

## Hawaii

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

### Commission-Regulated Utilities

The **Hawaii Public Utility Commission** (Hawaii PUC) regulates private water and wastewater companies in Hawaii.<sup>98</sup> The Hawaii PUC does not regulate government-owned water and wastewater utilities.

Under **Hawaii Rev. Stat. § 269-16**, all commission-regulated rates shall be *just and reasonable* and shall be filed with the Hawaii PUC. Further, a commission-regulated utility’s rates must not be departed from except on prior approval of the commission.<sup>99</sup>

Additionally, if a commission-regulated utility wants to implement a rate increase, a hearing may be held where the utility may present testimony to the commission concerning the increase. The commission may then fix the rates to be *just and reasonable*, and “may prohibit rebates and unreasonable discrimination between localities or between users or consumers under substantially similar conditions.”<sup>100</sup>

The Supreme Court of Hawaii, as early as 1979, recognized the need to protect low-income and elderly customers from excessive utility rates from “public”<sup>101</sup> utilities. In *Application of Hawaii Electric Light Co.*,<sup>102</sup> the Court held that “[i]n addition to conservation of energy and optimization of the efficient use of facilities and resources, a public utility’s rate structure should encourage equitable rates to all its consumers including the poor and the elderly. Reactions to demands that the increasing energy burden borne by the poor and the elderly be alleviated range from sympathy to scorn for ‘social rate making.’ Our laws, however,

98. **Hawaii Rev. Stat. § 269-6**.

99. *Balthazar v. Verizon Hawaii, Inc.*, 123 P.3d 194, 198 (Haw. 2005) (citing to *Molokoa Village Dev. Co., Ltd. v. Kauai Elec. Co., Ltd.*, 593 P.2d 375, 379 (Haw. 1979)). The doctrine that a regulated utility must not depart from the rate it has filed with the Hawaii Public Utility Commission (PUC), absent permission from the PUC, has been termed as the “filed-rate doctrine.” The Hawaii Supreme Court has acknowledged that the application of the doctrine “may appear harsh,” but that it is necessary to advance the goals of “promoting nondiscrimination and non-justiciability.”

100. **Hawaii Rev. Stat. § 269-16**.

101. Although the *Application of Hawaii Elec. Light Co.* case dealt with commission-regulated utilities, the court referred to the principles referenced here in terms of “public utilities.”

102. *Application of Hawaii Elec. Light Co.*, 594 P.2d 612, 626 (Haw. 1979).

Commission-regulated utilities



Noncommission-regulated utilities



<b>State Population (2016):</b>	1,428,557
<b>Median Annual Household Income (2015):</b>	\$69,515
<b>Poverty Rate (2015):</b>	11.2%
<b>Typical Annual Household Water and Wastewater Expenditures (2015):</b>	\$1,668
Hawaii has 117 community water systems (CWS), of which 45 are privately owned and 100 serve populations of 10,000 or fewer people.	
Hawaii has 22 publicly owned treatment works facilities (POTWs), of which 11 treat 1 MGD or less.	
57,105 people are served by privately owned CWS; 1,436,450 are served by government-owned CWS; and 826,376 are served by POTWs.	
<b>Estimated Long-Term Water and Wastewater Infrastructure Needs:</b>	\$3.1 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.

recognize that the poor and elderly are deserving of special protection.”

In sum, for commission-regulated water and wastewater utilities in Hawaii, there is no express prohibition against implementing a customer assistance program (CAP) funded by rate revenues; however, any such program could be subject to legal challenge on the basis of being discriminatory. Under the Hawaii statutes, however, not all differences in rates are unlawful.<sup>103</sup> Dis-

103. See *Application of Hawaii Elec. Light Co.*, 594 P.2d at 614 (holding that in regard to utility rates, it is not all discrimination which is forbidden by law, but only those which are unreasonable).

crimination, to be unlawful, must be “unreasonable.”<sup>104</sup>

### *Noncommission-Regulated Utilities*

Under [Hawaii Rev. Stat. § 46-1.5\(1\)](#), counties<sup>105</sup> in Hawaii operate under home rule with respect to certain powers, designated by statute. Specifically, counties are not regulated by the Hawaii PUC, and they are given the power to establish and maintain waterworks and sewer works and to collect rates for water supplied to consumers and for the use of sewers.<sup>106</sup>

Although there is no explicit limitation on rate setting in the state statutes granting counties authority to collect rates for water and wastewater facilities, additional provisions found in the individual county charters may provide such limitations. As an example, the Honolulu Board of Water Supply is established by the [Honolulu County Charter](#). The charter provides that the board shall have the power to fix and adjust *reasonable* rates and charges for the furnishing of water and for water services, as well as for a public hearing process prior to fixing or adjusting rates. The charter explicitly prohibits the board from providing “free water, except as authorized by the state.” This prohibition could potentially prevent a county, such as Honolulu, from being able to implement certain CAPs, depending on how a court may interpret what constitutes “free water.”<sup>107</sup>

With respect to county utilities, because they are not regulated by the Hawaii PUC, their jurisdiction to set rates is very broad and would be limited only by the requirements laid out in a specific entity’s governing charter. Thus, absent a prohibition on engaging in such programs, a county water or wastewater system should be permitted to implement low-income CAPs funded by rate revenues.

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104. The Hawaii PUC has specifically found “affordability” to be one element of “reasonableness.” In reviewing Power Supply Improvement Plans (PSIPs), for example, the commission stated that “The PSIPs should provide assurance that the overall cost and rate impacts of utility system operations and proposed resource acquisitions are reasonable, economic and affordable.” [Order 33320](#), at 41, Docket 2014-0183 (November 4, 2015).

105. Counties are the only constituted government bodies below the state in Hawaii; therefore, there are no separate regulations or statutes governing cities.

106. [Hawaii Rev. Stat. § 46-1.5\(23\)](#).

107. The county charter, however, also provides that “all city powers shall be used to serve and advance the general welfare, health. . . [and] safety. . . of its inhabitants, present and future.” To the extent that affordability can be tied to “general welfare, health and safety,” municipal water and wastewater rates might reasonably be expected to be found not merely consistent with, but necessary for, advancing these stated objectives.