

**RULES
OF
TENNESSEE COMPTROLLER OF THE TREASURY**

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

TABLE OF CONTENTS

1740-01-.01	Definitions	1740-01-.03	Regulatory Procedures
1740-01-.02	Powers, Duties, and Authority	1740-01-.04	Appeals

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 February 1, 2016; effective May 1, 2016.

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.

(Rule 1740-01-.02, continued)

- (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, 68-221-1007 through 68-221-1013, and 68-221-1015(d).
Administrative History: Original rule filed August 26, 1988; effective October 10, 1988. Chapter

(Rule 1740-01-.02, continued)

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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 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

(Rule 1740-01-.03, continued)

- (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. **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 February 1, 2016; effective May 1, 2016.

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:** 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.