



## Georgia

Georgia is one of only six<sup>90</sup> states in which private water and wastewater companies are not regulated by a state utility commission.<sup>91</sup> Additionally, for government-owned utilities, there are few statutory or constitutional limits on rate-setting.

Georgia is a home rule state,<sup>92</sup> 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.<sup>93</sup>

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.”<sup>94</sup>

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

Commission-regulated utilities	N/A
Noncommission-regulated utilities	

<b>State Population (2016):</b>	10,310,371
<b>Median Annual Household Income (2015):</b>	\$49,620
<b>Poverty Rate (2015):</b>	18.4%
<b>Typical Annual Household Water and Wastewater Expenditures (2016):</b>	\$796
Georgia has 1,752 community water systems (CWS), of which 1,131 are privately owned and 1,639 serve populations of 10,000 or fewer people.	
Georgia has 334 publicly owned treatment works facilities (POTWs), of which 242 treat 1 MGD or less.	
259,406 people are served by privately owned CWS; 8,440,824 are served by government-owned CWS; and 5,626,983 are served by POTWs.	
<b>Estimated Long-Term Water and Wastewater Infrastructure Needs:</b>	\$12.0 billion
<i>Sources: U.S. Census Bureau, 2016 Population Estimate &amp; 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>	

ditions of service justifies a difference in charge.”<sup>95</sup> Therefore, the *Jarrett* case would be distinguishable from a case based on a legal challenge to income-based rate differences.

Because Georgia is a strong home rule state, municipal charters and local ordinances affect a local entity’s ability to implement low-income customer assistance programs (CAPs). As an example, the City of Atlanta’s Code of Ordinances has express provisions that provide that the rates and charges for city water service and city wastewater service shall be as established by the city, and that water and wastewater rates are waived by 30 percent for domestic customers aged 65 and

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).  
 92. [Ga. Const. art. IX, § II, para. I\(a\)](#) (granting counties home rule power), [Ga. Const. art. IX, § II, para. II](#) (granting municipalities home rule power).  
 93. [Ga. Const. art. IX, § II, para. III\(c\)](#).  
 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.<sup>96</sup>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.”<sup>97</sup> 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.

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96. Atlanta City Code § 154-111, § 154-112, § 154-276, & § 154-277.

97. *Garden Club of Georgia v. Shackelford*, 463 S.E.2d 470, 471 (Ga. 1995).