



## North Carolina

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

### Commission-Regulated Utilities

The **North Carolina Utilities Commission** (NCUC) regulates rates set by private water and wastewater companies.<sup>266</sup> The NCUC does not regulate government-owned water or wastewater utilities.<sup>267</sup>

Under **N.C. Gen. Stat. § 62-130**, the NCUC shall “make, fix, establish, or allow just and reasonable rates” for commission-regulated utilities. Regulation by the NCUC is done on an individual rate case basis.<sup>268</sup> **N.C. Gen. Stat. § 62-140** provides that no commission-regulated utility shall “make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage” and prohibits commission-regulated utilities from utilizing “any unreasonable difference as to rates or services either as between localities or as between classes of service.”

Additionally, commission-regulated utilities are not allowed to charge any person more or less than what the NCUC sets for any service, nor are customers permitted to receive service for a rate greater or less than what the NCUC has set.<sup>269</sup> Under **N.C. Gen. Stat. § 62-132**, rates set by the NCUC are deemed “just and reasonable,” and any rate charged by a commission-regulated utility that differs from the NCUC rates shall be deemed “unjust and unreasonable.”

In sum, commission-regulated utilities are not expressly prohibited from implementing low-income customer assistance programs (CAPs) funded by rate revenues; however, any such program would have to be approved by the NCUC. Additionally, the language prohibiting commission-regulated utilities from charging greater or less than commission approve rates, or from granting any preferences or advantages to one customer over another customer, likely holds the

Commission-regulated utilities



Noncommission-regulated utilities



<b>State Population (2016):</b>	10,146,788
<b>Median Annual Household Income (2015):</b>	\$46,868
<b>Poverty Rate (2015):</b>	17.4%
<b>Typical Annual Household Water and Wastewater Expenditures (2017):</b>	\$914
North Carolina has 2,010 community water systems (CWS), of which 1,458 are privately owned and 1,875 serve populations of 10,000 or fewer people.	
North Carolina has 318 publicly owned treatment works facilities (POTWs), of which 213 treat 1 MGD or less.	
855,740 people are served by privately owned CWS; 7,164,754 are served by government-owned CWS; and 4,409,160 are served by POTWs.	
<b>Estimated Long-Term Water and Wastewater Infrastructure Needs:</b>	\$15.1 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.*

greatest potential for legal challenges.

### Noncommission-Regulated Utilities

Under **N.C. Gen. Stat. § 160A-312(a)** and **§ 153A-275**, cities and counties are authorized to own and operate “public enterprises,” which are defined to include water and wastewater utilities.<sup>270</sup> Further, **N.C. Gen. Stat. § 160A-314** and **§ 153A-277** provide that cities and counties may establish and revise rates for public enterprise services, which “may vary according to

266. **N.C. Gen. Stat. § 62-130**.

267. The NCUC has jurisdiction over any utility furnishing water to the public for compensation or operating a public wastewater utility for compensation. See **N.C. Gen. Stat. § 62-3(23)d**, **§ 62-30**, **§ 62-31**, **§ 62-32**.

268. “Rate Consolidation,” National Association of Water Companies.

269. **N.C. Gen. Stat. § 62-139**.

270. **N.C. Gen. Stat. § 160A-311**.

classes or service.”<sup>271</sup> In *City of Asheville v. State*,<sup>272</sup> the court held that, under the broad rate-setting authority found in N.C. Gen. Stat. § 160A-314, “the setting of . . . rates and charges [for water and sewer services] is a matter for the judgment and discretion of municipal authorities, not to be invalidated by the courts *absent some showing of arbitrary or discriminatory action.*” However, in *Town of Taylorsville v. Modern Cleaners*,<sup>273</sup> the court held that “[a] public utility, whether publicly or privately owned, may not discriminate in the distribution of services or establishment of rates.” Additionally, the court elaborated that the “[s]tatutory authority of the city to fix and enforce rates for water and sewer services and to classify its customers is not a license to discriminate among customers of essentially the same character and services; rather, the statute must be read as a codification of the general rule that a city has the right to adopt reasonable classifications based on factors such as cost of service.”<sup>274</sup>

Thus, although there appears to be broad rate-setting authority granted to government entities owning and operating water and wastewater authorities, the aforementioned case law could be interpreted as requiring that rates must be based on cost of service characteristics. For government-owned utilities, this possible cost of service limitation likely creates the greatest potential for legal challenges to low-income CAPs funded by rate revenues. Several publications by the state’s leading local government finance legal academic expert reflect this view, advising local governments that using rate revenues to fund these programs is not allowed.<sup>275</sup>

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271. For counties, the phrasing is slightly different and provides that rates may vary for the same class in different areas of the county or may vary according to classes.

272. *City of Asheville v. State*, 665 S.E.2d 103, 123 (N.C. Ct. App. 2008) (citing *Town of Spring Hope v. Bissette*, 280 S.E.2d 490 (N.C. 1981)).

273. *Town of Taylorsville v. Modern Cleaners*, 237 S.E.2d 484, 486 (N.C. Ct. App. 1977).

274. *Id.*

275. See generally Kara A. Millonzi, *A Guide to Billing and Collecting Public Enterprise Utility Fees for Water, Wastewater, and Solid Waste Services*, UNC School of Government (2008), 89 (concluding that government-owned utilities cannot reduce utility fees directly).