



Alabama

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

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

Commission-Regulated Utilities

The **Alabama Public Service Commission (APSC)** regulates private water and wastewater companies in Alabama.²⁰ 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 utility²¹ 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.”²² **Ala. Code § 37-1-124** considers rates set by the APSC to be *prima facie* just and reasonable.²³ 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.²⁴ They are not subject to APSC regulation and thus can set their own water and wastewater rates.²⁵ For waste-

20. **Ala. Code § 37-1-32**; see also **Ala. Code § 37-4-1**.
 21. The utility must also be in a Class 8 municipality.
 22. *State v. S. Bell Tel. & Tel. Co.*, 148 So. 2d 229, 231 (Ala. 1962).
 23. *Gen. Tel. Co. of S.E. v. Ala. Pub. Serv. Comm’n*, 424 So. 2d 1288, 1289–90 (Ala. 1982) (“[The] 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.”).
 24. **Ala. Code § 11-50-1, § 11-50-5**.
 25. **Ala. Code § 37-1-34**.

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| State Population (2016): | 4,863,300 |
| Median Annual Household Income (2015): | \$43,623 |
| Poverty Rate (2015): | 18.8% |
| Typical Annual Household Water and Wastewater Expenditures (2016): | \$775 |
| Alabama has 516 community water systems (CWS), of which 17 are privately owned and 406 serve populations of 10,000 or fewer people. | |
| Alabama has 291 publicly owned treatment works facilities (POTWs), of which 204 treat 1 MGD or less. | |
| 58,937 people are served by privately owned CWS; 5,548,854 are served by government-owned CWS; and 2,420,993 are served by POTWs. | |
| Estimated Long-Term Water and Wastewater Infrastructure Needs: | \$11.0 billion |
| <i>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.</i> | |

water 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.²⁶

26. Factors allowed for consideration include:
 (1) The quantity of water used upon the premises served by the sewer system; (2) The number and kind of water outlets upon or in connection with such premises; (3) The number and kind of plumbing facilities or sewer fixtures on or in connection with such premises; (4) The number of persons residing or working in or otherwise connected with or using such premises; (5) The type or character of such premises; (6) The capacity of the improvements on or connected with such premises; and, (7) Any other factors determining the type, class and amount of the use of or service by or from the sewer system; provided, however, that if any such charge shall be measured by the quantity of water used, the municipality shall make appropriate provision for adjustment of charges on account of consumption of water which does not enter the sewer system.

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.