





# Virginia

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

Commission-regulated utilities	
Noncommission-regulated utilities	

## Commission-Regulated Utilities

The [Virginia State Corporation Commission \(SCC\)](#), established by the Virginia Constitution, regulates private water and wastewater companies.<sup>362</sup> The SCC does not regulate government-owned utilities.<sup>363</sup>

Under [Va. Code Ann. § 12.1-12](#), the SCC is charged with the duty of regulating the rates, charges, services, and facilities of all private water and wastewater companies.<sup>364</sup> Additionally, [Va. Code Ann. § 56-234](#) requires every commission-regulated utility to furnish reasonably adequate service and facilities at “reasonable and just” rates, further requiring such utilities to “charge uniformly all persons, corporations or municipal corporations using service under like conditions.”<sup>365</sup> If, after an investigation, the SCC determines that the rates of any commission-regulated utility operating in the commonwealth are found to be “unjust, unreasonable, insufficient, or unjustly discriminatory” or to be “preferential or otherwise in violation of any provisions of law,” under [Va. Code Ann. § 56-235](#), the SCC shall have the power to fix and order “just and reasonable” rates.<sup>366</sup>

Thus, commission-regulated water and wastewater utilities seeking to implement low-income customer assistance programs (CAPs) funded by rate revenues could face legal challenges under the requirement that any rate classifications be uniform, or if the SCC determines that rates for low-income customers are preferential.

362. Va. Const. art. IX, § 1; Va. Code Ann. § 56-35.

363. Va. Code Ann. § 56-1.

364. See [Po River Water and Sewer Co. v. Indian Acres Club of Thornburg, Inc.](#), 495 S.E.2d 478, 481 (Va. 1998) (holding that the state constitution and Virginia code give the Virginia State Corporation Commission (SCC) a constitutional and statutory duty to fix just and reasonable public utility rates).

365. An exception is made in [Va. Code Ann. § 56-234](#) for a public utility implementing a voluntary rate or rate design test or experiment, if it is approved by the SCC and if it is necessary to protect the public interest.

366. See [Roanoke Gas Co. v. State Corp. Comm'n](#), 300 S.E.2d 785, 786-87 (Va. 1983) (holding that the question of whether adjustments should be made in a commission-regulated utility’s rates is within the broad discretion of the SCC).

<b>State Population (2016):</b>	8,411,808
<b>Median Annual Household Income (2015):</b>	\$65,015
<b>Poverty Rate (2015):</b>	11.5%
<b>Typical Annual Household Water and Wastewater Expenditures (2015):</b>	\$818
Virginia has 1,127 community water systems (CWS), of which 590 are privately owned and 1,057 serve populations of 10,000 or fewer people.	
Virginia has 232 publicly owned treatment works facilities (POTWs), of which 164 treat 1 MGD or less.	
462,707 people are served by privately owned CWS; 6,490,561 are served by government-owned CWS; and 5,449,344 are served by POTWs.	
<b>Estimated Long-Term Water and Wastewater Infrastructure Needs:</b>	\$13.1 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.

## Noncommission-Regulated Utilities

Localities<sup>367</sup> in Virginia operate under Dillon’s Rule<sup>368</sup> Localities have jurisdiction to operate water supplies and water production, as well as preparation, distribution, and transmission systems and facilities, under [Va. Code Ann. § 15.2-2143](#), which requires fees and charges to be “fair and reasonable.” Additionally, [Va. Code Ann. § 15.2-2119](#) states that fees and charges for water and wastewater services provided by localities

367. Locality is defined as a county, city, or town as the context may require. Additionally, municipality and municipal corporation are defined to relate only to cities and towns. [Va. Code Ann. § 15.2-102](#).

368. See [City of Richmond v. Confre Club of Richmond, Virginia, Inc.](#), 387 S.E.2d 471, 473 (Va. 1990) (holding that in Virginia, local governments “possess and can exercise only those powers expressly granted by General Assembly, those necessarily or fairly implied therefrom, and those that are essential and indispensable”).

shall be “practicable and equitable.”

In *Town of Leesburg v. Giordano*,<sup>369</sup> the Virginia Supreme Court addressed the process for challenging the rates imposed by a locality, holding that “setting rates and fees for [wastewater] and water services is a nondelegable legislative function” and that an ordinance establishing such rates is afforded a presumption of reasonableness. The courts have further held that legislative action is “reasonable” if the matter is “fairly debatable,” which is achieved when “the evidence offered in support of the opposing views would lead objective and reasonable persons to reach different conclusions.”<sup>370</sup> Additionally, the burden of proof for a locality proving that its rate legislation is fairly debatable is less than a preponderance of the evidence.<sup>371</sup> In *Town of Leesburg*, the town of Leesburg was charging a 100 percent surcharge to its out-of-town customers, which was challenged as unreasonable. The town presented bare bones testimony, which the court found sufficient to meet the low threshold of being “fairly debatable,” and the rate structure was upheld.<sup>372</sup>

Thus, while noncommission-regulated utilities have broad authority to set rates for water and wastewater services, such rates must be fair, reasonable, practicable, and equitable. Additionally, language found in the Virginia Water and Waste Authorities Act suggests there are strict limits on what factors can be used to set rates, at least in the case of authorities.<sup>373</sup>

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369. *Town of Leesburg v. Giordano*, 701 S.E.2d 783, 787-88 (Va. 2010).

370. *Id.* at 788.

371. *Id.*

372. *Id.* at 790-91.

373. Despite the seemingly broad rate setting authority for localities (compared to other states), high-profile customer assistance programs, such as Richmond's [MetroCare Program](#), are funded by general fund appropriations rather than direct rate revenues, providing the city with additional protection.