



Michigan

Commission-regulated utilities	N/A
Noncommission-regulated utilities	

Michigan is one of only six¹⁸⁶ states in which private water and wastewater companies are not regulated by a state utility commission.¹⁸⁷ Cities and villages within Michigan are granted authority to acquire, own, and operate their own water and wastewater facilities under *Mich. Const. art. VII, § 24*. However, the state constitution does not refer to rate-setting powers or limitations of water and wastewater utilities. The Michigan statutes include provisions that affect rate setting by water and wastewater utilities. First, *Mich. Comp. Laws § 486.315* prohibits utilities from establishing rates that are “undue or excessive.” Additionally, *Mich. Comp. Laws § 123.141(2)* provides that rates charged for water furnished *outside* of a local government’s territorial limits must be based on the actual cost of service. No similar provision applies to water or wastewater services furnished *within* territorial boundaries.

Therefore, Michigan’s statutes and constitution appear to provide broad rate-setting authority with few explicit limitations on a local entity’s ability to utilize different rate structures. However, *Mich. Const. art. IX, § 31*, referred to as the “Headlee Amendment,” prohibits local governments from increasing taxes without voter approval. Although this amendment on its own might not raise a red flag for a utility seeking to utilize rate revenues to fund a low-income customer assistance program (CAP), the Michigan Supreme Court, in *Bolt v. City of Lansing*,¹⁸⁸ ruled that a stormwater charge, which exceeded the actual cost of service, was an invalid tax. In reaching its holding, the court in *Bolt* laid out a three-prong test to be used to differentiate between a tax and a fee. First, the court held that a user fee is meant for regulation, whereas a tax is meant to generate revenues.¹⁸⁹ Second, the court continued, a user fee must be proportionate to the necessary cost of service.¹⁹⁰ Finally, the court held that unlike taxes, fees should be voluntary, meaning that people have the right to refuse use of the commodity.¹⁹¹

186. The others are Georgia, Minnesota, North Dakota, South Dakota, and the District of Columbia.

187. Although water and wastewater utilities are not regulated with respect to rate setting, the Michigan Department of Environmental Quality regulates such utilities for compliance with water quality standards in Michigan.

188. *Bolt v. City of Lansing*, 587 N.W.2d 264, 279-81 (Mich. 1998).

189. *Id.* at 267-68 (citing *Merrelli v. St Clair Shores*, 355 Mich. 575, 583-584 (1959)).

190. *Id.* at 269 (citing *Vernor v. Secretary of State*, 179 Mich. 157, 167 (1914)).

191. *Id.* at 269-271 (citing *Jones v. Detroit Water Comm’rs*, 34 Mich. 273, 275 (1876)).

State Population (2016):	9,928,300
Median Annual Household Income (2015):	\$49,576
Poverty Rate (2015):	16.7%
Typical Annual Household Water and Wastewater Expenditures (2015):	\$911
Michigan has 1,385 community water systems (CWS), of which 648 are privately owned and 1,248 serve populations of 10,000 or fewer people.	
Michigan has 393 publicly owned treatment works facilities (POTWs), of which 317 treat 1 MGD or less.	
163,026 people are served by privately owned CWS; 7,230,623 are served by government-owned CWS; and 6,862,030 are served by POTWs.	
Estimated Long-Term Water and Wastewater Infrastructure Needs:	\$15.6 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>	

As is reflected in the discussion above, the Headlee Amendment, and the Michigan Supreme Court’s interpretation of it, suggest that those opposed to affordability programs could claim that setting rates in order to generate revenues, which would then be used to subsidize service for low-income customers, is an invalid tax according to *Bolt’s* three-prong test, unless voters approve of such a rate-setting program. To avoid this legal uncertainty, the Detroit Water and Sewerage Department has come up with a different source of revenue to fund its CAPs for its low-income customers. Such programs and Detroit’s system of funding them is explained in more detail in the accompanying case study.

When it comes to affordability issues in the context of

water and wastewater, Michigan is a unique state—not only because water and wastewater utilities are not regulated by a state utility commission, but also because it is the home of one of the nation’s poorest large cities, Detroit, which faces tremendous water affordability concerns, as well as the home of Flint, a low-income community which has suffered a devastating drinking water contamination crisis.

Because the Headlee Amendment does not pertain to private water and wastewater utilities, such utilities are more likely to be able to use customer rate revenues to implement low-income CAPs.