



CITY OF SOMERVILLE WATER DEPARTMENT

Sub-Metering in Somerville



When can a Tenant Be Billed Directly?

The sub-meter Law

On March 16, 2005 a new law went into effect in Massachusetts that allows landlords to bill tenants starting **new tenancies** directly for water if the property meets the law's requirements for sub-metering and water conservation.

This booklet answers basic questions about landlords' and tenants' rights and responsibilities under the law.



Sub-Metering in Somerville

CITY OF SOMERVILLE WATER DEPARTMENT

Who Pays for Water?



When can a tenant be billed directly for water?

If you are a tenant, a landlord can bill you directly for water only if the following requirements are met:

- 1. Sub-meters Are Installed**
The landlord has certified to the local board of health that a licensed plumber installed a sub-meter that measures and bills for water going only to your unit and checked that sub-meter is accurate;
- 2. Low-Flow Water Fixtures Are Installed**
The landlord has installed low-flow, water-conserving faucets, showerheads and toilets in your unit and the low-flow toilets were installed by a licensed plumber;
- 3. There Is a Written Rental Agreement**
You have signed a written rental agreement that clearly states that you are responsible for a separate water bill and provides in plain language the billing arrangements for payment of water; and
- 4. Your tenancy Started After March 16, 2005**
You moved into your apartment on or after March 16, 2005 (when the new water law went into effect). You cannot be billed for water separately if your tenancy began before March 16, 2005.
- 5. Previous tenant was not forced out**
If the previous tenant – who was not required to pay for water – left involuntarily, a landlord cannot bill the new tenant for water. The law seeks to prevent landlords from forcing existing tenants out in order to bring in new tenants who would be required to pay for water. (This is not easy to find out.)
- 6. Landlord Files certification**
Landlords billing separately for water must file a certificate with the local board of health or inspection services department that certifies they have done all of the above. See Question 8.

If the landlord has failed to meet any one of these requirements, he or she cannot bill you directly for water



Who Pays for Water?

When can't a tenant be billed directly for water?

If a landlord has failed to meet any of the requirements, he or she cannot bill you directly for water.

In addition, landlords cannot bill existing tenants directly for water. If the apartment you are currently in is the same one that you were in before March 16, 2005 (when the new sub-metering law went into effect), you are protected by the law. You are an existing or current tenant and cannot be billed directly for water.

Although a landlord may not bill you directly for water because you are a current tenant, he or she may install a water sub-meter during your tenancy so the next tenant can be billed directly.

Do public housing tenants have to pay for water?

Under the new Massachusetts water law, public housing authorities cannot bill state public housing tenants for water.⁵ The law also protects all federal public housing tenants who resided in their apartment before March 16, 2005, when the new water law went into effect. Federal regulations provide additional protections for federal public housing tenants.

If you have a Section 8 voucher or you live in housing that is privately owned and subsidized by the government, the law protects you only if you are a current tenant. In other words, if you are now living in the same place where you were living before March 16, 2005, you cannot be charged for water. If, however, your tenancy started on or after March 16, 2005, a landlord can charge you for water, but only if he or she has met all other requirements under the law. See Question 1.

Can a landlord shut off a tenant's water?

The new law prohibits landlords from shutting off your water or refusing you water service even if you are late in paying the water bill or have not paid your water bill. This is in recognition of state policy that water service is essential to the health of the occupants.



Who Pays for Water?



Are sewer charges included in water charges?

The new law allows landlords to bill for sewer services only if the sewer charges are calculated from the sub-meter that measures the tenant's water use. In most cities and towns in Massachusetts, sewer services are determined based on the amount of water used, so in these cities and towns, the water and sewer charges are billed together. However, if the city or town does not calculate sewer charges based on the amount of water used, tenants cannot be billed for sewer charges.



How sub-metering Works



How does sub-metering of water work?

Water going into any residential property first goes through a **primary meter**, which measures all the water going into the property. *The water provider (which in most cases is the city or town where the property is located) is responsible for providing water through the primary meter and for setting the cost of the water (and, in many places, the cost of the sewer service, as well).*

In Boston, for example, water is provided through the Boston Water and Sewer Commission. In Cambridge, the water company is the Cambridge Water Department. Worcester provides water through its Department of Public Works. The landlord is the customer of record with respect to the water bill and is responsible for its payment.

Under the new water law, water use for individual apartments must then be measured by **sub-meters**. **The landlord is responsible for having the sub-meters read and for billing tenants for their water use.**

In residential property with more than one rental unit, common areas, such as shared laundry facilities, outdoor faucets, and water used in common heating systems must be separately sub-metered. Water used in these common areas cannot be charged to any tenant.

A tenant can be billed only for actual water usage as measured by the sub-meter for his or her unit. **If the landlord has not installed sub-meters, you cannot be billed directly for water.**

How does sub-metering work if I rent a single-family house?

If you are renting a single-family house instead of an apartment, a landlord may bill you for water directly. In such a case, the landlord is not required to install a sub-meter if the primary meter measures only water that goes to an area used exclusively by you. The primary meter cannot, however, also measure water that goes to a common area or area not in your exclusive use. For example, if the landlord uses an outdoor faucet to water the lawn, you cannot be billed for water measured by the primary meter because you do not have exclusive use over the area. In order to bill you directly for water, the landlord is required to install a sub-meter to measure the water used exclusively by you and must meet all the other requirements of the law.



How sub-metering Works



What certificate must be a landlord file before billing a tenant for water?

Before a landlord can bill a tenant directly for water, a landlord must file a certification with the local board of health (or other municipal agency that enforces the State Sanitary Code). This certification must include a statement that:

1. The water sub-meter was installed by a licensed plumber and meets certain standards as provided by the law;
2. All showerheads, faucets, and toilets in the unit are water conservation fixtures meeting the standards of the law;
3. All toilets were installed by a licensed plumber; and
4. The tenant in the rental unit can be charged for water either because the unit is being occupied for the first time on or after March 16, 2005, or because the previous tenant was evicted for nonpayment of rent, or was evicted for breach of the rental agreement on or after March 16, 2005 or left voluntarily. In other words, the landlord did not harass a tenant to get him or her to move out so that the landlord could bill the next tenant for water.

The landlord must sign this certification under the “penalties of perjury,” which means that he or she swears the information is true. If a landlord has not filed this certification for a unit, he or she cannot charge the tenant for water. To find out whether your landlord has filed, check with your local board of health and ask whether they have the certification. To find your local board of health, contact your city or town hall. In Boston, Cambridge, and Worcester, contact the Inspectional Services Department.

What water conservation measures must a landlord take before billing for water?

Before billing a tenant directly for water, a landlord must install water conservation fixtures (faucets, showerheads, and toilets) in an apartment. These fixtures must meet certain low-flow standards set out in the law.

These low-flow standards have been required by federal law for new construction and renovation since 1994. So, it is likely that fixtures purchased and installed by the landlord after 1994 will meet the low-flow requirements of the law.

The landlord is also responsible for making sure that these water conservation fixtures are fully functioning at the beginning of every new tenancy.



How sub-metering Works



Who pays for the installation of the sub-meter and water conservation fixtures?

The landlord must pay to install sub-meters and must pay for the cost of installing water conservation fixtures. These costs cannot be passed on to tenants.

The landlord must also certify that he or she has had the water-conserving toilets installed by a licensed plumber and must file this certification with the local board of health (or municipal agency responsible for enforcing the State Sanitary Code).



Paying the Water Bill



Who sends the water bill to the tenant?

The landlord is responsible for sending the bill for water charges to the tenant. The landlord may contract with a separate company to take water sub-meter readings and to prepare, send, and collect bills.

What charges related to water cannot be passed on to tenants?

If a landlord bills you directly for water, he or she cannot pass along to you any fees related to sub-metering, such as:

1. Fees for taking sub-meter readings or preparing or collecting bills;
2. Fees for installing, maintaining, or servicing the sub-meter; or
3. Cost of testing the sub-meter;

How often can a tenant be billed?

A tenant can be billed for water charges as often as the water company bills the landlord. Typically this is every three months. If you and your landlord agree, your lease or a written rental agreement may provide for monthly billing.

If a landlord bills you on a monthly basis, the payment is due 15 days after the bill is mailed to you. If you are billed less often than every month—for example, if you are billed four times a year—the bill is due 30 days after it is mailed.

What if a tenancy begins in the middle of a billing period for water?

If your tenancy begins in the middle of a billing period for water, the landlord must mail you on the first day of your tenancy the reading of the sub-meter for the unit as of that day. You can be billed only for water measured on the sub-meter after this reading.



Paying the Water Bill



What information must a water bill have on it?

Each bill for sub-metered water must clearly state all charges and all other relevant information, including:

1. Current sub-meter reading and date reading was done;
2. Previous sub-meter reading and date reading was done;
3. Amount of water consumed since last reading;
4. How much you are being charged for each unit of water;
5. Total charge; and
6. Payment due date.

What happens if a tenant does not pay the water bill?

If a tenant does not pay a water bill, the landlord may consider this nonpayment to be a “material” or significant breach of the written rental agreement. This means that a landlord could try to evict you. However, by law you are allowed to “cure” nonpayment of a water bill and pay it **any time prior to a court hearing on the eviction case. If nonpayment of a water bill is the only reason your landlord is trying to evict you and you pay the bill prior to the eviction court hearing, your case must be dismissed.**

The landlord may also deduct unpaid water bills from your security deposit when you leave the apartment. **Note: To evict you for nonpayment of a water bill, a landlord must send you a notice called a *notice to quit*. You do not have to move if you get this notice. To actually evict you, a landlord must file a court case and get a judge’s permission to move you out. If the landlord has in any way violated the written rental agreement or the law (for example, has refused to repair a leaky toilet), you can tell the judge about it in order to prevent your eviction.**

What happens if a landlord does not pay the water bill?

Under the law, the landlord is considered the *water provider’s “customer” and is responsible for paying the water bills. (Most water providers are cities and towns, not private water companies.) If the landlord does not pay, the water provider may take legal action against the landlord, but cannot take legal action against individual tenants.*



CITY OF SOMERVILLE WATER DEPARTMENT



What can a tenant do if the sub-meter is not accurate?

The law requires that sub-meters meet certain standards of accuracy. If you feel that your sub-meter is not accurately measuring the water usage for your unit, you can have your sub-meter tested. The person testing your sub-meter must have no relationship, financial or otherwise, with the landlord. The person testing the sub-meter is required to determine the amount of water that was improperly measured by the sub-meter in the current billing period and any prior billing periods.

If the sub-meter is measuring more water than is being used by your unit, the landlord must install a new sub-meter and must also pay for the cost of the test. The landlord must then calculate the amount you have been overcharged and either reduce your current bill or give you a refund.

If the sub-meter is found to be accurate, you must pay for the cost of testing. If you do not, the landlord may add this cost to your next water bill.

Under the Attorney General's landlord-tenant regulations, any violation by the landlord of the water sub-metering law may be a violation of the Consumer Protection Laws.

Where is the actual text of the water sub-metering law?

The water sub-metering law was signed on December 16, 2004, and went into effect on March 16, 2005. To get the actual text of the law, go to: www.mass.gov/legis/laws/seslaw04/slo40417.htm.

Acknowledgments

This booklet was prepared by Annette Duke at the Massachusetts Law Reform Institute with assistance from Margaret Monsell and Allan Rodgers at Massachusetts Law Reform Institute. We also wish to thank Barbara Zimbel and Mac McCreight from Greater Boston Legal Services, Charlie Harak from the National Consumer Law Center, and Diane Lawton from the Consumer Protection and Antitrust Division of the Office of Attorney General for feedback on select questions; the following staff at Massachusetts Law Reform: Gale Halpern for her editing assistance, Caroline Robinson for her assistance with translation of the flyer on the new water law, and Caroline and Dan Collis Puro for their help making the materials available on-line; and the Publications Clearinghouse Fund at the Massachusetts Legal Assistance Corporation for the funds to translate materials.