Georgia

Georgia is one of only six states in which private water and wastewater companies are not regulated by a state utility commission. Additionally, for government-owned utilities, there are few statutory or constitutional limits on rate-setting.

Georgia is a home rule state, and its constitution grants specific “supplementary powers” to counties and municipalities. Specifically, under Ga. Const. art. IX, § II, para. III(a)(6)-(7), counties and municipalities are granted the power to provide water and wastewater services.

While the General Assembly may enact general laws on a local government’s supplementary powers, and can regulate, restrict, or limit the exercise of such powers, the General Assembly may not withdraw any such powers from the local entities.

Therefore, the statutes and constitution provide broad rate-setting authority and contain no explicit prohibitions for a local entity’s ability to utilize different classes of rates. Georgia courts have addressed the issue of the permissibility of a utility setting different rates for residential customers, based on whether customers had a meter, or not. In Jarrett v. City of Boston, the Supreme Court of Georgia found that: “[w]here a municipality, as here, owns and operates a waterworks system, it is fundamental that its rates for water must be uniform, in the sense that they must not be unreasonably or unjustly discriminatory as between consumers; but it is not of itself unreasonable or unjust discrimination to furnish water to some consumers at flat rates and to others of the same class at meter rates, even though the rate by the gallon actually used is ordinarily lower to the former than to the latter.”

In Jarrett, because the basis for the different rates was service related, the Court held “a difference in con-

90. The others are Michigan, Minnesota, North Dakota, South Dakota, and the District of Columbia.
91. There are a couple narrow exceptions to this. See e.g., Georgia Service Delivery Act, O.C.G.A. Sec. 36-70-24 (2). (Related to rate differentials between customers inside a jurisdiction versus those outside the jurisdiction); another exception is the Metropolitan North Georgia Water Planning District and regional water conservation plan mandating the use of conservation rate structures).
94. Jarrett v. City of Boston, 74 S.E.2d 549, 531 (Ga. 1953).
95. Jarrett, 74 S.E.2d at 531.
older with a maximum household income of $25,000 or less. This provision explicitly reduces water and wastewater rates for low-income senior citizens, and it gives broad discretion for the city legislative body to set water and wastewater rates without many predetermined parameters. City and county ordinances may vary from jurisdiction to jurisdiction and, therefore, a government-owned utility or private water company interested in implementing a low-income CAP should consult the laws governing the region within which the services would be provided.

One source of concern for government-owned water and wastewater utilities seeking to use rate revenues to fund low-income CAPs is the “Gratuities Clause” in the state constitution. Paragraph VIII of the Georgia Constitution states that “[t]he General Assembly shall not authorize any county, municipality, or other political subdivision of this state, through taxation, contribution, or otherwise, to appropriate money for or to lend its credit to any person or to any nonpublic corporation or association except for purely charitable purposes.” Additionally, a gratuity is defined as “something given freely or without recompense; a gift.” The argument that customer assistance may be a gratuity or an unconstitutional donation would be most relevant if rate-payer revenue is being used to fund an assistance program.

In terms of private water and wastewater companies, the main governance appears to come from the contracts developed between these private entities and the local governments where they operate. For such private companies, no express prohibition exists against implementing CAPs funded by rate revenues; however, these CAPs could be subject to a legal challenge on the basis of reasonableness.