

Notice of Rulemaking Hearing

Comptroller of the Treasury

There will be a public rulemaking hearing before the Comptroller of the Treasury, acting on behalf of the Water and Wastewater Financing Board, to consider the adoption and promulgation of rules pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann., Section 4-5-201 et seq. and Section 68-221-1001 et seq. Wastewater Facilities. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann., Section 4-5-204, and will take place in Room 16 of the Legislative Plaza, 6th Avenue, between Charlotte Avenue and Union Street, Nashville, Tennessee at 9:00 a.m. CST on the 5th day of December, 2007.

Any individual with disabilities who wishes to participate in these proceedings should contact the Board staff to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact should be made no less than ten (10) days prior to the scheduled meeting date, to allow time for the Board to determine how it may reasonably provide such aid or service. Initial contact may be made with the Comptroller's ADA Coordinator, Elaine Driver, at Ste. 1400, 505 Deaderick Street, Nashville, TN 37243-0261, and telephone number 615-401-7738

Substance of Proposed Rules

Rules 1740-01-.01 through .04 of Rule Chapter 1740-01 Water and Wastewater Financing Board are amended by deleting them in their entirety and substituting the following so that, as amended, they shall read as follows:

Amended Rule

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(1) Purpose, Scope, and Applicability

The purpose of the "Wastewater Facilities Act of 1987" enacted by the General Assembly of the State of Tennessee, (amending Tennessee Code Annotated 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 government 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.

(2) Use of Number and Gender

As used in these Rules:

1. Words in the masculine gender also include the feminine and neuter genders; and
2. Words in the singular include the plural; and
3. Words in the plural include the singular.

(3) Rule Structure

These Rules are organized, numbered, and referenced according to the following outline form:

(1) paragraph

(a) subparagraph

1. part

(i) subpart

(l) item

I. subitem

A. section

(A) subsection

Authority: T.C.A. §§4-5-202, and 68-221-1007 through 68-221-1013, inclusive and Public Chapter No. 86 approved May 3, 2007.

1740-01-.02 Definitions

(1) As used in these regulations:

“Act” means the Wastewater Facilities Act of 1987, as amended.

“Authority” means the Tennessee Local Development Authority.

“Board” means the Water and Wastewater Financing Board established by the Act.

“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 Tenn. Code Ann., 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.

“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.

“Water system” means community public water systems of counties, municipalities and utility districts formed pursuant to Chapter 82 of Title 7.

Authority: T.C.A. §§4-5-202 and 68-221-1007 through 68-221-1013, inclusive and Public Chapter No. 86 approved May 3, 2007.

1740-01-.03 Water and Wastewater Financing Board: Composition, Conflict Of Interest, Duties And Authority, Procedure, Records, Technical Secretary.

(1) Composition

(a) The Wastewater Financing Board shall be composed of the following nine (9) members:

1. The Comptroller of the Treasury, or the Comptroller’s designee, who shall serve as Board chairman;
2. The Commissioner of Conservation and Environment, or the Commissioner’s 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 manufacturing interests in the State;
7. 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; and
8. One (1) member appointed by the Governor who is an active employee of a municipal water utility and one(1) member who is an active employee of a water utility district.

(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 Tenn. Code Ann. §68-221-1008 (b).
5. The terms of the Board shall be staggered in accordance with the Act.

(c) Quorum, Conflict of interest, Expenses

1. Five (5) 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 water system or wastewater facility in which the Board member has a direct financial interest, including a contract of employment.
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 Commissioner of Finance and Administration and approved by the Attorney General and Reporter.

(d) Records

1. The Board shall keep complete and accurate records of proceedings.
2. Records will be located in the office of the Comptroller and open to public inspection.

(e) Technical Secretary

The Comptroller shall designate a staff person to serve as Technical Secretary to the Board and the designee shall report the proceedings of the Board and perform such duties as required by the Board.

(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 Tenn. Code Ann., Title 4, Chapter 5, and after due notice, to enforce rules and regulations which the Board deems necessary for proper administration of Tenn. Code Ann. §§68-221-1007 through 68-221-1012, inclusive, of the Act.
- (b) The Board shall conduct all meetings in accordance with the Public Meetings Act compiled in Tenn. Code Ann., Title 8, Chapter 44.

- (c) The Board shall investigate and determine the financial condition of water systems and 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 water systems and wastewater facilities described in Tenn. Code Ann. §68-221-1010(a), the Board shall be authorized:
 - 1. to effect the adoption of user rates necessary for the self-sufficiency and negotiate the consolidation ;
 - 2. to subsidize from appropriations made to it, the repair or improvement of the deficit water system or wastewater facility as an incentive for consolidation in negotiating any consolidation under these Rules;
 - 3. to ameliorate, from appropriations made to it, the burden of rate increases effected under this part borne by low-income customers of water systems and wastewater facilities through the establishment and administration of a declining rate subsidy program that shall not continue any longer than two (2) years; and
 - 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 water system or wastewater facility is filed with the comptroller of the treasury, the comptroller shall file with the Board the audit report of any water system or wastewater facility which has deficit total net assets or has a negative change in net assets 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 waterworks and wastewater facility.
- (b) Within sixty (60) days from the receipt of the comptroller's audit report, 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;
 - 2. resolve any default on indebtedness within 12 months unless otherwise specified by the Board.

3. fund depreciation in 1-3 years; 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 Tenn. Code Ann. §§68-221-1010(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 wastewater facilities.

(4) Water Loss

- (a) The Board will determine no less than annually the acceptable unaccounted for water loss percentage for local governments. 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 Division of Municipal Audit within the Office of the Comptroller of the Treasury in an appropriate manner of its determination of acceptable unaccounted for water loss percentage. The Division of Municipal Audit 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 30 days of its decision.

Authority: T.C.A. Section 68-221-1009(a)(7). Public Acts of 2007, Chapter 243.

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, Tenn. Code Ann., 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, inclusive and Public Chapter No. 86 approved May 3, 2007.

The "DRAFT" rules may be accessed for review using <http://comptroller.state.tn.us/>.

Draft copies are also available for review at the Comptroller's Office (see address below).

Tennessee Comptroller of the Treasury
Division of Local Finance
17th Floor, James K. Polk Building
505 Deaderick Street
Nashville, TN 37243
615-401-7864

Office hours for the Division's offices are from 8:00 AM to 4:30 PM, Monday through Friday (excluding holidays).

Oral or written comments are invited at the hearing. In addition, written comments may be submitted prior to or after the public hearing to the address above; Attention: Ms. Joyce Welborn. However, such written comments must be received by the Division by 4:30 PM CST, January 4, 2008 in order to assure consideration. For further information, contact Ms. Joyce Welborn at the above address or telephone number.

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Water and Wastewater Financing Board.

The notice of rulemaking set out herein was properly filed in the Department of State on the 28th day of september, 2007. (FS 09-28-07; DBID 738)