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Effective Date: 09/27/2010

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. Section 4-5-205*

**Agency/Board/Commission:** Water and Wastewater Financing Board
**Division:**
**Contact Person:** Robert T. Lee
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**Zip:** 37243
**Phone:** 615-401-7779
**Email:** robert.t.lee@tn.gov

**Revision Type (check all that apply):**
X Amendment
___ New
X 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 | Purpose, Scope, and Applicability |
| 1740-01-.02 | Definitions |
| 1740-01-.03 | Water and Wastewater Financing Board: Accounting Principles, Conference Meeting, Records, Reports, Procedures, Water Loss |
| 1740-01-.04 | Appeals |

(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://state.tn.us/sos/rules/1360/1360.htm)

1740-01 Water and Wastewater Financing Board is amended by deleting the Chapter in its entirety and substituting the following language so that as amended the Chapter shall read:

Chapter 1740-01
Water and Wastewater Financing Board

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1740-01-.01 Purpose, Scope, and Applicability
1740-01-.02 Definitions
1740-01-.03 Water and Wastewater Financing Board: Accounting Principles, Conference Meeting, Records, Reports, Procedure, Water Loss
1740-01-.04 Appeals


1740-01-.01 Purpose, Scope, and Applicability

The purpose of the "Wastewater Facilities Act of 1987" enacted by the General Assembly of the State of Tennessee, (amending T. C. A., Title 4, Chapter 31; Title 7, Chapter 82; and Title 68, Chapter 221) is to facilitate statewide compliance with State and Federal water quality standards by providing local governments in Tennessee with low-cost financial assistance relative to necessary wastewater facilities through the creation of a self-sustaining revolving loan program so as to improve and protect water quality and public health and to establish fiscal self-sufficiency of wastewater facilities.

The Wastewater Facilities Act of 1987, as amended, creates a Water and Wastewater Financing Board. This Board, provided for within the Office of the Comptroller of the Treasury, determines and ensures the financial integrity of certain water systems and wastewater facilities by effecting reasonable user rates or system efficiencies, including negotiated consolidation, of certain water systems and wastewater facilities.

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

1740-01-.02 Definitions

(1) As used in these regulations:

(a) "Act" means the Wastewater Facilities Act of 1987, as amended.

(b) "Authority" means the Tennessee Local Development Authority.

(c) "Board" means the Water and Wastewater Financing Board established by the Act.

(d) "Local government" means a county, incorporated town or city, metropolitan government, or state agency which has authority to administer a water system or wastewater facility, or any combination of two (2) or more of the foregoing acting jointly to construct a water system or wastewater facility. "Local government" shall also mean any utility district created pursuant to T.C.A., Title 7, Chapter 82, existing on July 1, 1984, and which operates a wastewater facility, and also includes such utility district created after July 1, 1984, if such utility district operates a wastewater facility comprised of at least five hundred (500) customer connections. "Local government" shall also mean any treatment authority created pursuant to T.C.A., Title 68, Chapter 221, Part 6 ("Water and Wastewater Treatment Authority Act") and that operates a water or wastewater facility

(e) "Wastewater facility" means any facility, including the reserve capacity thereof, whose purpose is to collect, store, treat, neutralize, stabilize, recycle, reclaim or dispose of

wastewater, including treatment or disposal plants, interceptor, outfall, and outlet sewers, pumping stations, equipment and furnishings which are necessary to accomplish the foregoing purposes. "Wastewater facility" shall also include best management practice projects for controlling non-point source of water pollution, failed innovative/alternative wastewater construction projects and the planning or replanning requirements of designated management authorities.

(f) "Water system" means community public water systems of counties, municipalities and those utility districts formed pursuant to T.C.A., Title 7, Chapter 82 that are subject to the jurisdiction of the Board.

(g) "Water systems and wastewater facilities" shall also mean any treatment authority created pursuant to T.C.A., Title 68, Chapter 221, Part 6 ("Water and Wastewater Treatment Authority Act") and that operates a water or wastewater facility.

Authority: T.C.A. §§4-5-202, 68-221-1007 through 68-221-1013, and 68-221-1015(d). Administrative History:

1740-01-.03 Water and Wastewater Financing Board: Accounting Principles, Conference Meeting, Records, Reports, Procedure, Water Loss

(1) Generally Accepted Accounting Principles and the interpretations of the Comptroller shall be used by the Board.

(2) Conference Meeting: One or more members may participate in a meeting of the Board, or a Committee of the Board, in lieu of physical presence utilizing technology by means of which all persons participating in the meeting can hear each other (participation in this manner shall constitute presence in person at such meeting). A physical meeting location where the public can access the meeting shall be designated if the technology utilized does not readily permit public access. Pursuant to T.C.A. § 8-44-108 if a quorum is not able to be present physically at the location of a meeting, then the meeting may occur only if the Board or the Committee makes a determination that a necessity exists. "Necessity" means (1) that the matters to be considered at that meeting require timely action, (2) that physical presence by a quorum of the members is not practical within the period of time requiring action, and (3) that participation by a quorum of the members by use of technology is necessary. Such determination, and a recitation of the facts and circumstances on which it was based, shall be included in the minutes of the meeting. If a physical quorum is not present at the location of a meeting, then the Secretary shall file such determination of necessity, including the recitation of the facts and circumstances on which it was based, with the office of the Tennessee Secretary of State no later than two (2) working days after the meeting.

(3) Records and Reports

(a) The Board or its duly appointed staff shall keep complete and accurate records of proceedings.

(b) Records will be located in the office of the Comptroller and open to public inspection as required by law and in accordance with Comptroller policy, including fees and charges. The Board, in consultation with the Comptroller, shall designate staff as the official contact for public records requests.

(c) The Comptroller shall assist the Board and be responsible for minutes and other duties as required.

(d) The Board or its designee shall report annually to the Governor and the General Assembly on the activities of the preceding year. This report will be filed with the Comptroller's office no later than January 31st of each year.

(4) Procedures

(a) For these purposes, wastewater facility also shall include any publicly owned water system utilizing a single bookkeeping system for both a water system and wastewater facility.

(b) Within sixty (60) days from the receipt of the Comptroller's referral, the Board shall schedule a hearing to determine whether the water system or wastewater facility described in the report is likely to continue in such a position. This initial hearing shall not be a contested case within the meaning of T.C.A. §4-5-101 *et seq.*, but rather one that is legislative in nature.

(c) Upon a determination that the system or facility is likely to remain in such a position, the Board may order the management to adopt and maintain user rate structures necessary to:

1. Fund current operation, maintenance, principal and interest obligations within 12 months, unless otherwise specified by the Board;

2. Resolve any default on indebtedness within 12 months, unless otherwise specified by the Board.

3. Fund depreciation in 1-3 years, unless otherwise specified by the Board; and/or

4. Eliminate in an orderly fashion any deficit total net assets within 5-10 years, unless otherwise specified by the Board.

(d) In the determination of an equitable user rate, the review by the Board will include, but not be limited, to the following factors:

1. Date and amount of last rate increase;

2. Average user rates for commercial and residential users;

3. Average median household income;

4. Typical cost of similar treatment process;

5. Use Ordinance;

6. Ratio of minimum bills to total bills;

7. Number of users; and,

8. Ratio of water processed to water billed.

(e) After the initial hearing, the management of the system or facility may request a formal contested case hearing if the management is dissatisfied with the results of the initial hearing. This formal contested case hearing shall be in accordance with T.C.A. §§68-221-10l0(b) and 4-5-301 *et seq.*

(f) In the event the Board determines user rate increases will be insufficient to cure, or such increased rates will be to the economic detriment of the local government served by the water system or wastewater facility, the Board may negotiate the consolidation of the water system or wastewater facility with another facility which, in the determination of the Board is best suited to operate the deficit facility. Such consolidation shall be upon those terms as agreed upon by all of the affected parties.

1. Prior to the consolidation of any water system or wastewater facility pursuant to this part, the Board shall hold a public hearing for all interested parties to such consolidation at a place convenient to such parties at least sixty (60)

days prior to the effective date of such consolidation. Notice of such public hearing shall be published in a newspaper of general circulation in the affected area not later than ten (10) days prior to the hearing.

2. If the parties to consolidation fail to reach an agreement within two hundred and seventy (270) days from the commencement of negotiations or proceedings are otherwise terminated, the Board will take action to effect the legislative intent of financially self-sufficient water system or wastewater facilities.

(5) Water Loss

(a) The Board will determine no less than annually the acceptable unaccounted for water loss percentage for public water systems. Any amount greater than the acceptable unaccounted for water loss percentage established by the Board shall be considered excessive.

(b) Once the percentage is determined, the Board shall notify the appropriate division within the Office of the Comptroller of the Treasury in an appropriate manner of its determination of acceptable unaccounted for water loss percentage. The appropriate division within the Office of the Comptroller of the Treasury will make referrals to the Board based on that percentage.

(c) The acceptable unaccounted for water loss percentage shall be posted on the website of the Board within thirty (30) days of its decision.

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

1740-01-.04 Appeals

(1) Any order or ruling of the Board shall become final unless the parties named therein request by written petition a hearing before the Board, no later than thirty (30) days after date such order or ruling is served pursuant to the Uniform Administrative Procedures Act, T.C.A., Title 4, Chapter 5, Part 3.

(2) Any appeal hearing may be conducted by the Board at a regular or special meeting by any member, or panel of members, or administrative judge as designated by the Chairman to act on the Board's behalf.

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

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

| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|---|---|---|---|---|---|
| Ann Butterworth, Chairman | x | | | | |
| Ben Bolton | x | | | | |
| Daisy W. Madison | x | | | | |
| Drexel Heidel | x | | | | |
| Tom Moss | | | | x | |
| Joseph R. Prochaska | | | | x | |
| Shirley Fox Rogers | | | | x | |
| Grey Scott | | | | x | |
| Kenneth Wiggins | x | | | | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Water and Wastewater Financing Board on June 25, 2010, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: September 28, 2007

Notice published in the Tennessee Administrative Register on: October 15, 2007

Rulemaking Hearing(s) Conducted on: (add more dates). December 5, 2007

Date: June 25, 2010

Signature: Joyce Welborn

Name of Officer: JOYCE WELBORN

Title of Officer: Board Coordinator

TORREY S. GRIMES STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY, TENN.

My Commission Expires NOV. 7, 2012

Subscribed and sworn to before me on: 6/25/10

Notary Public Signature:

My commission expires on: 11/7/12

All rulemaking hearing 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, T. C. A., Title 4, Chapter 5.

Robert E. Cooper, Jr.
Attorney General and Reporter

6-29-10
Date

**Department of State Use Only**

Filed with the Department of State on: 6/24/10

Effective on: 9/27/10

Tre Hargett
Secretary of State

RECEIVED
2010 JUN 29 PM 12: 35
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PUBLICATIONS

**Public Hearing Comments**

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T. C. A. §4-5-222. Agencies shall include only their responses to public hearing comments, which shall be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

See Attached

**Regulatory Flexibility Addendum**
Pursuant to Public Chapter 464 of the 105th General Assembly, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and § 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)

NO IMPACT

**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 Water and Wastewater Financing Board was transferred to the Comptroller of the Treasury from the Department of Environment and Conservation on May 3, 2007. When Public Chapter 243, Acts of 2007 passed requiring the Board to promulgate rules regarding water loss for local governments, the rules were transferred and revised to include the water loss information.

**(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;

Rules for the Board were promulgated in 1988 within the Department of Environment and Conservation as required in T.C.A. 68-221-1009 (a)(1), currently in process of a revision to comply with T.C.A. 68-221-1009 (a)(7) within the Comptroller of the Treasury ("COT"). The rules are currently being revised to reflect statutory changes since that date, including the transfer to the COT and Public Chapter 243 of 2007.

**(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;

All local governments with water and wastewater facilities are affected by the rules. Only the local government systems with water systems are affected by the water loss rule.

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

None

**(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 amount of increase or decrease in local government expenditures cannot be estimated. By decreasing a high water loss in a system, expenditures should decrease. However, expenditures may be required in order to reduce the high loss. Reducing the water loss will result in having more revenue available to cover the extra expenditures.

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

Robert T. Lee, General Counsel, Comptroller of the Treasury/ Joyce Welborn, Board Coordinator, Office of State and Local Finance, 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;

Joyce Welborn

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

Joyce Welborn, Office of State and Local Finance, Office of the Comptroller of the Treasury, Suite 1600 James

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

SUMMARY OF COMMENTS RECEIVED
AT THE DECEMBER 5, 2007 PUBLIC HEARING
ON RULES OF THE
THE UTILITY MANAGEMENT REVIEW BOARD (UMRB)
AND
THE WATER AND WASTEWATER FINANCING BOARD (WWFB)

The following is a summary of comments received at the public hearing held December 5, 2007 at 9:00 a.m. (and concluded at 9:30 a.m.) in Room 16, Legislative Plaza, Nashville, Tennessee on proposed rules of the UMRB and of the WWFB.

Ms. Joyce Welborn, Board Coordinator, briefly described the purpose for the public hearing and referred to Public Chapters 86 and 243, Acts of 2007 sponsored by Representative Charles Curtiss, District 43. She said the proposed rules have been filed with the Secretary of State's Office and also posted on the boards' websites.

Representative Curtiss said that there are some water systems that are billing for 50% or less of the water they produce, which in his opinion is unacceptable. He sponsored the legislation (PC243) giving the UMRB and WWFB authority to establish water loss rules because he felt those boards had the expertise and experience to address the problems faced by water systems in Tennessee. Although the legislation could have contained specific water loss criteria, enacting amendments to the legislation in the future that might be needed could be difficult. He felt that if the criteria is developed by the boards, it would be more flexible and thereby better able to address the problems faced by water systems throughout Tennessee.

Representative Curtiss said that while there are certain reasons when water loss is acceptable, it should be accounted for. He said that his legislation was drafted prior to the drought during the summer of 2007, but being able to account for water loss could certainly be of benefit if future drought conditions occur. Representative Curtiss closed his remarks by stating that each water system in this state is a monopoly and has a captive customer base. Consequently, there may be no incentive for some districts to actively seek solutions to a water loss problem. If this was a free market system—with competition among water systems—any system having significant water losses would not continue to operate very long.

Mr. Bill Young, Assistant Manager of Harriman Utility Board, stated that he supported the legislation, the growth of the Harriman system places new burdens on their water management process, and adequately monitoring and accounting for water loss must be part of this process.

Ms. Welborn then summarized the Division of Municipal Audit's requirements for utility districts and municipalities. For audit reports ending June 30, 2007, the system is required to include in the supplemental information a statement of gallons of water produced versus gallons sold. This will be unaudited information. For reports of years beginning after July 1, 2007, Municipal Audit has developed a proposed calculation but this may not necessarily be final—each utility district and municipal water system will be examined on a case by case basis if necessary.

Mr. Grey Scott, Gibson County Municipal Water District, asked if there was any legislation existing or proposed that would address use of water by fire departments, highway maintenance crews, and others who expect water for free. Ms. Welborn said she knew of no such legislation, but it could be proposed in the next session if considered necessary. Mr. David Bowling, Division of Local Finance, asked if there was any statutory authority that allowed providing water for free. Ms. Welborn said she knew of none. Mr. Bill Case, Division of Municipal Audit, stated that the statutes require water systems to levy sufficient rates to meet operating expenses and debt service. Mr. Don Scholes, attorney for the Tennessee Association of Utility Districts, stated that many bond covenants have similar language regarding rates.

Mr. Bill Young inquired about when the rules might go into effect. Ms. Welborn stated that the UMRB will not adopt the rules until after the annual report required on February 1 from Municipal Audit is received. Ms. Welborn advised that the WWFB has no such restriction regarding when it can adopt the rules.

Mr. Donnie Leggett, Fayette-Hardeman Utility District, asked by what authority the boards have to enforce the rules. Ms. Welborn said it would ultimately be through Chancery Court, which is the same authority the boards have now for financially distressed systems.

Ms. Welborn stated that if anyone would like to make written comments concerning the proposed rules, those comments must be received by her within 10 business days following the public hearing [*None were received*.].

To the Government Operations Committees:

The Water and Wastewater Financing Board adopted Chapter 1740-01 which amended the existing rule to accomplish the following:

- Reflect the change in name of the entity and the expanded authority over water systems (PC483, Acts 1997)
- Reflect responsibility regarding water loss (PC243, Acts 2007)
- Reflect the reassignment to the Office of the Comptroller of the Treasury (PC86, Acts 2007)
- Delete pure restatement of statutory provisions
- Update accounting and auditing terms and references

**RULES**
**OF**
~~**TENNESSEE DEPARTMENT OF HEALTH AND ENVIRONMENT**~~
~~**DIVISION OF COMMUNITY ASSISTANCE**~~

**CHAPTER 1740-01**
**WATER AND WASTEWATER FINANCING BOARD**

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| 1740-01-.02 | Definitions | 1740-01-.04 | Appeals |


## 1740-01-.01 ~~INTRODUCTION~~ PURPOSE, SCOPE AND APPLICABILITY.

The purpose of the "Wastewater Facilities Act of 1987" enacted by the General Assembly of the State of Tennessee, (amending T~~ennessee~~ C~~ode~~ A~~nnotated~~ Title 4, Chapter 31; Title 7, Chapter 82; and Title 68, Chapter 221 ~~13~~) is to facilitate statewide compliance with State and Federal water quality standards by providing local governments in Tennessee with low-cost financial assistance relative to necessary wastewater facilities through the creation of a self-sustaining revolving loan program so as to improve and protect water quality and public health and to establish fiscal self-sufficiency of wastewater facilities.

The Wastewater Facilities Act of 1987, as amended, creates a Water and Wastewater Financing Board. This Board, provided for within the Comptroller of the Treasury, determines and ensures the financial integrity of certain water systems and wastewater facilities by effecting reasonable user rates or system efficiencies, including negotiated consolidation, of certain water systems and wastewater facilities.

***Authority:*** *T.C.A. §§4-5-202 and 68-~~13~~-221-1007 through 68-~~13~~-221-1013~~, inclusive~~.* ***Administrative History:*** *Original rule filed August 26, 1988; effective October 10, 1988. Chapter 1200-22-5 moved to 1740-1 by the Secretary of State under the authority of Public Chapter 86 of Acts of 2007.*

### 1740-01-.02 DEFINITIONS.

(1) As used in these regulations:

(a) "Act" means the Wastewater Facilities Act of 1987, as amended.

(b) "Authority" means the Tennessee Local Development Authority.

(c) "Board" means the Water and Wastewater Financing Board established by the Act.

~~(d) "Director" means the Director of the Division of Construction Grants and Loans.~~

(d) "Local government" means a county, incorporated town or city, metropolitan government, or state agency which has authority to administer a wastewater facility, or any combination of two (2) or more of the foregoing acting jointly to construct a wastewater facility. "Local government" shall also mean any utility district created

(Rule 1740-01-.02, continued)

pursuant to Tennessee Code Annotated, Title 7, Chapter 82, existing on July 1, 1984, and which operates a wastewater facility, and also includes such utility district created after July 1, 1984, if such utility district operates a wastewater facility comprised of at least five hundred (500) customer connections. "Local government" shall also mean any treatment authority created pursuant to T.C.A., Title 68, Chapter 221, Part 6 ("Water and Wastewater Treatment Authority Act") and that operates a water or wastewater facility

(e) "Wastewater facility" means any facility, including the reserve capacity thereof, whose purpose is to collect, store, treat, neutralize, stabilize, recycle, reclaim or dispose of wastewater, including treatment or disposal plants, interceptor, outfall, and outlet sewers, pumping stations, equipmentand furnishings which are necessary to accomplish the foregoing purposes. "Wastewater facility" shall also include best management practice projects for controlling non-point source of water pollution, failed innovative/alternative wastewater construction projects and the planning or replanning requirements of designated management authorities.

(f) "Water system" means community public water systems of counties, municipalities and those utility districts formed pursuant to T.C.A., Title 7, Chapter 82 that are subject to the jurisdiction of the Board.

(g) "Water systems and wastewater facilities" shall also mean any treatment authority created pursuant to T.C.A., Title 68, Chapter 221, Part 6 ("Water and Wastewater Treatment Authority Act") and that operates a water or wastewater facility.

***Authority:*** *T.C.A. §§4-5-202 and 68-~~13~~-221-1007 through 68-~~13~~-221-1013,* and 68-221-1015(d). ~~inclusive~~. *Administrative History: Original rule filed August 26, 1988; effective October 10, 1988. Chapter 1200-22-5 moved to 1740-1 by the Secretary of State under the authority of Public Chapter 86 of Acts of 2007.*

**1740-01-.03** WATER AND WASTEWATER FINANCING BOARD: ~~COMPOSITON, CONFLICT OF INTEREST, DUTIES AND AUTHORITY, PROCEDURE, RECORDS, TECHNICAL SECRETARY~~ ACCOUNTING PRINCIPLES, CONFERENCE MEETING, RECORDS, REPORTS, PROCEDURE, WATER LOSS.

(1) Generally Accepted Accounting Principles and the interpretations of the Comptroller shall be used by the Board.~~Composition.~~

(2) Conference Meeting: One or more members may participate in a meeting of the Board, or a Committee of the Board, in lieu of physical presence utilizing technology by means of which all persons participating in the meeting can hear each other (participation in this manner shall constitute presence in person at such meeting). A physical meeting location where the public can access the meeting shall be designated if the technology utilized does not readily permit public access. Pursuant to T.C.A. § 8-44-108 if a quorum is not able to be present physically at the location of a meeting, then the meeting may occur only if the Board or the Committee makes a determination that a necessity exists. "Necessity" means (1) that the matters to be considered at that meeting require timely action, (2) that physical presence by a quorum of the members is not practical within the period of time requiring action, and (3) that participation by a quorum of the members by use of technology is necessary. Such determination, and a recitation of the facts and circumstances on which it was based, shall be included in the minutes of the meeting. If a physical quorum is not present at the location of a meeting, then the

(Rule 1740-01-.03, continued)

Secretary shall file such determination of necessity, including the recitation of the facts and circumstances on which it was based, with the office of the Tennessee Secretary of State no later than two (2) working days after the meeting.

~~(a) The Wastewater Financing Board shall be composed of the following seven (7) members:~~

~~1. Commissioner, Department of Health and Environment, or his designee, who shall serve as Board chairman.~~

~~2. Comptroller of the Treasury, or his designee.~~

~~3. One (1) member appointed by the Governor who shall represent the municipalities of the State.~~

~~4. One (1) member appointed by the Governor who shall represent the utility districts of the State.~~

~~5. One (1) member appointed by the Governor who shall represent the environmental interest of the State.~~

~~6. One (1) member appointed by the Governor who shall represent the minority citizens of the State and who has experience in government finance and who is not a State employee.~~

~~7. One (1) member appointed by the Governor, who shall represent the manufacturing interests in the State.~~

~~(b) Term of Appointments and Vacancies.~~

~~1. Board members shall serve for a three (3) year term expiring on June 30th except as designated herein, but continuing to serve until a successor has been appointed; or until the Board member has been reappointed.~~

~~2. Appointments to succeed a Board member who is unable to serve a full term shall be for the remainder of that term.~~

~~3. Board members may be reappointed, but they do not automatically succeed themselves.~~

~~4. Appointments to the Board for the remainder of unexpired terms and subsequent appointments shall be representative as stipulated in T.C.A. §68-13-1008 (b).~~

~~5. The terms of the Board shall be staggered in accordance with the Act.~~

~~(c) Quorum, Conflict of interest, Expenses.~~

~~1. Four (4) Board members shall constitute a quorum and a majority of those present and voting shall be required for a determination by the Board.~~

~~2. No Board member may participate in making a decision in any case involving a local government or wastewater facility in which the Board member has a direct financial interest, including a contract of employment.~~

(Rule 1740-01-.03, continued)

~~3. Members of the Board shall be entitled to actual and necessary expenses incurred while engaged in the performance of official duties as authorized by the Board; however all expenses and reimbursement shall be in accordance with the provisions of the Comprehensive Travel Regulations promulgated by the Department of Finance and Administration.~~

(3) Records and Reports

(a)~~1~~. The Board or its duly appointed staff shall keep complete and accurate records of proceedings.

(b)~~2.~~ Records will be located in the office of the Director and open to public inspection.

(c) The Comptroller shall assist the Board and be responsible for minutes and other duties as required.

(d) The Board or its designee shall report annually to the Governor and the General Assembly on the activities of the preceding year. This report will be filed with the Comptroller's office no later than January 31st of each year.

~~(e) Technical Secretary.~~

~~The Director shall serve as Technical Secretary to the Board and be responsible for minutes and other duties as required.~~

(2) Duties and Authority.

(a) The Board shall meet to adopt, modify, repeal and promulgate rules in accordance with the Uniform Administrative Procedures Act compiled in Tennessee Code Annotated, Title 4, Chapter 5, and after due notice, to enforce rules and regulations which the Board deems necessary for proper administration of T.C.A. §§68-13-1007 through 68-13-1012, inclusive, of the Act.

(b) The Board shall conduct all meetings in accordance with the Public Meetings Act compiled in Tennessee Code Annotated, Title 8, Chapter 44.

(c) The Board shall investigate and determine the financial condition of wastewater facilities under its jurisdiction.

(d) Generally Accepted Accounting Principles and the interpretations of the Comptroller shall be used by the Board.

(e) For those wastewater facilities described in T.C.A. §68-13-1010(a), the Board shall be authorized:

1. to effect the adoption of user rates necessary for the self-sufficiency of certain wastewater facilities and negotiate the consolidation of certain wastewater facilities;

2. to subsidize from appropriations made to it, the repair or improvement of the deficit wastewater facility as an incentive for consolidation in negotiating any consolidation under the part;

(Rule 1740-01-.03, continued)

3. to ameliorate, from appropriations made to it, the burden of rate increases affected under this part borne by low-income customers through the establishment and administration of a declining rate subsidy program that shall not continue any longer than two (2) years;

4. to issue subpoenas, administer oaths and take testimony.

(i) In case of refusals to obey a notice of hearing or subpoena issued by the Board, the Chancery Court of Davidson County shall have jurisdiction upon application of the Board.

(3) Procedures.

(a) ~~Within sixty (60) days from the time an audit of a wastewater facility is filed with the comptroller of the treasury, the comptroller shall file with the Board the audit report of a wastewater facility which has a retained earnings deficit or has an operating deficit for a period of three (3) consecutive years, or is in default on any of its debt instruments. For these purposes, wastewater facility also shall include any publicly owned waterworks system utilizing a single bookkeeping system for both a water works and wastewater facility.~~ For these purposes, wastewater facility also shall include any publicly owned water system utilizing a single bookkeeping system for both a water system and wastewater facility.

(b) Within sixty (60) days from the receipt of the Comptroller's ~~audit report~~referral, the Board shall schedule a hearing to determine whether the water system or wastewater facility described in the report is likely to continue in such a ~~deficit~~ position. This initial hearing shall not be a contested case within the meaning of T.C.A. §4-5-101 *et seq.*, but rather one that is legislative in nature.

~~1. Hearings shall be set according to the following criteria:~~

~~(i) severity of pollution threat as documented by the Tennessee Department of Health and Environment;~~

~~(ii) default on debt; and~~

~~(iii) ratio of retained earnings deficit to the wastewater facility's annual income.~~

~~2. Notification to the responsible party for management of the deficit facility shall be by certified mail.~~

(c) Upon a determination that the system or ~~wastewater~~ facility is likely to remain in such a ~~deficit~~ position, the Board may order the management ~~of the wastewater facility~~ to adopt and maintain user rate structures necessary to:

1. Fund current operation, maintenance, principal and interest obligations within 12 months, unless otherwise specified by the Board;

2. Resolve any default on indebtedness within 12 months unless otherwise specified by the Board;

(Rule 1740-01-.03, continued)

3. Fund depreciation in 1-3 years unless otherwise specified by the Board; and/or

4. Eliminate ~~liquidate~~ in an orderly fashion any ~~retained earnings~~ deficit total net assets within 5-10 years unless otherwise specified by the Board.

(d) In the determination of an equitable user rate, the review by the Board will include but not be limited to the following factors:

1. The date and amount of ~~when was and how much was~~ last rate increase;

2. Average user rates for commercial and residential users;

3. Average median household income;

4. Typical cost of similar treatment process;.

5. ~~Sewer~~ Use Ordinance;

6. Ratio of minimum bills to total bills;

7. Number of users; and,

8. Ratio of water processed to water billed.

(e) After the initial hearing, the management of the ~~wastewater~~ system or facility may request a formal contested case hearing if the management is dissatisfied with the results of the initial hearing. This formal contested case hearing shall be in accordance with T.C.A. §§68-13-10l0(b) and 4-5-301 *et seq.*

(f) In the event the Board determines user rate increases will be insufficient to cure ~~the wastewater facility's deficit~~, or such increased rates will be to the economic detriment of the local government served by the water system or wastewater facility, the Board may negotiate the consolidation of the ~~deficit~~ water system or wastewater facility with another facility which, in the determination of the Board is best suited to operate the deficient facility. Such consolidation shall be upon those terms as agreed upon by all of the affected parties.

1. Prior to the consolidation of any water system or wastewater facility pursuant to this part, the Board shall hold a public hearing for all interested parties to such consolidation at a place convenient to such parties at least sixty (60) days prior to the effective date of such consolidation. Notice of such public hearing shall be published in a newspaper of general circulation in the affected area not later than ten (10) days prior to the hearing.

2. If the parties to consolidation fail to reach an agreement within two hundred and seventy (270) days from the commencement of negotiations or proceedings are otherwise terminated, the Board will take action to effect the legislative intent of financially self-sufficient water systems or wastewater facilities.

(5) Water Loss

(a) The Board will determine no less than annually the acceptable unaccounted for water loss percentage for public water systems. Any amount greater than the acceptable unaccounted for water loss percentage established by the Board shall be considered excessive.

(Rule 1740-01-.03, continued)

(b) Once the percentage is determined, the Board shall notify the appropriate division within the Office of the Comptroller of the Treasury in an appropriate manner of its determination of acceptable unaccounted for water loss percentage. The appropriate division within the Office of the Comptroller of the Treasury will make referrals to the Board based on that percentage.

(c) The acceptable unaccounted for water loss percentage shall be posted on the website of the Board within thirty (30) days of its decision.

***Authority:*** *T.C.A. §4-5-202 and 68-~~13~~-221-1007 through 68-~~13~~-221-1013~~, inclusive~~.* ***Administrative History:*** *Original rule filed August 26, 1988; effective October 10, 1988. Chapter 1200-22-5 moved to 1740-1 by the Secretary of State under the authority of Public Chapter 86 of Acts of 2007.*

**1740-01-.04 APPEALS.**

(1) Any order or ruling of the Board shall become final unless the parties named therein request by written petition a hearing before the Board, no later than 30 days after date such order or ruling is served pursuant to the Uniform Administrative Procedures Act, T.C.A. Title 4, Chapter 5, Part 3.

(2) Any appeal hearing may be conducted by the Board at a regular or special meeting by any member, or panel of members, or administrative judge as designated by the Chairman to act on the Board's behalf.

***Authority:*** *T.C.A. §§4-5-202 and 68-~~13~~-221-1007 through 68-~~13~~-221-1013~~, inclusive~~.* ***Administrative History:*** *Original rule filed August 26, 1988; effective October 10, 1988. Chapter 1200-22-5 moved to 1740-1 by the Secretary of State under the authority of Public Chapter 86 of Acts of 2007.*