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Sequence Number: 02-01-16
 Rule ID(s): 6119
 File Date: 2/1/16
 Effective Date: 5/1/16

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Comptroller of the Treasury
Division:	Water and Wastewater Financing Board
Contact Person:	Betsy Knotts
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Zip:	37243
Phone:	(615) 401-7954
Email:	Betsy.Knotts@cot.tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1740-01	Water and Wastewater Financing Board
Rule Number	Rule Title
1740-01-.01	Definitions
1740-01-.02	Powers, Duties, and Authority
1740-01-.03	Regulatory Procedures

Chapter Number	Chapter Title
Rule Number	Rule Title

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://share.tn.us/sos/rules/1360/1360.htm>)

1740-01-.01 DEFINITIONS

(1) As used in these regulations:

- (a) "Board" means the Water and Wastewater Financing Board.
- (b) "Chair" means the Comptroller's designee.
- (c) "Comptroller" means the Comptroller of the Treasury, or designee.
- (d) "Counsel" means an attorney from the Comptroller's Office.
- (e) "Staff" means any person or persons under the control and direction of the Comptroller.

Authority: T.C.A. §§4-5-202 and 68-221-1007 through 68-221-1013. Administrative History: Original rule filed August 26, 1988; effective October 10, 1988. Chapter 1200-22-05 moved to 1740-01 by the Secretary of State under the authority of Public Chapter 86 of Acts of 2007. Repeal and new rule filed June 29, 2010; effective September 27, 2010. Repeal and new rules filed <DATE>; effective <DATE>.

1740-01-.02 POWERS, DUTIES, AND AUTHORITY

(1) Terms; expenses

- (a) Board members shall be appointed to three-year terms.
- (b) If a successor is not appointed before the end of a Board member's three-year term, the Board member shall continue to serve until a successor is appointed or until the Board member is reappointed.
- (c) Appointments to succeed a Board member who is unable to serve a full term shall be for the remainder of that term.
- (d) Board members shall serve without compensation, but shall be eligible for reimbursement for travel expenses in accordance with the provisions of the comprehensive travel regulations as promulgated by the Department of Finance and Administration and approved by the Attorney General and Reporter.

(2) Meetings

- (a) The Board shall exercise its powers only at public meetings.
- (b) The Board shall hold at least two meetings each calendar year.
- (c) The Board may hold special meetings.
- (d) Special meetings shall be called by the Chair or by any two Board members.
- (e) For any calendar year, the Board by resolution may set a regular meeting schedule.

(3) Quorum

- (a) A majority of the Board constitutes a quorum.

- (b) A majority of the Board members present and voting shall be required for formal action of the Board; for purposes of determining whether a Board member is voting, any member who has been determined by Counsel to have a conflict of interest or an appearance of impropriety must be excluded.

(4) Conflicts of interest; appearances of impropriety

- (a) Board members shall file annual written disclosures of financial interests and other direct and indirect conflicts of interest.
- (b) Board members are not authorized to participate in the discussion of or to vote on matters involving entities in which the Board member has a financial interest, with which the Board member has a conflict of interest, with which the Board member has a contract of employment, or if there is any appearance of impropriety as determined by Counsel.

(5) Records

- (a) Staff shall keep complete and accurate records of Board meetings.
- (b) Board records will be maintained in accordance with applicable records retention policy and will be open to the public in accordance with Comptroller policy and state law.

(6) Guidelines

- (a) The Board may annually delegate certain duties to Staff related to researching, drafting, and updating Board guidelines and other educational materials.
- (b) The Board may annually review, amend, and endorse by formal action the following:
 - 1. A non-revenue water percentage and validity score that provide parameters for water loss referrals and any related Board guidelines or educational materials.
 - 2. A list of certain factors that are used by the Board when evaluating the reasonableness of rate structures and any related Board guidelines or educational materials.

Authority: T.C.A. §§4-5-202 and 68-221-1007 through 68-221-1013.

1740-01-.03 REGULATORY PROCEDURES

(1) Formal Review

- (a) When an entity is referred by operation of statute to the Board for any reason, including, but not limited to financial distress, Comptroller investigation, or excessive water loss, the entity will undergo a formal review by Staff and the Board.
- (b) In preparation for the Board's formal review, Staff may request and review documents of the entity and speak with officials and staff of the entity. Staff shall gather as much verifiable information as possible about the entity's situation and summarize that information for the Board; Staff must be able to provide backup documentation for all statements made in any case summary.
- (c) The Board shall review Staff's case summary at a public meeting, request any backup documentation, and decide what the entity must do to remedy any issues. The Board shall then direct Counsel to document

the Board's requirements in the form of a Board order, letter, or memorandum. The requirements must be met before the Board releases the entity from Board oversight and the formal review. The order or similar document shall require the entity to update the Board in writing by a date certain prior to formal release from Board oversight.

- (d) At the appropriate time, the Board shall direct Counsel to close the case formally and inform the entity of its changed status.

(2) Board Investigation

- (a) In certain circumstances, including, but not limited to, when an entity has been referred by operation of statute to the Board for two or more years consecutively, the Board may request Staff to perform an investigation of an entity's financial, technical, and managerial capacity.
- (b) Staff may request and review documents, speak with officials and staff of the entity, and attend entity meetings.
- (c) At the conclusion of the special investigation, Staff shall summarize its findings and recommendations in a draft report to the Board.
- (d) The Board shall review and amend as necessary the draft report at a public meeting and decide what the entity must do to remedy any issues. The Board shall then direct Counsel to enter it into an order. The order shall require the entity to update the Board in writing by a date certain as a condition for formal release from Board oversight and the investigation.
- (e) At the appropriate time, the Board shall direct Counsel to close the investigation formally and inform the entity of its changed status.

(3) Contested Case

- (a) Parties to a Board order may request by written petition a hearing or rehearing brought before the Board pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3.
- (b) The written request for a contested case hearing must be received by Staff no later than thirty (30) days after the date the Board order was served on the parties.
- (c) All contested cases before the Board shall be conducted pursuant to the Rules of Procedure for Contested Cases as compiled at Chapter 1360-04-01.

(4) Litigation

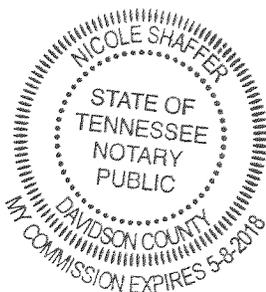
- (a) Within the parameters of state law, as confirmed by Counsel, the Board may initiate legal proceedings against noncompliant entities.
- (b) The Board shall exhaust all statutorily authorized administrative procedures before initiating any formal legal proceedings.
- (c) In all matters involving formal litigation, the Board shall engage the Attorney General and Reporter.

Authority: T.C.A. §§4-5-202 and 68-221-1007 through 68-221-1013.

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Ann Butterworth	X				
Tom Moss	X				
Tamika Parker				X	
Drexel Heidel	X				
Kenneth Wiggins	X				
Rick Graham	X				
Mechele Williams				X	
Randy Wilkins	X				
Vacancy					

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on 12/03/2015 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.



Date: 1/4/16

Signature: [Handwritten Signature]

Name of Officer: Ann V. Butterworth

Title of Officer: Chair of the Water and Wastewater Financing Board

Subscribed and sworn to before me on: 01/04/18

Notary Public Signature: [Handwritten Signature]

My commission expires on: 05/08/18

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

[Handwritten Signature]
 Herbert H. Slatery III
 Attorney General and Reporter
1/28/2016 Date

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 SECRETARY OF STATE
 REGISTRATIONS

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Filed with the Department of State on: 2/1/16

Effective on: 5/1/16

[Handwritten Signature]
 Tre Hargett
 Secretary of State
 RDA 1693

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The estimated fiscal impact on state and local government revenues and expenditures is minimal; the rule is merely a simplified version of the Water and Wastewater Financing Board’s prior rule.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The rule provides basic procedural guidelines for the Water and Wastewater Financing Board's (WWFB) administrative processes. The rule changes previous WWFB regulations by removing all provisions that duplicated state law and streamlining the regulatory procedures section.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

TCA Section 68-221-1009(a)—The WWFB has the authority to promulgate rules and regulations for the conduct of its affairs and to define excessive water losses for public water systems.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The WWFB, which is administratively attached to the Comptroller's Office, as well as public water and wastewater systems in Tennessee will be affected by this rule. The WWFB has formally endorsed the rule.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The estimated fiscal impact on state and local government revenues and expenditures is minimal; the rule is merely a simplified version of the Water and Wastewater Financing Board's prior rule.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Betsy Knotts, Assistant General Counsel, Comptroller of the Treasury

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Betsy Knotts, Assistant General Counsel, Comptroller of the Treasury

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

