

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

Form #4

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1992 AUG 21 AM 11: 21

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

AGENCY: West Virginia State Board of Investments TITLE NUMBER: \_\_\_\_\_

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

AMENDMENT TO AN EXISTING RULE: YES \_\_\_\_\_ NO X

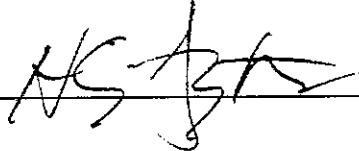
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

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 West Virginia State Board of Investments

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

  
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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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1992 AUG 21 AM 11: 21

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE  
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 - This rule implements the provisions of West Virginia Code §12-6A-1 et seq., wherein the State Board of Investments Division of Debt Management is 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-7.

1.03. General Purpose - The purpose of this rule is to carry out the legislative intent, as stated in West Virginia Code §12-6A-1, 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 to 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 this rule, 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 assumes substantially all the risks and benefits associated with the asset and 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 Lessee 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. The 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 spending unit'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 and 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 of bonds or notes to be issued or approve individual bond or note 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 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 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 closing. 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 quarterly reports and an 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 Board shall distribute the report to the Governor, the President of the Senate, the Speaker of the House of Delegates, the Legislative Auditor, and upon request to any legislative committee or member of the Legislature.

#### Section 4. Reporting Information Requirements

4.01. Debt Incurred - Each 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 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 fees
- B. Bond counsel fees
- C. Bond registration fees
- D. Bond rating fees
- E. Underwriter's fees
- F. Underwriter's counsel fees
- G. Trustee's fees
- H. Trustee's counsel fees
- I. Printing fees
- J. Auditor's fees
- K. Credit enhancement fees, a spending unit shall specify the nature of the credit enhancement and the 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) The 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 the funds. A schedule is not required 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 the debt issued during the quarter, and
- 13) All other information specified by the Board.

4.02. Proposed Debt - Each spending unit shall submit to the Board a report of proposed bond debt, notes or certificates of participant 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 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) The names of the following principal parties to the transaction:
  - A. Financial advisors
  - B. Bond counsels
  - C. Underwriters
  - D. Underwriter's counsels
  - E. Trustees
  - F. Auditors
- 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; and
- 8) All other information specified by the Board.

4.03. Report of Final Sale - All spending units submitting a report of proposed debt, as specified in Subsection 3.02 of this Rule, shall submit a report of final sale. The report, of Final Sale to the Board following the issuance of the debt, shall be separate from the quarterly report required in Subsection 3.01. The report, shall be on a form approved by the Board, shall include, where applicable, the following information:

- 1) The name of the 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 fees
  - B. Bond counsel fees
  - C. Bond registration fees
  - D. Bond rating fees
  - E. Underwriters fees
  - F. Underwriter's counsel fees
  - G. Trustee's fees
  - H. Trustee's counsel fees
  - I. Tax Counsel fees
  - J. Printing fees
  - K. Auditor's fees

L. Credit enhancement fees. The spending unit shall specify nature of the credit enhancement and the 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 the funds;

10) The repayment schedule;

11) A debt service schedule showing the 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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WEST VIRGINIA LEGISLATURE  
 LEGISLATIVE RULE-MAKING REVIEW COMMITTEE  
 Room M-152, State Capitol  
 Charleston, West Virginia 25305  
 (304) 340-3286

Senator William R. Wooton, Co-Chair  
 Delegate David Grubb, Co-Chair

Debra A. Graham, Counsel  
 Michael McThomas, Associate Counsel  
 Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

August 3, 1992

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. Mark E. N. Asaad  
 Board of Investments  
 State Capitol, Room E-122  
 Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Rules for the Reporting of State Debt to the  
 West Virginia State Board of Investments

1992 AUG - 3 AM 4: 41  
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The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
  - (a) as originally filed
  - (b) as modified by the agency   X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. \_\_\_\_\_
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. \_\_\_\_\_

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Jerry Simpson  
 Bd. of Investments