Note: This is an excerpt from a larger report, “Navigating Legal Pathways to Rate-Funded Customer Assistance Programs: A Guide for Water and Wastewater Utilities.” To access the whole report, go to https://cse.sog.unc.edu/pathways-to-rate-funded-customer-assistance.

Michigan

Michigan is one of only six states in which private water and wastewater companies are not regulated by a state utility commission. 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, 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. Second, the court continued, a user fee must be proportionate to the necessary cost of service. Finally, the court held that unlike taxes, fees should be voluntary, meaning that people have the right to refuse use of the commodity.

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.
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)).
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.