



## Kansas

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

Commission-regulated utilities	
Noncommission-regulated utilities	

### Commission-Regulated Utilities

The **Kansas Corporation Commission (KCC)** currently regulates the rates and service of private water companies in the state. KCC does not regulate government-owned or nonprofit water and wastewater utilities.<sup>142</sup> Pursuant to **Kan. Stat. Ann. § 66-1,230**, commission-regulated water utilities are considered “miscellaneous” utilities for the purposes of KCC regulation. **Kan. Stat. Ann. § 66-1,232** mandates that every miscellaneous utility shall be required to establish “just and reasonable” rates. Under the same statute, “every unjust or unreasonably discriminatory or unduly preferential classification, rate, joint rate, fare, toll, charge or exaction is prohibited, unlawful and void.”<sup>143</sup> **Kan. Stat. Ann. § 66-109** further prohibits commission-regulated utilities from charging “a greater or less compensation for the same class of service...than is specified in the printed schedules or classifications.” However, this statute also states that commission-regulated water utilities may charge different rates “by agreement with the customer, in cases of *charity, emergency, festivity, or public entertainment.*”<sup>144</sup>

Thus, this allowance of the use of different rates in cases of “charity” or “emergency” would appear to provide room for commission-regulated utilities to implement low-income customer assistance programs (CAPs) funded by rate revenues.<sup>145</sup>

### Noncommission-Regulated Utilities

Several state statutes authorize and regulate rate setting by government-owned<sup>146</sup> water and wastewater utilities. In general, these statutes provide authority to local governing bodies to establish rates and charges, stipulating only that rates be just, reasonable, and

142. Pursuant to **Kan. Stat. Ann. § 66-104e**, cities may relinquish their utility regulation authorities to the Kansas Corporation Commission (KCC).

143. **Kan. Stat. Ann. § 66-1,232**.

144. **Kan. Stat. Ann. § 66-109**.

145. However, programs incorporated into a commission-regulated utility’s rate schedule could be subject to KCC review and approval to ensure that discounts or benefits for low-income customers are not unreasonably discriminatory or unduly preferential.

146. Government-owned utilities include those owned by municipalities of different classes and counties.

<b>State Population (2016):</b>	2,907,289
<b>Median Annual Household Income (2015):</b>	\$52,205
<b>Poverty Rate (2015):</b>	13.6%
<b>Typical Annual Household Water and Wastewater Expenditures (2015):</b>	\$595
Kansas has 877 community water systems (CWS), of which 60 are privately owned and 844 serve populations of 10,000 or fewer people.	
Kansas has 624 publicly owned treatment works facilities (POTWs), of which 576 treat 1 MGD or less.	
75,242 people are served by privately owned CWS; 2,617,765 are served by government-owned CWS; and 2,226,186 are served by POTWs.	
<b>Estimated Long-Term Water and Wastewater Infrastructure Needs:</b>	\$7.9 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.*

sufficient to cover full cost of service. For example, with respect to municipal-owned combined water and wastewater utilities, **Kan. Stat. Ann. § 12-860** states that “the governing body of the city shall establish rates and charges for water and for the use of the sewage disposal system” and that “the amount of such rates and charges shall be reasonable and sufficient to cover the cost of operation, repairs, maintenance, extension and enlargement of the water and sewage system and improvements thereof...” Kansas cities and counties operate under home rule per **Kan. Const. art. XII, § 5**.<sup>147</sup> In 2004, the Kansas Supreme Court reaffirmed the broad home rule powers of cities, stating that such powers “shall be liberally construed to give cities the

147. Additionally, under **Kan. Stat. Ann. § 19-101** et. seq., cities and counties are permitted to operate pursuant to local charters.

largest possible measure of self-government.”<sup>148</sup>

Case law suggests that Kansas does not prohibit government-owned utilities from establishing different rate plans for different classes of users *as long as* there is a rational basis for such differences. In *Shawnee Hills Mobile Homes, Inc. v. Rural Water District*,<sup>149</sup> the Kansas Supreme Court recognized that “discrimination is a relative term and that absolute equality is seldom, if ever, fully realized” in holding that a higher per volume rate charged a mobile home park compared to individual homeowners was neither unreasonable nor discriminatory. However, dictum found in *Eudora Development Co. of Kansas v. City of Eudora*,<sup>150</sup> indicates that differences in rates could be subject to legal challenge if they are not based on differences in service. Specifically, the court found that “neither the common law nor the statutes forbid reasonable classification of rates or discrimination so long as it is not unjust, but is reasonable in view of substantial differences in services or in conditions of service.”<sup>151</sup>

Government-owned water utilities in Kansas appear to have sufficient local home rule authority to offer low-income CAPs funded by customer revenues. However, differences in rates may be subject to legal challenge if they are not based on differences in service. In addition, in Kansas, government-owned utilities are subject to federal and state equal protection and public purpose requirements.<sup>152</sup> To meet equal protection requirements, rate classifications cannot be arbitrary and capricious, and differences must be reasonably related to a legitimate governmental interest.<sup>153</sup> To meet public purpose requirements, appropriations of public money for private individuals must be for a public purpose and promote the public welfare.<sup>154</sup>

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148. *State ex. rel. Kline v. Unified Bd. of Comm’rs of Unified Gov’t of Wyandotte County/Kansas City*, 85 P.3d 1237, 1243 (Kan. 2004).

149. *Shawnee Hills Mobile Homes, Inc. v. Rural Water District*, 537 P.2d 210, 212 (Kan. 1975).

150. *Eudora Dev. Co. of Kansas v. City of Eudora*, 78 P.3d 437, 438 (Kan. 2003).

“Water rates set by a municipality are presumed to be valid and reasonable until the contrary has been established; burden of overcoming the presumption of validity and reasonableness rests with the challenging party.” *Id.*

151. *Id.*

152. As an example, Johnson County Wastewater works with Johnson County Department of Human Services to offer bill assistance to low-income customers to promote public health and safety. The Johnson County Utility Assistance program is funded by the city and county, private donations, and utility funds.

153. *Eudora Dev. Co. of Kansas*, 78 P.3d at 440-41.

154. *Duckworth v. City of Kansas City*, 758 P.2d 201, 201 (Kan. 1988).