

New law allows apartment properties to charge fee for water submetering

By TAA Vice President of Government Affairs David Mintz, CAE

Under a new bill, apartment properties that submeter water will be able to charge residents an administrative fee of up to 9 percent on their monthly water bill.

SB 2126 by Sen. Craig Estes (R-Wichita Falls) and Rep. Doug Miller (R-New Braunfels) has been signed into law by Gov. Rick Perry and takes effect September 1, 2009. The new law directs the Texas Commission on Environmental Quality (TCEQ) to adopt rules allowing most apartment communities (with five or more units) to charge a service charge of up to 9 percent on water submetering fees.

Which properties cannot charge a water submetering service fee?

Residents living at tax-credit properties and those who receive Section 8 voucher assistance may not be charged a service fee on their water submetering bills. Properties that bill residents for water using an allocation (RUBS) formula are also ineligible to charge the fee.

Can an owner begin charging existing residents the service charge immediately?

No. While the law becomes effective September 1, 2009, an owner cannot institute new fees during an existing lease (unless all parties agree to the change). Any service charges will need to be implemented either at the beginning of a new lease or upon renewal. TAA is in the process of updating its water submetering addendum to make it available as soon as possible.

In the meantime, a separate lease addendum or language should be incorporated in the special provisions section of Paragraph 10 of the lease. One approach may be to add a statement such as, "As allowed by Texas law and in accordance with the submetering addendum to this lease, your submetered water bill will contain a service charge of ___ percent (not to exceed 9 percent)."

Owners are advised to have their legal counsel review any other language they choose to use.

It is TAA's position that although the new law directs the TCEQ to develop rules allowing implementation of the service fee, if the TCEQ has not acted by September 1, 2009, owners may still begin charging the fees as long as they act in accordance with residents' leases and other submetering rules.

Which items does the service fee cover?

The law specifies that the service fee covers "costs related to submetering" and defines those costs to include "water costs as well as any other applicable taxes and surcharges that are charged by the retail public utility." This would include the portion of a bill that may also cover wastewater fees and properly calculated per-dwelling base charges.

What parts of the owner's water bill are not subject to the service fee?

TCEQ's water submetering rules prohibit an owner from charging a resident for fees charged by the utility to the owner for any deposit, disconnect, reconnect, late payment or similar fees incurred by the owner. Therefore, a property owner may not charge a resident any kind of service fee on such charges that the owner incurs from the public utility.

Does the owner have to charge the 9 percent fee?

No. It is at the owner's discretion whether to charge a water submetering service fee and the amount of the percentage of the fee, so long as it does not exceed 9 percent.

Where can I find more information about water billing?

Information about water billing can be found in the utility section of the TAA REDBOOK and REDBOOK Online.

Also, a one-page summary about water billing is available from the Texas Commission on Environmental Quality at www.tceq.state.tx.us/permitting/water_supply/ud/submeter.html. At the bottom of the summary is a link to the state law and regulations. Note, though, that as of June 15, 2009, the link to the law and rules have not been updated to include the provisions of SB 2126 allowing the administrative fee to be charged by multifamily properties.

A link to SB 2126 can be found at www.capitol.state.tx.us/tlodocs/81R/billtext/html/SB02126F.htm.