

Sunset Public Hearing Questions for  
**Water and Wastewater Financing Board**  
Created by Section 68-221-1008, *Tennessee Code Annotated*  
(Sunset termination June 2019)

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

**The Wastewater Facilities Act of 1987 created a Wastewater Financing Board within the Department of Environment and Conservation (“TDEC”). 1997 Tenn. Pub. Acts ch. 483 renamed it to the Water and Wastewater Financing Board (“the Board”) and included water systems within its jurisdiction. In 2007, the Board’s administrative attachment transferred from TDEC to the Comptroller of the Treasury. 2007 Tenn. Pub. Acts ch. 86. The Board 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.**

**Tenn. Code Ann. § 68-221-1009 prescribes the duties of the Board:**

- **Adopt, modify, repeal, and promulgate rules in accordance with the Uniform Administrative Procedures Act and, after due notice, to enforce rules and regulations which the Board deems necessary for proper administration of §§ 68-221-1007—68-221-1012;**
- **Investigate and determine the financial condition of water systems and wastewater facilities under its jurisdiction;**
- **Effect the adoption of user rates necessary for the self-sufficient operation of certain water systems and wastewater facilities and to negotiate the consolidation of certain water systems and wastewater facilities;**
- **Ameliorate 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 rate subsidy program to the extent state appropriations are available;**
- **Issue subpoenas requiring attendance of witnesses and production of such evidence as requested; administer oaths; and take such testimony as the board deems necessary in fulfilling its purpose. In case of the refusal of any person or entity to obey a notice of hearing or subpoena issued by the board under this part, the chancery court of Davidson County shall have jurisdiction upon application of the board to issue an order requiring such person to appear and testify or produce evidence as the case may require, and any failure to obey such order of the court may be punished by such court as contempt;**
- **In the case of public water systems, investigate, with the assistance of the Department of Environment and Conservation and the Comptroller of the Treasury, and determine the financial, technical, and managerial capacity of the systems to comply with the requirements of the federal and state acts; and to require systems to take appropriate action to correct any deficiencies in such areas, including, but not limited to, changes in ownership, management, accounting, rates, maintenance,**

consolidation, alternative water supply, or other procedures. The Board also may approve or disapprove such corrections as a condition for the receipt of assistance under § 68-221-1206(a)(3).

- Establish, adopt and promulgate, in accordance with the Uniform Administrative Procedures Act, rules to define excessive water losses for public water systems; and
- In the case of public water systems, to investigate public water systems whose water loss as reported in the public water system's audit is excessive as established by rules promulgated by the board and to require those public water systems to take appropriate actions to reduce water loss to an acceptable level as determined by the board.

**Staff to the Board consists of:**

**John Greer, Utilities Specialist**

2. Provide a list of board members and describe how membership complies with 68-221-1008, *Tennessee Code Annotated*. Who appoints members? Are there any vacancies on the board? If yes, what is being done to fill those vacancies?

**The Board consists of the Comptroller of the Treasury or his designee, who serves as Chairman, the Commissioner of TDEC or her designee, and seven members appointed by the Governor to three-year terms expiring on June 30 of the appropriate year.**

<u>Member</u>	<u>Representing</u>
Ann Butterworth, Chairman	Comptroller of the Treasury
Tom Moss	TDEC
Eugene Hampton	Government Finance/Minority Citizens
Drexel Heidel	Active Employee/Utility Districts
Vacant	Manufacturing Interests
Nick Newman	Active Employee/Municipal Water System
Rick Graham	Municipalities
Jim Redwine	Tennessee Environmental Council
Randy Wilkins	Utility Districts

**The position representing manufacturing interests has been vacant since 2015. The Governor's office has contacted the Tennessee Business Council to assist in filling the position, but the Council has not submitted names for consideration.**

3. How many times did the board meet in the last two fiscal years? How many members were present at each meeting?

**The Board's rules require it to meet at least twice each calendar year. In 2017, the Board met twice, with attendance at seven and five members respectively, and has met once in 2018 with seven members in attendance. The Board will meet again in November 2018, thus fulfilling its yearly meeting requirements.**

4. What per diem or travel reimbursement do members receive? How much was paid to board members in the last two fiscal years?

**Board members are reimbursed based upon the State Comprehensive Travel Regulations. Travel expenditures were \$917.89 for FY 17 and \$787.98 for FY 18.**

5. What were the board's revenues and expenditures for the last two fiscal years?

**The Board does not have a revenue stream. Board expenditures, which are limited to per diem, are covered by the Comptroller of the Treasury.**

6. 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?

**The Board is subject to the Tennessee Open Meetings Act. It posts its meeting notices in advance on its website, which is under the general website of the Comptroller of the Treasury: <http://www.comptroller.tn.gov/WWFB>. Board minutes are maintained by the Comptroller of the Treasury, which are furnished on request in accordance with the Tennessee Public Records Act.**

7. What were the major accomplishments of the board during the last two fiscal years? Specifically, describe the nature and extent of the board's activities as they relate to each of the board's duties and responsibilities set out in Section 68-221-1009, *Tennessee Code Annotated*.

**In the past two years, the Comptroller's Office has taken a proactive approach in assisting utilities with resolving financial and water loss issues in an informal manner before such issues reach the point of a referral to the Board. While the Board is tasked with regulating the financial stability of utilities, Board staff strives to build relationships and partnerships with utilities and offers daily assistance to municipalities across the State in taking a new and creative approach in ensuring financial stability. The Comptroller's Office, through Board staff, has offered multiple free days of training in Chattanooga, Jackson, Knoxville, Morristown and Nashville, in an effort to broaden the reach of its assistance and proactive engagement. Additionally, Board staff has partnered with various utility groups, including the Tennessee Association of Utility Districts, the Tennessee Municipal Electric Power Association, the Duck River Agency and the Tennessee Gas Association to provide additional training and technical assistance in locations throughout the state.**

**Board staff has visited utilities across the state to preemptively assist in answering complex utility questions and find solutions to financial and water loss issues. Board staff is available through a designated utilities email address and phone number to assist in any way possible.**

**The Board has ensured long term plans are in place for any entity that does come before it for financial distress. These plans are key to building financially stable utilities for future generations.**

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

**Pursuant to Tenn. Comp. R. & Regs. 1740-01-.02(4), each Board member is required to file with the comptroller “annual written disclosures of financial interests and other direct and indirect conflicts of interest.” Board members shall not participate in discussion or vote on matters in which the member has a conflict of interest or “if there is any appearance of impropriety as determined by Counsel.” Staff to the Board are employees of the Comptroller of the Treasury and are required to sign conflict of interest disclosure forms annually.**

9. What reports does the board prepare on its operations, activities, and accomplishments, and who receives those reports? If available, please attach copies of recent reports.

**The Board is not statutorily required to prepare an annual report; however, in fiscal year 2017, the Comptroller’s Office worked with the Board to produce a Fiscal Affairs Report on Tennessee utilities. This report is attached.**

10. Has the board promulgated rules and regulations as permitted in Section 68-221-1009(a)(1), *Tennessee Code Annotated*? If yes, please cite the reference.

**The Board’s rules can be found at Tenn. Comp. R. & Regs. 1740-01 (2016).**

11. How many water systems and wastewater facilities were brought before the board during the last two fiscal years upon recommendation of the Comptroller of the Treasury? Briefly summarize the board’s orders and determinations in those cases. Were all the hearings scheduled within 60 days from the receipt of the audit report as required by Section 68-221-1010, *Tennessee Code Annotated*?

**At any given time, approximately 250 utilities could come under the Board’s official oversight. The Comptroller’s Office, through Board staff, partners with each of these utilities to offer informal assistance on financial issues. Board staff has visited utilities across Tennessee during the last two fiscal years, speaking with board members and various county commissions, and offered technical assistance to maintain financial stability. Questions from utilities throughout the state are fielded daily through the Comptroller’s utilities phone number and email address.**

**The Board’s formal regulatory authority is only required when all efforts from the Comptroller’s Office to informally resolve the issues have been exhausted. Even in such cases, the Board often instructs the utility to continue to partner with staff to come to a suitable resolution. In these situations, staff acts as a liaison between the utility and the Board to find a reasonable compromise that protects the best interests of ratepayers.**

**When staff attempts to proactively assist utilities were unsuccessful, the following types of cases came under the Board’s jurisdiction.**

**FY 16-17**

**Water loss cases: 24**

**Financial cases: 22**

**Investigations: 2**

**Technical Assistance Requests: 1**

**FY 17-18**

**Water loss cases: 16**

**Financial cases: 28**

**The Board examined and reviewed each case individually and, when necessary, issued orders with individualized steps to assist each entity in resolving the issue for which it came before the Board. Meeting minutes and orders with more details regarding each case can be provided if needed. While all hearings were scheduled within 60 days, the Board often gave the utility several months to work with staff toward a resolution.**

12. How many reviews of board decisions were held during the last two fiscal years? Who conducted the hearings (the board, one or more board members, or an administrative judge)? How many decisions were reversed? Upheld? Amended?

**There were no reviews of Board decisions in the last two fiscal years.**

13. How many cases did the board refer to chancery court during the last two fiscal years because facilities failed to adhere to the board's final orders? What was the outcome of those cases?

**The Board referred no cases to chancery court during the last two fiscal years.**

14. Describe the board's process for investigating and determining the financial condition of wastewater facilities.

**Upon receipt of the audited financial statements from the Division of Local Government Audit Review Team (which constitutes the referral by the Comptroller of the Treasury), staff to the Board notifies the municipality. Staff sends a detailed financial questionnaire and begins to work with the municipality to develop a plan to help improve the financial situation or improve the excessive water loss condition within the guidelines previously established by the Board. Only when necessary, the Board issues a formal order and requires updates twice annually until the entity is released from oversight.**

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

**Staff is not recommending any legislative changes 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 of Tennessee citizens?

**The Board should be continued. The Water and Wastewater Financing Board plays a vital role in monitoring the fiscal health of approximately 250 utility systems across the state. The Board ensures these systems resolve financial distress and water loss conditions. Additionally, the Board and its staff help systems develop long term financial plans and analyze available funding and resources. Staff also provides important training and advises on issues including rate structures and best practices. Efficient and financially responsible utility operations protect ratepayers and ensure essential water and wastewater services are delivered reliably for future generations.**



# Comptroller of the Treasury

## Quarterly Fiscal Affairs Report

Volume 5, Number 3  
October 2016

*State law directs the Comptroller to report on the state's fiscal affairs periodically. In this report, we provide a look at Tennessee's utilities.*

“Water, water everywhere, nor any drop to drink.” Over 70 percent of the Earth's surface is covered with water – but, as anyone who swims in the oceans knows, the vast majority is not drinkable.

Luckily, thanks to utilities, Tennesseans have plenty of clean water to drink. Every day, utilities pump more than half a billion gallons of water to homes and businesses across the state. To ensure that this water keeps flowing and stays affordable, the Comptroller's Office helps utilities manage their money and steps in when they run into financial trouble.

### ***What is a utility?***

Broadly speaking, a utility is any entity that provides water, wastewater or sewer services, natural gas, electricity, or phone services. While electricity and telephone are a large part of the utility world, they have a vastly different regulatory scheme. This report will focus on water and wastewater due to the Comptroller's substantial involvement.

Tennessee has four classes of governmental utilities: utility districts, and utility services provided by cities, counties, and authorities. Although all of these types provide the same services, the four main classes are overseen by two different boards.

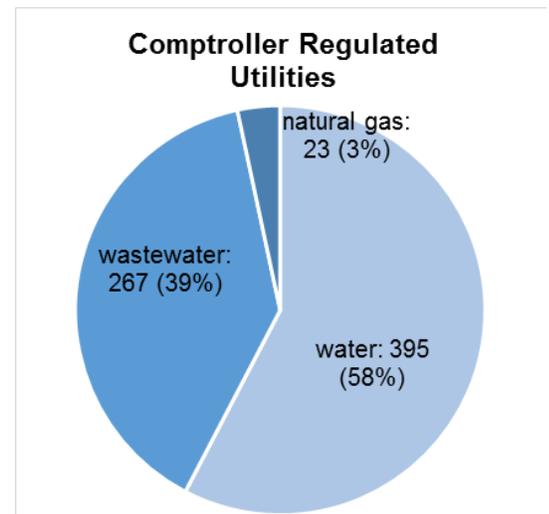
### ***Utility Districts***

Utility districts are entities that are legally separate from other governments, such as cities or counties. Utility districts are “user based” and “revenue driven,” meaning that they cannot levy taxes. Instead, all revenue comes from customers paying for services.

Unlike cities and counties, which have broad authority to provide all necessary services for citizens, utility districts can only provide a few specific services outlined in law. These include water, sewer and wastewater services, natural gas, garbage collection, police and firefighter services, street lighting, and parks and recreational services.

Tennessee utility districts are made up of:

- 138 water only providers
- 19 natural gas only providers
- 18 water and wastewater providers
- three wastewater and natural gas providers
- one wastewater only provider
- one water, wastewater, and natural gas provider; and
- one fire protection services provider.



Why does a utility district operate a fire department? It depends on a concept known as **service area**. In the past, many rural areas were too far from a city to receive services from a fire department or garbage collectors. So, with no city to provide these things, rural citizens created a utility district to cover the area.

### **Cities, Counties, and Authorities**

Most cities and counties provide water, wastewater, and natural gas services to residents. Financially, city and county utilities must be “self-sufficient,” meaning that they cannot operate with tax revenue; instead, they must support themselves with customer paid rates and fees.

As with utility districts, the concept of **service area** also applies to cities and counties. For example, while a county utility may cover the entire county, cities typically do not extend outside their corporate boundaries. Although cities may provide services past the city limits with approval from the county mayor, another way to reach more people is by forming an authority.

Authorities are similar to utility districts in that they are separate entities from the city or county government. Often, authorities are created in the spirit of collaboration – smaller city utilities may band together, for instance, to consolidate operations and serve more people.

Currently, 251 cities, nine counties, and nine authorities provide utility services.

251 cities	Nine counties	Nine authorities
• 22 water	• two water and wastewater	• five water and wastewater
• 38 wastewater	• one wastewater only	• one water only
• 191 water and wastewater	• six water only	• three wastewater only

## Why utilities matter

It's easy to see why utilities are important – just imagine 700,000 Nashville residents hauling buckets of water from the Cumberland River and boiling the water in their houses. But we may not think about how much utilities affect our daily lives. In 2015, utilities pumped *250 trillion* gallons of water to over 2 million connections – houses or buildings – across the state. For comparison, Sevierville, one of the rainiest cities in Tennessee, gets about 45 inches of rain a year – this means Sevierville would have to collect every drop of rainwater for over 14 years to provide as much water as utilities distributed in just one year.

But while utilities are undoubtedly essential parts of life, a rocky future lies ahead. Utilities are increasingly facing enormous infrastructure costs needed to replace pipes, meters, and storage tanks, and to upgrade utility plants. In fact, in 2015, the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) estimated that Tennessee has \$3.4 billion in water and wastewater infrastructure needs, mostly at the local level. And Tennessee is not the only state in this predicament – the American Society of Civil Engineers estimated that the United States currently needs \$1.3 trillion to fully replace its aging utility systems.

## The Impending Pipe Crisis

While the ancient Romans perfected the use of aqueducts and canals to provide water to citizens, modern utilities use thousands of miles of underground pipes. But consider this:

- In the early 1900s, utilities laid “100-year pipe,” meaning the pipes would last for roughly 100 years.
- In the mid-1900s, most utilities began putting in 50-year pipe.
- In the late 1900s, many utilities switched to using 30-year pipe.



What does this mean? It means that the vast majority of pipes in Tennessee – regardless of when they were put in the ground – will reach the end of their usable lifespan in the next decade or so. In other words, **Tennessee will need to replace nearly all of its pipes across the state in the near future.**

## America's Utility Report Card

**U.S. Wastewater grade: D**  
**U.S. Drinking water grade: D**

**TN Wastewater grade: D+**  
**TN Drinking water grade: C**

**Estimated cost to fully replace aging systems nationwide:**  
\$1.3 trillion, according to American Society of Civil Engineers

**Estimated cost of required repairs for the next 20 years:**  
\$655+ billion, according to the Environmental Protection Agency

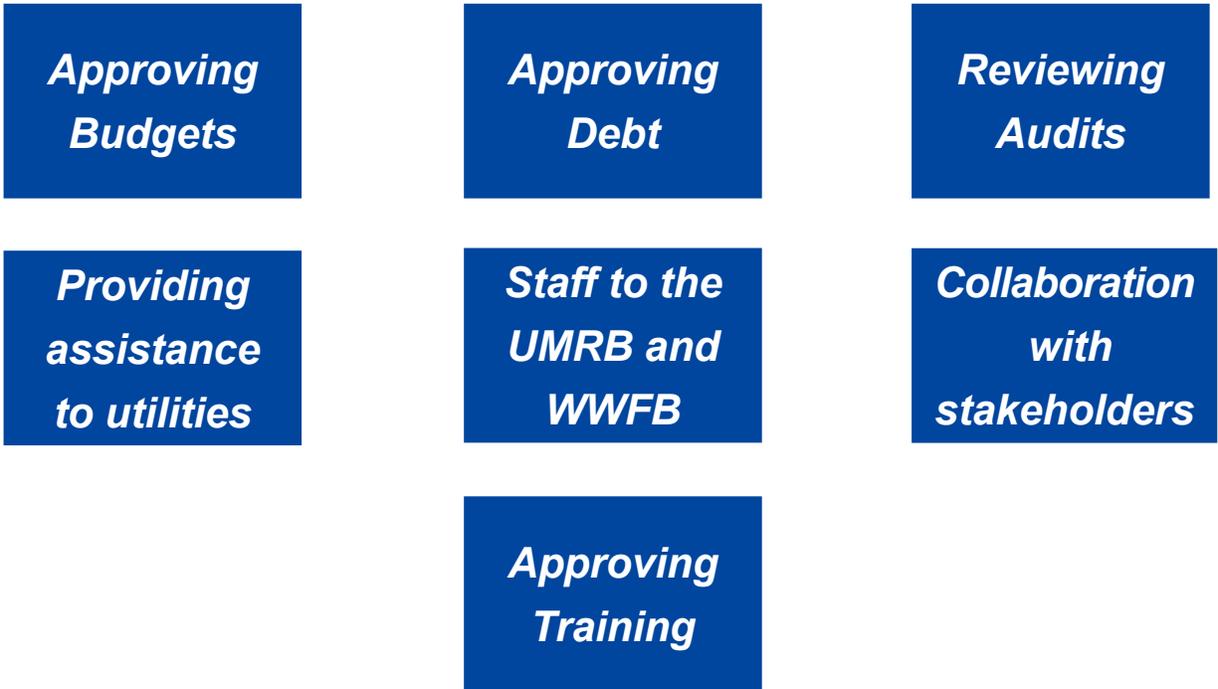
**Estimated cost of water and wastewater infrastructure needs in Tennessee:** \$3.4 billion, mostly in local funds, according to the Tennessee Advisory Commission on Intergovernmental Relations (TACIR)

\* Utility grades by the American Society of Civil Engineers

## ***Utilities and the Comptroller's Office***

So what does the Comptroller, the state's "money cop," have to do with utilities? While the Comptroller's Office does not monitor utilities' physical operations – pipe maintenance, water quality, etc. – the office does watch their fiscal operations. Financially healthy utilities are much more likely to be physically healthy utilities; after all, pipe repairs and infrastructure improvements cannot be made without the funds that come from good money management.

The office helps keep utilities financially sound by approving their budgets and debt, and steps in when utilities run into financial trouble. The Comptroller's Office supports utilities in a variety of ways:



- **Approving budgets.** The Comptroller's Office of State and Local Finance supports the financial accountability and sustainability of Tennessee's local governments. In fiscal year 2015-2016, the office approved budgets for 126 utility districts, 95 counties, and 296 cities. In addition to approving budgets, the Office of State and Local Finance also reviews or approves certain debt issues, including plans to issue balloon indebtedness.
- **Approving debt.** The Comptroller's Office works with the Tennessee Local Development Agency (TLDA), which provides loans to local governments, small businesses, and non-profits for certain purposes. In fiscal year 2015-16, TLDA disbursed over \$123 million in loans to local governments and utility districts through the Clean Water State Revolving Fund and the Drinking Water State Revolving Fund. The Comptroller's Office assists TLDA in determining whether a utility will be able to pay back its loan at its current water rates.
- **Reviewing audits.** In 2015, audits of utility districts revealed 174 findings, the majority of which involved weaknesses in internal controls. The Comptroller's Office reviews these audits, and may refer utilities with findings to either the Utility Management Review Board or the Water & Wastewater Financing Board.

- Supporting the Utility Management Review Board and Water & Wastewater Financing Board. The Comptroller’s Office serves as staff to both the UMRB and WWFB, the two boards that regulate utilities. The office assists with financial planning, including developing long term plans and analyzing available funding and resources. Comptroller staff also advise on issues involving water loss, rate structures, and best practices.
- Collaborating with all entities involved with local utilities. The Comptroller’s Office serves as a liaison with elected and appointed officials, the Tennessee Department of Environment and Conservation, and other regulatory agencies to assist Tennessee’s public utility systems.
- Approving trainings for utility district commissioners. By law, utility district commissioners must meet training and continuing education requirements to remain eligible for another term of office. The Comptroller’s Office approves all trainings.

### ***Improving Management with Training***

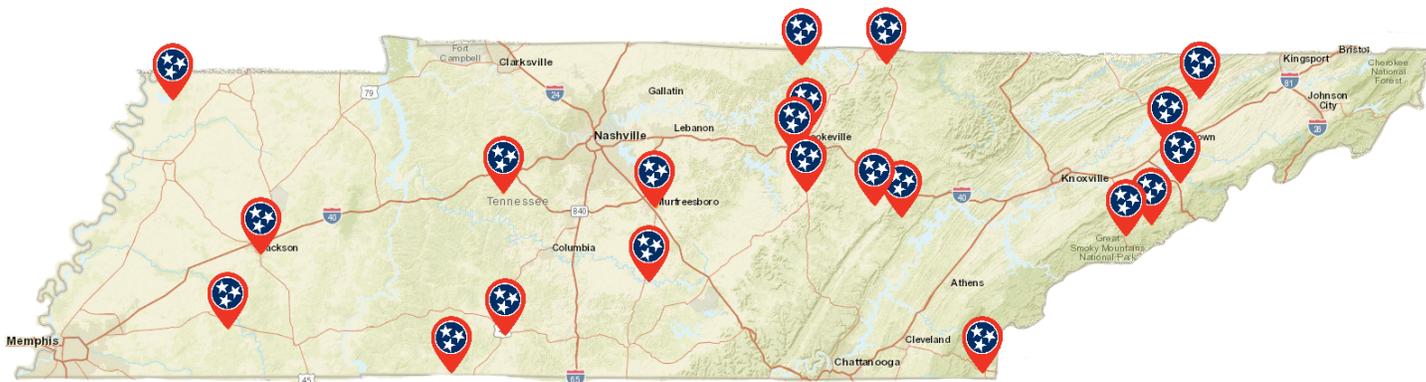
Well-run utilities are the difference between a first world and a third world country, and utility district commissioners have an important responsibility to maintain their utility district’s fiduciary responsibility. The Comptroller’s Office approves all trainings required by law for utility district commissioners. Commissioners must receive training on the following subjects:

- Board governance
- Financial oversight
- Policy making responsibilities
- Other topics related to commissioner’s duties

A utility district commissioner who fails to meet the training and continuing education requirements before the end of the commissioner’s term of office shall not be eligible for reappointment or reelection to another term of office. Currently, there are no requirements for municipal, county, or authority board members that oversee utilities to receive training.

***Currently, there are no requirements for municipal, county, or authority board members that oversee utilities to receive training.***

The map below shows the different trainings that the Comptroller’s Office provided during 2015-2016.



## ***Assisting utilities to fix financial problems***

While the Comptroller's Office works to keep all utilities financially sound, sometimes things go wrong, and the office must take further action. The Comptroller serves as the chair of the two boards that regulate governmental water, wastewater, and natural gas utilities: the UMRB and the WWFB. The boards are administratively attached to the Comptroller's Office, and additional Comptroller employees serve as staff. The UMRB and the WWFB ensure that utilities are self-supporting and operate within their means. Utilities with financial problems may be placed under the control of the boards until the issues are resolved. Utilities are referred to the boards due to:

- Financial distress. A financially distressed utility district may have liabilities greater than assets, two years of operating losses, or default on its debt.
- Water loss. A utility district may suffer "real" water loss, when the utility loses actual water due to leakages. Losses may also be "apparent," and result from clerical errors made by staff or incorrect readings from malfunctioning water meters. A law passed in 2007 requires that utilities losing an "excessive" amount of water be referred to the UMRB or WWFB for corrective action.

### ***2015 water losses:***

- ***\$68 million***
- ***51 billion gallons (80% of the water in Percy Priest Lake)***

While the two boards have very similar duties, the main difference is jurisdiction: the UMRB regulates utility districts, and the WWFB oversees cities, counties, and authorities. Additionally, the UMRB has greater quasi-judicial powers than the WWFB, and addresses customer complaints, authorizes the creation of new utility districts, and has the power to remove utility district commissioners.



*The Tennessee Local Development Authority approves loans for water and wastewater facilities.*

## Utility Management Review Board (UMRB)

## Water & Wastewater Financing Board (WWFB)

### Jurisdiction

- utility districts
- cities;
- counties; and
- authorities

### Duties

- oversee utilities for financial distress or water loss
- resolve customer complaints;
- authorize creation of new utility districts; and
- remove utility district commissioners.
- oversee utilities for financial distress or water loss

### Currently Under Oversight

24 utility districts:

- 19 for financial distress;
- three for water loss; and
- two under investigation.

42 entities - 39 cities, two counties, and one authority:

- 27 for financial distress; and
- 15 for water loss

### Membership

- utility district commissioners (3)
- utility district managers (3)
- consumer representative (1)
- Commissioner of TDEC
- Comptroller of the Treasury (Chair)
- member representing municipalities
- member representing utility districts
- member representing environmental interests
- member representing manufacturing interests
- member representing minority citizens with experience in government finance
- employee of a municipal water utility
- employee of a water utility district
- Commissioner of TDEC
- Comptroller of the Treasury (Chair)

## Conclusion

Although people may not stop to think about where their water comes from every time they turn on a faucet, utilities are an essential part of everyday life. By helping utilities stay financially healthy and stepping in when they run into trouble, the Comptroller's Office helps ensure that all Tennesseans have clean and affordable water to drink. The public is served best when it's provided water services by self-sustaining utilities that are adequately financed with rates and fees based on sound accounting, engineering, financial, and economic principles.

To be self-sustaining, renewal and replacement costs for treatment, storage, distribution, and collection systems must be considered. Some utilities have kept their rates low by ignoring these costs, but they become obvious as the useful lives of systems come to an end. Current managers and communities are forced to address these costs through painful rate increases.

Utility districts have a challenge to balance ratepayers' desires for low rates with an amount necessary to fund current and future needs. Prudent financial management is essential to a well-run public utility. Nothing less than clean, accessible and affordable water is at stake. Providing for today and planning for tomorrow allows Tennessee to maintain its position as a leader in economic development and quality of life.



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