



# Alaska

Water and wastewater utilities in Alaska fall under several rate setting regulatory systems.

## Commission-Regulated Utilities



The **Regulatory Commission of Alaska (RCA)** regulates most water and wastewater utilities in Alaska. It gains its jurisdiction over water and wastewater utilities from **Alaska Stat. § 42.05.141**. Government-owned utilities are exempted from RCA rate regulation, unless the governing body of the political subdivision elects to be regulated, or unless the political subdivision utility directly competes with another utility.<sup>27</sup>

Under **Alaska Stat. § 42.05.141**, the RCA is granted the power to make or require “just, fair, and reasonable” rates for a commission-regulated utility. Additionally, **Alaska Stat. § 42.05.381(a)** requires that all rates shall be “just and reasonable,” and **Alaska Stat. § 42.05.391** prohibits any commission-regulated utility as to rates from “grant[ing] an unreasonable preference or advantage to any of its customers or subject[ing] a customer to an unreasonable prejudice or disadvantage.”

Additionally, the same section provides that commission-regulated utilities may not establish or maintain an unreasonable difference as to rates, either between localities or between classes of service, and prohibits such utilities from “directly or indirectly refund[ing], rebat[ing], or remit[ing] . . . any portion of rates or charges, or from receiv[ing] greater or lesser compensation for its services than is specified in the effective tariff.”<sup>28</sup> Finally, **Alaska Stat. § 42.05.391(c)** provides that a commission-regulated utility “may not extend to any customer any form of contract, agreement, inducement, privilege, or facility, or apply any rule, regulation, or condition of service except such as are extended or applied to *all* customers under like circumstances.”

27. **Alaska Stat. § 42.05.711(b)**. This section specifically exempts political subdivision utilities from regulation under that entire chapter, with some exceptions related to requirement of a certificate. Most important for the purposes of this summary, the rates of such utilities are not subject to regulation by the Regulatory Commission of Alaska.

28. **Alaska Stat. § 42.05.391**.

Commission-regulated utilities	
Noncommission-regulated utilities	

<b>State Population (2016):</b>	741,894
<b>Median Annual Household Income (2015):</b>	\$72,515
<b>Poverty Rate (2015):</b>	10.2%
<b>Typical Annual Household Water and Wastewater Expenditures (2015):</b>	\$984
Alaska has 417 community water systems (CWS), of which 198 are privately owned and 407 serve populations of 10,000 or fewer people.	
Alaska has 12 publicly owned treatment works facilities (POTWs), of which 7 treat 1 MGD or less.	
206,653 people are served by privately owned CWS; 484,939 are served by government-owned CWS; and 280,812 are served by POTWs.	
<b>Estimated Long-Term Water and Wastewater Infrastructure Needs:</b>	\$1.0 billion
<i>Sources: U.S. Census Bureau, 2016 Population Estimate &amp; 2011–2015 American Community Survey 5-Year Estimates; 2016 EFC Rates Survey; U.S. Environmental Protection Agency, 2016 Safe Drinking Water Information System, 2011 Drinking Water Infrastructure Needs Survey, and 2012 Clean Watersheds Needs Survey. See Appendix C for more details.</i>	

In response to a challenge to discriminatory rates allegedly put in place by a commission-regulated gas utility, the Alaska Supreme Court held that although *unreasonable* discriminatory rates are unlawful, discrimination based on justified difference in cost of service or which is otherwise within the zone of reasonableness is permissible.<sup>29</sup> In the same case, the Court further held that when “the rate structure is such that one class of customers subsidizes another, discrimination may pass beyond its permitted scope and become undue or unreasonable.”<sup>30</sup>

Thus, commission-regulated water and wastewater

29. **Jager v. State**, 537 P.2d 1100, 1115-16 (Alaska 1975); see also **Glacier State Tel. Co. v. Alaska Pub. Util. Comm’n**, 724 P.2d 1187, 1191 (Alaska 1986).

30. **Jager**, 537 P.2d at 1110.

utilities in Alaska seeking to implement low-income customer assistance programs (CAPs) funded by rate revenues could potentially be limited by the strong statutory language, which appears to restrict utilities from offering any type of benefit to only one customer or group of customers.

### *Noncommission-Regulated Utilities*

Municipalities<sup>31</sup> in Alaska, which are not regulated by the RCA, are subject to the limitations found in general Alaska law, or in the case of home rule municipalities, subject to the limitations found in their individual charters. [Alaska Stat. § 29.35.070](#) provides that the governing body of a municipality may regulate, fix, establish, and change the rates and charges for utility service provided to it by a utility not regulated by the RCA.<sup>32</sup> Further, under that same section, the municipality must fix the rates through ordinance, and such rates must be *reasonable* and permit a fair return on invested capital.<sup>33</sup> There do not appear to be any further statutory restrictions or requirements regarding rates set by noncommission-regulated utilities.

Given the broad authority of noncommission-regulated utilities over their rates, such utilities would likely be able to implement a low-income CAP utilizing rate revenues with less potential for legal challenge than commission-regulated utilities would face.

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31. Municipality is defined to include a political subdivision incorporated under the laws of the state that is a home rule or general law city, a home rule or general law borough, or a unified municipality. [Alaska Stat. § 01.10.060\(a\)\(4\)](#).

32. [Alaska Stat. § 29.35.070](#) limits the unregulated public utilities to those not exempted under [Alaska Stat. § 42.05.711\(a\); \(d\)-\(k\); \(o\); or \(p\)](#).

33. This does not apply if the utility is a government-owned utility.