



Idaho

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

Commission-Regulated Utilities

The **Idaho Public Utilities Commission** (Idaho PUC) regulates private water and wastewater companies in the state. The commission does not regulate government-owned utilities. The Idaho PUC gains its jurisdiction to regulate private utilities from **Idaho Code § 61-501, § 61-502, § 61-503, § 61-507, and § 61-520**. The Idaho PUC is required to set “just and reasonable” rates.¹⁰⁸ Furthermore, commission-regulated utilities are statutorily required to have “just and reasonable” rules and regulations that “pertain to charges or service.”¹⁰⁹ **Idaho Code § 61-307** requires commission-regulated utilities to submit any proposed rate changes to the Idaho PUC, and **Idaho Code § 61-313** prohibits the same utilities from deviating from the rates in their approved schedules.

Additionally, **Idaho Code § 61-315** prohibits utilities from engaging in discrimination or preference, or from “establishing or maintaining any unreasonable differences between localities or classes of service.” The Idaho Supreme Court has held that the criteria for differentiation of rates include “the quantity of the utility used, the nature of the use, the time of use, the pattern of use, the differences in the conditions of service, the costs of service, the reasonable efficiency and economy of operation and the actual differences in the situation of the consumers for the furnishing of the service.”¹¹⁰ Ultimately, the commission has the power to determine which factors weigh the heaviest and what constitutes a reasonable rate.¹¹¹ However, even with some of these considerations potentially opening the door for assistance programs, in *Rowland v. Kellogg Power & Water Co.*, the Idaho Supreme Court held, “the furnishing of water to (people) without paying the uniform rate charged like users is positively prohibited.”¹¹²

Thus, if commission-regulated utilities in Idaho seek to

108. **Idaho Code § 61-301**.

109. **Idaho Code § 61-303**.

110. *Grindstone Butte Mut. Canal Co. v. Idaho Pub. Utils. Comm’n*, 627 P.2d 804, 809 (Idaho 1981).

111. See **Idaho Code § 61-315**; see also *Utah-Idaho Sugar Co. v. Intermountain Gas Co.*, 597 P.2d 1058, 1067 (Idaho 1979)

112. *Rowland v. Kellogg Power & Water Co.*, 253 P. 840, 842 (Idaho 1927).

Commission-regulated utilities



Noncommission-regulated utilities



State Population (2016):	1,683,140
Median Annual Household Income (2015):	\$47,583
Poverty Rate (2015):	15.5%
Typical Annual Household Water and Wastewater Expenditures:	N/R
Idaho has 735 community water systems (CWS), of which 477 are privately owned and 712 serve populations of 10,000 or fewer people.	
Idaho has 182 publicly owned treatment works facilities (POTWs), of which 154 treat 1 MGD or less.	
443,564 people are served by privately owned CWS; 792,187 are served by government-owned CWS; and 1,136,764 are served by POTWs.	
Estimated Long-Term Water and Wastewater Infrastructure Needs:	\$2.3 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.

implement low-income customer assistance programs (CAPs) funded by rate revenues, such programs would be subject to legal challenges based on the aforementioned case law. Such utilities would also need approval from the Idaho PUC in order to implement lower rates for low-income customers.

Noncommission-Regulated Utilities

Government-owned utilities, including municipalities and cities, have the right to operate and maintain rates for water utilities.¹¹³ However, **Idaho Const. art. VIII, § 3** requires that municipalities must not incur indebtedness without a two-thirds majority in an election

113. **Idaho Code § 50-323, § 50-330**.

held for the purpose of approving the indebtedness. Although this section does not apply to “ordinary and necessary” expenses authorized by the general laws of the state, such ordinary and necessary expenses are usually related to infrastructure improvements¹¹⁴ or employees of the municipality.¹¹⁵

Therefore, although noncommission-regulated utilities appear to have relatively broad rate-setting authority, any low-income CAPs funded by rate revenues would potentially be subject to the two-thirds majority vote requirement outlined above. Furthermore, low-income CAPs would still be subject to legal challenge based on the holding in *Rowland*, as stated above.

114. See *City of Challis v. Consent of Governed Caucus*, 361 P.3d 485, 487-92 (Idaho 2015); see also *Asson v. Burley*, 670 P.2d 839, 847-50 (Idaho 1983).

115. See *Hanson v. Idaho Falls*, 446 P.2d 634, 636 (Idaho 1968).