

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: BOARD OF INVESTMENTS

TITLE NUMBER: 113

CITE AUTHORITY 12-6A-1 et. seq.

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series X

TITLE OF RULE BEING PROPOSED: Rules for the Reporting of State

Debt to the West Virginia State Board of Investments

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Mark E. N. Asaad

DATE: November 6, 1991

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: WEST VIRGINIA STATE BOARD OF INVESTMENTS

LEGISLATIVE RULE TITLE: Rules for the Reporting of State Debt to the

West Virginia State Board of Investments
1. Authorizing statute(s) citation W.Va. Code Sec. 12-6A-1 et seq.

2. a. Date filed in State Register with Notice of Hearing:

July 24, 1991

b. What other notice, including advertising, did you give of the hearing?

Letter to all State Agencies, Boards, Commissions, and Authorities

c. Date of hearing(s): Wednesday, September 11, 1991
9:30 a.m.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

November 6, 1991 - 2:30 p.m.

f. Name and phone number(s) of agency person(s) to contact for additional information:

Mark Asaad 343-4090

Jerry Simpson 343-4090

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing: _____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached _____

LIST OF ATTENDEES

The following observers were present at the Public Hearing on Debt Management held on Wednesday, September 11, 1991 at 9:30 a.m.

<u>NAME</u>	<u>REPRESENTING</u>
Jerry Simpson	WV State Board of Investments
Mark Asaad	WV State Board of Investments
Brenda Warren	WV State Board of Investments
Craig Slaughter	WV State Board of Investments
Ed Staats	Bureau of Employment Program
Art Thomas	Bureau of Employment Program
Joe Hatfield	WV Housing Development Fund
Vince Collins	WV Housing Development Fund
Marty Gargano	WV Housing Development Fund
Lee O. Hill	Jackson & Kelly
David Kirby	United National Bank
Garry Stewart	School Building Authority
Clacy Williams	School Building Authority
Karen Potesta	WV Hospital Finance Authority

AMENDMENTS TO RULE

- Subsection 3.02. Clarify definition of debt
- Subsection 4.01. Clarify reporting requirement for the quarter
- Subsection 4.02. Clarify and modify information required for proposed debt issuance
- Subsection 4.03. Expand information required in Report of Final Sale

Above cited modifications reflect recommended changes received from public hearing, which help clarify and enhance the reporting requirements.

PUBLIC HEARING ON THE RULES AND REGULATIONS FOR THE REPORTING
OF STATE DEBT TO THE WV STATE BOARD OF INVESTMENTS

The purpose of this meeting is to receive written comments and oral comments to the proposed Rules for reporting State debt to the Board of Investments by various State agencies. These rules were filed with the Secretary of State Office on July 24, 1991. I should note for the record that written comments have been received so far from the WV School Building Authority, the WV Hospital Finance Authority and the Workers' Compensation Fund and from Steptoe & Johnson. I'd like to at this time turn it over to Mark Asaad who will go through and explain to you what the purpose of the Rules are and how they came about. These rules were filed or promulgated to effect the statutory legislation that was enacted during the 1991 Regular Session of the Legislature and that's Chapter 12, Article 6A, Section 1 et seq which is the creation of the Division of Debt Management in the State Board of Investments. Making the Board of Investments responsible for the recording of debt issue by State Agencies, Boards, Commissions and Authorities and what we tried to do with these Rules and Regulations is to put the Legislative intent specified within those statutes into a somewhat easily understood package for every Agency so that they can report the debt and turn the reports over to us. We tried to simplify things as best as possible, but to a degree, as you all are aware of, it is somewhat of a confusing subject, what is a lease, what is not a lease, what is debt, what is not debt, and we tried again to simplify it and make as encompassing as possible. So at this time I'd like to start at from beginning and listen to

any of your comments. Beginning with Section 2 unless anyone has comments about Section 1 which is boilerplate language. Beginning with Section 2 is really the heart and sole of what we are looking for and what we are dealing with within this stature. Does anyone have any comments pertaining to any of the definitions that are used throughout the rules and regulations? When you talk about Debt some agencies such as the Housing Development Fund have credit cards that we use out daily such as in travel, Debt includes items that are payable on demand and is there clarification needed there or does Debt include credit cards and such things as that? It should not include those credit card payments. That's my interpretation. The definitions that are used in the rules and regulations are the ones that are used within the statute itself. So we are kind of constrained as to how broad we can make that where we can't obviously go beyond the statute. It be my interpretation that credit card debt would not be included. That is something again that is payable on demand, can be paid off tomorrow if you wish. Any other comments concerning definitions? I think in relationship to that are initial interpretation was that what there looking for that goes beyond the current fiscal year. Formal obligations, future legislature, or particularly agency beyond a year. So credit card debt can be paid off within 30 days or 60 days or whatever the rate is so that would not be included. Out of that definition does it include the obligation to take a claim? As in a litigation claim? As a compensation claim. When someone brings a compensation, when you pay the claim, don't you pay those off as you receive them, or do you carry those forward

for a year. For the last 20 years. What kind annuity type payment would this be? Most exceed one year. That would probably need to be included. Again, that is for the ones you know. How difficult a problem does that present? At the present time, it is an extreme problem. System changes that are being input within a year or year in a half it will not be a problem. Do you have projections? We make actuarial projections in aggregate amounts. I guess what I'm asking, under the rules and regulations are you wanting full picture of an agencies debt or just parts of it. Full picture. On a complete full basis. Part of these rules and regulations were also constructed in a manner to work with the new GAAP accounting system that is being put into place by the Department of Administration. So we had quite a few accountants that also went through this and we tried to make it so that the two would work together so when we start reporting to the Department of Administration with what their requirements are going be, it will just be a follow-along type program. So, if it's full debt then it would include contingent liabilities? So its all things like accumulated annual leave? That would be part of GAAP. My personal opinion is that I don't think that's the intent of the Legislature. That will be disclosed under GAAP for F&A. We are not looking for that within this one. But, again, we are trying to get to that they will work together. So when you are making all these disclosure to F&A, we can also get what we need. We are not trying to make you duplicate reportings. You go through once and you get all your information on what your debts are and it will make it a simpler process for both F&A and us. How about vouchers payable?

Those don't go beyond a year? But they're a full picture of debt. I don't think that would be required. What about a pension plan obligation? My concern is that the definition of Debt does limit Debt beyond a fiscal year. It just says that all over forms of securities or paper evidencing amounts owed and payable on demand or specified dates. That could mean any invoice or payment for that manner that hasn't been paid. That's a debt under this definition and I know that wasn't the intention, but the actual statute doesn't go quite that far. All other forms of securities and indebtedness and of course the word indebtedness is kind of a squirrely phrase, but maybe something in the regs that would exclude all routine indebtedness in the course of business during the current fiscal year would be useful here. I know you wouldn't interpret it that way, maybe five years down the road, some really aggressive person in the Board of Investments that wants to harass an agency which may want to have all their invoices for the quarter with the complete report on how much, whose payable and everything else, that would be a nightmare. We'll take that into consideration. Any other questions concerning, again, the definitions? Let's go on to Section 3, which are the reporting time tables. Are there any questions on this particular Section? Maybe we could look at a cooperative Legislative effort to see if we couldn't make that at least a semi-annual kind of approach and maybe even an annual somewhere down the road that appears to me that quarterly is going to cover you and me both up with me generating and you trying to set up. It would appear to me that we probably can't do anything without the way the situation exists

presently. But if the State agencies effected are willing to sort of bid together and some legislative effort and talk with folks that make these kind of changes, maybe we could do something about this reporting system. I'd like to see that altered a little. I think that would be worth some consideration. I'm not sure at this stage and time that it is necessarily prudent to go to the Legislature and want to change the dates on the reporting right now. I think we are not in a position to try to understand legislative intent but the Legislature initially wanted to get a grasp on what's out there. And they wanted to get it prior to the 1992 Regular Session starting. So by making it on a quarterly basis, hopefully by January they will have had two reports in. That will give a starting point and can make their decisions based upon that and gives them an idea of what's going on. I'm sure that if any agency would approach a Legislature they'll always listen, take it into consideration. We have been sending out letters to most of the agencies prior to these deadlines asking them for information on a voluntary basis so we can start putting into spreadsheets now and spitting it back out to them and sending them a follow-up letter saying here's the information that you have given to us and put in. Is it correct? Does it conform to what you've said? And that way when October 1 rolls around, they already have that information in front of them, they've been helpful to us, so that all they have to do is double check their own records. Obviously with this, the sooner you start on it the better. I'm from the Hospital Finance Authority and we have some concerns about the 15 day prior to incurring debt. A lot of times

the information is not available, all the information that is requested is not available 15 days prior to. If you were to contact our office we have some forms that we have been working on that are somewhat rough in nature, but we are trying to smooth them out. And what we really want is what information you do have. A lot of times you can't go ahead and distribute a preliminary, you want to kind of keep that confidential until the official one comes out. If you send it to our office, we have sat on some of those, we just hold it until the official one comes out. We really just want to know the purpose for the debt, how you intend to repay it, whether it's negotiated or what kind of sale. The underwriters if possible, the financial advisor, if possible and bond counsel, people involved and who we can contact. Again, this is something that has been put into the legislation itself. The legislature wishes us to get involved in. Again, it's just a reporting requirement, we do not say yes or no or become involved in it what so ever, we just hold on to the information. So there would be no, if there was a technical default, say we did not supply all the information, it would not have a consequence on the Authority or the bond issue which they are involved in at the time. Meaning if you don't comply fully with regulations? Right. There is no penalty structure, there is no ability to say it's no good, it's invalid, it's an illegal bond issue, No. O.K. We realize that the intent of the regulations is to provide reporting to find out, first of all, what is out there cumulatively and then of course to get a running tab. The quarterly reporting, of course, required by the statute, so there is not much we can do about that, unless we

do seek to make it semi-annual or annual which I think probably be a good idea and still have the same amount of useful information and if it is a problem with getting the initial information quickly could be solved by requiring initial report as of a certain date that would give you enough time to clear it through the quarter 92, but on the regulations requiring complete information 15 day before, if you could put something in the regulations simply to the effect that to the extent available, that would help tremendously because even though I know I realize it is not your intention to go after things that are not available, the regulations still say that you shall report the following information and if no provisions for unavailability, basically, and as Marty pointed out, the lawyers involved in signing off on the transactions are going to have a difficult time saying that all State laws have been complied with this regulation has not technically been complied with. So your looking mainly over on 4.02. If you could change the first word on the fifth line, applicable, to available. Right. I have a couple of other comments on the timetable side of it not really getting over to the 4.02 part. The information requested each quarter is how much debt has been incurred cumulatively and in that calendar quarter. A simple no change report would be very useful here. There isn't that much State debt each quarter, and simply permitting a report that said no change from previous report. I'm not sure if that is permitted under regulations or not but something that would explicitly permit that would be helpful. And would not interfere with your information gathering. It would give you all the information you need. It would also assume that the

amount debt outstanding has not been diminished. Well that's a problem. Payment dates typically there would be some diminution in the amount outstanding, but is that really useful information if you have, say from 3 quarters ago, a bond that has \$8 million and it's applied in the amortization schedule which is required in the initial report, do you really need to know each quarter how much of that is being paid down. Should already be in the amortization schedule. It would be there, yes. Simply take a glance at the amortization schedule. The whole concern that most of us have is the burdensome aspect of the regulations and I do think you have done a good job in keeping them fairly simple, but the way regulations are complied with, you must comply with them literally and I just think that the constant expense of having to comply with sort of redundant reporting is really not important. If you have the information once, why do you need it every single quarter, repeated. And even if that were done on an annual basis, that would be better. The quarter prior to the legislature meeting, then that one report per year would provide all that information on annual basis. So if you want to pull it together for you, and it might be easier for the agency to pull it together for you, than for you to pull all the agencies' stuff together. Our doing that on an annual basis would be a lot simpler than having to do it on a quarterly basis. So if we could submit three reports to you that said no change and then on the fourth report for the year bring all of that up to date with the amount of reduction in debt that has occurred that might make more sense. What would your reaction be if we complete the report for each quarter and send it out to you

to sign off on and say this is correct. We fill in the blank spaces on the amortization schedule for the bond issue as far as the principle and interest for that particular three month period and you just sign off on it saying that it is accurate, correct. I'd feel better about that. I realize that would put a lot of burden on your staff. I don't have too big a concern about the bond issue. I think that's what's on the amortization schedule is pretty clean, but the ones I have more concern about are the lease purchases and that type of debt because that is going to be changing constantly. I know that George Mitchell and his people in the GAAP accounting system may take the position that they don't want anything below \$25,000. That's there cutoff. The code in this case is not specifying cutoff in debt as far as the dollar value is concerned. So we take the position that we have to take anything on lease purchase like buying a copier for \$4,000 and financed over 3 years that has to be reported and reported to legislature. That means that those agencies who are issuing debt are not going to be involved in this it's going to be every agency in the State. That's right. I assure you that they don't all know that. Everyone has been sent a letter. I didn't understand that from reading this letter. We want to emphasize that the GAAP conversion meetings in June that the equation had to be reported, we got into discussion over the size of the information involved versus what we felt like what was needed here. And I don't necessarily agree with this, the code does not get into what is minor debt and what is major debt. Well, I think maybe the wording that Vince has brought early in that maybe those things that are

coded by current operational costs, maybe those are considered an exclusion, which would take care of piece of paper work in copier. There is no agency in the State that doesn't do that. We are talking about straight lease, talking about whether they are going to receive or take possession. Of course a lot of them are on lease. Under definition of debt, compensation claims fall under that definition and we're required to provide 15 days notice on a current debt. Does that mean that we have to notify 15 days for every claim we occur debt on? Obviously that's ridiculous. You can go ahead and say that and I'll agree with you. That would be ridiculous for you to have to call us up every 15 days to submit. So there needs to be some kind of exception built in to that process if we are to report all debt under GAAP on an accrual basis then the reporting process has to some way exclude normal operations than incurred debt. That would need to be reflected in the regulations. That's a legitimate concern and I need to think that out. I have not given that thought and that's the whole idea for this hearing so I can get these concerns. Out of curiosity, what do you feel was the intent. My personal opinion is that the intent was for the Legislature and everybody in State government to get their arms around the debt obligations that are out there for the future. So that the Legislature coming into 1993 has some idea what their obligations are, what their moral obligations, constitutional obligation, or what ever that might be, I think there just trying to get the feel for that. That's the reason I think that stuff that's under a year or does not go beyond the current fiscal year, should be excluded. That could be considered

an operational type problem. Payment of normal bills and stuff, I don't think that should be included. I would think that those things, and correct me if I'm wrong, is I think that anything that will be looked at as being paid for out of the operational budget of the agency as of normal administrative kinds costs ought not be considered as part of this kind of reporting system. I think they are really interested in what is the State debt and look more at making kinds of a debt out of bond issues. But that was the way I viewed the Legislation. Obviously there's a lot of concerns out there. One agency called me up and they're into a 99 year lease on something. They are not going to get that at the end of 99 years, they aren't going to take possession of it, but yet they're into a 99 year lease. Do you include that in the report? Personally I don't feel like they should because they never get possession of that piece of real estate they got a lease on. The Legislature may feel like that that should be reported. I'm sure when we have our year end rule making committee. It's a capital lease. GAAP would require you to report it. It's a long-term debt obligation of that entity. This is real estate. It's land. Just land or land and a building? Just land. Let me raise a question about the interpretation of the word debt. Under our Constitution and cases construing it, debt does not include obligations that are payable during the current fiscal year. All leases entered into by the State or its Agencies are subject to an annual renewability clause and therefore are not obligations payable beyond a current fiscal year although they may renewal clauses that are typically renewed technically speaking under the Constitution, they are not

debt. I wonder whether a more restrictive interpretation of what we are talking about in the statute in terms of debt would be applicable here such as that. Now it may well have been the intention of the Legislature to pick up long-term leases, but in doing so if you are going to take that sort of interpretation of debt, then you get into the normal operating expenses type of debt which I think is everybody's worst nightmare here because the way your definition of debt reads would include that. So unless you do something to make some exclusions, not only are we going to pick up workers compensation claims, but also we will pick up all leases, every single invoice, or obligation for paperclips that any agency incurs. So I think it almost imperative that you do something on that definition of debt to make some exclusions and I think you can do so within the definition in the statute without violating the statute because indebtedness under our Constitution and case laws does not include matters within the fiscal year. But if you wanted to pick up leases then you can pick those up separately, but for goodness sake, let's not pick up all this operating cost just for the sake of picking up long-term leases. The Legislation basically requires 2 reports. Report prior to issuance of debts and corporate reports. Section 4 goes a little bit further than that and actually asks for report after deposition which is like a third report. I am not really as concerned about that except that the one you require at 15 days appears to me requires so much information when trying to get bond issue or trying to get something done, that is so onerous and again going back to the legal sign off that normally general accounts or somebody give the

bond council says that this issuance is in compliance with State law and you ask for so much information on 15 day notice that it is very difficult to comply getting all that information to you and meet that 15 day requirement. It seems like what you should ask for is what they are asking for in the Legislation which is a 15 day notice that is proposed offering and of course you can promulgate any rules you want but basically says that 15 days prior to proposed document of debt be issued by State needs written notice of such offering and the terms thereof shall be given to the division of State unit in the form of division made by regulation required. All it really says is fifteen days prior you should have some sort of notice of what the debt is and some sort of terms like it's going to be a twenty year bond issue for financing housing mortgages. That seems to me to be what the Legislation is requiring and you've gone well and way beyond that and made that 15 day notification very onerous to us, very difficult to comply with and very difficult when your in a hot market. You want to get the bond issue market and you could really slow us down and create some problems on the legal side. It seems like if you want the notice, I have no problem after the bond issue givens, give you OS, give you every extent of debt, give you an amortization schedule, give you everything you want after the issuance, but the 15 day prior to is really a very difficult period to me and it seems to me that if you want to go overboard I'd rather you go overboard on that 3rd report which really isn't required by the Legislation, but that is no problem on my side, I don't want to hide anything, but that 15 days is really very difficult. POS is normally not available if

your trying to get something from the market quickly and that really creates a lot of hardships on us. Also gives us the difficulty of having general council say that we are in compliance with the State law, which they have to give the bond council before bond council can give us their opinion. Let's be honest about this, what is the purpose of the 15 day advance? It's clearly designed so that if there is an issue that no one in State government knows anything about comes along that then the people in State government can call the people on the board and say, Hey, you guys know what your doing here? You're timing is bad because another entity is coming into the market or gee we just don't think you ought to do that and that's the only reason, because there is no mechanic in the statute. You can not create one in the regulations to legally stop from issuing its debt. So it has to be a political determination. That creates a whole series of problems that completely disrupts the process. So what you need to know is that authority X plans to keep bonds and approximately how much and who the major players are. And generally what we think the terms are. But then the rest of those details which really don't fit into place until such times actually close the bonds and incur the debt. Which I don't have any problem with, it's just that 15 day notice is just so onerous and just so much information required that it would take me two days just to comply with this and 15 day period in trying to get the bond issue to market. I'll get all of this stuff after the bond for the 3rd report. But that 3rd report theoretically is what I'm supposed to give to you on my quarterly report because that's what I tell you in my quarter, here's all the

debt that's issued during the quarter, here's the cost and all that in the quarterly report, but if you want three reports it's O.K. with me. I have no problem with that. The quarterly report theoretically picks up that. We issue a debt, here's what it cost, here's all the players. I would echo those comments strongly the actual statute does not actually require the full laundry list of information that you have in the regulations. It simply says the terms of the debt, terms typically would mean that people have stated the approximate amount, purchase amount of the borrowing and purpose even who the major players are. All the other information on the fees of all the entities much of which won't be known 15 days before the debt. May not even be known at the time of issuance until all the invoices are in and all the expenses are accounted for. How are you going to know that before you go to market? Chances are you haven't been to market 15 days before issuance. A lot of this information not only is not going to be available but serves no purpose from the stand point of the State's needing the information. Very simply stated, all the State really has an interest in, in my opinion, is that agency X is going to issue some debt, here's the approximate amount, here's the purpose, and here's the people involved or the entities involved and that's about it. The interest rate is 8.2% or 8.1% what does the State care? The interest rate is going to be the best rate available under the terms of the type of financing. And I would also echo Marty's comment that after the debt has been issued and all the dust has settled and everyone is not frantically trying to get to the market in time, that full list of laundry information can be

provided and I have no problem with it. And the thing that is missing in the final report which is reported by the Legislation is that you haven't asked for a set of cash flows. The Legislation clearly requires you to look at cash flows. And that should be the final thing that you get from the deposition. You should have a PO you should have a final OS you should have all the details of the costs and you should have a final set of cash flows. Because that is what is going to tell whether the deposition is proper or improper and give you an opportunity to look at them too late but at least gives you opportunity to see what the debt of the debt of the State is like over the issuance of that bond what the debt services, both principle and interest and gives you clear understanding of what is there. And that to me is what is real important. A cash flow would take care of all the information. On 4.01, on quarterly report, in the 3.01 requirement says that the report shall contain the information specified in section 4.01 in this rule. And I'm not very good in interpreting what you have written here, but I interpret this that every quarterly report I have to give you all the costs and expenses of every issuance that I report on to you for that quarter on an ongoing basis so everything that I've issued, we've been issuing bonds since 1971 we have approximately 18 issuances outstanding, theoretically, the way this is written, I've got to repeat everytime I give you that report all this information again on my issuance. I thought what maybe needed to be put in here is like in 4 and some of the other things where you are really looking for is cost and expenses incurred in the issuance of debt during the reporting needs to be added in here,

quarterlized. But it's for the debt during report. I assume you don't want me to go back all my debt to 1971 and go dig all this up even on the first report to tell you my issuance. You're concerned with what we are issuing during the quarter. Is that right? That is correct. But it is written that way. The way the Regs read it would require every agency to go back to day 1 and report all debt and all of these 18 items or whatever there are here and I would submit that for instance the underwriter's fee on some debt that was issued in 1961 is probably going to be tough to dig out. The places where I thought you needed to say would be like in 4 after debt, during the quarter, before the would including and put during the quarter I think on number 4 I think number 5, number 6, number 7, 8 those need to be for the quarter or could be real onerous. If you are concerned about going back and getting a handle on fees and expenses and other details of previous issued debt. Not at all. If you were, I suggested in the letter, you could maybe go back three years which would be reasonable. Well then the quarter would be more appropriate then. I guess the other question I had was the two places that you allude to in Section 4.03 you say that the report should be on a Board approved form. Is that something you are designing to where you could just send us a form and we fill it in? The whole purpose of the proposed and I apologize about not having the forms prepared and not sending them out, is that it's not to make such an onerous task upon you to fill them out. It's pretty much one page front page, you check off blocks, not much typing or writing, and if we put the language in of where applicable and where available, does that

lessen the burden there upon each agency? I understand you are not going to have the final figures as far as the advisor fees, council fees and any of that stuff. Are you still going to leave 4.02 as onerous as it is or are you thinking maybe you'll go into what the tone of Legislation which seems to be just to give you a basic summary of the debt 15 days before hand. It just seems again that the 15 day period is really a critical period. I'm not arguing, I'll do the rest of this stuff, but the real concern I have is this 15 day period, and again trying to get general accounts or whoever who have to sign off on the bond council were in compliance with all State laws. And that 15 day information is just so onerous and that it just seems to me that it just doesn't seem to meet the debt that you are asking for on this and I'd rather you shifted it to three. What you are really looking for in this is you want to identify the players in the 15 days in advance and that's the most important information. I think that both your points are well taken and we appreciate that and I think we do need to look at that very closely and I can't say what we are going to end up with or not but I think we will definitely look at it very hard and see if there is some way we can relieve the burden. This is very similar to kinds of information that appears in the Legislation regulations where there is a debt management authority and people who have input into the drafting in this also operate in some other States, that's why I'm prepared with this language and attending all those subcommittee meetings and all sessions regarding this piece of Legislation this is essentially contrary to what they are looking for. They didn't want to get into that end of the business. They

wanted to know about the debt but they weren't concerned with who the players were, what the actual fees were prior to the debt issuance. After this administration passes and other administrations come into power this could possibly create some problems for agencies down the road. I remember one discussion, I was at some of the hearings with you, the basic theme that the Legislature gave the agencies is the ability to issue debt and they didn't want to infringe upon that ability to issue debt, but they felt like the State needed to know what its obligations were. I will give you all the information you want, it's not that, it's in a timely. You tax our ability to issue that, that's the concern I have. Sure. You can have all the information you want, I'll give you all the stuff after the debt's issued. This is getting off the subject a little bit but did you have any problems with the report the way the information is being requested on the report that we sent out to you. I haven't seen it yet. I'll call you. Again, the cash flows might give you everything you pretty much want. Well, just to kind of rap it up, I understand with what you are all saying and we agree with you, question is the degree. Right? I understand you saying that. Again, our only purpose, we are not making a judgment call on any of this is onerous, we don't care. I mean that is not our duty, that is not our responsibility, we don't look at any of that. We basically intended to if a Legislature calls us and says so and so is going out on the market, you got anything on it? Then we can say well here is what we've got. And tell him what we consider to be the valuable information and that he can contact the agency directly. Not to impair going

on the market place, nor to put an onerous task on you, it's just a question of degree and we will consider it and strongly look at it. I guess we have kind of jumped around on three to four, any other questions on three? I guess again, the form, I mean maybe that would be real helpful to us if we saw the form and maybe that would resolve a lot of this situation. We'd see what information you wanted on the form on the 15 day notice form and the ongoing reporting form, to me that would be real helpful because it is not as onerous as this looks. I don't have one with me. If some of you would like to walk over to office with me, I'd be happy to make a copy of it and you could take a look at it. Leave your fax numbers with Brenda. Everything is open. There are a number of other things (in Section 4.01) there that you might want to consider like market fees, management fees, various other expenses and other expenses that are probably not listed that would be very important. Tax accountable fees. Fees of this nature. "Other" column might be appropriate. Is that bond registration or bond registrar? Bond registration fee. That's pretty nominal. Few hundred dollars, but again that's something we thought should be in there. Auditors are going to get a lot more than a few hundred dollars, I can assure you that. Well, then, this is including but not limiting to. Would inclusion of the word approximate or estimated be possible, because some of these you really are not going have nailed down even after the issuance. Of course we've talked before about maybe eliminating this for the 15 day prior to issuance information, but even after the issuance you may not know everything. Something allowing for estimate or approximate would

be very helpful. Well, 4.03 intent was that when the numbers are final, it's not asking for it the day after closing, signing, again we have received from one particular agency, after they gave information on the proposed we've received two subsequent reports on the final until they get the actual numbers in it. It was approximately 45 days, 60 days. It does not give a time limit to a degree one to be flexible. Let me ask you a question. Because it gets a little confusing. Doesn't it make sense that you have the information that is listed in 4.01 really be included as the information that you get in 4.03. You want a preliminary indication of certain information, secondly you want a final report, third you want reports which actually summarize what is outstanding and what is incurred. There is no reason that you would have the 4.01 information in one report and the 4.03 information in another report because it's the same thing. Now I would think that the information that you've listed in 4.01 more appropriately would be part of the final report sale that you get in 4.03. 4.01 really in itself does not make a whole lot of sense. You still are going to have your quarterly and annual reports which as I say will be a summary of the outstanding debt which would include any newly incurred debt. Which is what I really said was that you really only need, that the Legislation only calls for two reports, you've added the third report, but then you repeat that information back in 4.01. If you could fit it in the Legislation, would be to give you the preliminary report final report and then an ongoing quarterly report of what our status is of all debt. That would make an easier report for you to compile. And if you

had an entity that had two on two currents of debt on quarter and you've got the quarterly report then you could just go back and file the report for each one of those if you wanted to get the specific information. Information would always be there, you wouldn't get two or three reports containing the same information. Reasonable comment. I agree. That only for those, doing the bond issuance, then you should only include that in the final. Yes. We would still like to get notice on the proposed. Sure. But when you are doing the quarterly report, which is what we get within 15 days, not in detail, just what you paid, what you owe. I presume all this will be put into a computer basically you will take the form and just input it into a computer each time you receive one and keep a running set of data that easily be retrieved. Huge spreadsheets that's calculated out and change the numbers each quarter as they come in. I think that one of the Legislative purposes for maybe getting on a quarterly basis to start, was that we get all this mass of inflow of information and then maybe after that, I don't know what the Legislative intent is, maybe after a year or two they go to a semi-annual or annual report and then it's real easy to just plug in a number every year. I'm not sure we're imposed reducing it to semi-annual or annual. We can't do that we've got to change that in the Legislature.

STEPHENS & JOHNSON

ATTORNEYS AT LAW

SIXTH FLOOR

UNION NATIONAL CENTER EAST

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CLARKSBURG, W. VA. 26302-2190

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WRITER'S DIRECT DIAL NUMBER

(304) 624-8161

September 5, 1991

Comments on Administrative Regulations Pertaining
to Rules for the Reporting of State Debt to the
West Virginia State Board of Investments
(W.Va. Code §12-6A-6)

West Virginia State Board
of Investments
State Capitol Complex
Room E-122
Charleston, West Virginia 253205

Attention: Mr. D. Jerry Simpson

Dear Mr. Simpson:

The proposed regulations implementing the Debt Management Act of 1991 W.Va. Code, Section 12-6A-6 (the "Act"), are relatively simple and brief, but nevertheless contain provisions which will be unduly burdensome to the affected Spending Units, while providing little useful information to the Board of Investments. The following suggestions would make compliance simpler, less costly and less time-consuming. They would not appreciably diminish the quality or timeliness of the reporting required under the Act.

Section 4.01 of the proposed Regulations requires a debt report of each Spending Unit which includes information on all debt incurred during that calendar quarter, but which would also include the same information for all debt previously incurred and currently outstanding. The information requested in Section 4.01(4) in particular (costs and expenses) may be very difficult, if not impossible to determine for extremely old debt. We suggest that this information only be required for debt incurred during the current calendar quarter and the previous three years. We would also suggest that the Regulations permit a simple "no change" filing if the Spending Unit has not incurred additional debt since the last report.

With respect to Section 4.02 of the proposed Regulations (proposed debt), we believe that much of the information requested either will not be known 15 days prior to issuance or will be difficult to determine. Many of the fees required to be reported in Section 4.01(2)(4) may not be known until after issuance of the debt. Also, the rates of interest, net interest cost, true interest cost, repayment schedule and amortization schedule may not be known at

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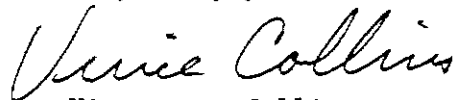
West Virginia State Board of Investments
Page 2

that time. We would suggest that reporting of this information not be required prior to issuance, since it will be reported in the quarterly report.

Finally, we suggest that a simple, one-page form containing blanks for the requested information be prepared by the Board of Investments and made available to the affected Spending Units. This would make it easier for both the Spending Unit and the Board of Investments to quickly report and computerize details of these reports. A form patterned after the Municipal Bond Commission New Issue Report would be a good start.

We believe that the reporting, collation and dissemination of the information required by the Act will greatly enhance the State's ability to review and assess its total debt structure. Our only concern is that the reporting requirements not become too burdensome and create additional complexity in an already overly complex task.

Very truly yours,



Vincent A. Collins

VAC/bnc
Attachment
090491.L01
96096/91001



School Building Authority of West Virginia
Clacy E. Williams, Executive Director

1601 Kanawha Boulevard, West • Suite 202, • Charleston, West Virginia 25312 • Office Number (304) 348-2541 • FAX Number (304) 348-2539

September 11, 1991

Mr. Jerry Simpson
Assistant Treasurer for Administration
Treasurer's Office
Building 1, Suite E-147
Charleston, West Virginia 25305

Dear Mr. Simpson:

I wish to respond to your recent request for written comments regarding the rules and regulations of the State Board of Investments for implementing the Debt Management Act of 1991. Please take into consideration the following suggestions:

1. Reduce reporting in Section 4.01 to include only debt incurred during the reporting period and/or any debt retired during the same. Reduce repetitious reporting of ongoing debt to a simple "no change" response if no new debt or debt retirement has occurred in the reporting quarter. Some of the data requested, i.e., costs or expenses on old debt, may not be easily attained by long established issuing agencies.
2. In reviewing Section 4.02, it is quite apparent that much of the information requested for proposed debt cannot be determined until actual marketing occurs. This is especially the case for TIC, NIC and rates of interest. Repayment and amortization schedules are only proposed at that point in the process and of little value as a maintained record. The data will be reported on the quarterly report immediately following the issuance and at that time will be correct.
3. I would like to suggest a cooperative legislative effort by the State Board of Investments and the issuing agencies of the state to alter the quarterly reporting period in the statute to annual or semi-annual. It seems to be a bureaucratic nightmare to create, and for you to receive, a never ending paper trail of reports when no change will have occurred in most instances. The prior notification clauses bring potential change to your attention before it occurs and a new status report should be required immediately after issuance.

Annual comprehensive debt reports providing a broader scope of agency activities and debt commitments should provide satisfactory summary data for your compilation.

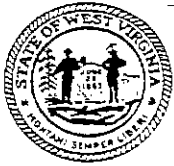
The need to provide the administration and legislature current data regarding the level of state debt was recognized early by the School Building Authority of West Virginia. Be assured you will have our cooperation in assimilating this important information. I am appreciative of the opportunity to react to your proposed regulations and am confident that the suggestions made will receive full consideration.

Sincerely,

A handwritten signature in cursive script that reads "Clacy Williams".

Clacy Williams
Executive Director

CW:lm
0486a/71&72a



Gaston Caperton
Governor

**WEST VIRGINIA
HOSPITAL FINANCE AUTHORITY**
910 Quarrier Street, Suite 402
Charleston, West Virginia 25301
(304) 348-0549

James R. Christie, Chairman
Board Members
Taunja Willis Miller, Secretary, WV DHHR
Larrie Bailey, Treasurer of State
Joseph W. Powell
Jack H. Hartley
Michael Wehrle
Karen L. Potesta, Executive Director

September 10, 1991

West Virginia State Board of Investments
State Capitol Complex
Room E-122
Charleston, West Virginia 25305

Dear Gentlemen:

The Chairman of the West Virginia Hospital Finance Authority and I have reviewed the proposed Debt Management Rules and Regulations promulgated by the West Virginia State Board of Investments. Our review indicated that there are three problems that we wish to address concerning the proposed Rules that we think might adversely affect the ability of the West Virginia Hospital Finance Authority to issue bonds.

First, Section 3.02 requires that the Issuer submit a written report to the Board of Investments no later than 15 days prior to incurring debt. The information required in that report is rather extensive as reflected in Section 4.02 of the proposed Rules. This requirement will certainly be difficult if not impossible to meet for future bond issues of the Authority because much of the required information might not be available 15 days prior to the Authority incurring the subject debt. It appears that the Rules go well beyond the statutory authority set forth in the Act. The Act requires a "written notice of such proposed offering and the terms thereof" to be given to the Division of Debt Management which was created by the Act within the State Board of Investments. The extensive information required by Section 4.02 of the proposed Rules certainly require more than just the terms of the proposed offering.

The second problem is somewhat related to the problem discussed in the above paragraph. It is not perfectly clear from the Act or the proposed Rules whether the written report must be filed 15 days prior to the date of closing of the bond issue or 15 days prior to the execution of the Bond Purchase Agreement between the Issuer and the Underwriters. As you are aware, the execution of the Bond Purchase Agreement may well precede the closing of the bond issue by a considerable period of time. The Act requires that the written notice be given to the Division of Debt Management "not less than fifteen days prior to a proposed

offering of debt to be issued by a state spending unit". The proposed Rules require that the written notice be submitted to the Division of Debt Management 15 days prior to "incurring the debt". Clarification is needed as to when this report is due.

The third problem is that the proposed Rules require the Issuer to give at least three written notices of the issuance of bonds to the Division of Debt Management. The first is required by Section 3.02 of the proposed Rule which requires the written report to be submitted no later than 15 days prior to incurring the debt. The second report is required by Section 4.03 which requires a written report of final sale to be submitted following the issuance. Finally, the third notice is required by Section 3.01 which requires that each state spending unit within 15 days of the end of each calendar quarter submit a written report to the Board and the Legislative Auditor of the total debt incurred by the unit during the calendar quarter. Although the report 15 days prior to incurring the debt and the report due within 15 days of the end of each calendar quarter appear to be authorized by the Act, the report of final sale after the issuance of the debt appears to have no authorization in the Act and, therefore, would appear to be inappropriate.

The above reflects the three primary concerns we have regarding the proposed Rules. We question what the impact would be if the Authority would have a technical failure to comply with the Act on a bond issue it was conducting.

We certainly appreciate the opportunity to express our concerns. Thank you.

Sincerely,



Karen L. Potesta
Executive Director

KLP/so

Workers' Compensation Fund
601 Morris Street
Charleston, West Virginia 25301-1416

Gaston Caperton, Governor
Andrew N. Richardson, Commissioner
John H. Kozak, Executive Secretary



M E M O R A N D U M

To: H. Craig Slaughter, Executive Director
Board of Investments

From: *Andy* Andrew N. Richardson, Commissioner
Bureau of Employment Programs

Date: August 30, 1991

Re: Comments Concerning Proposed Debt
Management Rules and Regulations

Section 2. Definitions

This section addresses and defines several specific types of debt yet leaves questions as to the nature of reportable debt in other areas. The phrase ". . . and all other forms of securities or paper evidencing amounts owed and payable on demand or specific dates" needs further definition (§ 2 page 3, ¶ 3). More especially when considering the wording of § 1.03 General Purpose, ". . . to determine the total state debt obligation . . . State's ability to meet its total debt service."

Do these definitions include:

- contingent liabilities?
- encumbrances outstanding?
- vouchers payable?
- pension plan obligations?
- unpaid employee benefits?
- commitments for non-capital leases?
- construction commitments?
- claims and judgments?

Item 4, "Capital Lease" § 2, page 2, ¶ 4, ". . . Present Value of the Future Minimum Lease Payments . . . ,":

- Is this determination to be made as established by FASB-13?
- What is the definition of "Fair Value" and how is it to be determined?

"Lease Purchase . . ." (§ 2, page 3, ¶ 6) appears to exclude lease purchases of less than one year; are leases less than one year classified as debt elsewhere?

Section 3. Debt Information Reporting Timetables

§ 3.01 makes reference to ". . . total debt incurred . . ." and ". . . all debt outstanding . . ." by what definition? Does "total" and "all" only refer to those items specifically defined in § 2?

§ 3.02 refers to notification of the intention to incur debt; is this notification requirement only applicable to debt specifically defined in § 2 or does the requirement also apply to other types of debt?

Section 4. Reporting Information Requirements

Several items within § 4.01 appear to require clarification.

- Will the Board provide the form to be used for this report?
- Would not Item 6 be included with Item 11?
- Items 7 and 8 include terms that should be further defined along with acceptable methods of calculation.

Proposed Debt, § 4.02, also appears to require clarification.

- The form is to be approved by the Board. That form should be part of these proposed rules.
- Items 7 and 8 include terms that should be further defined along with acceptable methods of calculation.
- Would not Item 10 be part of Item 12?
- Is the Board's approval required before the "proposed debt" may be incurred?

Under § 4.03 the proposed form should be part of these proposed rules.

Board Members:

Honorable W. Gaston Caperton III
Governor/Chairman

Mr. John T. Poffenbarger
Executive Secretary/Member

Honorable Larric Bailey
Treasurer/Member

Honorable Glen B. Gainer, Jr.
Auditor/Member

Mr. Dwight Keating
Member

Mr. Richard Riederer
Member

Mr. William T. Tracy
Member



State of West Virginia

Board of Investments

Suite E-122
State Capitol
Charleston, WV 25305
Telephone: (304) 343-4090
Telefax: (304) 344-9284

Staff:

H. Craig Slaughter
Executive Director

D. Jerry Simpson
Chief Operating Officer

Matthew E. Jones
Chief Financial Officer

Robert R. Jones
Chief Investment Officer

Mark E. N. Asaad
Chief Counsel

TO: All State Agencies, Boards, Commissions, and Authorities

FROM: H. Craig Slaughter
Executive Director

DATE: August 5, 1991

SUBJECT: Debt Management Rules and Regulations

During the 1991 Session of the Legislature, "The Debt Management Act of 1991" (the "Act") was passed and signed into law by Governor Caperton. The West Virginia State Board of Investments (the "Board") was given the authority to implement the provisions of this legislation. This legislation took effect on July 1, 1991.

One of the provisions of the Act directs the Board to promulgate rules and regulations for the development and implementation of a State Debt Reporting System. On July 24, 1991, the Board filed legislative rules on an emergency basis. Additionally, the Board filed a Notice of Public Hearing on the proposed rules. The public hearing on the "Rules for the Reporting of State Debt to The W.Va. State Board of Investments" shall be held on the following date and location:

August 5, 1991
PAGE 2

Date of Public Hearing: Wednesday, Sept. 11, 1991

Location: State Capitol Complex
Conference Center - Building 7
Room "A"

Time: 9:30 a.m.

Oral and written comments concerning the proposed rules may be made at that time. If you desire to send written comments prior to the public hearing, please send them to:

WV State Board of Investments
State Capitol Complex
Room E-122
Charleston, West Virginia 25305
ATTN: Jerry Simpson

Any questions you may have prior to the Public Hearing should be directed to Jerry Simpson at (304) 343-4090.

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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- 3.02. Timetable for Reporting a Proposed Offering of
Debt
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- 4.02. Proposed Debt
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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, as determined by the Board.

"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 through the issuance of bonds, notes or certificates of indebtedness, 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 quarterly 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 during the quarter,
- 3) The amount and type of debt outstanding at the end of the quarter,
- 4) All costs and expenses incurred in the issuance of debt during the quarter, including, but not limited to the following:
 - 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. Auditor's fees
 - K. 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 debt issued during the quarter,
- 6) The total debt service on the debt for the quarter,
- 7) The net interest cost and true interest cost on the debt, per series issued during the quarter,
- 8) Actual rate of interest per maturity,
- 9) The source of funds utilized for repayment of debt issued during the quarter, 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 quarter,
- 11) The repayment or amortization schedule of all debt issued during the quarter,
- 12) The security for debt issued during the quarter, 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, in the form of bonds, notes or certificates of indebtedness, no later than fifteen days prior to closing. The report shall be on a form approved by the Board, which shall include, where applicable and available, the following information:

- 1) The name of the State spending unit,
- 2) The estimated amount and type of debt to be incurred by the spending unit,

- 3) A preliminary copy of the official statement,
- 4) Names of the principal parties to the transaction.
 - A. Financial advisor
 - B. Bond counsel
 - C. Underwriters
 - D. Underwriter's counsel
 - E. Trustee
 - F. Auditor
- 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) The source of funds utilized for repayment of the debt.
- 8) 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 the Rules, of Final Sale to the Board following the issuance of 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 incurred by the spending unit,

3) A copy of the official statement or offering circular,

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. Underwriters fee
- F. Underwriter's counsel fee
- G. Trustee's fee
- H. Trustee's counsel fee
- I. Tax Counsel fee
- J. Printing fee
- K. Auditor's fee
- L. 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 official statement or offering circular,

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

7) Actual rate of interest per maturity,

8) The 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.

- 10) The repayment schedule,
- 11) Debt service schedule showing payments due over the life of the debt.
- 12) The security for the debt,
- 13) The amortization schedule for the debt; and
- 14) All other information specified by the Board.

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SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #1

FILED

1991 JUL 24 AM 9:31

OFFICE OF WEST VIRGINIA SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Board of Investments TITLE NUMBER:

RULE TYPE: Legislative; CITE AUTHORITY 12-6A-1 et. seq

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 NEW RULE BEING PROPOSED: Series X

TITLE OF RULE BEING PROPOSED: Rules for the Reporting of State Debt to the WV Board of Investments.

DATE OF PUBLIC HEARING: Wednesday, September 11, 1991 TIME: 9:30 a.m.

LOCATION OF PUBLIC HEARING: State Capitol Complex Conference Center - Building 7 Room A

COMMENTS LIMITED TO: ORAL, WRITTEN, BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Attn: Jerry Simpson

Board of Investments

State Capitol Building

Room E-122

Charleston, WV 25305

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

The purpose of these rules is to carry out the legislative intent 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.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules for the Reporting of State Debt to the WV State Board of Investments.

Type of Rule: X Legislative Interpretive Procedural

Agency Board of Investments Address Room E-122,
State Capitol Building, Charleston, WV 25305

1. Effect of Proposed Rule:	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ N/A	\$ N/A	\$ 125,000	127,500	\$ 127,500
Personal Services			80,000	80,000	80,000
Current Expense			45,000	47,500	47,500
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates: The above estimates include personal services, fringe benefits, printing and computer software.

3. Objectives of these rules: The purpose of these rules is to carry out the legislative intent 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.

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.

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

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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.

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