



Nebraska

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

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| Commission-regulated utilities | |
| Noncommission-regulated utilities | |

Commission-Regulated Utilities

The **Nebraska Public Service Commission (NPSC)** regulates private water and wastewater companies in Nebraska.²¹⁷ NPSC does not regulate government-owned utilities.

Neb. Rev. Stat. § 75-1001 through **§ 75-1012** provides the general authority for the NPSC to regulate the rates and charges of private water and wastewater companies. However, these statutes provide little guidance with respect to allowable rates for such utilities. **Neb. Rev. Stat. § 75-1009** simply states that “no rate or charge determined by the commission pursuant to the Water Service Regulation Act may yield more than a fair return on the fair value of property used and useful in rendering service to the public.”²¹⁸ State statutes neither expressly prohibit nor expressly authorize the implementation of low-income customer assistance programs (CAPs) funded by rate revenues by commission-regulated water and wastewater utilities. While such programs may, thus, be possible, legal challenges could potentially arise from a lack of express authority, or from court interpretation of the aforementioned provision.

Noncommission-Regulated Utilities

Most of the cities and all counties in Nebraska operate pursuant to general law, meaning their powers are limited to those expressly authorized by the state legislature. Separate statutes address rate setting by water and wastewater utilities owned and operated by government entities, including municipalities of different classes and counties.²¹⁹ Specifically, **Neb. Rev. Stat. § 16-682** grants first class cities²²⁰ the right to charge rates for water services which “the city council shall by ordinance deem just or expedient.” For metropolitan class

217. See **Neb. Rev. Stat. § 75-1002**.

218. With respect to other types of commission-regulated utilities, such as telecommunications utilities, state statutes require that the rates be “reasonable” and that utilities not “grant undue preference or advantage to any particular person.” **Neb. Rev. Stat. § 75-1009**.

219. See **Neb. Rev. Stat. § 14-2114, § 14-365.10, § 15-223**; see also **Neb. Rev. Stat. § 16-682, § 16-694, § 17-538**.

220. First class cities have between 5,000 and 100,000 inhabitants.

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| State Population (2016): | 1,907,116 |
| Median Annual Household Income (2015): | \$52,997 |
| Poverty Rate (2015): | 12.7% |
| Typical Annual Household Water and Wastewater Expenditures (2015): | \$476 |
| Nebraska has 601 community water systems (CWS), of which 73 are privately owned and 587 serve populations of 10,000 or fewer people. | |
| Nebraska has 467 publicly owned treatment works facilities (POTWs), of which 452 treat 1 MGD or less. | |
| 18,107 people are served by privately owned CWS; 1,584,553 are served by government-owned CWS; and 1,321,547 are served by POTWs. | |
| Estimated Long-Term Water and Wastewater Infrastructure Needs: | \$4.1 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.

cities, **Neb. Rev. Stat. § 14-2114** provides the board of directors with “power and authority to determine and fix all water . . . rates and to determine what shall be a reasonable rate.”

Regarding wastewater services, **Neb. Rev. Stat. § 16-694** stipulates that the mayor and city council of first class cities may establish, by ordinance, rates for wastewater service that are “fair and reasonable” but further requires that any charges collected “shall be placed in a separate fund and used exclusively for the purpose of maintenance and repairs of any sewers in such city.” Similarly, **Neb. Rev. Stat. § 14-365.10** requires that wastewater service charge revenues in metropoli-

tan class cities be used for designated purposes²²¹ and further requires that “any funds raised from this charge shall be placed in a separate fund and not be used for any other purpose or diverted to any other fund.”

In *Erickson v. Metropolitan Utilities District*,²²² the Nebraska Supreme Court found that a Metropolitan Utilities District of Omaha surcharge to customers who owned a nonconserving air conditioning unit was unreasonable, unjust, and discriminatory, largely because it was not based on differences in the cost of service between customers who did and did not own these units. The court acknowledged that although state statutes provide “the board of directors of the district with the power and authority to determine what shall be a reasonable water rate, this power and authority is not without restrictions.”²²³ In its decision, the court cited general rules which state that “charges must be equal to all for the same service under like circumstances” and that a “public service corporation is impressed with the obligation of furnishing its service to each patron at the same price it makes to every other patron for the same or substantially the same or similar service.”²²⁴

Thus, for the majority of cities and counties operating under general law, the power and authority to establish their own rates is “not without restrictions” and the greatest potential for legal challenges would likely arise from the case law articulated above, which requires that charges must be equal for the “same service under like circumstances.” Additionally, it is unclear how the provisions limiting the uses of wastewater funds would be interpreted. The two largest cities in Nebraska, Omaha and Lincoln, operate pursuant to a home rule charter and, therefore, may have a greater authority to implement low-income CAPs funded by rate revenues under their local laws.²²⁵

221. Specifically, wastewater rates must “be used for maintenance or operation of the existing system, payment of principal and interest on bonds issued, or to create a reserve fund for the payment of future maintenance, operation, or construction of a new sewer system.” *Neb. Rev. Stat. § 14-365.10*.

222. *Erickson v. Metro. Utils. Dist.*, 107 N.W.2d 324, 332-33 (Neb. 1961).

223. *Id.* at 331.

224. *Id.* (citing 12 McQuillin, *Municipal Corporations* (3d Ed.), 299).

225. Additionally, the U.S. EPA’s 2016 compendium [Drinking Water and Wastewater Utility Customer Assistance Programs](#) outlines three existing affordability programs in Nebraska including two temporary assistance programs (one offered by the City of Fremont and the other offered by Metropolitan Utilities District (MUD)) and a bill discount program (also offered by MUD). Such programs, however, are not funded by rate revenues.