



TENNESSEE UTILITY MANUAL FOR LOCAL GOVERNMENTS



*Approved by the Tennessee Board of Utility Regulation
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Jason E. Mumpower
Comptroller of the Treasury



**DIVISION OF
LOCAL GOVERNMENT FINANCE**

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Section 1 – Introduction

Purpose

The purpose of the Tennessee Utility Manual for Local Governments (the “Manual”) is to provide uniform guidance for local governments in Tennessee that operate water, sewer, or natural gas utility systems. The Manual is not designed to be all-inclusive, but to provide guidance and requirements related to utilities. The Manual’s primary focus is the oversight and regulation of utility systems by the Tennessee Board of Utility Regulation (“TBOUR” or “the Board”).

The manual is divided into the following areas:

- Oversight by the Comptroller of the Treasury (“the Comptroller” or “the Comptroller’s Office”) – Section 2
- TBOUR – Section 3
- TBOUR Referrals, Approvals, and Other Areas of Oversight – Sections 4 – 7
- Annual Requirements – Section 8
- Other Agencies and Boards – Section 9
- Utility Terminology, Definitions, & Concepts – Section 10
- Best Practices – Section 11

This manual, as approved by the Tennessee Board of Utility Regulation on March 13, 2025, is the first edition issued pursuant to the Rules of the Tennessee Board of Utility Regulation, Chapter 1715-02.

Applicability

Any reference to the term “utility system” or “local government” applies to the following entities pursuant to Tenn. Code Ann. § 7-82-701(b):

- Municipalities
- County or Metropolitan Governments
- Joint ventures created by an interlocal agreement, any of which offers water, sewer, or natural gas utility services

- Municipal Energy Authorities
- Utility Districts
- Water and Wastewater Treatment Authorities

This manual is not meant to be a reference for:

- Electric Systems
- Broadband Systems
- Private Utilities
- Environmental Issues

These entities and concerns are regulated by other state or federal agencies.

Additionally, pursuant to Tenn. Code Ann. § 64-9-107(c), TBOUR does not have jurisdiction over the Megasite Authority of West Tennessee, a regional development authority administratively attached to the Tennessee Department of General Services. The Authority is authorized to provide water and wastewater services to customers located on the initial megasite property and is statutorily prohibited from operating at a deficit after December 31, 2026. See: Tenn. Code Ann. §§ 64-9-104(11), 64-9-107(d)



Section 2 – Comptroller Oversight

The Comptroller supports utility systems operated by local governments through the following divisions and offices:

- Division of Local Government Finance
- Division of Local Government Audit
- Division of Investigations
- Office of Open Records Counsel
- Tennessee Board of Utility Regulation

Division of Local Government Finance

State legislators recognize the importance of financial stability and resilience in Tennessee’s local governments and have passed laws that strengthen financial accountability for utility systems operated by local governments.

The Division of Local Government Finance (“LGF”) provides oversight for utility systems operated by counties, metropolitan governments, municipalities, utility districts, and authorities in the following areas:

- Staff to the Tennessee Board of Utility Regulation
- Annual Budget Oversight
- Debt Oversight
- Interfund Transfers and Corrective Action Plans

Staff to the Tennessee Board of Utility Regulation

LGF serves as Board staff to the TBOUR as further explained in Section 3.

Annual Budget Oversight

Local governments that operate a utility system are statutorily required to adopt an annual budget. LGF has a comprehensive review and approval process for the annual budget.

A utility system's annual budget should do three (3) things:

- 1) Result in a statutory increase in net position¹,
- 2) Pay all debt service as it is due; and,
- 3) Generate sufficient revenue to sustain both an unrestricted and a total positive net position.

Outside of an emergency, state law does not allow local governments to issue debt unless the local government's budget has been approved by LGF. (Tenn. Code Ann. §§ 9-21-404; 7-36-113; 7-82-501; 68-221-611, and 68-221-1306).

For more information on budget requirements, including a budget manual, instructional videos, and submission requirements, refer to at: tncot.cc/budget.

Debt Oversight

The legal requirements on debt issued by a utility system vary, depending on the type of local government that owns and operates the utility system. The requirements governing debt oversight can be found on the Comptroller's website at: tncot.cc/debt. Utility systems are responsible for these requirements if they have outstanding debt or are planning to incur new debt, including interfund loans.

Requirements that govern debt oversight, including a debt manual, instructional videos, and other tools, may be accessed on the Comptroller's website at: tncot.cc/debt.

Interfund Transfers and Corrective Action Plans

Tenn. Code Ann. § 7-34-115 requires utility systems operated by counties and municipalities to be self-supporting and operated on sound business principles. This means user charges, rates, and fees must reflect the cost of providing the utility service. The impact of this requirement is twofold:

- (1) The utility system cannot operate for gain or profit or serve as a source of revenue to the general government but must operate for the benefit of the customers served by the utility system.
- (2) The utility system cannot rely upon subsidies from the general government to help pay for costs and expenses of the utility system.

In the first scenario, should utility funds be used for the illegal benefit of the general government, local officials must repay the funds (Tenn. Code Ann. § 7-34-115). If the general government does not have sufficient funds to immediately repay the utility system, the county or municipality must submit a corrective action plan covering a period not to exceed five (5) years in which to repay the funds. The plan shall be submitted to and approved by LGF. Local officials should be aware that upon discovery of such violation through an audit, any official in violation is subject to ouster under

¹ A statutory increase in net position is a positive net change, not counting grants or contributions or transfers.

Tenn. Code Ann. Title 8, Chapter 47. As explained in Section 4, use of restricted utility revenue for general governmental purposes will result in a local government being referred to TBOUR.

This statute does not prohibit a local government from being entitled to receive from a utility the amount of properly allocated and disclosed direct and indirect operating expenses incurred by the municipality on behalf of the utility. An example direct expense is direct labor, and example indirect expenses include administrative salaries, rent, and audit fees. Allocation of expenses must be fully documented and based upon estimates that are reasonable and measurable. Shared costs must be allocated and paid or reimbursed each month.

Employee benefit contributions (e.g., pension and other postemployment benefits) for utility employees should be made from the utility financial resources. All associated assets, deferrals, and liabilities should also be reported by the utility system.

In the second scenario, although a utility system cannot rely upon regular subsidies from the municipality or county, a local government is not prohibited from making a one-time transfer of lawfully available funds to pay a non-operating cost, such as an investment in capital assets, that has been pre-approved by LGF. Approval by LGF is not required when external grant funds are moved from one fund to the utility fund for an authorized grant purpose. Refer to Sections APP.B and APP.D of the Audit Manual published by the Comptroller's Division of Local Government Audit.

County, municipal, and metropolitan governments that have issued revenue debt pursuant to Tenn. Code Ann. § 9-21-308 are subject to the same statutory requirements. Please note that interfund loans between a utility fund and any other fund of a local government must be approved by LGF.

Division of Local Government Audit

The Comptroller's Division of Local Government Audit (LGA) is responsible for the annual audit of Tennessee's local governments. Financial statements must be presented in accordance with generally accepted accounting principles. Each financial and compliance audit is conducted in accordance with the requirements of *Government Auditing Standards*. LGA is responsible for the following publications that utility systems should be familiar with:

- Internal Control and Compliance Manual for Governmental Units and Other Organizations
- Audit Manual: Auditing, Accounting and Reporting for Local Government Units and Other Organizations
- Information System Best Practices for Local Governments

LGA also maintains a platform known as COT Cyber Aware to provide resources to local governments related to cyber security. The division approves TAUD model expense and travel policies. Additionally, utility systems that plan to implement an electronic business system must file implementation statements with LGA pursuant to Tenn. Code Ann. § 47-10-119.

To access information from the Division of Local Government Audit, visit: comptroller.tn.gov/office-functions/la.html

Division of Investigations

The Comptroller's Division of Investigations is responsible for conducting investigations related to financial irregularities, fraud, and other matters within the purview of the Comptroller's office. The Comptroller's office in Tennessee plays a key role in ensuring transparency, accountability, and efficiency in the use of public funds. The Division of Investigations typically works to uncover and address instances of financial misconduct, misuse of public funds, and other financial irregularities.

Public officials that are aware that unlawful conduct has occurred are required to report that information to the Comptroller in a reasonable amount of time. See Tenn. Code Ann. § 8-4-501.

To report Fraud, Waste, or Abuse use the form here: <https://comptroller.tn.gov/office-functions/investigations/fraud-waste-and-abuse.html>

The Office of Open Records Counsel

The Office of Open Records Counsel ("OORC") serves citizens, media, and local governmental entities as a resource for issues related to the Tennessee Public Records Act ("TPRA") and Tennessee Open Meetings Act ("TOMA"). The OORC does not act as a clearinghouse for public record requests, does not make public record requests on behalf of others, and does not have the statutory authority to enforce the TPRA or TOMA or punish violations.

The OORC offers free training to local governments wishing to learn more about the TPRA and TOMA. The training introduces the basic requirements of the laws and also covers topics such as how to receive public record requests; how to respond to public record requests; how to charge for public records; and public records policies. Training sessions may be provided on request to groups of 20 or more, subject to the availability of the Open Records Counsel. The OORC also puts on an open records roadshow, a series of presentations in cities all across the state, in the Fall every year. Roadshow presentations are open to the public and provide a broad and deep overview of the TPRA and TOMA.

The Office also has resources for local governments, including advisory opinions, best practices, frequently asked questions, model policies, and other guidance.

To access information from the Office of Open records, visit: <https://comptroller.tn.gov/office-functions/open-records-counsel.html>



Section 3 – Tennessee Board of Utility Regulation

Creation and Purpose

The Tennessee Board of Utility Regulation (“TBOUR” or “the Board”) was created by Tenn. Code Ann. § 7-82-701 and is administratively housed in the Comptroller’s Office. TBOUR’s purpose is to advise and direct utility systems around good utility management, and to determine and ensure the sound financial integrity of those utility systems. TBOUR is charged with the responsibility of furthering the legislative objective of self-supporting water, sewer, and gas systems in Tennessee.

Board Members

TBOUR is composed of eleven board members that are appointed to four-year terms. Pursuant to Tenn. Code Ann. § 7-82-701, at least one of the board members must sit on the governing body or be an active employee of a utility system that owns or operates a natural gas system. The members are chosen as follows:

Comptroller of the Treasury

- 1— The Comptroller or his designee sits as Chair to the Board
- 1— Comptroller appointee to the Board

Commissioner of the Tennessee Department of Environment and Conservation (TDEC)

- 1— The Commissioner or his designee sits as Vice-chair to the Board

General Assembly

- 1— House Speaker Appointee who sits on the governing body of a utility system, or is an active employee, of a utility system
- 1— Senate Speaker Appointee who sits on the governing body of a utility system, or is an active employee of a utility system

Governor

- 1— Appointee who represents utility interests, selected in consultation with the Tennessee Association of Utility Districts (“TAUD”).
- 1— Appointee who is an active municipal employee or elected official, selected in consultation with Tennessee Municipal League (“TML”).
- 1— Appointee who represents the interest of minority citizens of the state that must have experience in government finance.
- 1— Appointee who is an active municipal employee or sits on the governing board of a municipal water utility, selected in consultation with TAUD.
- 2— Appointees who are an active employee or commissioner of a utility district, selected in consultation with TAUD.

TBOUR Staff

The Comptroller's Office designates a staff member to serve as manager to the Board and provides an attorney to serve as Board counsel. The Board manager reports the proceedings of TBOUR to the Comptroller and performs other such duties as the Board may require. Each utility under TBOUR's jurisdiction is assigned a financial analyst from the Comptroller's Division of Local Government Finance who acts as Board staff for a specific region and as a point of contact between the Board and the utility. A contact map is available on TBOUR's website.

TBOUR's staff (other than Board counsel) are part of LGF, and fulfill the following responsibilities in that role:

- Receive and review annual information from utility systems.
- Approve utility training providers and curriculum.
- Refer financially distressed utility systems to TBOUR.
- Recommend sanctions and remedial actions to TBOUR.
- Support TBOUR's statutory purpose.

Oversight and Meetings

TBOUR provides managerial, technical, and financial oversight of local-government utility systems that offer water, sewer, or gas. TBOUR also has the authority to conduct informal hearings of certain customer complaints.

TBOUR regulates the following governments:

- Counties, metropolitan governments, and incorporated towns and cities, including their instrumentalities, that provide water, sewer, or natural gas services.
- Treatment and energy authorities
- Utility districts

TBOUR exercises its oversight and regulatory powers during public meetings. The Board generally holds at least two meetings each calendar year and may hold special meetings. Meeting schedules and agendas are available online on TBOUR's public website. Most meetings have a public comment period where individuals have the opportunity to comment about items included on the agenda. Guidelines for Public Comment at Meetings are available on TBOUR's public website.

Transparency

Tenn. Code Ann. §§ 7-82-705; 7-82-707; TBOUR Rules

Open Meetings and Meeting Information

As noted above, TBOUR exercises its oversight and regulatory powers at public meetings. TBOUR's activities are made available to local officials and to the public through its online publication of meeting schedules, agendas, Board packets, recordings, minutes, and orders. Other

information may be available from TBOUR staff, or by a public records request to recordrequests@cot.tn.gov.

Rules

TBOUR has adopted rules pursuant to Tenn. Code Ann. § 7-82-702(a) to further the legislative objective of self-supporting and well-managed utility systems. The rules are available on the Board's website.

Annual Report on TBOUR's Activities

TBOUR publishes an annual report on its public website describing the activities of the Board for the preceding calendar year.

Annual Information from Utility Systems

Annual information reports and water loss reports submitted to TBOUR each year by utility systems are available online pursuant to Tenn. Code Ann. § 7-82-707.

Tennessee Utility Manual for Local Governments

The publication of this manual provides transparency to local officials that operate utility systems under TBOUR's jurisdiction.

To access the preceding information visit: <https://www.comptroller.tn.gov/boards/utilities.html>

Power & Authority

TBOUR has the authority to take all the actions necessary and proper to further the legislative objective of self-supporting and well-managed utility systems. The Board has the power to adopt and enforce rules in accordance to Tenn. Code Ann. § 7-82-702. The Board also has the power and authority to issue subpoenas requiring the attendance of witnesses and production of evidence as requested. Failure to comply with a subpoena issuance and actions required by the Board will result in a referral to the chancery court of Davidson County. Individuals failing to meet subpoena requirements are eligible to be held in contempt of court. See Appendix A for a summary of TBOUR's authority.

TBOUR oversees the financial, technical, and managerial operations of utilities. This is accomplished through:

- determining remedies for **financial distress**;
- addressing water loss issues;
- overseeing and regulating utility governing body member training requirements;
- performing administrative reviews of technical, financial, or managerial failures;
- restoring stability to **ailing utility systems**;
- conducting **informal hearings** to address complaints from utility customers; and
- fulfilling other statutory mandates that support utility operations.

Statutory Responsibilities

TBOUR's statutory responsibilities are managed and regulated through:

- A. Referrals** Utility systems are referred to TBOUR when specific criteria are met and remain under TBOUR's oversight until released. The Board will release a utility system from its oversight when remedial actions are implemented by local officials, as applicable.
- B. Approvals and Recommendations** TBOUR approves or disapproves proposed actions or makes recommendations before utility systems can move forward.
- C. Notifications** Local officials are required to file certain information with TBOUR as a means of notifying the Board of certain actions that impact utility operations.
- D. Contested Case Hearings** TBOUR conducts contested case hearings regarding removal of commissioners or changing the methodology for filling vacancies for utility districts.

For a statutory summary of all referrals, approvals, recommendations, notifications, and contested case hearings, refer to Appendix A.

Merger or Consolidation Authority

Tenn. Code Ann. §§ 7-82-704, 7-82-705, and 7-82-708

Ailing Utility Systems

TBOUR has the authority to order a merger or consolidation of an ailing utility system with another utility system if the merger is necessary to restore financial stability, ensure continued operation, or otherwise ensure that the public's well-being is served in accordance with Tenn. Code Ann. § 7-82-704. Ailing utility systems are subject to the TBOUR referral process explained in this Section.

Pursuant to Tenn. Code Ann. § 7-82-704, a utility system is ailing if the system:

1. Is financially distressed, as described in Tenn. Code Ann. § 7-82-703(b);
2. Is financially unable to expand the amount or type of service as set forth and described in its founding documents or petition for creation as described under Tenn. Code Ann. §§ 7-82-201, 68-221-604, 68-221-1304, or any other section or private act; or
3. Displays a pattern of severe managerial incompetence such that the utility system cannot provide the public it serves with safe, consistent access to its services. As used in this subdivision (a)(3), severe managerial incompetence includes:
 - a. Frequent interruptions in service to multiple customers, lasting multiple days;
 - b. Frequent infrastructure failures that result in interruptions in service or cause the quality of service to fall below safe levels; or

- c. Failure to:
 - i. Respond to reports of damage to, or failure of, infrastructure within a reasonable timeframe;
 - ii. Improve or attempt to improve infrastructure, including necessary maintenance, upgrades, or construction of redundant infrastructure where necessary; or
 - iii. Correct a deficiency in oversight, operational management, or financial management, which leads to repeated harm to the utility system, a violation of state or federal law, or fraud, waste, or abuse of the utility system's resources.

Actions Prior to a Merger

TBOUR and TBOUR staff will do the following pursuant to Tenn. Code Ann. § 7-82-704(b)-(c):

1. Review the ailing utility system's audit(s) and operations;
2. Order the ailing utility to obtain a feasibility study from a qualified expert on the feasibility and benefit of the ailing system merging or consolidating with another utility system;
3. Review the results of the study;
4. If the results of the study favor a merger, hold a **public hearing** within the service area to notify customers of the potential merger; and
5. After the public meeting occurs, hold an **informal hearing** on the questions of whether:
 - a. The consolidation or merger:
 - Is in the best interest of the public being served by the ailing utility system; and
 - Will bring harm to the public being served by the other utility system that will absorb the ailing system; and
 - b. The ailing utility system should be merged or consolidated with another utility system.

Pursuant to Tenn. Code Ann. § 7-82-704(a), TBOUR has authority to order a merger or consolidation of an ailing utility system with another utility system when the merger is necessary to restore financial stability of the system, ensure continued operation, or otherwise ensure the well-being of the public being served by the utility system.

Utility Revitalization Fund

Utility systems that are merging, whether the merger is voluntary or Board-ordered, may apply to the Board for a grant from the Utility Revitalization Fund. Grants are subject to the availability of funds and must be approved by the Board. The funds must be used to mitigate the financial impact of the merger or consolidation, and grants will only be approved when it is necessary for the merger to occur. The process is discussed in greater detail in Section 5.

Advisory Technical Assistance

TBOUR may offer advisory technical assistance to utility systems pursuant to Tenn. Code Ann. § 7-82-702(a)(13).

Open Meetings Program for Governing Bodies

TBOUR is responsible for developing a program for utility systems under the Board's jurisdiction that will educate utility board members about the open meetings laws and how to remain in compliance with such laws. TBOUR fulfills this responsibility through its online training available at: www.comptroller.tn.gov/boards/utilities.html. See: Tenn. Code Ann. § 8-44-111.

Section 4 – TBOUR Referrals

A utility system may be referred to or reported to TBOUR by the Comptroller, Board staff, or by operation of state law. TBOUR may also initiate the referral of a utility system following a customer complaint after an appeal or complaint is first made to the utility system’s governing board. When operation of law applies, Board staff will initiate the referral. A utility system may be referred or reported to TBOUR for any of the following reasons.

- 4-1 Ailing System – Financial distress
- 4-2 Ailing System – Financially unable to expand service
- 4-3 Ailing System – Pattern of severe managerial incompetence
- 4-4 Excessive water loss
- 4-5 Failure to meet initial training or continuing education requirements.
- 4-6 Failure to submit annual information report.
- 4-7 Administrative review of financial, technical, and/or managerial capacity
- 4-8 Unlawful use or reliance on funds; illegal payment or transfer of funds
- 4-9 Late audits two consecutive years
- 4-10 Complaints from utility customers
- 4-11 Failure to assess or update cyber security plan every two years
- 4-12 Failure to provide information on connection costs
- 4-13 Failure to demonstrate financial, technical, and/or managerial capacity by SRF loan applicants.
- 4-14 Adoption of ethical standards that differ from the TAUD approved model
- 4-15 Investigative report issued by Tennessee Comptroller’s office for a utility district
- 4-16 Questions on adequacy of purchasing policy for a utility district

When a utility system is referred to TBOUR local officials should generally expect the process depicted in Appendix B, though the process may vary to better address specific situations.

4-1 Referral: Ailing System – Financial Distress

Tenn. Code Ann. § 7-82-703(a-b)

Financial distress is defined in Tennessee statute as: having two consecutive years of negative **statutory change in net position**, defaulting on debt obligations, reporting a deficit unrestricted net position, or reporting a deficit total net position. Within 60 days from the date an audit is filed, a utility system will be

referred to TBOUR if it meets any one of these criteria. After a local government is referred, local officials should expect the general process outlined in Appendix B.

1. When local officials receive notification of the referral, Board staff will request completion of an online **utility financial distress questionnaire**. While Board staff recognizes that this questionnaire may be difficult to fill out, it is necessary to determine how staff can help a utility system achieve long-term financial success. Based upon the nature of financial distress, a questionnaire may not be requested.
2. Based upon information from the **utility financial distress questionnaire** and Board staff's recommendations, TBOUR will take an action during its next scheduled meeting likely leading to an **Order** being issued directing the utility to take specific actions to remedy the financial distress. Usually, the **Order** will require that local officials contract with an approved **third-party expert** for a rate study along with an evaluation and modification of policies. If a local government official is unsure whether a company or group is approved by the Comptroller to conduct a rate study, please reach out to Board staff prior to signing any agreement or contract.
3. Once the **Order** has been received, the utility will need to comply with TBOUR's directives, which will usually include dates by which actions must be taken. For example, in the case of a required rate study, adopt all recommendations made by the approved **third-party expert** or make the case to TBOUR as to why the recommendations should not be adopted. An entity will usually remain on an **update cycle** until the utility has had two consecutive, timely annual audits showing a positive statutory change in net position and has completed all outstanding directives in the **Order(s)**. After that, Board staff will add the local government to the agenda of the next TBOUR meeting with a recommendation that the utility be released from oversight.

Failure to Implement Board Order(s)

Pursuant to Tenn. Code Ann. § 7-82-703(d), TBOUR has authority to prescribe a rate structure to be adopted by a financially distressed utility system to remedy financial distress. Should the governing body fail to adopt the prescribed rate, the Board will petition the chancery court in a jurisdiction in which the utility system is operating or in the chancery court of Davidson County to require the adoption of the rate structure prescribed by the Board. The court may also order other remedies that, in the court's discretion, may be required to cause the utility system to operate in accordance with state law and in a financially self-sufficient manner. See: Tenn. Code Ann. § 7-82-703(e).

Failure to address financial distress may result in an **administrative review** of the financial, technical, and managerial operations of the utility system pursuant to Tenn. Code Ann. § 7-82-706(a), to further assess the ability of local officials to provide utility services.

Merger or Consolidation of a Financially Distressed System

TBOUR has the authority to order a merger or consolidation of an **ailing utility system** with another utility system if the merger is necessary to restore financial stability, ensure continued operation, or otherwise ensure that the public's well-being is served in accordance with Tenn. Code Ann. § 7-82-704.

Change in the Method of Filling Board Vacancies for a Financially Distressed Utility District

When TBOUR reviews the audited annual financial report and operations of a financially distressed utility district pursuant to Tenn. Code Ann. § 7-82-703 and determines vacancies on the board of commissioners are filled by a method other than appointment by a county mayor or mayors, TBOUR may elect to hold a public hearing on the issue of whether the method of filling vacancies should be changed. See Tenn. Code Ann. §§ 7-82-307(c), 7-82-702(a)(4).

Financial Distress for Limited Distribution Utility Systems

Local governments that provide service to other governments and not to private citizens are excluded from being referred to TBOUR for a **statutory decrease in net position** for two consecutive years. However, these local governments will be referred for oversight of TBOUR if they have a deficit in total net position, a deficit unrestricted net position, or are in default on debt. See Tenn. Code Ann. §§ 7-82-401(f)(2) and (f)(3); 7-82-703(g).

4-2 Referral: Ailing System - Financially Unable to Expand Service

Tenn. Code Ann. § 7-82-704(a)(2)

Any utility system that is not financially able to expand its utility service as set forth and described in its founding documents, petition for creation under general state law, or private act, is defined by state law as an **ailing utility system** and will be referred to the oversight of TBOUR. After a local government is referred, local officials should expect the general process outlined in Appendix B.

TBOUR has the authority to order a merger or consolidation of an **ailing utility system** with another utility system if the merger is necessary to restore financial stability, ensure continued operation, or otherwise ensure that the public's well-being is served in accordance with Tenn. Code Ann. § 7-82-704.

4-3 Referral: Ailing System – Pattern of Managerial Incompetence

Tenn. Code Ann. § 7-82-704(a)(3)

Any utility system that displays a pattern of severe managerial incompetence that impacts the utility's ability to provide the public it serves with safe, consistent access to its services is defined by state law as an **ailing utility system** and will be referred to the oversight of TBOUR.

Severe managerial incompetence includes:

1. Frequent interruptions in service to multiple customers, lasting multiple days;

2. Frequent infrastructure failures that result in interruptions in service or cause the quality of service to fall below safe levels; or
3. Failure to:
 - a. Respond within a reasonable timeframe to reports of damage to, or failure of, infrastructure;
 - b. Improve or attempt to improve infrastructure, including necessary maintenance, upgrades, or construction of redundant infrastructure where necessary; or
 - c. Correct a deficiency in oversight, operational management, or financial management, which leads to repeated harm to the utility system, a violation of state or federal law, or fraud, waste, or abuse of the utility system's resources.

The general process local officials may expect when a utility system is referred to TBOUR may be found in Appendix B. TBOUR has the authority to order a merger or consolidation of an **ailing utility system** with another utility system if the merger is necessary to restore financial stability, ensure continued operation, or otherwise ensure that the public's well-being is served in accordance with Tenn. Code Ann. § 7-82-704.

4-4 Referral: Excessive Water Loss

Tenn. Code Ann. §§ 7-82-202, 7-82-706(c), 7-82-707(d)

Pursuant to Tenn. Code Ann. § 7-82-202(c)(5), TBOUR has authority to establish parameters that define excessive water loss, and to order reasonable measures to cure excessive water loss. Excessive water loss in Tennessee has been defined by the Board as any system with **non-revenue water by volume** of 40% or above, in accordance with Tenn. Code Ann. § 7-82-702. Failure of a utility to submit water loss information also constitutes excessive water loss pursuant to Tenn. Code Ann. § 7-82-707. Water loss is calculated from information reported on the **annual information report**, which is required to be submitted by the end of the utility's fiscal year. A local government will be referred to TBOUR when its water loss meets or exceeds the 40% threshold or when local officials fail to submit the required information used to calculate the water loss in the **annual information report**.

Once Board staff determines a utility system has either reported an excessive water loss, or has failed to submit annual water loss information, the local government will be referred to TBOUR and local officials should expect the general process outlined in Appendix B.

1. When local officials receive notification of the referral, Board staff will request they have the **AWWA v6.0 worksheet completed** by an approved **third-party expert**.
2. Once Board staff has received and reviewed the AWWA worksheet, Board staff will direct the utility to take specific actions. Usually, local officials will be required to create a management plan to bring the utility back within water loss compliance. Utilities may choose to work with a **third-party expert** to conduct a leak study or plan necessary capital improvements to reduce total **non-revenue water by volume** percentage.

3. After a utility system has implemented the management plan as directed by Board staff, the utility system will be in an **update cycle** until it has demonstrated improvement in reducing **non-revenue water by volume** percentage. The utility will remain on the **update cycle** until it has demonstrated considerable progress as deemed satisfactory by the Board staff. After that, the utility system will be added to the agenda of the next TBOUR meeting. Board staff will notify the Board of the initial referral, the utility's compliance, and a recommendation for release from Board oversight.

It is important to note that there is no set solution or pre-approved plan by TBOUR, as all utility systems are unique and should be examined individually by all relevant parties. If the utility fails to comply with requests from Board staff on either item one or three, the Board will be notified of the utility system's failure to address the excessive water loss and of noncompliance with directives from Board staff.

Failure to Address Board Staff Directives for Excessive Water Loss

- Should local officials fail to comply with requests from Board staff on either item #1 or #2 as listed above, TBOUR will be notified of the utility's failure to address excessive water loss at its next meeting. Based upon the circumstances underlying the referral and Board staff recommendation, the Board will take an action leading to an **Order** being issued directing the utility to take specific actions to remedy the water loss. After local officials implement the directives, and demonstrate compliance in an **update cycle**, the utility system will be added to the agenda of the next regularly scheduled TBOUR meeting, during which Board staff will recommend that the utility system be released from oversight. Once released, the utility system will be notified.
- Failure to address excessive water loss may result in an **administrative review** of the utility system's financial, technical, and managerial operations pursuant to Tenn. Code Ann. § 7-82-706(a). Further, when local officials fail to take appropriate actions required by TBOUR to reduce water loss to an acceptable level, the Board has authority to petition the chancery court in a jurisdiction in which the utility system operates to require local officials to take the appropriate actions. See Tenn. Code Ann. § 7-82-706(c).
- TBOUR may initiate a contested case hearing on the question of whether a member or members of the board of commissioners of a utility district should be removed from office and a new member or members appointed or elected on the grounds that a utility district failed to comply with TBOUR's **Order(s)** regarding excessive water losses. See Tenn. Code Ann. § 7-82-307(b)(3)(A).

4-5 Referral: Failure to Meet Initial Training or Continuing Education Requirements

Tenn. Code Ann. §§ 7-82-702(a)(14), 7-34-115,

Pursuant to Tenn. Code Ann. § 7-82-707(f), a utility system must ensure that all members of its governing body complete all required training and must collect an **annual training statement**, on a form approved by TBOUR, from each member. Local governments are required to indicate on the **annual information report** if members of the governing body have complied with training requirements. A local government will be referred to TBOUR when one or more board members fail to meet the minimum training requirements. After a local government is referred, local officials should expect the general process outlined in Appendix B.

Section 8 discusses minimum training and continuing education requirements for utility board members.

Generally, once a utility system has sent Board staff proof of training and proof that board members have reported training by use of the **annual training statement**, TBOUR staff will add the utility system to the agenda of the next meeting of TBOUR with a recommendation for release from Board oversight. When board members refuse or fail to comply with training requirements, they should expect the following:

Failure to Meet Training Requirements

All Utility Systems Under TBOUR Jurisdiction:

Pursuant to Tenn. Code Ann. § 7-82-702(a)(14), TBOUR has authority to exercise all the powers and take all actions necessary, proper or convenient, for the accomplishment of its purpose to ensure the financial integrity of utility systems. One way TBOUR exercises this authority is by issuing **Orders** for reasonable sanctions against local governments for failure to meet training requirements.

Failure to comply with statutory training requirements may result in a utility system being referred to TBOUR for an **administrative review** of the financial, technical, and managerial operations of the utility system to determine the capacity of local officials to comply with state law. The Board has authority to order remedial action from local officials to correct a deficiency identified by the Board, and to compel a utility's staff or governing body to attend a TBOUR meeting. See Tenn. Code Ann. §§ 7-82-702, 706(a)-(b).

County, Municipal, and Metro-Owned Utility Systems:

When any board member fails to meet the required training and continuing education requirements before the end of the continuing education period or before the end of any extension approved by the Comptroller, TBOUR has discretion to order reasonable sanctions against the local government. See Tenn. Code Ann. § 7-34-115(k).

Utility Districts, Water or Sewer Authorities, Water and Wastewater Treatment Authorities, Regional Water and Wastewater Treatment Authorities:

Any member who fails to meet the training and continuing education requirements before the end of any continuing education period or before the end of an extension approved by the Comptroller is not eligible for reappointment or reelection to another term of office. See Tenn. Code Ann. §§ 7-82-307(5)(A), 68-221-605(g), and 68-221-1305(g).

4-6 Referral: Failure to Submit Annual Information Report

Tenn. Code. Ann. § 7-82-707

Local officials must submit to TBOUR, by the first day of the utility system's fiscal year, an **annual information report** on a form approved by the Board. A local government will be referred to TBOUR when it fails to complete and file the report, and the Board may order reasonable sanctions against the utility system. See Tenn. Code Ann. § 7-82-707(a).

Section 8 includes additional information on requirements for the **annual information report**.

The general process local officials may expect when a utility system is referred to TBOUR for failure to complete and submit the **annual information report** is explained in Appendix B. Generally, TBOUR will issue an **Order** that requires local officials to file the report, noting that failure to do so will result in subpoenas being issued to members of the governing body and utility manager to appear in-person before TBOUR during its next meeting following noncompliance with the **Order**.

4-7 Referral: Administrative Review

Tenn. Code. Ann. § 7-82-706

An **administrative review** may be initiated from various sources and for various reasons. For example, a concern may be reported to Board staff by employees of a utility system, by a state agency, by a utility customer, or by different divisions of the Comptroller's office. Further, Board staff may recommend the review when a utility system fails to comply with state law. The underlying reasons will always be directly related to the administration of the financial, technical, and managerial affairs of a utility system. Once a local government is referred to TBOUR by Board staff, local officials should expect the general process found in Appendix B.

The directives and responsibilities will generally include:

- A TBOUR **Order** directing Board staff to conduct an **administrative review** of the utility system to determine the financial, technical, and managerial capacity of the utility to
 1. comply with requirements of applicable federal and state law; and/or
 2. efficiently manage its system, including reasonable and just user rates, debt structures, and water loss.

The review may include the assistance of the Tennessee Department of Environment and Conservation, Comptroller, Tennessee Association of Utility Districts, or any other government or entity approved by TBOUR. Usually, the **Order** will also instruct Board staff to issue subpoenas for

the utility's manager, governing body, and other pertinent staff, to appear in person before the Board at its next meeting if local officials do not fully comply with the administrative review.

- After the initial **Order** has been issued and sent to the utility, Board staff will reach out to local officials who will need to comply with requests for information and requests for interviews as Board staff conducts the administrative review.
- Next, Board staff will make recommendations to TBOUR based upon the results of their review. Pursuant to Tenn. Code Ann. § 7-82-706, TBOUR is given the authority to require by **Order** a utility system to take appropriate remedial action(s) to correct a deficiency identified during the review process, as applicable. These remedial actions may include:
 1. Changes in ownership, management, accounting practices, or user rates;
 2. Adoption or change to maintenance practices, software, or hardware, or development of alternative supplies of resources, means of distribution of resources, or methods of water and wastewater management;
 3. Merger or consolidation of a utility system with another system as described under Tenn. Code Ann. § 7-82-704; or
 4. Development of rules and policies as necessary for effective and responsible management of a utility system.

4-8 Referral: Unlawful Use or Reliance on Funds

Tenn. Code Ann. §§ 7-82-703, 7-82-707

Utility systems are referred to TBOUR when it is determined that local officials have used utility funds to pay for non-utility expenses, used non-utility funds to pay utility expenses, transferred utility funds to any other fund inconsistent with state law, or is found to have made any other illegal use or transfer of utility funds (Tenn. Code Ann. § 7-82-703). After a local government is referred, local officials should expect the general process outlined in Appendix B.

Pursuant to Tenn. Code Ann. § 7-82-707, employees or members of the governing body of a utility system are required to report any knowledge of a transfer, loan, grant to or from a utility fund, or any other transaction in violation of Tenn. Code Ann. § 7-34-115, or other applicable law. Refer to Section 2 for more information on requirements related to Tenn. Code Ann. § 7-34-115. The employee or governing body member of an applicable utility under TBOUR has 15 calendar days to report the information after they become aware of such transfer. The information should be reported by email to: utilities@cot.tn.gov.

Board staff reviews audits to determine if illegal transfers have been made that bring into question financial, technical, and managerial competency. These can also be referred to the Comptroller's Division of Investigations for further investigations into fraud, waste, and abuse.

4-9 Referral: Late Audits for Two Consecutive Years

Tenn. Code Ann. § 7-82-703(c)(1)(a)

The Division of Local Government Audit is responsible for the annual financial and compliance audits of all local governmental entities with statutory audit requirements. Local governments are required to publish a financial report consistent with state law and the uniform contract to audit accounts, as applicable. When a utility system fails to complete and submit yearly audited financial statements for two consecutive years, the system will be referred to TBOUR. For local governments that contract for an audit with an independent certified public accounting firm, the uniform contract to audit accounts sets forth the audit due date, which will be no later than six months after the end of the fiscal year. This applies to municipalities, utility districts, and authorities. Without audited financial information, the financial condition of a utility system cannot be measured.

The general process local officials may expect when their local government is referred to TBOUR for late audits may be found in Appendix B.

4-10 Referral: Complaints from Utility Customers

Tenn. Code Ann. §§ 7-82-702(b), § 7-82-402(a)(3), § 7-82-102

TBOUR exercises its statutory oversight for customer complaints through **informal hearings**. Customer complaints that may be heard by the Board are governed by statute and include the following:

	Description	Tenn. Code Ann.	Source of Referral, Notification, Other
1	Customer complaints related to all utility systems under TBOUR jurisdiction	§ 7-82-702(b)	Customer, TBOUR Staff
2	Customer grievance related to the final decision by a utility district on customer protest related to rates.	§ 7-82-402(a)(3)	Customer, TBOUR Staff
3	Customer petition for a utility district rate review.	§ 7-82-102	10% of Customers

Customers that have a question related to the operations of a utility system under the jurisdiction of TBOUR should email utilities@cot.tn.gov or call 615.747.5260 for assistance from Board staff. An online “Utilities Inquiry” form for customer complaints is available on TBOUR’s website.

1. Customer Complaints Related to All Utility Systems Under TBOUR Jurisdiction

Tenn. Code Ann. § 7-82-702

Pursuant to Tenn. Code Ann. §§ 7-82-702(b), TBOUR has authority to review and conduct **informal hearings** for complaints from customers in the following areas:

- Justness and reasonableness of rates, fees, or charges.
- Requirements surrounding customer and developer responsibilities.
- Failure to adopt and enforce policies, or the inadequacy of policies already in place, for the utility system's efficient and responsible operation.
- Failure to offer or extend utility service to a customer.

TBOUR may only conduct an **informal hearing** when Board staff have referred a complaint to the Board for hearing. Board staff will refer a complaint for hearing if it presents a dispute that, if resolved in favor of the complainant, would justify the Board ordering remedial action.

Board staff may consolidate complaints that raise substantially similar issues against the same utility system to be heard together. During the Board's review, Board staff have authority to request affidavit evidence, in addition to minutes, transcripts, and other evidence of actions by the utility system. The Board may render its decision based upon that evidence or, if the Board determines an open hearing is appropriate, will order the interested parties to be notified of the date, time, and place that such hearing will be held.

Customers must first appeal or make a complaint to the utility system's governing board, or utilize any other available remedy offered by the utility system, prior to seeking an **informal hearing** before TBOUR. The request for an **informal hearing** must be received within thirty (30) days of the adverse decision of the utility system's governing board.

The general process a utility system may expect when the Board conducts an informal hearing of a complaint against the utility may be found in Appendix B. During the informal hearing at the TBOUR meeting, both the customer(s) and representatives from the utility system will be given opportunities to present their case. The Board shall consider the reasonableness of the utility system's rules, policies, and cost of service as well as evidence presented during the hearing, if applicable, in making its decision.

The Board may order whatever remedial actions are necessary to address a customer's complaint. Any appellate review of the Board's decisions is governed by the Uniform Administrative Procedures Act, compiled in Tenn. Code Ann., Title 4, Chapter 5. The Davidson County chancery court has jurisdiction over judicial review of the Board's decisions.

2. Customer Grievance Related to the Final Decision by a Utility District on a Customer Protest Related to Water or Sewer Rates

Tenn. Code Ann. § 7-82-402

The following applies to a utility district customer who receives a bill for water or sewer services and pays money for such services. See Tenn. Code. Ann. § 7-82-402(a)(1)(B).

Any customer that does not agree with the final action of a utility district's governing body under Tenn. Code Ann. § 7-82-402 may obtain a review of the final action by simple written request to TBOUR within thirty (30) days of the final action. Tenn. Code Ann. § 7-82-402 sets forth and requires a specific process and timeline for customer complaints that must be followed at the local level.

Pursuant to Tenn. Code Ann. § 7-82-402(c) all utility districts that operate under Tenn. Code Ann. Title 7, Chapter 82, must notify their customers at least once a year that decisions by the board of commissioners on customer complaints may be reviewed by TBOUR in accordance with Tenn. Code Ann. § 7-82-702(b). This notice must be published on the utility's website, in a newspaper of general circulation in the county or counties in which the district is situated, or by mailing it annually to the district's customers in a separate correspondence such as an annual report, an annual newsletter, or other writing provided annually to the district's customers. Board staff will refer a complaint for hearing if it presents a dispute that, if resolved in favor of the complainant, would justify the Board ordering remedial action.

3. Utility Districts – Customer Petition for Utility District Rate Review

Tenn. Code Ann. § 7-82-102

TBOUR has authority to review rates charged and services provided by public utility districts. The review provided for in Tenn. Code Ann. § 7-82-102 et seq. may only be initiated by a petition containing the genuine signatures of at least ten percent (10%) of the customers within the authorized area of the public utility district.

Tenn. Code Ann. § 7-82-102, sets forth and requires a specific process and timeline that must be followed to be considered by TBOUR for review and includes the following:

1. The customer or customers initiating the petition must file a letter of intent to compile and file the petition with TBOUR before the petition is signed.
2. All information submitted in the petition must be legible.
3. Customer signatures on the petition must be:
 - a. from customers who are billed for and pay money for services of the utility district,
 - b. obtained within ninety (90) days of the date the letter of intent to compile and file petition is filed with TBOUR, and
 - c. genuine, meaning written, original signatures, excluding facsimile and electronic signatures of any kind.
4. Each utility account shall be entitled to one (1) signature, and no customer may sign the petition more than once.
5. Each customer signing the petition must include the address at which the customer receives utility service and the date the customer signed the petition.
6. The petition must be addressed to TBOUR and a copy of the petition must be served upon the board of commissioners of the affected utility district.
7. Only one (1) petition can be filed with TBOUR in any twelve-month period.

Upon receipt of the petition, TBOUR must verify the names and addresses of the signers of the petition to ensure that they are bona fide customers of the utility district and to ensure that all signatures have been obtained within ninety (90) days of the date the notice of intent to compile and file petition is filed with the Board.

TBOUR will review the petition at a public hearing. Notice of the hearing will be given to interested parties.

TBOUR will review petitions on the basis of:

1. Provisions governing rates in Tenn. Code Ann. Title 7, Chapter 82;
2. Provisions of bond resolutions or other indebtedness; and
3. Requirements of the Audit Manual prepared by the Comptroller.

Tenn. Code Ann. § 7-82-102(5) states that it is the General Assembly's express intent that TBOUR's review be substantive and meaningful.

Utility districts may take no action that results in contractually binding the district or obligating the district to issue bonds that requires a rate increase until the district has first given notice of the anticipated action to the district's customers. Prior to the issuance of bonds, the utility district must report information to the Comptroller's Office as set forth in Tenn. Code Ann. § 7-82-501(c). The district must then publish the Comptroller's report in a newspaper of general circulation in the county in which the district's principal office lies.

4-11 Referral: Failure to Update Cyber Security Plan

Tenn. Code Ann. § 7-51-2301 et al.

Utility systems subject to the jurisdiction of TBOUR must have a prepared cyber security plan that has been implemented. The plan should provide for the protection of the utility's facilities from unauthorized use, alteration, ransom, or destruction of electronic data.

Local officials are responsible for ensuring that the cyber security plan is assessed and updated every two years to address new threats (Tenn. Code Ann. § 7-51-2302). Independent auditors are required to verify and report to the Comptroller's Division of Local Government Audit (LGA) compliance with this provision of state law each year. The information from independent auditors is compiled and reported to the state legislature each year as required by state law. LGA's Audit Manual includes links to organizations that have resources to support utility systems as they assess and update their cyber security plans to ensure new threats are addressed.

Pursuant to Tenn. Code Ann. § 7-51-2303, should local officials fail to either implement or update a utility system's cyber security plan every two years, then the Comptroller's Office shall refer the utility system to TBOUR to order reasonable sanctions against the utility. The general process local officials may expect when their local government is referred can be found in Appendix B.

Other utility systems that are not subject to the jurisdiction of TBOUR, including cooperatives as defined in Tenn. Code Ann. § 65-25-102, and county or municipal-owned utilities that provide electric or propane services, must also meet the same compliance requirements. If it is determined that local officials have failed to comply, the Comptroller’s Division of Local Government Finance, will impose reasonable sanctions against the utility.

4-12 Referral: Failure to Provide Information on Connection Costs

Tenn. Code Ann. § 65-5-403

Utility systems will be referred to TBOUR when local officials fail to provide utility customers information on connection costs as set forth in Tenn. Code Ann. § 65-5-401-402. Pursuant to Tenn. Code Ann. § 65-5-403, TBOUR has authority to order reasonable sanctions against the utility. Refer to Appendix B for the general process a utility system may expect when it is referred to TBOUR.

4-13 Failure to Demonstrate Technical, Managerial, and Financial Capability by SRF Loan Applicants

Tenn. Code Ann. § 68-221-1206 (a)(3)

The Tennessee Department of Environment and Conservation (TDEC) and the Tennessee Local Development Authority (TLDA) administer the Drinking Water Revolving Loan Fund. Local governments applying for loans from the Drinking Water Revolving Loan Fund, also referred to as the State Revolving Fund (SRF) Loan Program, are subject to certain statutory prerequisites. Pursuant to Tenn. Code Ann. § 68-221-1206 (a)(3), one of those prerequisites is that applicant local governments must demonstrate technical, managerial, and financial capability to ensure compliance with the requirements of the federal act and the state act, as determined by TLDA. Local governments that do not demonstrate these capabilities may receive loans if local officials agree to undertake feasible and appropriate changes in the utility system’s operations as approved by TBOUR. This may include changes in ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures, to ensure that the system has the technical, managerial, and financial capability to comply with the state and federal requirements throughout the life of the loan.

4-14 Referral: Adoption of Ethical Standards that Differ from TAUD Approved Model – Utility Districts and Water and Wastewater Authorities

Tenn. Code Ann. §§ 8-17-101 et al., § 7-82-702(a)(6)(C)

Utility systems are required to adopt ethical standards that govern elected and appointed officials, employees, and board members, whether or not the members are compensated. If a utility district or

water and wastewater authority adopts ethical standards that are different from the TAUD model, then the ethical standards must be submitted to TBOUR, which shall review and make a finding by **Order** that the ethical standards are more stringent than the TAUD model.

Utility districts and water and wastewater authorities that adopt a more stringent model should notify Board staff at: utilities@cot.tn.gov. Board staff will ensure the utility system is placed on the agenda for the next TBOUR meeting, at which time an **Order** will be issued by the Board and subsequently sent to local utility officials.

4-15 Referral: Investigative Report Issued by the Tennessee Comptroller of the Treasury for a Utility District

Tenn. Code Ann. §§ 7-82-307(b)(2)(A), 7-82-702(a)(3)

The Comptroller forwards to TBOUR any published investigative audit report involving a utility district incorporated under Tenn. Code Ann., Title 7, Chapter 82. TBOUR reviews those reports and may conduct a contested case hearing on the question of whether utility district commissioner(s) should be removed from office for knowingly or willfully committing misconduct in office; knowingly or willfully neglecting to fulfill any duty imposed upon the member by law; or failing to fulfill their fiduciary responsibility in the operation or oversight of the district. Board staff will conduct an **administrative review** to determine if a contested case hearing should be recommended to TBOUR.

The general process utility district officials may expect when an investigative report is referred to TBOUR may be found in Appendix B.

4-16 Referral: Questions on Adequacy of a Purchasing Policy for a Utility District

Tenn. Code Ann. § 7-82-804

Each utility district's board of commissioners must adopt a policy governing all purchases, leases, and lease-purchase agreements of the district. Tenn. Code Ann. §§ 7-82-801—803 set forth the minimum provisions that must be included in the policy. Questions of the appropriateness or adequacy of any utility district purchasing policy must be submitted in writing to TBOUR. The general process utility district officials may expect when a district is referred to the Board because of concerns related to the district's purchasing policy may be found in Appendix B.



Section 5 – TBOUR Approvals and Recommendations

An approval or a recommendation from TBOUR is required by state law for the following.

Local Officials

- 5-1 Application for Utility Revitalization Fund grant
- 5-2 Utility service to a customer in an adjoining utility district
- 5-3 Resolution to change method of board appointment for a utility district
- 5-4 Petition for creation, purchase, development, acquisition of certain utility systems

Tennessee Association of Utility Districts

- 5-5 TAUD Model of Ethical Standards

5-1 Approval: Application for Utility Revitalization Fund Grant

Tenn. Code Ann. § 7-82-708

TBOUR is authorized to administer funds for grants to utility systems that:

1. Merge or consolidate under Tenn. Code Ann. § 7-82-704 by **Order** of TBOUR to mitigate the financial impact of the merger or consolidation.
2. Are pursuing a voluntary merger, consolidation, or acquisition.

Grants will be subject to the availability of funds. Amounts will vary and TBOUR will deem the appropriate amount. Local officials must apply to the Board for grants from the Utility Revitalization Fund. In the case of a voluntary merger, consolidation, or acquisition, TBOUR has discretion to grant the application if it finds that:

1. The merger is in the best interest of at least one utility system's service population,
2. The merger does not harm another service population, and
3. The grant is necessary to achieve the merger.

Further, the Board may only approve grants to mitigate operating expenses if the applicant utility system establishes that, after the last disbursement from the grant is made, the system will be financially solvent.

A utility system that is a recipient of a grant from the Utility Revitalization Fund must submit quarterly reports to the Board on a form approved by the Board.

Pursuant to Tenn. Code Ann. § 7-82-708 (f)(3), the Comptroller or TBOUR may consider a disbursement made from the Utility Revitalization Fund to be operating revenue for purposes of determining whether a utility system is in financial distress.

5-2 Approval: Utility Service to Customer in Adjoining Utility District

Tenn. Code Ann. § 7-82-112(a)

Utility Districts are allowed to provide utility service to a customer located within the boundaries of an adjoining utility district when approved by TBOUR. Either the customer or the adjoining utility district may file a request with TBOUR for the customer to obtain utility service from the utility district. TBOUR may approve the request when it finds that:

- The adjoining utility district has either refused to provide utility service to the customer or is not able or willing to provide service within a reasonable period of time and at a reasonable cost as determined by TBOUR; and
- The utility district is willing to provide utility service to the customer.

If TBOUR finds that the customer should be served by the utility district, then TBOUR is required to issue an **Order** setting forth its findings and granting the service request. This only applies to the request of a single customer of a utility district for utility service from an adjoining utility district.

5-3 Approval: Resolution to Change the Method of Board Appointment for a Utility District

Tenn. Code Ann. § 7-82-307(a)(9)

State law permits the board of commissioners of a utility district that is otherwise excepted by subdivision Tenn. Code Ann. § 7-82-307(a)(2) to change, by resolution, its present method for filling vacancies to the appointment by a county mayor or mayors under subdivision Tenn. Code Ann. § 7-82-307 (a)(4) or (a)(5). The utility district must file a certified copy of the resolution with TBOUR. At its next scheduled meeting, TBOUR will enter an **Order** either approving or disapproving the resolution.

The Board will approve the resolution if it finds that the request is in the best interest of the utility district and its customers. All vacancies on the utility district's board of commissioners that occur after the TBOUR **Order** approving the resolution will be by appointment by a county mayor under Tenn. Code Ann. § 7-82-307 (a)(4) or (a)(5). If TBOUR does not issue an **Order** approving the resolution, then the method of filling vacancies will remain unchanged, and the utility district will continue to fill vacancies under the method used prior to the adoption of the resolution.

5-4 Approval: Petition for Creation, Purchase, Development, Acquisition of Certain Utility Systems

Description	Tenn. Code Ann.
Petition for creation – of a utility district	§ 7-82-201(a)(1) § 7-82-702(a)(7)
Petition for creation – of a public act water or wastewater treatment authority	§ 68-221-604(b)
Petition for creation – of a public act regional water and wastewater treatment authority	§ 68-221-1304
Petition to purchase, develop, acquire, or build a new public act water or wastewater system.	§ 68-221-1017 § 7-82-702(a)(8)

Local officials should work with legal counsel to ensure all legal requirements for a new utility system are met. Petitions for the creation or establishment of the above utility systems must be filed with TBOUR for review and decision. TBOUR will issue an **Order** either approving or disapproving the request at its next scheduled meeting.

5-5 Approval: TAUD Model of Ethical Standards

Tenn. Code Ann. § 7-82-702(a)(6)(A-C)

Tenn. Code Ann. § 8-17-105(b)

Pursuant to Tenn. Code Ann. § 8-17-105, the Tennessee Association of Utility Districts (TAUD) is required to provide guidance and direction and model ethical standards for utility districts, water and wastewater authorities, and gas authorities. TAUD is required to submit the model standards to the TBOUR for review and approval pursuant to Tenn. Code Ann. § 7-82-702(a)(6). TBOUR must approve the TAUD model standards by **Order** before they are adopted by a utility district or authority identified above. TBOUR approved the TAUD model ethical standards at its August 2, 2007 meeting.



Section 6 – TBOUR Notifications

Local and state officials are required by state law to notify TBOUR of certain issues related to training, continuing education, mergers, consolidations, dissolutions, and utility services. Notifications are accomplished through the following statutory filings:

Local Officials

- 6-1** Training extension request letter and corresponding Comptroller determination letter sent to a board member
- 6-2** Petition for merger, consolidation, or re-creation of a utility district
- 6-3** Dissolution of a utility district
- 6-4** Supplemental petition for a utility district to provide other utility services

Comptroller of the Treasury

- 6-5** Comptroller-approved training and continuing education curriculum

6-1 Notification: Training Extension Request Letter and Corresponding Comptroller Determination Letter Sent to a Board Member

Tenn. Code Ann. §§ 7-34-115(j), 7-82-308(f), 68-221-605(f), 68-221-1305(f)

Board members may request a training and continuing education extension of up to six (6) months from the Comptroller's Office. The request shall only be granted upon a reasonable showing of substantial compliance with minimum statutory training requirements. The board members are required to file copies of any extension request letters and corresponding Comptroller determination letters with TBOUR.

6-2 Notification: Petition for Meger, Consolidation, or Re-Creation of a Utility District

Tenn. Code Ann. §§ 7-82-202(g)-(h)

Mergers or Consolidations: Local officials should work with legal counsel to ensure statutory requirements for a merger or consolidation of a utility district with another utility district, or with a municipality or county are met. Petitions for a merger or consolidation of utility districts or for a

consolidation of a utility district with a municipality or county pursuant to Tenn. Code Ann. §§ 7-82-202(e)-(f) must be filed with TBOUR simultaneously with the required filing to the county mayor or mayors. The petitions are not subject to approval or disapproval by TBOUR.

Re-creations: Petitions for the re-creation of a utility district for the purpose of redefining its incorporated boundary must be filed with TBOUR simultaneously with the filing of the petition with the county mayor or mayors. The petitions are not subject to approval or disapproval by TBOUR.

6-3 Notification: Dissolution of a Utility District

Tenn. Code Ann. § 7-82-301(b)

Pursuant to Tenn. Code Ann. § 7-82-301(b), when utility districts are dissolved as a result of the following circumstances, a true and correct copy of the order dissolving the utility district must be filed with TBOUR.

1. When no affirmative action is taken by a newly-formed utility district within one (1) year of the date of filing of order of creation, the county mayor may hold a hearing, after notification of the duly appointed commissioners, and determine if the utility district is proceeding with dispatch and diligence to provide the utility service or services it was authorized to provide in its order of creation. If the county mayor finds that the utility district is not, then the county mayor shall enter an order dissolving the utility district. The president of the utility district shall file with the Tennessee Secretary of State, TBOUR, and the register of deeds of the county or counties in which the district is located, a true and correct copy of the order dissolving the utility district.
2. When a utility district fails to render any of the services for which it was created within a period of four (4) years of the date of filing of order of creation and fails to acquire within such period any assets or facilities necessary to provide the utility service or services for which it was created, the utility district shall be dissolved by operation of law. The county mayor of the county in which the original petition for creation of the utility district was filed shall file a notice of dissolution with the Tennessee Secretary of State and upon such filing the utility district shall no longer be deemed to exist. The county mayor shall file with TBOUR and the register of deeds of the county or counties in which the utility district is located, a true and correct copy of the notice of dissolution.

6-4 Notification: Supplemental Petition for A Utility District to Provide Other Utility Services

Tenn. Code Ann. § 7-82-302(e)

Utility districts created on or after July 1, 1967, are limited to providing services pursuant to the order creating the district. Utility districts incorporated before July 1, 1967, may only provide services that were being provided on that date, or else subsequently provided by facilities that were constructed from the proceeds of bonds issued not later than July 1, 1968. Supplemental petitions for authority to provide other utility services pursuant to Tenn. Code Ann. Title 7, Chapter 82, Part 3, may be addressed to the county mayor, who will give notice and hold hearings on petitions in the same manner, on the same issues, and under the same conditions as for original incorporation.

The supplemental petition must be filed with TBOUR simultaneously with the required filing to the county mayor or county mayors. The petition is not subject to approval or disapproval by TBOUR.

6-5 Notification: Comptroller-Approved Training and Continuing Education Curriculum

Tenn. Code Ann. §§ 7-34-115(j), 7-82-308(f), 68-221-605(f), 68-221-1305(f)

Associations and organizations with appropriate knowledge and experience may prepare a training and continuing education curriculum covering the subjects set forth in state statute. The curriculum, including any changes or updates, must be submitted to the Comptroller of the Treasury for review and approval prior to use. Any training and continuing education curriculum approved by the Comptroller must be updated every three (3) years and resubmitted to the Comptroller for review and approval. The Comptroller is required to file a copy of the approved training and continuing education curriculum with TBOUR.



Section 7 – TBOUR Contested Case Hearings

Contested case hearings are limited to utility districts. The procedure for contested case hearings are governed by the Tennessee Uniform Administrative Procedures Act and the Tennessee Secretary of State's rules for contested cases. TBOUR has statutory authority to conduct contested case hearings and issue **Orders** for the determination of whether utility district board members should be removed from office and a new board member appointed or elected, or whether the methodology for determining vacancies should be changed as follows:

- 7-1 Removal of utility district commissioner(s) by customer petition.
- 7-2 Removal of utility district commissioner(s) for failures directly related to matters in an investigative report issued by the Tennessee Comptroller of the Treasury.
- 7-3 Removal of utility district commissioner(s) for misconduct or failure to comply with a TBOUR order, failure in official duties, or misconduct of office.
- 7-4 Change in the method of filling board vacancies for a financially distressed utility district.

7-1 Removal of Utility District Commissioner(s) by Customer Petition

Tenn. Code Ann. §§ 7-82-307(b)(1)(A), 7-82-702(a)(3)

Upon the petition of at least twenty percent (20%) of the customers of a utility district to TBOUR requesting the removal of a member or members of the utility district board of commissioners, the Board is required to conduct a contested case hearing on the question of whether such member or members should be removed from office and a new member or members appointed or elected.

Tenn. Code Ann. § 7-82-307(b)(1)(A), sets forth and requires a specific process and timeline that must be followed to be considered by TBOUR for review and includes the following:

1. The customer or customers initiating the petition must file a letter of intent to compile and file the petition with TBOUR before the petition is signed.
2. All information submitted in the petition must be legible.

3. Customer signatures on the petition must be:
 - a. from customers who are billed for and pay money for services of the utility district
 - b. obtained within ninety (90) days of the date the letter of intent to compile and file the petition is filed with TBOUR, and
 - c. genuine, meaning written, original signatures, excluding facsimile and electronic signatures of any kind.
4. Each utility account shall be entitled to one (1) signature, and no customer may sign the petition more than once.
5. Each customer signing the petition must include the address at which the customer receives utility service and the date the customer signed the petition.
6. Only one (1) petition can be filed with TBOUR in any twelve-month period.

Upon receipt of the petition, TBOUR must verify the names and addresses of the signers of the petition to ensure that they are bona fide customers of the utility district and to ensure that all signatures have been obtained within ninety (90) days of the date the notice of intent to compile and file the petition was filed with TBOUR.

Upon filing the petition, the petitioners shall also file a cash bond or attorney or corporate surety bond made payable to the State of Tennessee for the costs of hearing and processing the petition. The bond may be refunded if TBOUR determines that the member or members of the utility district board of commissioners that are the subject of the petition should be removed; in such instance the cost of the hearing shall be assessed against the district. The administrative judge may assess additional costs against either the petitioners or the district to cover the total cost of the hearing.

If the Board concludes the member(s) of the utility district board of commissioners should be removed, the Board will issue an **Order** removing such member(s) from their office. Any vacancy on the board of commissioners shall then be filled by the selection method used by the utility district to fill vacancies.

7-2 Removal of Utility District Commissioner(s) for Failures Directly Related to Matters in an Investigative Report Issued by the Tennessee Comptroller of the Treasury

Tenn. Code Ann. §§ 7-82-307(b)(2)(A), 7-82-702(a)(3)

The Comptroller of the Treasury refers published investigative reports involving a utility district to TBOUR. The Board reviews those reports and may conduct a contested case hearing on the question of whether utility district commissioners should be removed from office for:

- knowingly or willfully committing misconduct in office,
- knowingly or willfully neglecting to fulfill any duty imposed upon the member by law, or
- failing to fulfill their fiduciary responsibility in the operation or oversight of the district.

If the Board concludes the member(s) of the board of commissioners meet one or more of above conditions, the Board will issue an **Order** removing such member(s) from office. Any vacancy must then be filled by the selection method used by the utility district to fill vacancies; provided, that no member of the board of commissioners ousted by **Order** of TBOUR shall be eligible for reappointment, reelection, or to participate in either the nomination, appointment or election of new members by the board of commissioners.

7-3 Removal of Utility District Commissioner(s) For Failure to Comply with a TBOUR Order, Failure in Official Duties, or Misconduct of Office

Tenn. Code Ann. §§ 7-82-307(b)(3)(A), 7-82-702(a)(3)

TBOUR may initiate a contested case hearing on the question of whether a member or members of the board of commissioners of utility districts under its jurisdiction should be removed from office and a new member or members appointed or elected on the grounds that either:

1. The utility district failed to comply with an **Order** of TBOUR, which shall include failing to comply with an **Order** concerning excessive water losses;
2. A member or members failed to fulfill their fiduciary responsibility in the operation or oversight of the district; or
3. A member or members committed misconduct in connection with such office or failed to perform any duty imposed by law on such office, including taking appropriate actions pursuant to Tenn. Code Ann., Title 7, Chapter 82, Part 7 to reduce water loss to an acceptable level as determined by TBOUR.

Failure of a member to vote in favor of a rate structure prescribed by TBOUR that has been adopted by the utility district does not in itself constitute grounds for removal.

If TBOUR concludes the member(s) of the board of commissioners meet one or more of the above conditions, the Board will issue an **Order** removing such member(s) from office. Any vacancy must then be filled by the selection method used by the utility district to fill vacancies; provided, that no member of the board of commissioners ousted by **Order** of TBOUR shall be eligible for reappointment, reelection, or to participate in either the nomination, appointment or election of new members by the board of commissioners.

7-4 Change in the Method of Filling Board Vacancies for a Financially Distressed Utility District

Tenn. Code Ann. §§ 7-82-307(c), 7-82-702(a)(4)

When TBOUR reviews the audited annual financial report and operations of a financially distressed utility district pursuant to Tenn. Code Ann. § 7-82-703 and determines vacancies on the board of commissioners are filled by a method other than appointment by a county mayor or mayors,

TBOUR may elect to hold a public hearing on the issue of whether the method of filling vacancies should be changed.

If TBOUR elects to hold a public hearing, then the Board shall conduct a contested case hearing on this issue. If the Board finds that it is in the best interest of the public served by the utility district that the method of filling vacancies be changed, then the Board shall enter an **Order** that provides that all future vacancies be filled by appointment of the county mayor or mayors pursuant to the procedures set forth in Tenn. Code Ann. § 7-82-307(a)(4) and (5).

Utility systems are responsible for specific annual requirements, including:

- ✓ **A. Annual Information Report – Submission on TBOUR’s Website**
- ✓ **B. Annual Training Statement – Filed Locally**

A. Annual Information Report

Tenn. Code Ann. § 7-82-707

Local officials are required to complete an online annual information report by the first day of the utility’s fiscal year with TBOUR. The form of the report is approved by the Board and fulfills the reporting and filing requirements outlined in Tenn. Code Ann. § 7-82-707(a)-(d).

- (1) The financial condition of the utility system at the end of the fiscal year;
- (2) A statement of the utility rates then being charged by the system;
- (3) Other information the Board finds would assist the Board and the public in understanding the financial health of the system or any challenges the system faces;
- (4) Water loss information; and
- (5) The contract for the purchase of water for resale for utility systems that purchase more than fifty percent (50%) of its total water for resale.

The annual information report is submitted online through TBOUR’s website. The Utility’s ID Code is needed to submit the report and can be obtained from Board staff. Pursuant to Tenn. Code Ann. § 7-82-707(e), the Comptroller of the Treasury publishes the annual reports submitted by utility systems each year.

Failure to submit the annual information report will result in a local government being referred to TBOUR.

B. Annual Training Statement

Tenn. Code Ann. § 7-82-707(f)

Pursuant to Tenn. Code Ann. § 7-82-707(f), a utility system must ensure that each member of the utility's governing body completes all required training and is required to collect an **annual training statement**, on a form approved by the Board, from each member of the governing body.

As part of the **annual information report** submission, local governments are required to indicate if members of the governing body are in compliance with training requirements.

Statutory Training Requirements

State law establishes requirements for:

1. Annual Training Statement
2. Minimum Training and Continuing Education Hours
3. Subject Matter and Eligible Training Sponsors and Providers
4. Extension Requests
5. Penalties for Failure to Meet Training Requirements
6. Requirements Specific to Utility Districts, Water or Sewer Authorities

Local utility officials are responsible for complying with statutory training and continuing education requirements.

1. Annual Training Statement

Tenn. Code Ann. §§ 7-34-115(j), 7-82-308(f), 7-82-707(f)

Pursuant to Tenn. Code Ann. § 7-82-707(f), a utility system must ensure that each member of the utility's governing body completes all required training and is required to collect an **annual training statement**, on a form approved by the Board, from each member of the governing body. The annual training statement is filed with the local government, it is **not filed** with the Comptroller's Office or with TBOUR.

No later than January 31 of each year, each utility board member shall file an **annual training statement**, on a form developed by the Comptroller of the Treasury, with their respective local government certifying the training and continuing education courses attended during the prior calendar year. The form can be found on TBOUR's website. Board members must file a training statement even if they did not attend any training within the past year. The local government must keep a copy of the annual training statements, including proof of attendance or certificates of completion, on file for at least two, three-year continuing education periods, or six years following the calendar year in which the written statement was filed. The statements should be filed solely with the local government, the Comptroller's office and Board staff **DO NOT** retain these records.

2. Minimum Training and Continuing Education Hours

Tenn. Code Ann. §§ 7-34-115(j), § 7-82-308(f), § 68-221-605(f), § 68-221-1305(f)

There is a two-tiered training requirement for all board members that supervise, control, or operate a utility system:

Initial Training: Each board member must obtain 12 hours of training within 12 months of their initial election or appointment. The initial 12 hours are required for the first election or appointment and not subsequent elections or appointments.

Continuing Education: Once a board member has satisfied their initial 12 hours of training, their continuing education period of three years begins on the following January 1st. Each board member

must receive a total of 12 hours of training within a three-year period. As a best practice, board members should obtain a minimum of 4 hours of training each calendar year.

3. Subject Matter and Eligible Training Sponsors and Providers

Tenn. Code Ann. §§ 7-34-115(j), 7-82-308(f), 68-221-605(f), 68-221-1305(f)

Training subjects must include, but are not limited to:

- board governance
- financial oversight
- policy-making responsibilities
- other topics reasonably related to the duties of the utility board

Associations and Organizations with Appropriate Knowledge and Experience:

- May prepare a training and continuing education curriculum for utility board members covering the above subjects.
- Must submit the curriculum to the Comptroller for review and approval prior to use. (An approval request form is available for submission on TBOUR's website.)
- Must submit any changes and updates to the curriculum to the Comptroller for approval prior to use.
- Update approved training and continuing education curriculum every three (3) years for resubmission to the Comptroller for review and approval.

Pursuant to state law, the Comptroller files a copy of approved training and continuing education curriculum with TBOUR.

To help local officials meet their training requirements, the Comptroller's Office currently provides online training at no cost. The Comptroller's Office also offers periodic training classes at various locations throughout the State.

4. Extension Requests

Tenn. Code Ann. §§ 7-34-115(j), 7-82-308(f), 68-221-605(f), 68-221-1305(f)

Board members may request a training and continuing education extension of up to six (6) months from the Comptroller of the Treasury or the Comptroller's designee. The request will only be granted upon a reasonable showing of substantial compliance with minimum statutory training requirements. If the extension is granted, the board member must complete any additional required training hours necessary to achieve full compliance for only the relevant continuing education period within the extension period. The board member must file copies of any extension request letters and corresponding Comptroller determination letters with TBOUR.

Requests for Training Extensions are available on TBOUR's website.

5. Penalties for Failure to Meet Training Requirements

All Utility Systems Under TBOUR Jurisdiction:

Pursuant to Tenn. Code Ann. § 7-82-702(a)(14), TBOUR has authority to exercise all the powers and take all the actions necessary for the accomplishment of its purpose to ensure the financial integrity of utility systems. One way TBOUR exercises this authority is by issuing **Orders** for reasonable sanctions against local governments for failure to meet training requirements.

TBOUR's authority includes but is not limited to subpoenaing all governing body members to appear before TBOUR. See Tenn. Code Ann. § 7-82-702(a)(2).

Failure to comply with statutory training requirements may result in a utility system being referred by Board staff to TBOUR for an **administrative review** of the financial, technical, and managerial operations of the utility system. The Board has authority to require appropriate remedial action from local officials to correct a deficiency identified by the Board. See Tenn. Code Ann. § 7-82-706(a)-(b).

County, Municipal, and Metro-Owned Utility Systems

When any board member fails to meet the required training and continuing education requirements before the end of the continuing education period or before the end of any extension approved by the Comptroller, TBOUR has full discretion to order reasonable sanctions against the local government, including, but not limited to, being ineligible to receive assistance from the Tennessee Local Development Authority under Tenn. Code Ann. § 68-221-1206(a)(3). See: Tenn. Code Ann. § 7-34-115(j)-(k).

Utility Districts, Water or Sewer Authorities, Water and Wastewater Treatment Authorities, Regional Water and Wastewater Treatment Authorities

Any member who fails to meet the training and continuing education requirements before the end of a continuing education period or before the end of an extension approved by the Comptroller of the Treasury will not be eligible for reappointment or reelection to another term of office.” See Tenn. Code Ann. §§ 7-82-307 (5) (A), 68-221-605(g), and 68-221-1305(g).

Specific to Utility Districts

TBOUR has authority to initiate a contested case hearing on the question of whether a member or members of the board of commissioners of a utility district should be removed from office and a new member or members appointed or elected on the grounds that a utility district failed to comply with an **Order** of TBOUR concerning training requirements.

6. Requirements Specific to Utility Districts, Water or Sewer Authorities, Created by any Public or Private Act

Failure to File Annual Training Statement

When an **annual training statement** is not filed, a commissioner becomes ineligible to receive further payment or benefit as provided in Tenn. Code Ann. 7-82-308(a), including monthly meeting per diem payments, insurance benefits, and insurance premium reimbursements until the annual written statement is filed. See: Tenn. Code Ann. § 7-82-308(f)(4)(E)

Training Costs

The utility system shall be responsible for paying the training and continuing education course registration and travel expenses for the required training and continuing education. See: Tenn. Code Ann. § 7-82-308(f)(5)

Failure to File an Annual Extension Request and Comptroller Determination With TBOUR

When an annual extension request and Comptroller Determination letter is not filed with TBOUR, a commissioner becomes ineligible to receive further payment or benefit as provided in Tenn. Code Ann. 7-82-308(a), including monthly meeting per diem payments, insurance benefits, and insurance premium reimbursements until the information is properly filed. See: Tenn. Code Ann. § 7-82-308(f)(3)

Additional Training Hours Mandated by TBOUR

The training requirements established in Tenn. Code Ann. § 7-82-308(f) do not prohibit TBOUR from requiring additional training and continuing education requirements for utility systems that are **financially distressed**, as defined in Tenn. Code Ann. §§ 7-82-703 and 7-82-308(f)(8).

Prerequisite to Reappointment or Reelection to Board of Commissioners

An existing commissioner who is nominated for reappointment must certify to the appointing mayor prior to reappointment that he or she has complied with the continuing education requirements set forth in 7-82-308. Likewise, an existing utility district commissioner who is seeking reelection must certify to the district prior to being placed on the ballot that he or she has complied with the continuing education requirements set forth in 7-82-308. See Tenn. Code Ann. § 7-82-307(b)(5)(B-C).



Section 9 – Other Agencies and Boards

Tennessee Department of Environment and Conservation (TDEC)

TDEC is responsible for overseeing environmental protection and conservation efforts in the state. TDEC manages various programs related to air quality, water resources, solid waste management, parks and recreation, and other environmental issues. Resources and information are available at: www.tn.gov/environment.html

Department of Economic & Community Development (ECD)

ECD is responsible for promoting economic and community development in the state of Tennessee. The department focuses on initiatives and programs to attract and retain businesses, create job opportunities, and enhance the overall well-being of Tennessee communities. Resources and information are available at: www.tn.gov/e.cd.html

County Technical Assistance Service (CTAS)

CTAS is an agency of the University of Tennessee Institute of Public Service and provides technical, training, consulting, and field services to elected and appointed county and metropolitan officials and finance directors. CTAS assists counties with appointment of utility district commissioners and assists county-operated utility systems with the budget process, policies, utility infrastructure relocation, and other areas that impact utility systems. Resources and information are available at: www.ctas.tennessee.edu

Municipal Technical Advisory Service (MTAS)

MTAS is an agency of the University of Tennessee Institute of Public Service and provides technical, training, consulting, and field services to elected and appointed municipal and metropolitan government officials and finance directors. MTAS assists municipal utility systems with the budget process, internal controls, policies, trainings, rate studies, legal interpretations, and other technical guidance. Resources and information are available at: www.mtas.tennessee.edu

Tennessee Association of Utility Districts (TAUD)

TAUD provides Tennessee utility systems with training, industry information and publications, model policies, rate studies, and legislative updates. Resources and information regarding TAUD are available at: www.taud.org.

Tennessee Public Utility Commission (TPUC)

TPUC was created to meet the challenges of the changing telecommunications and utility environment. They set rates and service standards of privately owned telephone, natural gas, electric, and water utilities. Resources and information are available at: www.tn.gov/tpuc.html.

Tennessee Valley Authority (TVA)

The Tennessee Valley Authority provides electricity for 153 local power companies serving 10 million people in Tennessee and parts of six surrounding states, as well as directly to 58 large industrial customers and federal installations. TVA also provides flood control, navigation, and land management for the Tennessee River system and assists local power companies and regional governments with their economic development efforts. Resources and information are available at: www.tva.com.

Tennessee Gas Association (TGA)

The Tennessee Gas Association, established in 1962, is a non-profit association created by and for the natural gas distribution systems across the State. TGA offers members opportunities to enhance their professional careers, company operations and industry contacts through various conferences and training sessions throughout the year. TGA is governed by a board of directors made up of member employees from across the State. Resources and information are available at: www.tngas.org.

National Rural Water Association (NRWA)

The National Rural Water Association is a non-profit organization dedicated to training, supporting, and promoting the water and wastewater professionals that serve small and rural communities across the country. The NRWA provides training and technical assistance through 50 affiliated State Rural Water Associations that currently have over 31,000 utility system members. Rural Water training and technical assistance covers every aspect of operating, managing and financing water and wastewater utilities. Resources and information are available at: www.nrwa.org.

Rural Community Assistance Partnership (RCAP)/Southern RCAP: Communities Unlimited

RCAP is a national network of nonprofit organizations that provide technical assistance and training to rural communities in the US. RCAP assists these communities in addressing challenges related to water and wastewater systems, community development and infrastructure. Resources and information are available at: www.rcap.org

Communities Unlimited: Communities Unlimited is part of RCAP's network for the southern region of the United States which includes Tennessee. Communities Unlimited works to support rural communities by providing technical assistance, financial services, and resources to help them address challenges related to water and wastewater systems, economic development, and community infrastructure. Resources and information are available at: www.communitiesu.org

Section 10 – Utility Terminology, Definitions, & Concepts

Administrative Review: A review of a utility system pursuant to Tenn. Code Ann. § 7-82-706 to determine the financial, technical, and managerial capacity of the utility to comply with requirements of applicable federal and state law; and/or efficiently manage its system, including reasonable and just user rates, debt structures, and water loss.

Ailing Utility System: A utility system that is:

- a. Financially distressed, as described in § 7-82-703(b);
- b. Financially unable to expand the amount or type of service as set forth and described in its founding documents or petition for creation as described under § 7-82-201, § 68-221-604, § 68-221-1304, or any other section or private act; or
- c. Displays a pattern of severe managerial incompetence such that the utility system cannot provide the public it serves with safe, consistent access to its services.

Annual Information Report: A report local officials must file with TBOUR by the first day of the utility's fiscal year. The form of the report is approved by the Board and fulfills the reporting and filing requirements outlined in Tenn. Code Ann. § 7-82-707(a)–(d).

- a. The financial condition of the utility system at the end of the fiscal year;
- b. A statement of the utility rates then being charged by the system;
- c. Other information the Board finds would assist the Board and the public in understanding the financial health of the system or any challenges the system faces;
- d. Water loss information; and
- e. The contract for the purchase of water for resale for utility systems that purchase more than fifty percent (50 %) of its total water for resale.

The report is an online submission and can be found on TBOUR's website. The Utility's ID Code is needed to submit the report and can be obtained from Board staff.

Annual Training Statement: A form approved by TBOUR that individual members of a utility's governing body must complete each year, regardless of if they attended training during that year. The form is used to document compliance with continuing education requirements. Additional information on this requirement is in Section 8. The form is available on TBOUR's website.

AWWA v6.0 Worksheet (or Software): A tool from the American Water Works Association (AWWA) used to analyze water loss by comparing key performance indicators. TBOUR adopted its use pursuant to its authority in Tenn. Code Ann. § 7-82-202(c)(5).

Board: The Tennessee Board of Utility Regulation (“TBOUR”) created in the office of the Comptroller by T.C.A. §§ 7-82-701-708, or its successor entity.

Board Counsel: An attorney within the Comptroller's office that is directed to provide legal advice, prepare documents, or act as counsel to the Board in any other capacity.

Board Order: See “Order”.

Board Staff: The Comptroller’s designated manager for the Board, counsel to the Board, and any other employee of the Comptroller assigned as staff to the Board.

Capacity Fee: A fee charged for connecting new developments to the utility system.

Cash Basis: Is a method of accounting in which revenue is recognized when cash is received, and expenses are recognized when cash is paid. Cash basis accounting is simpler and more straightforward but may not provide a complete and accurate picture of an entity’s financial activities, especially in terms of timing and matching revenues with associated expenses.

Depreciation: Depreciation is often one of the largest operating expenses of a utility system. Depreciation is the allocation of the cost of a capital asset (such as equipment and facilities) over its estimated useful life. It helps to accurately reflect the wear and tear on these assets over time and allocate associated costs to the periods in which the asset provides service. Depreciation is crucial in financial reporting, rate-setting, asset management, and decision-making for utilities. TBOUR has adopted guidelines for evaluating the useful lives of assets of water and wastewater systems. See Appendix C.

Financial Distress (also: Financially Distressed): A utility system is financially distressed when it has reported one or more of the following as of its most recent audits:

- a. a deficit total net position,
- b. a deficit unrestricted net position,
- c. a negative change in net position for two consecutive years without regard to grants or capital contributions,
- d. a default on any of its debt instruments.

See: Tenn. Code Ann. § 7-82-703(b)

GAAP Basis (Accrual Basis): Under generally accepted accounting principles (GAAP), recognition of revenues and expenses when they are earned or incurred regardless of when cash is received or paid. GAAP basis accounting provides a more comprehensive and accurate representation of an entity's financial position and performance over a specific period, as it considers all economic events, regardless of the timing of cash transactions.

Informal Hearing: A hearing by TBOUR from interested parties, specifically, customer(s) and representatives from the utility system(s), involved in either: (1) a customer complaint or (2) the potential merger or consolidation of an ailing utility system with another utility system. Informal hearings are not subject to the contested case requirements of the Uniform Administrative Procedures Act (UAPA) or the uniform rules for contested cases. These are generally held during a regularly scheduled TBOUR meeting.

Non-Revenue Water by Volume: The distributed volume of water that is not reflected in customer billings. The American Water Works Association defines three specific categories of water usage or loss that will not result in revenue to a utility system:

- a. unbilled authorized consumption: water for firefighting, flushing, etc.;
- b. apparent losses: customer meter inaccuracies, unauthorized consumption and systematic data handling errors; and
- c. real losses: system leakage and storage tank overflows.

Order: A decision of TBOUR in any given matter, as evidenced by the Board's vote on a motion and any amendments adopted. An Order is effective as of the date it is entered unless it states otherwise and is effective and binding regardless of whether it is reduced to writing. However, after the meeting in which an Order is given, an official Order will be sent to local officials documenting Board Order(s).

Rate Structure: The pricing model for charging customers based on water/sewer or gas usage or other factors.

Statutory Change in Net Position: The sum of total revenues less all grants, capital contributions, and expenses.

Structurally Balanced Budget: A budget is structurally balanced when recurring revenues are sufficient to pay recurring expenses. Relying on one-time revenue from selling assets, restructuring debt, spending savings, or deferring maintenance indicate the budget is not structurally balanced.

Third-Party Expert: An experienced, qualified, individual, organization, non-profit agency, or governmental agency with no direct relationship to the utility system, as an employee or board member.

Update Cycle: The period needed for Board staff to monitor a utility system to ensure Board directives that have been implemented are fully established and functioning. The period will depend upon the nature of the referral.

Utility Financial Distress Questionnaire: An online form Board staff utilizes to help determine the best course of remedial action that will be recommended to TBOUR to restore financial health to a utility system in financial distress.

Water Loss Report: Pursuant to Tenn. Code Ann. § 7-82-707(d), utility systems must submit a water loss report on a form prescribed by the Board. There is not a separate water loss form or report. Water loss is calculated from information reported on the **annual information report**.

Various resources are available to utility systems operated by local governments. The resources and best practices referenced in this Section will be helpful to local officials in the management and oversight of utility systems.

Adjustments to Utility Bills

Utility systems should have a policy in place for allowable adjustments to customer utility bills. Adjustments may be needed because of billing errors, meter reading errors, leaks, and other reasons. The policy should explain the review and approval process. Our office recommends local governments adopt a policy that encompasses the following:

- Allowable reasons for an adjustment
- A clear process for requesting an adjustment
- Expectations and review process
- Limitations, exclusions, and exceptions
- Customer responsibilities
- The effect on outstanding account balances during the adjustment review process
- Who at the utility system has the authority to approve an adjustment
- An appeals process

Alternatively, if a utility declines to give adjustments, a policy should be stating this instead.

Ask Audit

Local government officials should not be afraid to engage with their auditor. Ask questions. Identify weaknesses and adopt policies accordingly.

Asset Management Plan

A systematic approach to managing and maintaining a utility's capital assets, including facilities, infrastructure, and equipment is essential for utility systems. Local officials should establish a methodology for assessing the condition of capital assets and a plan for capital maintenance and replacement needs. Understanding the current state of assets, planning for their replacement or improvement, and identifying appropriate funding sources, all contribute to the long-term sustainability and reliability of utility services.

Regular monitoring and adjustments throughout the year are also necessary to respond to changing conditions and ensure financial stability. The Tennessee Department of Environment and Conservation has published an [Asset Management Plan Guide](#) for water and sewer systems that is a valuable resource for developing internal practices and policies. The principles in the guide may also be applied to asset management for gas systems.

Customer Complaint Policy

A process to receive customer complaints and a policy on how to investigate complaints should be approved by the governing body. The policy should identify staff with authority to investigate and resolve customer complaints. Our office recommends the use of a complaint form that includes the following information:

- Name of the individual making the complaint
- Account number
- Address
- Telephone number
- Nature of the complaint that includes a description of the issue and copies of any supporting documents
- The desired remedy for the complaint
- Contact information for the utility system should the customer need help completing the form

Once a complaint is received, an investigation should be made to determine the validity of the complaint and the needed corrective action, if any. In addition to the complaint form, the following information should be documented and maintained for each complaint:

- Date the complaint was received
- Who received the complaint
- Date resolved/completed
- Steps taken to investigate the complaint
- Who investigated the complaint
- Results of the investigation
- Action taken

Should the customer be dissatisfied with the resolution, there should be a process for appeal to the governing body of the utility system. This will generally occur during a regular scheduled meeting. When customers are dissatisfied with the decision of the governing body, they should be informed that they have 30 days to appeal to the Tennessee Board of Utility Regulation (TBOUR) for an informal hearing.

Depreciation Savings Account

A capital asset is depreciated over its estimated useful life to allocate the cost of the asset to the periods a utility system either gains benefit, or produces revenue, from the asset. State law requires that all utility systems recognize depreciation consistent with generally accepted accounting principles. When debt is used to finance the purchase of an asset, the depreciation expense tends to equal the cash needed to repay the debt. This presents a unique opportunity for utility systems that also finance capital assets with cash reserves, grants, and contributions. Our Office recommends local governments adopt a policy to deposit an amount equal to “annual depreciation expense less annual principal payments” into an interest-bearing account or authorized investment to be reserved for future capital investment. Even though capital costs increase due to inflation, a depreciation savings account will enable utility systems to finance future capital investments with less debt, which often results in significant interest cost savings to the utility system. For deposit and investment options, see the Tennessee Department of the Treasury for information on the Local Government Investment Pool (LGIP) and Intermediate Term Investment Fund (ITIF).

Rates and Fees

Rates, fees, and any other charges must be reasonable and justified, but they should also be enough to make the utility self-sufficient. Rates and fees should be reviewed regularly to ensure the utility remains financially self-sufficient. Rates and charges should be sufficient to cover all reasonable operating expenses, as well as depreciation, interest on debt, and any other nonoperating expenses. Rates should generate enough cash to pay both principal and interest on debt. Each utility should have rates sufficient to have a positive change in net position separate from grant proceeds and contributions. Utilities that report a decrease in net position, without regard to grant proceeds or contributions, for two consecutive years will be referred to the oversight of the Tennessee Board of Utility Regulation (TBOUR). A policy for periodic rate studies is a proactive and strategic approach to managing the financial health of a utility. Conducting thorough internal reviews during non-rate study years allows utilities to proactively address challenges, optimize operations, and lay the groundwork for informed decision-making in subsequent rate studies. Some utility systems have an annual cost-of-living rate increase that is adopted once, and then rates adjust at an inflationary percentage each year.

Recommended Policies

Sound financial policies lay the foundation for good financial decisions. At a minimum, a utility should have policies in place to address internal controls, budget adoption, cash flow management, billing, rate increases/adjustments, asset management, and debt management. Refer to the Comptroller’s debt and budget manuals for recommended debt and budget policies.

Repair and Maintenance Reserve

Utility systems should set aside funds to pay for major repair and maintenance expenses that do not meet criteria for capitalization under generally accepted accounting principles. Because these costs are reported as a current year expense, they cannot be financed by long-term debt and must be financed by available cash. Our office recommends local governments adopt a resolution that outlines:

- A minimum target reserve amount that is based upon long-term maintenance needs and reflects specific needs of the utility system.
- The funding methodology of the reserve. This may be a tiered approach to build toward maintenance costs that occur every 5 -15 years.
- Authorized uses of reserve funds. For example:
 - Excludes: annual-recurring repair and maintenance costs.
 - Includes: water storage tank cleaning and painting, sewer lagoon dredge costs, non-capitalized costs related to moving utility lines, storm repair, etc.
- Required authorizations for use of reserve funds.
- Where funds are maintained:
 - Bank account, investment account, etc.
 - The Local Government Investment Pool administered by the Tennessee State Treasurer provides interest earnings and accessibility.
- Annual monitoring
 - We recommend an annual report to the governing body that includes the target balance, balance at the beginning of the year, ending balance, additions to, expenses from, and a discussion on needed changes, if any, to the authorized reserve level and uses.
- Periodic reassessment requirements
 - At set intervals, identify new risks, rising costs, condition of assets, new environmental regulatory requirements, and other factors that impact the current reserve policy and change the utility system's policy as needed.

Appendix A

TBOUR Oversight Summary

	Description	Applies To	Tenn. Code Ann.	Source of Referral, Notification, Other
A. REFERRALS				
TBOUR reviews and applies sanctions and determines remedial actions needed by local officials for the following:				
A-1	Ailing System —Financial distress: (1) Deficit total net position (2) Deficit unrestricted net position (3) Statutory decrease in net position for two consecutive years (4) Default on debt	All	§ 7-82-703(b) § 7-82-704(a)(1)	Comptroller
A-12	Ailing System —Financially unable to expand service as set forth in creation documents.	All	§ 7-82-704(a)(2)	TBOUR Staff
A-13	Ailing System —Pattern of severe managerial incompetence	All	§ 7-82-704(a)(3)	TBOUR Staff
A-2	Excessive water loss	All	§ 7-82-702(a)(5) § 7-82-706(c) § 7-82-707(d)	TBOUR Staff
A-3	Failure to meet initial training or continuing education requirements	All	§ 7-82-702 (a)(14)	TBOUR Staff
	Failure to meet initial training or continuing education requirements	City or County	§ 7-34-115 (k)	TBOUR Staff
A-4	Failure to submit annual information report	All	§ 7-82-707(a)	TBOUR Staff
A-5	Administrative review of the financial, technical, and managerial capacity of a utility system	All	§ 7-82-706 (a-b)	Comptroller TBOUR Staff
A-6	Unlawful use or reliance on funds	All	§ 7-82-703 (c)(1)(B) § 7-82-703(c)(1)(C)	Comptroller
A-7	Late audits for two consecutive years	All	§ 7-82-703(c)(1)(A)	Comptroller
A-8	Complaints from utility customers —various	All	§ 7-82-702(b) TBOUR Rules	Customer(s), TBOUR Staff
	Complaints from utility customers —grievance related to final decision by a utility district on customer protest related to water or sewer rates.	UD	§ 7-82-402(a)(3)	Customer(s), TBOUR Staff
	Complaints from utility customer —petition for utility district rate review	UD	§ 7-82-102	10% of Customers
A-9	Failure to assess or update cyber security plan every two years	All	§ 7-51-2302	Comptroller
A-10	Failure to provide information on connection costs	All	§ 65-5-403	TBOUR Staff
A-11	Failure to demonstrate technical, managerial, and financial capability by SRF loan applicants.	All	§ 68-221-1206 (a)(3)	TBOUR Staff

	Description	Applies To	Tenn. Code Ann.	Source of Referral, Notification, Other
A-14	Adoption of ethical standards that differ from TAUD approved model.	UD WWTA RWWTA GA	§ 7-82-702(a)(6)(C)	TBOUR Staff
A-15	Investigative report issued by Tennessee Comptroller for a utility district	UD	§ 7-82-307(b)(2)(A)	Comptroller
A-16	Questions on adequacy of purchasing policy for a utility district	UD	§ 7-82-804	Concerned Party
B. APPROVALS AND RECOMMENDATIONS				
<i>TBOUR reviews and either approves, disapproves, or recommends for the following:</i>				
B-1	Application for Utility Revitalization Fund grant	All	§ 7-82-708	Local officials
B-2	Applications for utility relocation loans	All	§ 67-3-901(j)	Local officials
B-3	Utility service to customer in adjoining utility district	UD	§ 7-82-112(a)	Customer or Adjoining Utility District
B-4	Resolution to change method of board appointment for a utility district	UD	§ 7-82-307(a)(9)	Governing board
B-5	Petition for creation: utility district	UD	§ 7-82-201(a)(1) § 7-82-702(a)(7)	Stakeholders
	Petition for creation: public act water or wastewater treatment authority	WWTA	§ 68-221-604(b)	Local officials
	Petition for creation: public act regional water and wastewater treatment authority	RWWTA	§ 68-221-1304	Local officials
	Petition to purchase, develop, acquire, or build a new public act water or wastewater system.	City or County	§ 68-221-1017 § 7-82-702(a)(8)	Local officials
B-6	TAUD Model of Ethical Standards	TAUD	§ 7-82-702(a)(6)(A-B) § 8-17-105(b)	TAUD
C. NOTIFICATIONS				
<i>TBOUR receives notifications, with no required action, for the following:</i>				
C-1	Training extension request letter and corresponding Comptroller determination letter sent to a board member.	UD	§ 7-82-308(f)(3)	Board Member
		City or County	§ 7-34-115(j)(6)	Board Member
		WWTA	§ 68-221-605 (f)(5)	Board Member
		RWWTA	§ 68-221-1305 (f)(5)	Board Member
C-2	Petition for merger, consolidation, or re-creation of a utility district	UD	§ 7-82-202(g-h)	Stakeholders
C-3	Dissolution of a utility district	UD	§ 7-82-301(b)	County Mayor
C-4	Supplemental petition for authority for utility district to provide other utility services	UD	§ 7-82-302(e)	Governing Body
C-5	Approved training and continuing education curriculum.	Comptroller	§ 7-34-115(j) § 7-82-308(f)(7) § 68-221-605(f) § 68-221-1305(f)	Comptroller

	Description	Applies To	Tenn. Code Ann.	Source of Referral, Notification, Other
D. CONTESTED CASE HEARINGS				
TBOUR conducts contested case hearings for the following:				
D-1	Removal of utility district commissioner(s) by customer petition	UD	§ 7-82-307(b)(1)(A) § 7-82-702(a)(3)	Customers
D-2	Removal of utility district commissioner(s) for failures directly related to matters in an investigative report issued by the Tennessee Comptroller of the Treasury	UD	§ 7-82-307(b)(2)(A) § 7-82-702(a)(3)	Comptroller
D-3	Removal of utility district commissioner(s) for failure to comply with a TBOUR order, failure in official duties, or misconduct of office.	UD	§ 7-82-307(b)(3)(A) § 7-82-702(a)(3)	Board staff
D-3	Change in the method of filling board vacancies for a financially distressed utility district.	UD	§ 7-82-307(c) § 7-82-702(a)(4)	Board staff

Abbreviation Key:

All	Water, Sewer, and Natural Gas Utility Systems
GA	Gas Authority
MEA	Municipal Energy Authority
RWWTA	Regional Water and Wastewater Treatment Authority
UD	Utility District
WWTA	Water and Wastewater Treatment Authority

Appendix B

TBOUR Referrals – General Process

- 1 – Notification** The utility system will be notified of the referral, which often includes a request for additional information.
- 2 – TBOUR Agenda** The utility system will be added to the agenda of the meeting at which TBOUR staff will notify the utility’s governing body of the referral. A representative of the utility system is not required to attend in person, but representatives are always welcome to attend and in some cases a representative’s attendance may be requested or ordered.
- NOTE: For water loss, training, and cyber plan referrals, a utility system will be added to the agenda once directives from Board staff to correct the underlying issues causing the referral are either addressed or failed to be addressed.
- 3 – Directives** Depending upon the nature of the referral:
- Board staff will begin working with the utility system to implement corrective actions/directives to address referral issues; or
 - Board staff will draft a recommendation for consideration by TBOUR at their next meeting. Often an **Order** will be sent to the utility system that includes directives from TBOUR.
- 4 – Implementation** Local officials will implement directives from Board staff or from TBOUR.
- 5 – Update Cycle** Once directives have been implemented, the utility system will generally remain under TBOUR oversight until Board staff can determine compliance has been established. This is referred to as the **update cycle**. Board staff will report this at the next TBOUR meeting. After compliance has been established, a utility system will be added to the agenda of the next TBOUR meeting and Board staff will recommend that the utility be released from oversight. The utility system will be notified when it is removed from the **update cycle**.
- 6 – Release from Board Oversight** After compliance has been established, a utility system will be added to the agenda of the next TBOUR meeting and Board staff will recommend that the utility be released from oversight.

Appendix C

Guidelines for Estimated Useful Lives of Assets of Water and Wastewater Systems

The Tennessee Board of Utility Regulation has adopted the following guidelines for evaluating the useful lives of assets of water and wastewater systems. The useful lives of assets should not exceed the appropriate guidelines listed below.

Capital Asset Description	Estimated Useful Life
Water Systems	Years
Buildings (Office and Plant)	30-50
Equipment and Tools	10-15
Furniture and Fixtures	5-10
Machinery, Equipment, Vehicles	5-15
Pumps and Treatment Equipment	15-20
Transportation Equipment	5-10
Water Lines and Storage	40-50
Well/Dam	Engineer's Estimate
Wastewater (Sewer) Systems	Years
Buildings (Office and Plant)	30-50
Equipment and Tools	10-15
Furniture and Fixtures	5-10
Machinery, Equipment, and Vehicles	5-15
Pumps and Treatment Equipment	5-20
Transportation Equipment	5-10
Wastewater (Sewer) System	40-50