



Colorado

Water and wastewater utilities in Colorado fall under multiple rate setting regulatory systems.

Commission-regulated utilities	
Noncommission-regulated utilities	

Commission-Regulated Utilities

Article XXV of the Colorado Constitution provides the Colorado Public Utilities Commission (Colorado PUC) with the authority to regulate the facilities, services, rates, and charges of private water and wastewater companies.⁶³ The Colorado PUC provides only simplified regulation to some small private water companies.⁶⁴ The Colorado PUC does not have jurisdiction over municipal-owned utilities.

The Colorado PUC establishes industry rate standards and approves rates for fully regulated water corporations, ensuring that financial, engineering, legal, and economic requirements are met. Pursuant to [Colo. Rev. Stat. § 40-3-101](#), all charges made, demanded, or received by commission-regulated utilities must be “just and reasonable.” However, [Colo. Rev. Stat. § 40-3-106\(1\)](#) expressly prohibits such utilities from granting “any preference or advantage to a corporation or person” or establishing or maintaining “any unreasonable difference as to rates, charges, service, facilities, or between localities or class of service.” In 1979, the Colorado Supreme Court concluded that providing a special rate for low-income customers constituted an unreasonable preference under [Colo. Rev. Stat. § 40-3-106\(1\)](#).⁶⁵

In response, in 2007, the legislature enacted subsection (d)(I) of [Colo. Rev. Stat. § 40-3-106\(1\)](#) to overturn this decision. Specifically, subsection (d)(I) provides that “the commission may approve any rate, charge, service, classification, or facility of a gas or electric utility that makes or grants a reasonable preference or advantage to low-income customers, and the implementation of such commission-approved rate, charge, service, classification, or facility by a public utility shall not be

63. Specifically, the constitution provides regulation authority over “public utilities,” further defined by [Colo. Rev. Stat. § 40-1-103](#), which defines one type of public utility, “water corporations,” to include combined water and wastewater corporations, whether as a single entity or as different entities under common ownership.

64. [Colo. Rev. Stat. § 40-3-104.4](#) requires the Colorado PUC to provide simplified regulatory treatment for small water companies, balancing regulatory oversight with the cost of such regulation

65. See [Mountain States Legal Found. v. Pub. Util. Comm’n](#), 590 P.2d 495, 498 (Colo. 1979).

State Population (2016):	5,540,545
Median Annual Household Income (2015):	\$60,629
Poverty Rate (2015):	12.7%
Typical Annual Household Water and Wastewater Expenditures (2015):	\$755
Colorado has 871 community water systems (CWS), of which 403 are privately owned and 788 serve populations of 10,000 or fewer people.	
Colorado has 250 publicly owned treatment works facilities (POTWs), of which 210 treat 1 MGD or less.	
231,555 people are served by privately owned CWS; 5,419,011 are served by government-owned CWS; and 4,120,517 are served by POTWs.	
Estimated Long-Term Water and Wastewater Infrastructure Needs:	\$11.2 billion
<i>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.</i>	

deemed to subject any person or corporation to any prejudice, disadvantage, or undue discrimination.”⁶⁶ Because the amendment applies only to natural gas and electric utilities, it is currently still unlawful for commission-regulated water and wastewater utilities to implement low-income customer assistance programs (CAPs) funded by rate revenues.

Noncommission-Regulated Utilities

In Colorado, utilities that are not regulated by the Colorado PUC include municipalities, counties, and

66. [Colo. Rev. Stat. § 40-3-106\(1\)\(d\)\(1\)](#).

special districts.⁶⁷ Colorado’s state constitution allows cities, towns, and counties to adopt home rule charters.⁶⁸ The constitution expressly confers to home rule entities “all powers necessary, requisite, or proper for the government and administration” of local and municipal matters, including water and sanitation.⁶⁹

Cities, towns, and counties that do *not* adopt home rule charters are subject to statutory authority and have only those powers that are expressly granted by the state legislature. State statutes generally allow local governments to create rate systems to meet their individual needs. However, [Colo. Rev. Stat. § 37-97-101](#) requires the use of meters in order to “equitably” bill customers for their demand on the system.⁷⁰

Water or wastewater special districts, created under [Colo. Rev. Stat. § 32-1-103](#), may impose and collect service charges, which must be *uniform* across type, class, and amount of use of facilities or related services.

In summary, home rule municipalities would likely have the authority to implement low-income CAPs funded by rate revenues, subject to any specific regulations included in local charters. Municipalities without home rule charters seeking to implement such programs may be subject to an equitability clause. Finally, special districts implementing low-income CAPs could face legal challenge on the basis of the statutory “uniformity” requirement.

67. Colo. Const. art. XX & art. XIV; see also [Colo. Rev. Stat. § 32](#).

68. [Colo. Const. art. XX, § 9](#) (for cities and towns) & [art. XIV, § 16](#) (for counties).

69. Currently, 99 of Colorado’s 271 municipalities, including the state’s 10 largest cities, operate under a home rule charter.

70. Pursuant to [Colo. Rev. Stat. § 37-97-101](#), all water systems with at least 600 taps must install meters.