

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

FORM #7

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Filing Date

FILED

1991 JUL 24 AM 9:31

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

July 24, 1991

NOTICE OF AN EMERGENCY RULE

AGENCY: Board of Investments TITLE NUMBER: 113

CITE AUTHORITY: 12-6A-1 et seq

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED _____

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: Series X

TITLE OF RULE BEING FILED AS AN EMERGENCY: Rules for the reporting
of State Debt to the WV Board of Investments.

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

The filing on an emergency basis is necessary to insure that all State agencies issuing bonds and incurring debt are in full compliance with West Virginia Code 12-6A-1 et seq that took effect July 1, 1991.

Use Additional Sheets If Necessary.


Signature

DATE: July 23, 1991
TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
FROM: WV State Board of Investments

EMERGENCY RULE TITLE: Rules for the Reporting of State Debt to the WV
State Board of Investments.

1. Date of filing: July 24, 1991
2. Statutory authority for promulgating the emergency rule:
12-6A-1 et seq
3. Date of filing of proposed legislative rule: July 24, 1991
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?
New Language
5. Has the same or similar emergency rule previously been filed and expired?
No
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare
The filing on an emergency basis is necessary to insure that all
State agencies issuing bonds and incurring debt are in full com-
pliance with West Virginia Code 12-6A-1 et seq that took effect
July 1, 1991.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

Code Section 12-6A-6

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

Without these Rules the Debt Management Division wouldn't be able to provide the Executive and Legislative branches with a Debt Management report by October 31, 1991. This report is necessary for the 1992 Legislative session in order that the Governor and Legislature may make important fiscal decisions with the necessary financial information at their disposal.

General Summary of the Rules for the Reporting
of State Debt to the West Virginia State Board of Investments

- Section 1. Provides the basic information for the authority and purpose for which this Rule is being promulgated.
- Section 2. Provides definitions to words and phrases used throughout the Rule.
- Section 3. Establishes timetables for State agencies to report debt information to the Board of Investments. It also provides the timetable for when the Board of Investments shall make its debt report to the Governor and Legislature. All State agency debt shall be reported to the Board within 15 days following the end of every calendar quarter and all proposed debt offerings shall be reported to the Board no later than 10 days prior to the debt being incurred. The Board has 30 days from the end of the calendar quarter to submit a debt report to the Governor and Legislature.
- Section 4. Establishes what required information shall be necessary in order for a State agency to be in compliance with the West Virginia Code for the reporting of debt to the Board.

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
West Virginia State Board of Investments

Chapter 12-1
Series

Subject: Rules for the Reporting of State Debt to the West
Virginia State Board of Investments.

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS
West Virginia State Board of Investments

Chapter 12
Series

Subject: Rules for the Reporting of State Debt to the West Virginia State Board of Investments.

Section 1. General

1.01. Scope - These rules implement the provisions of West Virginia Code §12-6A-1 et seq., wherein the State Board of Investments Division of Debt Management shall be responsible for the recording and reporting of debt issued by the State, its agencies, boards, commissions and authorities.

1.02. Authority - West Virginia Code §12-6A-1 et seq.

1.03. General Purpose - The purpose of these rules is to carry out the legislative intent, as stated in the above-cited code section, to gather, record and report information concerning the indebtedness of the State so that it may be utilized by the Executive and Legislative branches of government to determine the total state debt obligation and plan sound fiscal policies based upon the State's ability to meet its total debt service.

1.04. Filing Date -

1.05. Effective Date -

Section 2. Definitions

For the purpose of these rules, unless a different meaning is clearly required by the context;

"Agency" means and includes any department, board, authority, commission, division, branch office or other spending unit of State Government.

"Board" means the West Virginia State Board of Investments.

"Capital Lease" means a lease in which the lessee (person leasing from another) assumes substantially all the risks and benefits associated with the asset, which meets one or more of the following criteria:

- 1) The lease transfers ownership of the leased asset at the end of the lease term.
- 2) The lease terms and conditions contain a bargain purchase option which allows the State to buy the leased asset for substantially less than the estimated value of the leased item.
- 3) The term of the lease is 75% or more of the estimated economic life of the leased asset. Estimated economic life is the estimated useful life of the asset for the purpose for which it was intended, regardless of the term of the lease. For example, if a copier with an estimated economic life of 10 years were leased for 8 years, it would meet this criterion.
- 4) The Present Value of the Future Minimum Lease Payments at the beginning of the lease equals or exceeds 90% of the fair value of the asset.

"Certificates of Participation" means certificates issued for the purpose of financing or refinancing the purchase of capital goods. The Certificates of Participation evidence the holders' rights and interest in lease payments which are made by the State under the lease obligations. The Certificates of

Participation do not constitute or create a general obligation or indebtedness of the State in excess of the amount, if any, appropriated from fiscal year to fiscal year for the payment of the lease payments, and the State has no continuing obligation to appropriate money for the lease payments.

"Code" means the 1931 code of West Virginia, as amended.

"Debt" means bonds, notes, Certificates of Participation, certificate transactions, Capital Leases, lease purchases, mortgages and all other forms of securities or paper evidencing amounts owed and payable on demand or specified dates.

"Division" means the division of debt management.

"General Obligation Bonds" means debt in the form of bonds supported by a constitutional obligation of the State to make debt payments if no other source of funds is available. The creation of general obligation debt requires a constitutional amendment approved by 2/3rds of both houses of the Legislature and a majority vote by the public.

"Lease Purchase" means a lease agreement in excess of one year providing for the application of rental payments to the purchase price of equipment or facilities. A State agency's obligation under the lease purchase agreement is made expressly subject to appropriations by the Legislature, thus creating a "moral obligation" on the part of the Legislature to appropriate necessary rent when the lease payments are due and payable.

"Moral Obligation Bonds" means bonds issued without the support of a constitutional obligation of the State to provide for debt payments. The obligation to pay the debt service is made expressly subject to appropriations by the Legislature, thus creating a "moral obligation" on the part of the Legislature to appropriate necessary funds when the bonds are due and payable.

"Mortgages" means a debt instrument for financing the purchase of real property by which the borrower gives the lender a lien on the property as security for the repayment of the loan.

"Special Revenue Bonds & Notes" means long term debt obligations which are backed solely by a stream of revenue generated by the program or project being financed. Currently the Legislature creates the authority or program, but does not always set the total amount to be issued or approve individual issues. Though the Legislature may approve revenue bond or note debt it is not legally obligated to pay debt service from the general funds of the State.

"Spending unit" means any of the State's agencies, boards, commissions, committees, authorities, entities or other units of State Government with the power to issue debt and secure such debt, with the exclusion of local political subdivisions of the State.

"State" means the State of West Virginia.

Section 3. Debt Information Reporting Timetables

3.01. Time Table for Reporting Total Debt - As of July 1, 1991 each State spending unit shall, within fifteen days following the end of each calendar quarter, submit a written report to the Board and the Legislative Auditor of the total debt incurred by the spending unit during the calendar quarter and all debt outstanding for the spending unit at the close of the same calendar quarter. The report shall contain the information specified in Subsection 4.01 of this Rule.

3.02. Time Table for Reporting A Proposed Offering of Debt - Beginning July 1, 1991, each State spending unit intending to incur debt shall submit a written report to the Board no later than fifteen days prior to incurring the debt. The report shall contain the information specified in Subsection 4.02 of this Rule.

3.03. Board Report - Beginning July 1, 1991 the Board shall prepare and issue a quarterly and annual report of all State debt and proposed debt, no later than thirty days following the close of each calendar quarter and at the end of the fiscal year. The report shall be distributed to the Governor, President of the Senate, Speaker of the House, Legislative Auditor, and upon request to any legislative committee or member of the Legislature.

Section 4. Reporting Information Requirements

4.01. Debt Incurred - Each State spending unit shall submit a debt report to the Board, pursuant to West Virginia Code §12-6A-6, containing the following information where applicable:

- 1) The name of the State spending unit,
- 2) The amount and type of debt incurred each quarter,
- 3) The amount and type of debt outstanding at the end of each quarter,

4) All costs and expenses incurred in the issuance of the debt, including:

- A. Financial advisor fee
- B. Bond counsel fee
- C. Bond registration fee
- D. Bond rating fee
- E. Underwriter's fee
- F. Underwriter's counsel fee
- G. Trustee's fee
- H. Trustee's counsel fees
- I. Printing fees
- J. Credit enhancement fee (specify nature of credit enhancement and anticipated future cost, if any)

5) A copy of the Official Statement or if not applicable, other document setting forth both the terms and conditions of the debt,

- 6) The total debt service on the debt,

7) The net interest cost and true interest cost on the debt, per series,

8) Actual rate of interest per maturity,

9) The source of funds utilized for repayment of the debt, and a schedule, by year, for the collection of such funds. No schedule need be attached if the source of funds is from the General Revenue Fund.

10) The dollar amount of debt repayment during the calendar quarter and the fiscal year total,

11) The repayment or amortization schedule,

12) The security for the debt, and

13) All other information specified by the Board.

4.02. Proposed Debt - Each State spending unit shall submit to the Board a report of proposed debt, no later than fifteen days prior to incurring the debt. The report shall be on a form approved by the Board, which shall include, where applicable, the following information:

1) The name of the State spending unit,

2) The amount and type of debt to be incurred for the spending unit,

3) A preliminary copy of the official statement,

4) All anticipated costs and expenses incurred in the issuance of the debt, including:

A. Financial advisor fee

B. Bond counsel fee

C. Bond registration fee

- D. Bond rating fee
- E. Underwriters fee
- F. Underwriter's counsel fee
- G. Trustee's fee
- H. Trustee's counsel fee
- I. Printing fee
- J. Credit enhancement fee (specify nature of credit enhancement and anticipated future cost, if any)

5) The terms and conditions of the debt if not set forth in the preliminary official statement,

6) The reason for the debt issuance and use of the debt offering proceeds,

7) Actual rate of interest per maturity,

8) The proposed net interest cost and true interest cost on the debt, per series,

9) The source of funds utilized for repayment of the debt, and a schedule, by year, for the collection of such funds. No schedule need be attached if the source of funds is from the General Revenue Fund.

10) The repayment schedule,

11) The security for the debt,

12) The amortization schedule for the debt; and

13) All other information specified by the Board.

4.03. Report of Final Sale - All State Spending units submitting a report of proposed debt, as specified in Subsection 3.02 of this Rule, shall submit a report, separate from the quarterly report required in Subsection 3.01 of this

Rule, of final sale to the Board following the issuance of the debt. The report shall be on a Board approved form and shall also contain a copy of the official statement or offering circular.