

Amendment No. 1 to HB1478

Todd
Signature of Sponsor

AMEND Senate Bill No. 1152

House Bill No. 1478*

by deleting all of the language after the enacting clause in its entirety and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 9-21-406, is amended by deleting the language in its entirety and substituting the following:

(a) Any note or promise to repay money (herein called "obligation") issued or made under this chapter contrary to requirements precedent to the issuance of notes under this part and parts 5-8 of this chapter, as the case may be, shall be considered nonconforming and shall be subject to the restrictions and penalties of this section.

(b) Upon identification of a nonconforming obligation the comptroller of the treasury or the comptroller's designee shall send written notice to offending parties, including the chief executive officer and chief financial officer of the affected local government. This notice shall contain a detailed description of:

- (1) The nature of the nonconformance;
- (2) Specific corrective actions necessary to bring the obligation into conformity; and
- (3) A reasonable time, as determined by the comptroller or comptroller's designee, within which the local government shall complete the necessary corrective actions.

(c) Upon receipt of a notice issued pursuant to subsection (b), a local government shall respond to the notice in writing within ten (10) business days. This response shall state:

- (1) Acknowledgment of the alleged nonconformance, and

(A) A detailed plan for obtaining conformity;

(B) A statement as to whether the time frame established by the notice of subsection (b) is sufficient to complete corrective actions necessary for conformance; and

(C) If necessary, a request for additional time to complete corrective actions necessary for conformance; or

(2) Disputation of the alleged nonconformance, and

(A) A detailed explanation of reasons for disputation; and

(B) A request for reconsideration.

(d) Upon receipt of the response required by subsection (c), the comptroller or comptroller's designee shall within ten (10) business days send a written response to the chief executive officer of the local government, the chief financial officer of the local government and the local governing body. That response shall:

(1) In cases where the local government acknowledges initial determination of the comptroller or the comptroller's designee:

(A) Accept or deny the plan offered pursuant to subsection (c)(1)(A); and

(B) Where applicable, approve or deny the request made pursuant to subsection (c)(1)(C) for additional time to complete corrective actions necessary to obtain conformity; or

(2) In cases where the local government disputes the initial determination of the comptroller or comptroller's designee, contain a statement addressing the merits of the disputation. This statement shall:

(A) Accept the disputation and consider the obligation in conformity; or

(B) Deny the disputation and restate the necessary corrective actions and reasonable time frame for completing such.

(e) At the conclusion of the time frame established pursuant to subsection (d) by the comptroller or comptroller's designee for completion of the necessary corrective actions the comptroller or comptroller's designee shall, within ten (10) business days, make a determination as to whether the local government has completed the necessary corrective actions to the official's satisfaction.

(1) Upon the determination that the necessary corrective actions have been satisfactorily completed, the obligation shall be considered in conformity and no penalty shall be assessed. Notice of such shall, within ten (10) business days of determination, be sent to all parties.

(2) Upon the determination that the necessary corrective actions have not been satisfactorily completed, notice shall be sent to all parties, including the chief executive office of the local government, the chief financial officer of the local government and the local governing body. Such notice shall be sent within ten (10) business days of such determination and shall include:

(A) A statement of nonconformance;

(B) A written explanation of deficiencies in conformance;

and

(C) A statement that the nonconformance shall be reported to the comptroller and that the parties shall be subject to the penalty provisions of this section.

(f) Upon receipt of a notice of nonconformance issued pursuant to subsection (e)(2) the comptroller shall:

(1) Levy a penalty in accordance with the guidelines adopted pursuant to subsection (g);

(2) Upon a determination that it is in the best interests of fairness, extend the time frame in which parties may complete necessary corrective action, before a penalty is levied; or

(3) Waive the penalty.

(g) The state funding board shall develop and adopt guidelines for the purpose of identifying classifications of nonconformity and levying of penalties pursuant to this section. In developing and adopting these guidelines, the following shall be taken into consideration:

(1) The distinction between material nonconformance and administrative nonconformance;

(2) The distinction between willful or knowing nonconformance and inadvertent or accidental nonconformance;

(3) The existence and extent or absence of actual damages to the public;

(4) That every penalty imposed should be levied upon a totality of the circumstances; and

(5) Where determining the necessity of public notification of nonconforming obligations, the comptroller shall use a method commensurate with the nature of the nonconformance.

(h) The comptroller or the comptroller's designee may extend the time for written notices or responses provided for in this section for a reasonable duration upon a determination that such extension of time in the best interest of the parties. An offending party or affected local government may request an extension of time by submitting such request with reasoning to the comptroller or the comptroller's designee.

SECTION 2. This act shall take effect on becoming law, the public welfare requiring it.