



South Dakota

South Dakota is one of only six³³⁷ states in which private water and wastewater companies are not regulated by a state utility commission. Although private water and wastewater companies do operate in the state, they are generally very small and are not regulated by state law with respect to rates.

Government-owned water and wastewater utilities, including municipal systems and rural water districts, provide water and wastewater services to the majority of South Dakota’s residents.

With respect to government-owned utilities, [S.D. Codified Laws § 9-39-23](#) allows municipal utility boards to “fix reasonable rates, fees, and charges” for the services they provide.³³⁸ [S.D. Codified Laws § 9-40-15.1](#) further requires that the governing body of each municipal water or wastewater utility “shall establish and collect equitable rates, charges, or rentals for all services and benefits furnished.”

Beyond this requirement, state statutes provide additional regulations for municipal wastewater districts. [S.D. Codified Laws § 9-48-26](#) authorizes municipalities to establish charges for wastewater services by ordinance or resolution, and [S.D. Codified Laws § 9-48-27](#) stipulates that “such charges shall be as nearly as may be in the judgment of the governing body equitable and in proportion to the services rendered.” Additionally, [S.D. Codified Laws § 9-48-29](#) stipulates that collected wastewater fees shall be used for “paying the cost of financing the operation, maintenance or construction of the sewer utilities.”

With respect to other types of government-owned utilities, pursuant to [S.D. Codified Laws § 7-25A-7\(21\)](#), counties have the authority to establish improvement districts to acquire, construct, operate, and maintain water and wastewater utilities. Further, [S.D. Codified Laws § 7-25A-7\(15\)](#) authorizes the governing board of districts to establish user charges or fees necessary for the conduct of district activities and services, and [S.D. Codified Laws § 7-25A-38](#) stipulates that such “rates,

Commission-regulated utilities	N/A
Noncommission-regulated utilities	

State Population (2016):	865,454
Median Annual Household Income (2015):	\$50,957
Poverty Rate (2015):	14.1%
Typical Annual Household Water and Wastewater Expenditures:	N/R
Estimated Long-Term Water and Wastewater Infrastructure Needs:	\$0.9 billion

South Dakota has 454 community water systems (CWS), of which 215 are privately owned and 440 serve populations of 10,000 or fewer people.

South Dakota has 29 publicly owned treatment works facilities (POTWs), of which 26 treat 1 MGD or less.

172,601 people are served by privately owned CWS; 577,176 are served by government-owned CWS; and 215,655 are served by POTWs.

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.

fees, rentals, and charges shall be just and equitable and uniform for users of the same class.”³³⁹

There are, thus, no regulations in South Dakota that *explicitly* prohibit or authorize low-income customer assistance programs (CAPs) funded by customer revenues. However, if municipalities attempt to implement such programs for wastewater services, they may be subject to legal challenge based on a determination of whether or not the rates are “equitable and in propor-

337. The others are Georgia, Michigan, Minnesota, North Dakota, and the District of Columbia.

338. Pursuant to the same statute, “the board may adopt, by resolution, reasonable rules and regulations for utility services supplied by the municipally owned public utilities under its control and management.” [S.D. Codified Laws § 9-39-23](#).

339. This statute goes on to state that all rates and charges shall produce revenues, together with any other assessments, taxes, revenues, or funds available or pledged for such purpose, at least sufficient to cover operation and maintenance expenses, pay all bonds and interest charges, and provide for any other funds which may be required under the resolution or resolutions authorizing the issuance of bonds. However, it does not strictly limit the use of revenues for these purposes. [S.D. Codified Laws § 7-25A-38](#).

tion to the services rendered.”³⁴⁰ Additionally, county-owned water and wastewater utilities may be limited in their ability to provide rate-funded low-income CAPs by the requirement that the rates and charges of these entities be “equitable and uniform for users of the same class.”

340. In addition, 10 of South Dakota’s 310 cities, including 5 of the 10 largest cities, operate pursuant to home rule charter. These cities likely have even more authority to establish low-income customer assistance programs.