



# Arizona

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

## Commission-Regulated Utilities

The **Arizona Corporation Commission (ACC)** regulates private water and wastewater companies. It gains its jurisdiction over these companies from **Ariz. Const. art. XV, § 3** and **Ariz. Rev. Stat. § 40-203**. The ACC does not regulate government-owned utilities. **Ariz. Rev. Stat. § 40-361** provides that rates must be “just and reasonable.”<sup>34</sup> Changes to rates require a company to provide notice to and to gain permission from the ACC.<sup>35</sup>

Commission-regulated companies must charge rates that are “regularly and uniformly extended to all persons” unless a rate is specifically ordered by the commission.<sup>36</sup> Further, **Ariz. Rev. Stat. § 40-334** prohibits commission-regulated companies from making or granting “any preference or advantage to any person, or from subjecting any person to any prejudice or disadvantage.”<sup>37</sup>

The prohibition against granting any preference or advantage may be the most stringent limitation relative to the creation of low-income customer assistance programs (CAPs) funded by rate revenues. Additionally, because commission-regulated utilities are required to submit rates and follow the approval of the ACC, in order to provide CAPs funded by rate revenues, a commission-regulated utility would likely need specific approval from the commission in the form of an ACC order to charge these rates.

34. Additionally, **Ariz. Const. art. XV, § 3** explicitly requires the Arizona Corporation Commission to prescribe just and reasonable classifications and just and reasonable rates and charges. This is unique, as the just and reasonable requirement is not usually found in a state’s constitution.

35. **Ariz. Rev. Stat. § 40-367**.

36. **Ariz. Rev. Stat. § 40-374**.

37. See *Town of Wickenburg v. Sabin*, 200 P.2d 342, 343-44 (citing *McQuillin Municipal Corporations*, 2d ed., vol. 4, § 1829, for the proposition that public service corporations must treat all their consumers fairly and without unjust discrimination and give all of them the same service on equal terms at uniform rates without discriminating between customers similarly situated as to character of service rendered or charges made; and as regards discrimination in rates or service in the public utility field, a municipal corporation stands in the same position as a private corporation).

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| Commission-regulated utilities    |  |
| Noncommission-regulated utilities |  |

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| <b>State Population (2016):</b>  | 6,931,071      |
| <b>Median Annual Household Income (2015):</b>  | \$50,255       |
| <b>Poverty Rate (2015):</b>  | 18.2%          |
| <b>Typical Annual Household Water and Wastewater Expenditures (2015):</b>  | \$549          |
| Arizona has 752 community water systems (CWS), of which 435 are privately owned and 687 serve populations of 10,000 or fewer people.   |                |
| Arizona has 131 publicly owned treatment works facilities (POTWs), of which 81 treat 1 MGD or less.  |                |
| 1,228,732 people are served by privately owned CWS; 5,196,455 are served by government-owned CWS; and 5,340,473 are served by POTWs.   |                |
| <b>Estimated Long-Term Water and Wastewater Infrastructure Needs:</b>  | \$13.2 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> |                |

## Noncommission-Regulated Utilities

Municipalities and counties have the ability to own and operate water and wastewater utilities.<sup>38</sup> Before increasing rates, noncommission-regulated utilities owned or operated by municipalities must publish a report justifying the increase, hold a public hearing, and have the municipality’s governing body adopt the

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increase.<sup>39</sup> Although noncommission-regulated utilities can largely set their own rates, state case law has held that municipal rates must be nondiscriminatory in the same manner as is required of commission-regulated companies.<sup>40</sup>

Therefore, if a noncommission-regulated utility implements a CAP funded by rate revenues, it could be challenged under the aforementioned standards. Some noncommission-regulated utilities offer bill discount programs, but it is unclear how each such program is funded. For example, [Pima County](#) offers 25 percent, 50 percent, and 75 percent discounts to its wastewater customers who have incomes below certain amounts.<sup>41</sup>

At a statewide level, Arizona has an affordability assistance program that provides bill assistance on an income basis. [Ariz. Rev. Stat. § 46-741](#) creates the “Neighbors helping neighbors fund” to provide eligible customers with assistance. Eligible recipients are individuals who have a household income at or below 125 percent of the poverty level or individuals who are 60 years of age or older or persons with disabilities and who have a household income at or below 150 percent of the poverty level. State taxpayers fund this program via elective contributions on their individual state tax returns. The fund is one of 15 eligible charities and funds that overall generated \$1.4 million dollars in contributions in 2014.

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39. [Ariz. Rev. Stat. § 9-511.01](#).

40. *Town of Wickenburg*, 200 P.2d at 343-44.

41. The Pima County Sewer Outreach Subsidy Program is funded with Sewer User Fees. Pers. comm. with Jennifer Coyle, Program Manager, Pima County Regional Wastewater Reclamation Dep’t (Mar. 6, 2017).