	*5th Plymouth*

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SENATE . . . . . No. 1667

By Mr. Finegold, a petition (accompanied by bill, Senate, No. 1667) of Barry R. Finegold, John P. Fresolo and Rhonda Nyman for legislation relative to water company infrastructure projects. Telecommunications, Utilities and Energy.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
SENATE
, NO. *2320* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act relative to water company infrastructure projects..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 25 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after Section 10B, the following new section:

Section 10C. (a) For purposes of this section the following terms shall have the following meanings:

"Eligible projects" means those water company plant projects not previously included in the water company's rate base in its most recent general rate case and that are intended to improve or protect the quality and reliability of service to customers, including (A) renewal or replacement of existing infrastructure, including mains, valves, services, meters and hydrants that have either reached the end of their useful life, are worn out, are in deteriorated condition, are or will be contributing to unacceptable levels of unaccounted for water, or are negatively impacting water quality or reliability of service if not replaced; (B) main cleaning and relining projects; (C) relocation of facilities as a result of government actions, the capital costs of which are not otherwise eligible for reimbursement; and (D) purchase of leak detection equipment or installation of production meters, and pressure reducing valves.

"Department" means the Department of Public Utilities.

16 "Infrastructure assessment report" means a report filed by a water company with the
17 department that identifies water system infrastructure needs and the company's criteria for
18 determining the priority for eligible projects related to infrastructure.

19 "Pretax return" means the revenue necessary, after deduction of depreciation and property
20 taxes, to produce net operating income equal to the water company's weighted cost of capital as
21 approved by the department in the company's most recent general rate case multiplied by the new
22 original cost of eligible projects.

23 "Reconciliation adjustment" means the difference between revenues actually collected
24 through the water infrastructure and conservation adjustment and the amount allowed under the
25 WICA for that period for the eligible projects. The amount of revenues over collected or under
26 collected through the adjustment will be recovered or refunded, as appropriate, as a
27 reconciliation adjustment over a one-year period commencing on April first.

28 "Water company" means a water company, as defined in Chapter 165, Section 1 of
29 Massachusetts General Laws, that has filed for approval an individual infrastructure assessment
30 report to support a request for a WICA adjustment.

31 "Water Infrastructure and Conservation Adjustment (WICA)" means an adjustment
32 applied as a charge or credit to a water company customers' rates to recover the WICA costs of
33 eligible projects.

34 "WICA costs" means the depreciation and property tax expenses and associated return on
35 completed eligible projects.

36 "WICA revenues" means the revenues provided through a water infrastructure and
37 conservation adjustment for eligible projects.

38 (b) The Department of Public Utilities may authorize a water company to use a rate
39 adjustment mechanism, such as a water infrastructure and conservation adjustment (WICA), for
40 eligible projects completed and in service for the benefit of the customers. A water company may
41 only charge customers such an adjustment to the extent allowed by the department based on a
42 water company's infrastructure assessment report, as approved by the department and upon
43 semiannual filings by the company which reflect plant additions consistent with such report. The
44 department, in consultation with the Attorney General, shall conduct the proceeding in
45 accordance with the provisions of Chapter 164, Section 94 of the Massachusetts General Laws.

46 (c) On or before ninety days after the effective date of this section, the department shall
47 initiate a generic docket on what shall be included in a water company's infrastructure
48 assessment report and annual reconciliation reports and the criteria for determining priority of
49 eligible projects. The department shall provide public notice with a deadline for interested parties
50 to submit recommendations on the report contents and criteria. The department may hold a

51 hearing on the generic docket but shall issue a decision on the docket not later than one hundred
52 eighty days after the deadline for interested parties to submit their recommendations on the
53 report contents and criteria.

54 (d) The water company shall file their individual infrastructure assessment report with the
55 department and such report shall identify the water system infrastructure needs and a water
56 company's criteria for determining priority for eligible projects related to infrastructure.

57 The department shall address such criteria in its docket initiated pursuant to subsection
58 (b) of this section. Criteria may include, but shall not be limited to, (1) age, material or condition
59 of the facilities; (2) extent and frequency of main breaks or interruption of service; (3) adequacy
60 of pressure; (4) head loss; (5) availability of fire flows; and (6) the potential of such projects to
61 improve system integrity and reliability.

62 (e) The department shall approve a water company's individual infrastructure assessment
63 report upon determining that the company has demonstrated through generally accepted
64 engineering practices (1) the infrastructure projects considered for renewal or replacement are
65 eligible projects; (2) such projects will benefit customers by improving water quality, system
66 integrity or service reliability; (3) they adhere to the criteria established for determining priority
67 for infrastructure projects; and (4) there is a sufficient level of investment in infrastructure. The
68 department may hold a hearing to solicit input on a water company's individual infrastructure
69 assessment report provided a decision on the assessment is made not later than one hundred
70 eighty days after filing. Any such report not approved, rejected or modified by the department
71 within such one-hundred-eighty-day period shall be deemed to have been approved.

72 (f) Upon department approval of a water company's individual infrastructure assessment
73 report, the water company may charge the WICA for eligible projects in addition to such water
74 company's existing rate schedule pursuant to subsection (g) of this section and the procedures
75 and customer notification requirements in subsections (h) and (i) of this section.

76 (g) The WICA adjustment shall be calculated as a percentage, based on the original cost
77 of completed eligible projects multiplied by the applicable rate of return, plus associated
78 depreciation and property tax expenses related to eligible projects and any reconciliation
79 adjustment calculated pursuant to subsection (k) of this section as a percentage of the retail water
80 revenues approved in its most recent rate filing for the regulated activities of said water
81 company.

82 (h) A water company may impose the WICA adjustment for eligible projects as a charge
83 or credit on customers' bills at intervals of not less than six months, commencing on either
84 January first, April first, July first or October first in any year. No proposed WICA charge or
85 credit shall become effective until the Department of Public Utilities has approved such charges
86 or credits pursuant to an administrative proceeding. The department may receive and consider
87 comments of interested persons and members of the public at such a proceeding, which shall be

88 an adjudicatory proceeding for purposes of Title 3 of the Massachusetts General Laws, this
89 section or any regulation adopted hereunder. Such administrative proceeding shall be completed
90 not later than thirty days after the filing of an application by a water company or within a time
91 period as otherwise established in the generic docket conducted pursuant to subsection (c) of this
92 section. Any approval or denial of the department pursuant to this subsection shall not be deemed
93 an order, ruling or final decision of the department for purposes of MGL Chapter 25, Section 5.
94 The approval or denial of the department pursuant to this subsection shall not be the basis of a
95 complaint brought pursuant to MGL Chapter 164, Section 93.

96 Notwithstanding the provisions of this section, if the department has not rendered an
97 approval or denial concerning any such application within the established timeframe, the
98 proposed charges or credits shall become effective at the option of the company pending the
99 department's finding with respect to such charges, provided the company will refund its
100 customers any such amounts collected from them in excess of the charges approved by the
101 department in its finding.

102 (i) Water companies shall notify customers through a bill insert or other direct
103 communications when the adjustment is first applied and the WICA charge or credit shall appear
104 as a separate item on customers' bills.

105 (j) The amount of the WICA applied between general rate case filings shall not exceed
106 seven and one-half per cent of the water company's annual retail water revenues approved in its
107 most recent rate filing, and shall not exceed five per cent of such revenues for any twelve-month
108 period. The amount of the adjustment shall be reset to zero as of the effective date of new base
109 rates approved pursuant to MGL Chapter 164, Section 94 and shall be reset to zero if the
110 company exceeds the allowable rate of return by more than one hundred basis points for any
111 calendar year.

112 (k) On or before February twenty-eighth of each year, a water company shall submit to
113 the department an annual reconciliation report for any WICA charges applied to customers' rates
114 through December thirty-first of the previous calendar year. Such reconciliation report shall
115 identify those projects that have been completed, demonstrate that the WICA charges are limited
116 to eligible projects that are in service and used and useful as of the end of the calendar year, and
117 include any other information required as a result of the generic docket conducted pursuant to
118 subsection (b) of this section. The company shall indicate in its report any significant changes in
119 the extent of infrastructure spending, the priorities for determining eligible projects or the criteria
120 established in the infrastructure assessment report.

121 In addition, the reconciliation report shall compare the WICA revenues actually collected
122 to the allowed amount of the adjustment. If upon completion of the review of the annual
123 reconciliation report the department determines that a water company over collected or under
124 collected the WICA adjustment, the difference between the revenue and costs for eligible

125 projects will be recovered or refunded, as appropriate, as a reconciliation adjustment over a one-
126 year period commencing on April first. The company shall refund the customers with interest for
127 any over collection but shall not be eligible for interest for any under collection.

128 SECTION 2. This act shall take effect upon its passage.