Alabama

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

Commission-Regulated Utilities

The Alabama Public Service Commission (APSC) regulates private water and wastewater companies in Alabama. Under Ala. Code § 37-1-34, the APSC does not have the authority to regulate government-owned utilities. Furthermore, per Ala. Code § 37-4-2.1, utilities serving less than 1,000 customers and purchasing water from a noncommission-regulated utility can choose to be exempt from APSC regulation and instead fall under that utility’s municipal authority.

Ala. Code § 37-1-81 states that commission-regulated utilities need to file rate schedules with the APSC before changing rates. In addition, Ala. Code § 37-1-80 states that commission-regulated utilities must charge “reasonable and just” rates. Alabama follows the “rate base theory” when determining what is just and reasonable, with the rate base (to determine the fair rate of return) being “the valuation placed on the utility property.” Ala. Code § 37-1-124 considers rates set by the APSC to be prima facie just and reasonable. Furthermore, when the APSC finds rates to be unjust and unreasonable, Ala. Code § 37-1-97 gives it the power to adjust them to be just and reasonable.

Thus, commission-regulated utilities would likely need specific approval, in the form of an APSC order, to charge rates to be used to fund a low-income customer assistance program (CAP).

Noncommission-Regulated Utilities

Municipalities, including cities and towns, have the right to operate and maintain rates for water utilities. They are not subject to APSC regulation and thus can set their own water and wastewater rates. For wastewater rates, under Ala. Code § 11-50-121, “all such charges shall be uniform for the same type, class, and amount of use or service by or from the sewer system.”

This code also lists factors that can be used to set rates, but does not mention socio-economic factors.

21. The utility must also be in a Class 8 municipality.
23. Gen. Tel. Co. of S.E. v. Ala. Pub. Serv. Comm’n, 424 So. 2d 1288, 1289–90 (Ala. 1982) (“[T]he Court shall set aside the order only if it finds: (1) The Commission erred to the prejudice of the appellant’s substantial rights in its application of law; or (2) the order, decision, or award was procured by fraud or based on facts contrary to the substantial weight of the evidence.”).
Based on the limits laid out above, non-commission-regulated water utilities appear to have very broad rate-setting authority that could be used to implement low-income CAPs funded by rate revenues. On the other hand, because of the aforementioned specific statutory limitation, wastewater utilities might face legal challenges if using rate revenues to fund low-income CAPs, but such programs would face fewer obstacles than programs using income-indexed rates or discounts.