

Federal legislation modifies bankruptcy protections



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At the end of 2020, Congress passed another COVID relief bill, the Consolidated Appropriations Act (CAA). Tucked away in the package were a number of modifications to the federal Bankruptcy Code, including language that temporarily suspends the right of public utilities to require customers filing bankruptcy petitions to make deposits that provide “adequate assurance” of payment.

As most readers of *Live Lines* know, municipal utilities, like other creditors, are prohibited by the Code from seeking recovery of unpaid electric bills incurred by customers prior to filing a petition for bankruptcy relief under Chapters 7, 10 or 13 of the Code. This includes invoking any of the standard collection tools utilized by municipal utilities to recover payments from nonpaying customers, such as disconnection or placement of the arrearage on the tax roll.

However, utilities are afforded some protection for service provided after the peti-

tion is filed. This protection generally takes the form of a deposit, the amount of which can range from a few weeks to as many as two months of the debtor’s average utility bills. Under the CAA, however, utilities are now precluded, at least until December 27, 2021, from requiring debtors to make such deposits.

Since the pandemic, not surprisingly, the number of bankruptcy petitions has been rising — by the end of 2020, corporate bankruptcy petitions exceeded 600, the highest of any year since 2012. Consumer bankruptcies, however, have not had an equivalent surge, at least as of yet, likely because of the federal relief packages that have passed, including CAA and the CARES act before it. Forecasters are not yet certain what 2021 will bring, but given the uncertainty of the economic outlook, one can anticipate at least some degree of bankruptcy activity. ●

Richard Heinemann provides legal services to municipalities and local governments in Wisconsin and throughout the upper Midwest. He is among the presenters at the March 24 Credit and Collections Seminar where he will offer insights about “Bankruptcy 101.”