





## West Virginia

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

Commission-regulated utilities	
Noncommission-regulated utilities	

### Commission-Regulated Utilities

All water and wastewater service providers are regulated to some extent by the **Public Service Commission of West Virginia** (WVPSC). The WVPSC regulates any person, persons, association, or municipality engaged in the business of producing, furnishing, transporting, distributing, or selling water for any purpose held to be a public service.<sup>381</sup> However, **W. Va. Code § 24-1-1(j)** further provides that “water and [wastewater] utilities that are political subdivisions of the state providing separate or combined services and having at least four thousand five hundred customers and annual gross revenues of \$3 million or more are most fairly and effectively regulated by the local governing body with respect to rates.”<sup>382</sup> Thus, the WVPSC regulates all private water companies and government-owned water and wastewater utilities in West Virginia but has limitations on its jurisdiction over rates set by government-owned water and wastewater utilities meeting certain size and revenue thresholds.

Under **W. Va. Code § 24-3-2**, all commission-regulated utilities are prohibited from granting any special rate, rebate, or drawback, as well as from receiving a greater or less compensation than it receives or offers to any other person “for doing a like and contemporaneous service under the same or substantially similar circumstances and conditions.” Additionally, commission-regulated utilities are prohibited from giving any “undue or unreasonable preference or advantage” to any customer or from subjecting any customer to any “undue or unreasonable prejudice or disadvantage.”

However, the same provision, **W. Va. Code § 24-3-2(b)**, states that the anti-discrimination constraints articulated above should not be construed to prevent the WVPSC from “[a]uthorizing a private water utility to voluntarily implement a rate design featuring reduced rates and charges for service to qualifying low-income

<b>State Population (2016):</b>	1,831,102
<b>Median Annual Household Income (2015):</b>	\$41,751
<b>Poverty Rate (2015):</b>	18.0%
<b>Typical Annual Household Water and Wastewater Expenditures:</b>	N/R
West Virginia has 468 community water systems (CWS), of which 113 are privately owned and 444 serve populations of 10,000 or fewer people.	
West Virginia has 266 publicly owned treatment works facilities (POTWs), of which 230 treat 1 MGD or less.	
477,528 people are served by privately owned CWS; 1,035,168 are served by government-owned CWS; and 1,095,860 are served by POTWs.	
<b>Estimated Long-Term Water and Wastewater Infrastructure Needs:</b>	\$4.3 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.*

residential customers.” Specifically, in accordance with **W. Va. Code § 24-2A-5**, reduced rates can be offered to private water company residential customers who receive any of the following benefits: Social Security Supplemental Security Income (SSI) Temporary Assistance for Needy Families (TANF) Temporary Assistance for Needy Families-Unemployed Parent Program (TANF-UP) Assistance from the Supplemental Nutrition Assistance Program (SNAP), if they are 60 years of age or older.<sup>383</sup>

381. **W. Va. Code § 24-1-2**.

382. The statute further limits the Public Service Commission of West Virginia’s regulatory jurisdiction over such government-owned water and wastewater utilities to that provided expressly in the rest of **Chapter 24** of the West Virginia statutes.

383. The reduced rate is required to be a set percentage not more than 20 percent less than the regular rate. **W. Va. Code § 24-2A-5**. Rates cannot be lowered for otherwise qualifying people if they are living in the house of a person who does not qualify. **W. Va. Code § 24-2A-5**. Of additional importance, West Virginia allows for a tax credit to “water utilities” that offer services at reduced rates to qualified low-income residential customers. **W. Va. Code § 11-13-3f**.

Thus, all commission-regulated water and wastewater utilities are subject to the same anti-discrimination language, which could provide a basis for a legal challenge to low-income customer assistance programs (CAPs) funded by rate revenues. However, an exception is carved out which gives private water companies direct authority to implement such CAPs.

### *Noncommission-Regulated Utilities*

As was previously mentioned, government-owned water and wastewater utilities that have at least 4,500 customers and annual combined gross revenues of \$3 million or more have authority to set their own rates. Specifically, [W. Va. Code § 24-2-3](#) provides that such government-owned water and wastewater utilities may establish their own rates, provided that in the event that the WVPSC determines after a hearing that such rates are “unjust, unreasonable, insufficient, or unjustly discriminatory,” the commission may fix by order “reasonable” rates.

Additionally, under [W. Va. Code § 24-2-4b\(b\)](#), all rates set by noncommission-regulated government-owned water and wastewater utilities “shall be just, reasonable, applied without unjust discrimination between or preference for any customer or class of customer and based primarily on the costs of providing these services.” Additionally, the same statute provides that “[a]ll rates and charges shall be based upon the measured or reasonably estimated cost of service and the equitable sharing of those costs between customers based upon the cost of providing the service received by the customer, including a reasonable plant-in-service depreciation expense.”

In sum, government-owned water and wastewater utilities not regulated by the WVPSC with respect to rates would be most limited in their ability to implement low-income CAPs by the language requiring that rates be based on cost of service and by the prohibition against using unjust preferences for any customer or class of customers.