

---

## **Coates' Canons Blog: Utility Rate Discounts – Can a local government cut its utility customers a break?**

By Kara Millonzi

Article: <https://canons.sog.unc.edu/utility-rate-discounts-can-a-local-government-cut-its-utility-customers-a-break/>

This entry was posted on August 17, 2009 and is filed under Finance & Tax, Public Authority Finance, Public Enterprise / Utility Finance, Solid Waste Finance

---

This is perhaps my most frequently asked question, and it comes up in a variety of contexts. Some local governments wish to provide discounted utility services (particularly water, wastewater, and solid waste) to certain targeted populations, such as low income customers, senior citizens, and veterans. Other units seek to charge lower rates to religious, educational or other non-profit entities. Still others hope to use discounted utility rates as among their economic development incentives to attract new industries. Whatever the reason for wanting to provide the utility rate discounts, the answer is always the same—a local unit *may not* discount its utility rates based solely on the *status* of a customer or customer class. But what do I mean by status? And are there any exceptions or ways to circumvent this restriction? Read on to find out...

### ***Valid Utility Rate Customer Classifications***

North Carolina General Statutes §§ 160A-314 and 153A-277 expressly authorize municipalities and counties, respectively, to charge different rates for different “classes of service,” but the statutes provide little clear guidance on the differentiating factors needed to justify separate classifications. Under the common law, different rate classifications may reflect differences in the costs of providing services to certain customer groups. Additionally, rate classifications may be “based upon such factors as . . . the purpose for which the service or the product is received, the quantity or the amount received, the different character of the service furnished, the time of its use or any other matter which presents a substantial ground of distinction.” In other words, courts have upheld classifications for purposes of assessing different utility rates when there is a utility-based reason for the differentiation. However, classifications based on the type—or status—of the customer, or customer group, that do not relate to one of the above-listed purposes are not valid. For example, a local unit may assess a different rate for water used for irrigation purposes than for household or other commercial purposes (classification based on the purpose for which the water is used), but it cannot charge a different rate to all farmers (classification based on status). A unit may vary its utility rates based on the size of the house or the number of bathrooms (proxies for different costs or capacity demands), but it may not charge a different rate based on customer income levels (classification based on status). Or, a unit may assess a different rate to customers who request service after a certain date (again, proxies for different costs or capacity demands), but it may not set rates based on the age of its customers (classification based on status). In short, a local government may not establish a separate classification for any of the customer groups listed in the first paragraph in order to charge a lower (or higher) utility rate.

Are there any exceptions to this general rule? There are no explicit exceptions, but there are methods by which a local government may accomplish a similar purpose to discounting utility rates, at least for certain customer groups.

### ***General Government Subsidy Programs***

---

First, G.S. 160A-497 authorizes counties and municipalities to “undertake programs for the assistance and care of [their] senior citizens”—defined as citizens who are least 60 years of age. Under this authority, a county or municipality may establish a utility rate subsidy program for its senior citizens. The program must be established in the unit’s General Fund (not its Enterprise Fund) but can be structured in a number of different ways. For example, the program may authorize a unit to transfer monies from the General Fund to the Enterprise Fund to pay all, or a portion, of a qualifying senior citizen’s utility bill. It also may set up a reimbursement system for utility customers from the General fund. Additionally, a county or municipality may apply a rate subsidy program to all of its senior citizens or limit the program to senior citizens at or below a certain income level or senior citizens who are disabled.

Second, G.S. 153A-376 and G.S. 160A-456 authorize counties and municipalities, respectively, to undertake community development programs “concerned with . . . welfare needs of persons of low and moderate income.” Under this authority, a local unit likely may establish a utility rate subsidy program similar to the one described above but for low or moderate income citizens. The statute does not define low or moderate income. However, local officials may wish to consult the Section 8 income limits established by the federal Department of Housing and Urban Development (HUD) for guidance in determining qualifying income limits.

*(Note that G.S. 160A-314(a2) expressly states that a city is not prohibited “from providing aid to low-income persons to pay all or part of the cost of solid waste management services for those persons.” A similar provision is not included in the parallel county statute for solid waste services, nor is it included for county- or municipal-provided water or sewer services. Despite the absence of this provision, I believe that the discretionary authority under G.S. 153A-376 or G.S. 160A-456 is broad enough to authorize a county to provide a utility rate subsidy program for solid waste services and a county and municipality to provide such a program for water or sewer services.)*

### **Economic Development Incentives**

Finally, G.S. 158-7.1 provides broad authority for counties and municipalities to appropriate funds “for the purposes of aiding and encouraging the location of manufacturing enterprises, making industrial surveys and locating industrial and commercial plants . . .” Under this authority, as part of an economic development incentive, a local government may provide a cash grant to a perspective commercial or industrial entity that reimburses the entity for all, or a portion, of its utility fees over a period of time. A unit also may fund the extension of utility lines or facilities to serve the entity. Again, however, the appropriations for such incentive programs should derive from the General Fund, not an Enterprise Fund.

## **Links**

- [www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_160A/GS\\_160A-314.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-314.html)
- [www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_153A/GS\\_153A-277.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-277.html)
- [www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_160A/GS\\_160A-497.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-497.html)
- [www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_153A/GS\\_153A-376.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-376.html)
- [www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_160A/GS\\_160A-456.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-456.html)
- [www.huduser.org/datasets/il/il09/index.html](http://www.huduser.org/datasets/il/il09/index.html)
- [www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_158/GS\\_158-7.1.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_158/GS_158-7.1.html)