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# Municipal Law Newsletter

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## Municipal Obligations for Police and Fire Employees Under the New "No Tax on Overtime" Rules

Municipalities should be mindful of their obligations under the One Big Beautiful Bill Act, which reduces some of the federal income tax rules affecting how overtime is tracked and reported. Effective for the 2025 through 2028 tax years (unless further extended), individuals who receive qualified overtime compensation may deduct the pay that exceeds their "regular rate of pay" that is required by the Fair Labor Standards Act (FLSA)[1] and that is reported on a Form W-2. The maximum annual deduction is $12,500 ($25,000 for joint filers). Employers will be required to file information returns with the IRS and furnish statements (likely on Form W-2) to employees showing the total amount of qualified overtime compensation paid during the year.

Many municipal employers pay overtime more generously than the FLSA requires, particularly for police and fire employees covered by a collective bargaining agreement. For purposes of calculating the new overtime tax credits, only the hours worked that exceed the FLSA overtime threshold will count, rather than all of the more generous overtime provided by municipal employment policies and collective bargaining agreements. However, figuring out the amount of FLSA overtime and applicable "regular rate of pay" to calculate the tax credits can be complicated.

Municipal employers need to keep track of the number of hours worked that would be considered FLSA overtime during a given "work week" or "work period." For most employees FLSA overtime would only start to accrue when working more than 40 hours in a 7-day period (considered a "work week" under the FLSA). However, there is a partial exception in the FLSA for police and fire employees that permits higher hourly thresholds before requiring FLSA overtime compensation to be paid. For police and fire employees, the FLSA also permits overtime hours to be computed over a "work period" that may be longer than the regular 7-day "work week" (up to 28 days). The chart below shows the different overtime thresholds for police and fire employees depending on the "work period."

| Work Period (Days) | Overtime Threshold in Hour | |
|---|---|---|
| | Fire Protection | Law Enforcement |
| 28 | 212 | 171 |
| 27 | 204 | 165 |
| 26 | 197 | 159 |
| 25 | 189 | 153 |
| 24 | 182 | 147 |
| 23 | 174 | 141 |
| 22 | 167 | 134 |

*Continued on page 2*

## Municipal Obligations for Police and Fire Employees

*Continued from page 1*

| Work Period (Days) | Overtime Threshold in Hours | |
|---|---|---|
| | Fire Protection | Law Enforcement |
| 21 | 159 | 128 |
| 20 | 151 | 122 |
| 19 | 144 | 116 |
| 18 | 136 | 110 |
| 17 | 129 | 104 |
| 16 | 121 | 98 |
| 15 | 114 | 92 |
| 14 | 106 | 86 |
| 13 | 98 | 79 |
| 12 | 91 | 73 |
| 11 | 83 | 67 |
| 10 | 76 | 61 |
| 9 | 68 | 55 |
| 8 | 61 | 49 |
| 7 | 53 | 43 |

Municipalities will need to be mindful of which "work periods" are set in their collective bargaining agreements for police and fire employees to ensure FLSA overtime hours are properly computed and tracked for these employees. Many collective bargaining agreements for police officers and firefighters set different "work periods" than the regular 7-day "work week." Therefore, it is possible for police officers and firefighters to work more than 40 hours in a given 7-day period, but, due to this FLSA exception, the time worked over 40 hours might not qualify as FLSA overtime, provided the total hours worked within the "work period" is below the thresholds noted above. For example, many collective bargaining agreements set a 14-day "work period" for departments using a 12 hour shift, with 3 days worked one week and 4 days worked the second week, for a total of 84 hours worked within the 14-day "work period." In such a situation, FLSA overtime would not start to accrue until police officers had worked more than the 86-hour threshold and firefighters had worked more than the 106-hour threshold during a given 14-day "work period." Only the hours in excess of the applicable threshold would count for purposes of calculating the tax credits under the "no tax on overtime" rules.

Any FLSA overtime converted to "FLSA compensatory" time also will need to be tracked to calculate the tax credits under the "no tax on overtime" rules. FLSA overtime converted to FLSA compensatory time counts towards the tax credits if the FLSA compensatory time is used for paid time off or paid out during the year in which the FLSA overtime converted from was earned.[2] For purposes of calculating the credit, 1/3 of the wages for the paid time off taken with applicable FLSA compensatory time or 1/3 of the payout for applicable FLSA compensatory time paid out would count towards the credit.[3]

Municipalities also need to be mindful of how the FLSA "regular rate of pay" is calculated during any "pay periods" in which FLSA overtime is accrued or applicable FLSA compensatory time is paid out or used for paid time off. The regular rate of pay, not just the basic hourly rate, is used to determine the amount of the no "tax on overtime" tax credits earned during a particular "pay period." The "regular rate of pay" is all "FLSA compensation" earned during the "work period" divided by the actual hours worked in the "work period". In addition to the regular pay rate, common types of "FLSA Compensation" for police and fire employees include shift differentials, longevity pay, training pay, cash-in-lieu of health insurance pay, and education or other incentive pay. Municipalities should confer with their legal counsel to determine what is considered "FLSA compensation."[4]

While not related to the calculation of the tax credits under the "no tax on overtime" rules, municipalities may want to take this opportunity to review whether they are meeting their FLSA overtime payment liabilities. Municipalities should be aware that the FLSA allows employers to offset their FLSA overtime liabilities by the more generous overtime payments many municipal policies and collective bargaining agreements provide. However, in some circumstances, employers may find they are paying less than the FLSA requires. Failure to meet FLSA overtime payment obligations could lead to legal action for back pay and damages, which basically doubles the amount of unpaid wages, in addition the employee's attorney's fees. Many insurance policies will not cover liability for failure to pay overtime, although some policies might cover a municipality's defense costs.

In conclusion, the "no tax on overtime" rules require municipalities to track what qualifies as FLSA overtime, the amount of FLSA overtime converted to FLSA compensatory time, and the applicable FLSA "regular rate of pay" for each "work period" or "work week" during which FLSA overtime accumulates or applicable FLSA compensatory time is paid out or used for paid time off. It will probably take some adjustment to track FLSA overtime and FLSA compensatory time. Many payroll providers and systems are working on rolling out updates to make this tracking easier. Municipalities are encouraged to contact their payroll provider or software vendor to see if any adjustments are coming to make easier implementation.

*— Eric Hagen and Brian Goodman*

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1 The .5 portion of the 1.5 time premium pay for overtime.

2 See IRS Notice 2025-69 at pgs. 25-26 and Example 6 at pgs. 28-29.

3 See Example 6 of IRS Notice 2025-69 at pgs. 28-29.

4 See https://www.dol.gov/agencies/whd/fact-sheets/56a-regular-rate

## *Municipal Utilities and Bankruptcy Practice: What Wisconsin Utilities Need to Know*

As utility revenues come under pressure from delayed and missed customer payments, municipal utilities in Wisconsin are increasingly attentive to broader economic and financial trends that can affect customer solvency. Bankruptcy filings nationwide have been trending upward in recent reporting periods, with total filings increasing by more than 13% year-over-year through March 31, 2025.[1] Nationally, there were 542,529 total bankruptcy cases in the year ending June 30, 2025, with Chapter 7 filings accounting for over 330,000 of those cases and more than 8,400 Chapter 11 filings.[2] These figures reflect sustained financial pressure on both residential and commercial utility customers.

Within Wisconsin specifically, bankruptcy data from the U.S. Bankruptcy Court for the Eastern District of Wisconsin shows continued activity across both individual and business cases, including regular monthly Chapter 7 and occasional Chapter 11 filings throughout 2025,[3] underscoring the very real potential for municipal utilities to encounter insolvent customers entering bankruptcy.

**PSCW Rules on Commercial and Nonresidential Deposits**

Wisconsin's regulatory framework provides municipal utilities with tools to manage risk and secure payment for utility service. Under the Public Service Commission of Wisconsin (PSCW) rules, utilities may require deposits from commercial accounts as a condition of providing service:

- Electric utilities may impose commercial and farm deposits pursuant to Wis. Admin. Code, § PSC 113.0403, authorizing deposits based on factors such as credit history and risk of nonpayment.
- Water utilities serving nonresidential accounts likewise may require security deposits under § PSC 185.361, allowing utilities to obtain financial assurances ahead of service initiation or continuation.

These deposit authorities enable municipal utilities to obtain security in advance that can mitigate the impact of subsequent customer defaults — a particularly salient point for larger nonresidential customers whose financial instability may precede or presage potential bankruptcy filings.

**Forms of Guarantee and the Intersection with the Bankruptcy Code**

Section 366 of the Bankruptcy Code is meant to balance utility providers' general right to refuse to do business with a debtor post-petition and a debtor's need for utility service. Congress attempted to strike this balance by protecting debtors from utility shutoffs for the first few weeks after filing, but also giving utility providers a special right to "adequate assurance" of future payment while a bankruptcy case is pending.

Historically, prior to enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act (BACPA) in 2005, bankruptcy courts frequently considered a debtor's *pre-petition* history of timely utility payments in assessing what constituted adequate assurance of payment. For example:

- In *In re Best Products Co.*, 203 B.R. 51 (Bankr. E.D. Va. 1996), a bankruptcy court accepted a deposit equating to one-half of an average monthly bill as adequate assurance where the debtor had regularly paid utility charges and had no pre-petition default.
- In *In re 499 W. Warren Street Associates Ltd. Partnership*, 138 B.R. 363 (Bankr. N.D.N.Y. 1991), a court approved a deposit equal to one month's average billing based on the debtor's solvency and expected ability to meet postpetition obligations.
- In *In re Spencer*, 218 B.R. 290 (Bankr. W.D.N.Y. 1998), where prepetition defaults were part of the record, a two-month average billing deposit was upheld as adequate assurance.

These pre-BACPA decisions reflected a flexible judicial inquiry into a debtor's payment history and prospects for future payment.

The landscape shifted significantly post-BACPA with the adoption of 11 U.S.C. § 366(c). In Chapter 11 cases, under Section 366(c)(3)(B)(ii), bankruptcy courts are prohibited from considering *pre-petition* timely payment history in determining whether a utility's requested adequate assurance of payment is reasonable. This statutory bar means that even customers with historically reliable payment patterns cannot rely on that history to forestall additional security requirements post-petition.

Post-BAPCPA cases # emphasize that if a Chapter 11 debtor fails to provide adequate assurance within 30 days of filing, the utility may alter, refuse, or discontinue service. 11 U.S.C. § 366(c)(2). While courts can, upon notice and hearing, modify a utility's demand for assurance, they may not weigh pre-petition security absence, prior timely payments, or the availability of an administrative expense priority in determining what constitutes adequate assurance. In Chapter 11 cases, utilities may also use security deposits provided before the petition date to satisfy delinquencies without separate notice or court order.

Adequate assurance is not the same as an absolute guarantee of payment. But utility providers are empowered to demand what they believe is adequate assurance where a debtor is at risk of defaulting on its payment obligations. Moreover, provision of adequate assurance does not prevent a utility from terminating service to the debtor or the estate if post-petition payments for utility services are not made after the statutory waiting period. Such a termination must follow the procedure prescribed under non-bankruptcy law for the disconnection of utility service.

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## Municipal Utilities and Bankruptcy Practice

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For municipal utilities, this statutory framework underscores that adequate assurance is evaluated independently of past payment practices, focusing instead on the security necessary to protect the utility from the ongoing service risk.

**Offsets, Letters of Credit, and Security Instruments**

Municipal utilities commonly obtain letters of credit, cash deposits, surety bonds, or similar guarantees to secure payment. Under Section 366(c)(4) a utility may recover or set off against a security deposit provided prepetition without notice or court order. This provision can be particularly valuable to municipal utilities in addressing post-petition delinquencies while retaining rights to adequate assurance going forward.

In sum, the bankruptcy code provides mechanisms to protect municipal electric and water utilities for post-petition payments. Before a petition is filed, municipal utilities with commercial customers with payment issues should obtain deposits or guarantees consistent with PSCW rules. These protections remain intact even if the customer subsequently files a bankruptcy petition.

*— Nicholas Bratsos*

1 https://www.uscourts.gov/data-news/data-tables/2025/03/31/bankruptcy-filings/f.

2 https://www.uscourts.gov/data-news/data-tables/2025/06/30/bankruptcy-filings/f.

3 https://www.wieb.uscourts.gov/bankruptcy-statistics/?filing.

# *Wisconsin Water Utilities Adding Value with Advanced Metering Infrastructure*

As the son-in-law of a meter reader, I have heard the old war stories: aggressive dogs, interesting lawn décor, and uncooperative homeowners. As with everything in life, the steady march of technology has changed how many (though not all) water utilities read meters and—for better or worse—the types of stories told. The late 20th century saw the rise of Automatic Meter Reading (AMR), which allows utilities to remotely collect meter data. AMR reduces labor costs from physical reads, but typically still requires a utility employee to walk or drive down the street to collect data from the AMR meters via radio waves.

The new millennium saw the first large-scale adoption of another technology: Advanced Metering Infrastructure (AMI). AMI differs from its predecessor in its improved ability to passively collect frequent and accurate water usage data, often on an hourly basis. The technology "is a collection of devices and systems used by utilities to collect, measure, communicate, and analyze water use data from treatment through delivery to customers."[1] AMI further enables two-way communication between utilities and customers allowing both the utility and its customers access to near real-time usage data.

The benefits of using AMI are manifold and recent legislation supported by the League has made it easier than ever to implement AMI by eliminating the need for construction authorization from the Public Service Commission of Wisconsin. However, a highly unscientific sampling of Wisconsin water utility annual reports[2] shows that only a little over a quarter of Wisconsin utilities have started implementing or fully implemented AMI. Over half of utilities have AMR and 17% of the sampled utilities were still manually reading meters. So, for those communities who aren't yet on the AMI bandwagon, this article shares the perspectives of your utility colleagues on why they made the upgrade.

**Customer Benefits of AMI**

"AMI metering is all about connecting the customer to their usage of water from their water utility," said Kevin Westhuis, Utility Director for the City of River Falls Municipal Utilities. This includes not only basic usage information, but "alerts for identification of potential leaks and running toilets, usage pattern information, budgeting purposes, and much more." In implementing its AMI program, River Falls Municipal Utilities "reminded the customers that this technology is for them. Yes, the utility will also have more data about usage trends and system data, but ultimately there are huge benefits to the end user."

With "real time water consumptive data," replied Krishna Kumar, General Manager at Madison Water Utility, utilities are able "to detect potential water leaks early, preventing high water bills and easily avoidable water waste." A common refrain among utilities who have adopted AMI is that property owners whose leaks otherwise may have gone undetected for days—or longer—are highly appreciative of this feature.

While a utility can alert customers of unusual usage, with AMI a utility does not have to be the gatekeeper for a customer's data. AMI online portals give all customers who sign up the ability to monitor their individual usage as well.[3] Brian Powell, General Manager of Green Bay Water, reports that large customers are the most frequent users of online portals and have used the water data for internal planning, including by tweaking processes and evaluating electrical costs, saving water and money.

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When customers hear about AMI for the first time, privacy and security of the data is a common concern. A customer is limited to seeing their own data in their online portal, but the utility can see all usage data. Municipal utilities are already sensitive to the protection of municipal utility customer information (see Wis. Stat. § 196.137), and AMI is no different. Educating your customers on the protections afforded customers under Wisconsin law, and a well-trained staff on the use of AMI, usually mitigates these concerns.

**Utility Benefits of AMI**

"We started out with AMI because we saw the benefits for staffing," Mr. Powell said. Since starting implementation 20 years ago, "Green Bay Water went right from meter readers walking up to the meters to using AMI." This switch allowed Green Bay Water to reallocate the substantial amount of labor used for meter readings to other pressing needs. Green Bay Water's Business Manager, Stephanie Rogers, also saw labor—and customer service—benefits for move-ins and move-outs, because "people often do not call when they move out. When we get a call two weeks later, we can now look back and do a bill for the final date," rather than send a reader out two-weeks too late. This ability to look back has proven particularly popular for landlords.

Smaller utilities report similar advantages. Derek Anderson, Water Superintendent for the Village of Deerfield Water Utility, reports that since replacing its 1,185 meters with AMI meters in the last year, the utility has saved at least four days of work every month for meter reads, and even more for final move-out reads. "The biggest thing for the water utility is that AMI has already saved a lot of time and will save a lot of money in the future," he responded.

Beyond a decrease in labor costs associated with meter reading, Mr. Kumar has seen how "AMI also helps the [Madison Water] Utility to accurately assess peaking factors enabling the Utility to right size its water infrastructure to meet both the current and future needs." Green Bay Water agrees and uses the AMI data in system master planning. "We can see where the water is going," said Ms. Rogers, "and break our data down by customer class and pressure zone." This data can be put in hydraulic models to see when flows are happening and look at peaking factors when evaluating system capacity and upgrades.

"Regarding using AMI data for rate setting," opined Erik Granum, a Principal/Senior Consultant at Trilogy Consulting, LLC, "I think that more data is always better than less, and it provides information that can be used to ensure that rates are reasonable for all customers, based on generally accepted cost of service principles." For some communities, AMI data has started showing that traditional assumptions regarding peaking factors for different customer classes may not hold true. Most AMI systems do not yet readily allow the aggregation of the massive amounts of data that AMI generates for rate-setting purposes, but there is future potential for this use.

**Customer Meter Projects No Longer Require PSCW Authorization**

Water utilities have benefited from a streamlined approach to implementing AMI technology since 2021 when the League of Wisconsin Municipalities, in partnership with Municipal Environmental Group – Water Division (MEG-Water) and Wisconsin Rural Water Association, lobbied for the creation and passage of 2021 Wisconsin Act 86. That Act created Wis. Stat. § 196.49(5g) which exempts water public utilities and combined water and sewer public utilities from needing a Public Service Commission of Wisconsin certificate of authority before beginning customer meter installation, repair, or replacement projects. Utilities are already benefiting. When the Deerfield Water Utility installed AMI in the last year, it only needed to convince its village board and residents of the many benefits of AMI and did not need to wait for additional regulatory approval.

**Conclusion**

Advanced Metering Infrastructure can change the game in how a utility designs and operates its system, how a utility communicates and serves its customers, how customers interact with their utility, and how the utility and its customers alike conserve water. While this article outlines the benefits of AMI to both the utility and its customers, there are startup and ongoing costs to the purchase, installation, and operation of the hardware and software components. However, those utilities which have implemented AMI see that the benefits that near real-time access to more data affords outweigh the costs. If your utility is looking to implement AMI, ask around—in my experience, our water utility colleagues are more than happy to share their stories.

*— Jared W. Smith*

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1 *Improving Water Management Using Advanced Metering Infrastructure Data: A Guide for Facility Managers*, EPA WaterSense, September 2022. Available at: https://www.epa.gov/system/files/documents/2022-09/ws-commercial-ami-guide-facility-managers.pdf

2 Based on the author's review of 142 municipal water utility annual reports.

3 Online portals only work if they are used by customers. For suggestions on how to make your online portals more accessible, the American Water Works Association (AWWA) has published a Guidebook for practitioners called "Increasing consumer benefits & engagement in AMI-based conservation programs," available at https://www.awwa.org/wp-content/uploads/AMI-Increasing-Consumer-Benefits-Guide-For-Practitioners.pdf.

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# *Municipal Law Newsletter*

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