

Sunset Public Hearing Questions for  
**Underground Utility Damage Enforcement Board**  
Created by Section 65-31-114, *Tennessee Code Annotated*  
(Sunset termination June 2017)

1. Provide a brief introduction to the board, including information about its purpose, statutory duties, staff, and administrative attachment.

**Tenn. Code Ann. § 65-31-114 was passed by the Tennessee General Assembly in 2015, creating the Underground Utility Damage Enforcement Board (“Enforcement Board”). The Enforcement Board is comprised of sixteen (16) members appointed from specific stakeholder groups who are committed to promoting the safety of underground utility facilities by preventing harm to people, property, and infrastructure. Three (3) members of the Enforcement Board will serve on the Executive Committee, which is responsible for levying penalties and taking action on complaints of alleged violations of the Underground Utility Damage Prevention Act (“the Act”). The provisions of the Act are codified in Tenn. Code Ann. § 65-31-101 *et seq.* The Tennessee Regulatory Authority’s (“TRA”) role is to assist the Enforcement Board by providing administrative and investigative support. Among other duties, the TRA is designated by the Enforcement Board to receive and investigate complaints of alleged violations.**

2. Provide a list of the board members and describe how membership complies with Section 65-31-114 (c). Are there any vacancies on the board and, if so, what is being done to fill those vacancies.

**In accordance with Tenn. Code Ann. §65-31-114 *et seq.* Kevin Tubberville was elected as Chair of the Enforcement Board in July 2016. Wayne Hastings serves as Vice Chair. The Enforcement Board is comprised of sixteen (16) members from stakeholder groups.<sup>1</sup> Fifteen (15) of the members are appointed. The appointing authorities for the fifteen (15) appointed members are equally and specifically split among the Governor, the Speaker of the Senate and the Speaker of the House. The Board also includes one *ex officio* member from Tennessee 811, Inc., a non-profit entity that serves as the state’s official one-call service. One Enforcement Board member resigned, leaving a vacancy representing the Tennessee Cable and Telecommunications Association. Staff has reached out to Speaker Harwell’s office to offer our assistance, if needed, in filling the vacancy.**

**Three (3) members of the Enforcement Board serve on the Executive Committee, which is responsible for levying penalties and taking action on complaints of alleged violations. The members elected to serve on the**

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<sup>1</sup> Attachment

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**Enforcement Board Executive Committee are: Kevin Tubberville, Bob Lambert, and Steve Raper**

3. Does the board's membership include public/citizen members? Female members? Members of racial minorities? Members who are 60 years of age or older at the time of appointment?

**The Enforcement Board is comprised of sixteen (16) public/citizen members from stakeholder groups. There are currently no racial minorities or women serving on the Board. A majority of the members serving on the board are in the age group of sixty (60) years of age or older.**

4. How many times did the board meet during fiscal year 2016, and how many members were present at each meeting?

**The Board did not meet during FY16 because the appointment process was still under way and as a result, it was premature to mobilize and meet however, a majority of the appointments were completed at the start of FY 17. As a result, the Enforcement Board met three (3) times thus far in 2016 with another meeting set for December. There were thirteen (13) members present for the July 12<sup>th</sup> meeting, fourteen (14) members present for the August 25<sup>th</sup> meeting, and 12 members present for the October 18<sup>th</sup> meeting. Tenn. Code Ann. § 65-31-115(b)(2) requires that the Enforcement Board meet a minimum two (2) times per calendar year.**

5. What per diem or travel reimbursement do members receive? How much was paid to board members during fiscal year 2016?

**Enforcement Board members serve without compensation pursuant to Tenn. Code Ann. 65-31-114(e). According to Tennessee Attorney General's Opinion 16-25 issued on July 15, 2016, Enforcement Board members may receive reimbursement for travel expenses in accordance with Tennessee Department of Finance and Administration's, Policy 8, Comprehensive Travel Regulations. No travel reimbursements were requested by or paid to Enforcement Board members in FY16.**

6. What were the board's revenues (by source) and expenditures (by object code) for fiscal year 2016? Does the board carry a reserve fund balance and, if so, what is the total of that reserve fund balance?

**The board did not meet in Fiscal Year 2016 and as a result, revenues were \$0.**

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**The enabling statute found in TCA § 65-31-115(a)(5) addresses the funding of the program. It is a self-funded state program whereby the utility operators through contributions to 811 fund the board to support the investigative and administrative services performed by the Tennessee Regulatory Authority. The costs assessed to the operators are specifically directed by statute to offset the expenses incurred by the agency. TCA § 65-31-117 established the Underground Damage Prevention Fund. If civil penalties are collected, the funds received shall be deposited in the Fund and used for grants to small operators as well as to contract with providers for public awareness, education, or compliance training. This section authorizes the Fund to carry a balance, but it is currently \$0.**

7. Is the board subject to Sunshine law requirements (Section 8-44-101 et seq., *Tennessee Code Annotated*) for public notice of meetings, prompt and full recording of minutes, and public access to minutes? If so, what procedures does the board have for informing the public of its meetings and making its minutes available to the public?

**Yes, the Enforcement Board is subject to Sunshine law requirements. The meetings of the Enforcement Board are publicly noticed ten (10) days prior to date of the meetings. After the first meeting on July 12, 2016, subsequent meetings of the Enforcement Board have been attended by a court-reporter and transcribed. From the transcript, meeting minutes are prepared and subsequently available to the public following approval of the minutes by the Board. In addition to the minutes, any member of the public may inspect the Enforcement Board's meeting transcript. Transcripts are typically available for public inspection within two (2) weeks of the Board meeting. Expedited copies of transcripts can be obtained directly from the court-reporter by any member of the public, subject to any fee the Court-reporter might charge, before the Enforcement Board has received the transcript**

8. What policies and procedures does the board have in place to address potential conflicts of interest by board members, staff and employees?

**At the initial meeting of the Enforcement Board on July 12, 2016, the Board members were given training on a variety of topics including, conflicts of interest, ethics, public records and the requirements of the Sunshine law. Enforcement Board members have received memorandums concerning conflicts of interest.**

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9. What reports does the board prepare on its operations, activities and accomplishments, and who receives those reports?

**Tenn. Code Ann. § 65-31-101 does not direct the board to prepare any reports. However, the board and TRA staff intends to prepare reports, which will include complaint and enforcement action data. The Enforcement Board webpage provides information on operations and activities. The reports will be located on the Enforcement Board webpage and these reports will also be presented during its public meetings.**

10. Has the board promulgated rules as authorized in Section 65-31-115(1), Tennessee Code Annotated? If rules have been promulgated, please cite the reference.

**Rules have not been promulgated at this time.**

11. Has the board entered into any contracts, as authorized in Section 65-31-115(3)? If yes, please provide relevant information about those contracts.

**The Enforcement Board has not yet entered into any contracts, but upon completion of final negotiations and the appropriate approvals of the required State authorities, intends to enter into a Special Contract with Tennessee One-Call System, Inc. d/b/a Tennessee 811. After working extensively with the Department of General Services Central Procurement Office to prepare and ensure distribution in a manner so as to generate and elicit as many responses as possible, including specifically targeting at least two out-of-state entities known to provide similar services, the Enforcement Board issued a *Request for Information* (RFI). The purpose of the RFI was to determine whether there were vendors capable of providing the statutorily-mandated compliance training program in accordance with the Act.**

**During its October 18, 2016 Meeting, the Enforcement Board was presented with an analysis of the responses received from the RFI. After deliberation by the Board, with the two members associated with Tennessee 811 abstaining from discussion and vote, the Board voted to enter into a Special Contract with Tennessee 811 to perform statutorily-mandated compliance training for all persons found to be in violation of the Underground Utility Damage Prevention Act. In addition, the Board voted to delegate authority to TRA Legal Counsel to negotiate and finalize the contract terms with Tennessee811, execute the contract, and forward it to the required State authorities (CPO and Comptroller) for approval.**

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12. What were the major accomplishments of the board during fiscal year 2016? Specifically, what actions has the board taken to comply with Section 65-31-116, *Tennessee Code Annotated*, which allows the board to investigate complaints, issue citations, and hold hearings.

**The Enforcement Board did not meet during FY16; however, upon reaching a quorum, the Board held its first meeting on July 12, 2016. Kevin Tubberville was elected as Chairman of the Enforcement Board. Mr. Tubberville was also elected to the Executive Committee. The Enforcement Board met again on August 25, 2016 and elected Wayne Hastings as Vice Chair. Bob Lambert and Steve Raper were elected to fill the remaining two (2) seats on the Executive Committee. During the Board's August 25, 2016 meeting, the members approved a motion that complaints be filed within ninety (90) days of a person being made aware of an alleged violation. The Enforcement Board designated the TRA to receive and investigate complaints beginning on October 1, 2016. The website design for the Enforcement Board was finalized and activated on September 22, 2016.**

13. Section 65-31-117, Tennessee. Code Annotated, creates an underground damage prevention fund within the Tennessee Regulatory Authority. Please provide information about the status of this fund, including the fund balance and any revenues and expenditures.

**The reserve fund has been established with the Department of Finance and Administration. The balance is currently \$0 and there have been no revenues deposited in the fund. There have been no expenditures from the fund to date.**

14. Has the board developed and implemented quantitative performance measures for ensuring it is meeting its goals? What performance indicators or goals does management use to measure the effectiveness and efficiency of the board? How well has the board performed based on those performance indicators?

**The Enforcement Board has not developed quantitative performance measures. However, data will be collected on: complaints, repeat violators, and penalties assessed. Reporting functions will monitor and track the various data that will be used to continue to improve the functions of the Enforcement Board. Analysis of this data will form the basis of future quantitative performance measures.**

**Memorandum of Understandings executed between the Board and the TRA, for administrative and investigative support, and between the Board and TN**

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**811, related to collection of cost assessments, will be reviewed in twelve months to determine effectiveness and efficiency of Enforcement Board activities.**

15. Describe any items related to the board that require legislative attention and your proposed legislative changes.

**There are no legislative changes proposed at this time.**

16. Should the board be continued? To what extent and in what ways would the absence of the board endanger the public health, safety or welfare?

**The Enforcement Board should be allowed to continue ensuring the safety of people, property, and infrastructure during excavation and demolition projects. Excavation and demolition activities jeopardize public welfare when they do not follow safety procedures for identifying underground utilities and performing excavating/demolishing activities with caution. The purpose of the Underground Utility Damage Prevention Act is to prevent harm to people, property, and underground utility facilities. The provisions of the Act are codified in Tenn. Code Ann. § 65-31-101 *et seq.* In addition, continuing the board would help the state's efforts to comply with the U.S.D.O.T.'s Pipeline and Hazardous Materials Safety Administration's (PHMSA's) requirement that states improve public safety by establishing statewide civil enforcement programs.**

17. Please list all board programs or activities that receive federal financial assistance and, therefore are required to comply with Title VI of the Civil Rights Act of 1964. Include the amount of federal funding received by program/activity.

**The Enforcement Board does not receive federal funding.**

*If the board does receive federal assistance, please answer questions 18 through 25. If the board does not receive federal assistance, proceed directly to question 24.*

18. Does your board prepare a Title VI plan? If yes, please provide a copy of the most recent plan.
19. Does your board have a Title VI coordinator? If yes, please provide the Title VI coordinator's name and phone number and a brief description of his/her duties. If not, provide the name and phone number of the person responsible for dealing with Title VI issues.

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20. To which state or federal agency (if any) does your board report concerning Title VI? Please describe the information your board submits to the state or federal government and/or provide a copy of the most recent report submitted.
21. Describe your board's actions to ensure that board staff and clients/program participants understand the requirements of Title VI.
22. Describe your board's actions to ensure it is meeting Title VI requirements. Specifically, describe any board monitoring or tracking activities related to Title VI, and how frequently these activities occur.
23. Please describe the board's procedures for handling Title VI complaints. Has your board received any Title VI-related complaints during the past two years? If yes, please describe each complaint, how each complaint was investigated, and how each complaint was resolved (or, if not yet resolved, the complaint's current status).
24. Please provide a breakdown of current board staff by title, ethnicity, and gender.

<u>Title</u>	<u>Ethnicity</u>	<u>Gender</u>
UUDEB Investigator	Caucasian	M
Deputy Chief, Consumer Services Division	Caucasian	F

25. Please list all board contracts, detailing each contractor, the services provided, the amount of the contract, and the ethnicity of the contractor/business owner.

**None**

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**ATTACHMENT**

<b>Board Member</b>	<b>Representing</b>	<b>Organization</b>	<b>Appointing Authority</b>	<b>Term Expires</b>
Wayne Hastings	Utility Districts	West Knoxville Utility District	Lieutenant Governor	6/30/2019
Bill Hollin	Agri/Homeowner		Governor	6/30/2019
Eddie Hood	Counties	Williamson Co. Hwy. Comm.	Speaker of the House	6/30/2018
Kenneth W. King	Municipal Electric Public	Bristol Essential Services	Lieutenant Governor	6/30/2017
Kevin Kruchinski	Water/Wastewater	TN American Water	Lieutenant Governor	6/30/2019
Bob Lambert	Natural Gas Distribution Systems	Etowah Utilities	Governor	6/30/2019
Scott Niehaus	Small ILEC	United Communications	Lieutenant Governor	6/30/2018
Bob Pitts	Excavation Industry	Assoc. of Builders & Contractors	Lieutenant Governor	6/30/2017
Thomas E. Suggs, Jr.	Electric Coop	Middle TN Electric Membership Corp.	Speaker of the House	6/30/2017
Kevin Tubberville	TN Road Builders	Jones Brothers	Governor	6/30/2018
Bill Turner	Ex-Officio Public Electric	TN One Call	Ex Officio Member	No Expiration
Rick Tunnell	Power	AEP	Governor	6/30/2019
Kevin Raley	Interstate Pipeline	Colonial Pipe	Speaker of the House	6/30/2017
Craig Jensen	Large ILEC	AT&T	Speaker of the House	6/30/2019
Steve Raper	Towns & Cities	Jackson Energy Auth.	Governor	6/30/2019
<i>Unfilled</i>	Cable TV Industry	<i>Unfilled</i>	Speaker of the House	6/30/2019