Illinois

Commission-regulated utilities ⚠

Noncommission-regulated utilities ⚠

State Population (2016):	12,801,539
Median Annual Household Income (2015):	$57,574
Poverty Rate (2015):	14.3%
Typical Annual Household Water and Wastewater Expenditures (2015):	$574

Illinois has 1,740 community water systems (CWS), of which 466 are privately owned and 1,516 serve populations of 10,000 or fewer people.

Illinois has 416 publicly owned treatment works facilities (POTWs), of which 279 treat 1 MGD or less.

1,226,390 people are served by privately owned CWS; 10,775,021 are served by government-owned CWS; and 11,078,471 are served by POTWs.

Estimated Long-Term Water and Wastewater Infrastructure Needs:	$25.4 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.

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

Commission-Regulated Utilities

The Illinois Commerce Commission (ICC) regulates private water and wastewater companies in Illinois.[116] The ICC does not regulate utilities that are owned and/or operated by any political subdivision, public institution of higher education, or municipal corporation of the state.[117]

Under 220 Ill. Comp. Stat. Ann. § 5/4-101, the commission is tasked with the role of supervising private water and wastewater companies, as well as of examining such companies and keeping informed of their rates and charges. Additionally, 220 Ill. Comp. Stat. Ann. § 5/9-101 requires all commission-regulated rates or charges to be "reasonable and just," and 220 Ill. Comp. Stat. Ann. § 5/9-241 prohibits any commission-regulated utility from "making or granting, with respect to rates or charges, any preference or advantage to any corporation or person, or from subjecting any corporation or person to any prejudice or disadvantage." If, after a hearing, the ICC determines that the rates, or charges of, a commission-regulated utility are "unjust, unreasonable, discriminatory, insufficient, preferential or otherwise in violation of any provisions of law," the ICC shall determine just and reasonable rates or charges and fix such rates through an order.[118]

The Illinois Supreme Court has held that a just and reasonable rate for a commission-regulated utility cannot exceed the value of service to the consumer, and it can never be made by compulsion of public authority so low as to amount to confiscation.[119] Moreover, the test to determine whether rate discrimination has occurred is "whether the differential treatment is reasonable and not arbitrary."[120]

For commission-regulated water or wastewater utilities seeking to implement customer assistance programs (CAPs) funded by rate revenues, the language prohibiting such utilities from granting any preference or advantage to any person, and allowing the ICC to change rates that are considered to be discriminatory, insufficient, or preferential, likely holds the greatest potential for legal challenges.

Noncommission-Regulated Utilities

Municipalities[121] in Illinois operate under home rule,

116. 220 Ill. Comp. Stat. § 5/4-101.
117. 220 Ill. Comp. Stat. Ann. § 5/3-105.
118. 220 Ill. Comp. Stat. Ann. § 5/9-250.
119. Iowa-Illinois Gas and Elec. Co. v. Illinois Commerce Comm'n, 167 N.E.2d 414, 419 (Ill. 1960).
120. City of Chicago v. Illinois Commerce Comm'n, 666 N.E.2d 1212, 1216 (Ill. App. Ct. 1996).

121. Municipality is defined to include a city, village, or incorporated town, but does not include a township, town when used as the equivalent of a township, incorporated town that has superseded a civil township, county, school district, park district, sanitary district, or any other similar governmental district. 65 Ill. Comp. Stat. Ann. § 5/1-1-2.

and their utilities are not regulated by the ICC.[122] For municipalities that elect by ordinance to operate a *joint* waterworks and sewerage system, 65 Ill. Comp. Stat. Ann. § 5/11-139-8 provides that such municipalities may charge customers a reasonable compensation for the use and service of the combined systems. Additionally, the Illinois courts have held that when a municipality acts as proprietor, such as in the case of selling water to suburbs, the water rates must be reasonable.[123] Townships are granted authority to construct and operate a waterworks or wastewater utility under 60 Ill. Comp. Stat. Ann. § 1/205-10. With respect to rates, townships, whose utilities also are not regulated by the ICC, are only required to have rates that are sufficient to meet certain costs. They are not statutorily limited as to what type of rate structure they may use, nor are there any limiting terms that require that rates be nondiscriminatory or reasonable.[124]

However, the court in *Austin View Civic Ass'n v. City of Palos Heights* held that "[t]hough there is no statute that prevents municipal corporations that operate public utilities from acting in an unreasonably discriminatory manner, there is still the common law duty that prevents them from doing so."[125]

Additionally, in *Village of Niles v. City of Chicago*, a case challenging noncommission-regulated utility rates, the Illinois appellate court held that not all discrimination is prohibited. Rather, the court stated "when the reasonableness of the rates is challenged . . . the challengers must demonstrate convincingly that they are being charged a discriminatorily high rate or one that exceeds the cost of service to the point of unreasonableness."[126] In *Village of Niles*, the court specifically addressed a challenge to the city's provision of "religious, educational, and municipal purposes within the city" and found that the plaintiffs did not prove that these practices resulted in rates that were unreasonable or excessive to them.[127] The court further concluded that "if the rates charged to plaintiffs are not excessive, there is no unreasonable discrimination."[128]

Therefore, for noncommission-regulated utilities, the jurisdiction to set rates is broad but limited by the requirements that any rate structure used to implement a low-income CAP cannot result in rates that are "excessive" or "unreasonably discriminatory." Additionally, as is the case in other home rule states, limitations or enabling provisions in individual municipal charters could affect an entity's ability to implement such programs.

122. Ill. Const. art. 7, § 6. The Illinois Constitution provides that a county which has a chief executive officer elected by the electors of the county, and any municipality which has a population of more than 25,000 are home rule units, which may exercise any power and perform any function pertaining to its government and affairs. Many smaller communities, not subject to this provision, and not regulated by the Illinois Commerce Commission, also operate municipal-owned water and/or sewerage systems. Such communities set rates by vote of the elected body.
123. Vill. of Niles v. City of Chicago, 558 N.E.2d 1325, 1331 (Ill. App. Ct. 1980).
124. 60 Ill. Comp. Stat. Ann. § 1/205-70.
125. Austin View Civic Ass'n v. City of Palos Heights, 405 N.E.2d 1256, 1263 (Ill. App. Ct. 1980).
126. Vill. of Niles, 558 N.E.2d at 1341.
127. Id. at 1342. The court technically found that the plaintiffs did not have standing to challenge the free water, because "the city's cost-of service study allocated the costs of free water and unpaid water charges on delinquent accounts entirely to in-city users." However, the court expounded to assert that even if the plaintiffs had standing, they did not prove that the provision of the services resulted in excessive rates to them.
128. Id. at 1342