



## Vermont

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

Commission-regulated utilities	
Noncommission-regulated utilities	

### Commission-Regulated Utilities

The Vermont Department of Public Service (PSD) and the Public Service Board (PSB) regulate private water companies in Vermont. Both entities gain jurisdiction over such companies from *Vt. Stat. Ann. tit. 30, § 203(3)*. The PSD advocates for consumers and the public interest while making recommendations on all private water company petitions filed with the PSB, and the PSB has formal authority to grant, deny, or modify petitions of those companies. Government-owned water and wastewater utilities are exempt from regulation by the PSD or the PSB.

Under *Vt. Stat. Ann. tit. 30, § 203(3)*, the PSB and PSD have general supervision over private water companies engaged in the collection, sale, and distribution of water for domestic purposes. Further, *Vt. Stat. Ann. tit. 30, § 209*, grants the PSB jurisdiction to hear, determine, render judgment, and make orders and decrees regarding rates “when unreasonable or in violation of law.” Going into more detail regarding the nature of rates, *Vt. Stat. Ann. tit. 30, § 218* provides that, “[w]hen, after opportunity for hearing, the rates, tolls, charges, or schedules are found unjust, unreasonable, insufficient, or unjustly discriminatory, or are found to be preferential or otherwise in violation of a provision of this chapter,” the PSB may order and substitute just and reasonable rates.<sup>355</sup> Under the same statutory provision, the PSB is required to set certain telephone utility rates in order to enable the state to participate in the Federal Communications Commission’s Lifeline program, which assists low-income customers with telecommunications bills.<sup>356</sup> Additionally, the statute further provides that the PSB, on its own motion or upon petition of any person, may approve a rate schedule that provides reduced rates for low-income electric utility consumers “better to assure affordability.”<sup>357</sup> There is, however, no similar provision in the Vermont

355. See also *Petition of Milton Water Corp.*, 218 A.2d 710, 713 (Vt. 1966) (holding that the Public Service Board has the power and duty to prevent unjust discrimination in rates charged by a public utility in this state and to substitute rates found to be just and reasonable for those found to be unjustly discriminatory).

356. *Vt. Stat. Ann. tit. 30, § 218*.

357. *Vt. Stat. Ann. tit. 30, § 218*.

<b>State Population (2016):</b>	624,594
<b>Median Annual Household Income (2015):</b>	\$55,176
<b>Poverty Rate (2015):</b>	11.5%
<b>Typical Annual Household Water and Wastewater Expenditures:</b>	N/R
Vermont has 420 community water systems (CWS), of which 243 are privately owned and 413 serve populations of 10,000 or fewer people.	
Vermont has 87 publicly owned treatment works facilities (POTWs), of which 73 treat 1 MGD or less.	
66,672 people are served by privately owned CWS; 383,585 are served by government-owned CWS; and 337,145 are served by POTWs.	
<b>Estimated Long-Term Water and Wastewater Infrastructure Needs:</b>	\$0.7 billion

*Sources: U.S. Census Bureau, 2016 Population Estimate & 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.*

statutes providing for reduced rates for low-income water or wastewater customers.

Thus, for commission-regulated water utilities, any low-income customer assistance program (CAP) funded by rate revenues would need to be approved by the PSB. Additionally, such a program could be subject to legal challenges on the basis that the rates are “discriminatory” or “preferential.”

### Noncommission-Regulated Utilities

Municipalities<sup>358</sup> in Vermont, which are not regulated

358. Municipality is defined to include “a city, town, town school district, incorporated school or fire district or incorporated village, and all other governmental incorporated units.” *Vt. Stat. Ann. tit. 1, § 126*.

by the PSD or the PSB, are permitted to establish rates for the supply of water under [Vt. Stat. Ann. tit. 24, § 3311](#). Although the statutory language itself does not require that the rates meet any standard, the Vermont Supreme Court has interpreted this provision to mean that municipal-owned water utilities have “broad authority to determine what kinds of uses they will charge (such as, for example, reserved allocations), and whether they will charge based on annual fees or meter service.”<sup>359</sup> Further, the court held “water rates are entitled to a presumption of reasonableness, and [the Court] will defer to the municipal corporation as long as the rates are nondiscriminatory, and are not arbitrary and capricious.”<sup>360</sup> With respect to wastewater utilities, municipalities in Vermont are permitted to establish rates under [Vt. Stat. Ann. tit. 24, § 3615](#). Although this statutory provision also does not provide any explicit standards for the rates, the Vermont Supreme Court has interpreted the language to require that the wastewater rates be “fair, equitable and reasonable.”<sup>361</sup>

Therefore, for noncommission-regulated water utilities, their jurisdiction to set rates is broad, and their potential to implement low-income CAPs funded by rate revenues would likely be limited only by the requirement that rates must be reasonable, nondiscriminatory, and not arbitrary or capricious. Likewise, for noncommission-regulated wastewater utilities, their ability to implement such CAPs seems to be limited only by the requirement that rates be fair, equitable, and reasonable.

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359. [Vermont North Props. v. Vill. of Derby Center](#), 102 A.3d 1084, 1100 (Vt. 2014).

360. *Id.* (citing [Handy v. City of Rutland](#), 598 A.2d 114, 118 (Vt. 1990)).

361. [Handy v. City of Rutland](#), 598 A.2d 114, 118 (Vt. 1990).