



Florida

Water and wastewater utilities in Florida fall under two main rate setting regulatory systems.

Commission-regulated utilities	
Noncommission-regulated utilities	

Commission-Regulated Utilities

Under Fla. Stat. § 367, the Florida Public Service Commission (FPSC) has exclusive jurisdiction over certain private water and wastewater companies, with respect to authority, service, and rates. However, the FPSC’s regulation of all private water and wastewater companies is not automatic. Fla. Stat. § 367.171(1) provides that county governments have the option of either regulating the rates, services, and territory of private water and wastewater companies within their jurisdiction, or of ceding such jurisdiction to the FPSC.⁸⁵

With respect to rate-setting, the FPSC is responsible for fixing rates that are “just, reasonable, compensatory, and not unfairly discriminatory.”⁸⁶

Commission-regulated companies or utilities are limited to imposing and collecting rates and charges, which have been approved by the commission for the particular class of service involved.⁸⁷

In sum, commission-regulated water and wastewater companies or utilities are required to collect only rates and charges, which have been approved by the FPSC, and the statutes don’t address whether an entity may request a rate modification to put into place an affordability program. Therefore, in order to implement a customer assistance program (CAP) utilizing rate revenues, commission-regulated companies or utilities would likely need FPSC approval.

Noncommission-Regulated Utilities

Florida’s municipalities, counties, regional water supply authorities, and special districts are self-regulating and operate under home rule. Fla. Stat. § 153.03 grants counties the power to operate water and wastewater utilities, as well as to fix and collect rates, fees, and other charges for the services and facilities of such utilities. Such rates, fees, and charges are set by the

85. Additionally, there are systems that are specifically exempted from FPSC regulation under Fla. Stat. § 367.022.

86. Fla. Stat. § 367.081(2)(a)1.

87. Fla. Stat. § 367.091(4).

State Population (2016):	20,612,439
Median Annual Household Income (2015):	\$47,507
Poverty Rate (2015):	16.5%
Typical Annual Household Water and Wastewater Expenditures (2015):	\$725
Florida has 1,647 community water systems (CWS), of which 973 are privately -owned and 1,406 serve populations of 10,000 or fewer people.	
Florida has 371 publicly owned treatment works facilities (POTWs), of which 181 treat 1 MGD or less.	
1,371,784 people are served by privately owned CWS; 18,421,027 are served by government-owned CWS; and 13,038,635 are served by POTWs.	
Estimated Long-Term Water and Wastewater Infrastructure Needs:	\$32.3 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.

county commission, and shall be just and equitable and may be based upon the quantity of water consumed and/or upon other factors.⁸⁸ The rates and fees set by the county commission are not subject to supervision or regulation by any other commission, board, bureau, or agency of the county or of the state or of any sanitary district or other political subdivision of the state.

Furthermore, Fla. Stat. § 180.13 provides that a city council, or other legislative body of a municipality, may establish just and equitable rates or charges to be paid to the municipality for the use of a water or wastewater utility. State courts have further explained the rate-setting authority of government-owned utili-

88. Fla. Stat. § 153.11(c).

ties, holding that “[i]n setting utility rates, governmental agencies enjoy a significant degree of latitude,” and that a governmental entity “may charge different rates to different classes of users so long as the classifications are not arbitrary, unreasonable, or discriminatory.”⁸⁹

Therefore, if noncommission-regulated utilities implement CAPs funded by rate revenues utilizing different rates to different classes of users, such classifications cannot be “arbitrary, unreasonable, or discriminatory.” Because the process for rate setting for counties or municipalities requires community involvement, community-wide initiatives to assist low-income customers could be incorporated into the city or county commission’s determination of water and wastewater rates; however, such decisions could then be subject to legal challenges on the basis of whether the rates are indeed discriminatory or unreasonable.

89. *I-4 Commerce Ctr., Phase II, Unit I v. Orange Cty.*, 46 So. 3d 134, 136 (Fla. Dist. Ct. App. 2010) (citing *City of Gainesville v. State*, 863 So. 2d 138, 147 (Fla. 2003)); see also *Cooksey v. Utils. Comm’n*, 261 So. 2d 129, 130 (Fla. 1972) (fixing of fair and reasonable rates for utilities services is an incident of authority given to municipalities by Constitution and statutes to provide and maintain those services and courts may not fix rates for those municipal utilities but will determine, on behalf of any aggrieved party, whether there has been a deviation from standard of just and reasonable in fixing rates).