



State of West Virginia

OFFICE OF THE STATE TREASURER
CHARLESTON, WV 25305

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July 11, 1997

Ms. Judy Cooper
Secretary of State's Office
State Capitol Complex
Charleston, West Virginia 25305

Dear Ms. Cooper:

As requested by the Secretary of State's Office, the State Treasurer's Office is asking the emergency rules filed on May 30, 1997 be withdrawn. The series' to be withdrawn are as follows: series 3, 4, 6, 7, 8, 9, and 10. In the event the rules need to be refiled in an emergency based for a specific case, the State Treasurer's Office retains the right to refile these emergency rules at a later date.

If you have any questions please contact me or Jim McMillon at 558-5000.

Sincerely,

Jerry Simpson
Assistant State Treasurer

c: John Perdue, State Treasurer
Jim McMillon
file

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

JUL 11 3 04 PM '97

FILED

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

Form #7

Filing Date

FILED

MAY 30 4 59 PM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: State Treasurer's Office TITLE NUMBER: 112CSR9

CITE AUTHORITY: W.V.Code - Section 12-6B-4

EMERGENCY 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 RULE BEING FILED AS AN EMERGENCY: Series 9

TITLE OF RULE BEING FILED AS AN EMERGENCY: Rules for Reporting of Debt Capacity

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

See Attached

Use additional sheets if necessary


Signature

DATE: 5/30/97

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: State Treasurer's Office

EMERGENCY RULE TITLE: Rules for Reporting of Debt Capacity (112CSR9)

1. **Date of Filing** 5/30/97

2. **Statutory authority for promulgating emergency rule:**
W.V.Code - Section 12-6B-4

3. **Date of filing of proposed legislative rule:** 5/30/97

4. **Does the emergency rule adopt new language or does it amend or appeal a current legislative rule?**
This rule promulgated via Senate Bill 563 adopts new language

5. **Has the same or similar emergency rule previously been filed and expired?**
N/A

6. **State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.**
N/A

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

N/A

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

This rule is required according to legislation passed in
Senate Bill 563, effective 4/12/97. Substantial harm to the
public interest could result by operating without this rule.

(See Statement of Circumstances of Proposed Rule)

SUMMARY OF PROPOSED RULE

TITLE 112

LEGISLATIVE RULE

STATE TREASURER'S OFFICE

SERIES 9

RULES FOR THE REPORTING OF DEBT CAPACITY

This rule implements the provisions of W. Va. Code §12-6B-1 et seq., wherein the State Treasurer's Division of Debt Capacity is responsible for the gathering and reporting of information concerning the State's ability to meet its debt obligations, its ability to incur new debt, conduct an ongoing review of the amount and condition of bonds, notes, and other security obligations of the State's spending units.

STATEMENT OF CIRCUMSTANCES OF PROPOSED RULE

TITLE 112

LEGISLATIVE RULE

STATE TREASURER'S OFFICE

SERIES 9

RULES FOR THE REPORTING OF DEBT CAPACITY

This agency approved rule is needed to comply with provisions of W. Va. Code embodied in Senate Bill 563, passed during the 1997 Regular Legislative Session, effective from passage on April 12, 1997. Senate Bill 563 expanded some of the State Treasurer's functions and duties and transferred several functions and duties of the West Virginia State Board of Investments to the State Treasurer's Office. Without this rule, the public interest can be substantially harmed by the loss of public moneys since the Governor and Legislature are restrained from prudently managing the State's financial resources.

This rule implements the provisions of W. Va. Code §12-6B-1 et seq., wherein the State Treasurer's Division of Debt Capacity is responsible for the gathering and reporting of information concerning the State's ability to meet its debt obligations, its ability to incur new debt, conduct an ongoing review of the amount and condition of bonds, notes, and other security obligations of the State's spending units.

This rule carries out the legislative intent, as stated in W. Va. Code §12-6B-1, to provide necessary information to the governor and the Legislature so that they may prudently manage the state's financial resources by attempting to keep the State within an average to low range of nationally recognized debt limits.

**TITLE 112
LEGISLATIVE RULE
STATE TREASURER'S OFFICE**

**SERIES 9
RULES FOR THE REPORTING OF DEBT CAPACITY**

§112-9-1. General.

1.1. Scope. -- This rule implements the provisions of W. Va. Code §12-6B-1 et seq., wherein the State Treasurer's Division of Debt Capacity is responsible for the gathering and reporting of information concerning the State's ability to meet its debt obligations, its ability to incur new debt, conduct an ongoing review of the amount and condition of bonds, notes, and other security obligations of the State's spending units.

1.2. Authority. -- W. Va. Code §12-6B-4.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. General Purpose. -- The purpose of this rule is to carry out the legislative intent, as stated in W. Va. Code §12-6B-1, to provide necessary information to the governor and the Legislature so that they may prudently manage the state's financial resources by attempting to keep the State within an average to low range of nationally recognized debt limits.

§112-9-2. Definitions.

For the purpose of this rule, unless a different meaning is clearly required by the context:

2.1. "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:

2.1.1. The lease transfers ownership of the leased asset at the end of the lease term.

2.1.2. 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.

2.1.3. The term of the lease is seventy-five percent (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 ten (10) years were leased for eight (8) years, it would meet this criterion.

2.1.4. The present value of the future minimum lease payments at the beginning of the lease equals or exceeds ninety percent (90%) of the fair value of the asset.

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

2.3. "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 Treasurer .

2.4. "Debt Impact Statement" means a signed statement from the Treasurer which shall contain the information specified in Subsection 3.4 of this Rule and may accompany, at the request of a member of the Legislature, every bill introduced to the West Virginia Legislature which authorizes the issuance of debt.

2.5. "Division" means the division of debt capacity.

2.6. "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.

2.7. "Installment Purchases" 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.

2.8. "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.

2.9. "Net Tax Supported Debt" means all General Obligation bonds as defined in Section 2.6 of this Rule, Special obligation bonds as defined in Section 2.12 of this Rule, capital leases as defined in Section 2.1 of this Rule, and other debt as defined in Section 2.10 of this Rule minus reasonable and necessary deductions which should be taken into consideration including but not limited to debt service reserve funds, escrow portfolios, defeasance and refundings.

2.10. "Other Debt" includes installment purchases as defined in Section 2.7 of this rule; mortgages as defined in Section 2.8 of this Rule; and short-term debt as defined in Section 2.4 of this Rule.

2.11. "Short-Term Debt" means notes which generally have a term of five years or less. Forms of notes include tax anticipation notes, revenue anticipation notes, grant anticipation notes and certificates of participation.

2.12. "Special Obligation Bond" means debt in the form of bonds which are issued pursuant to a specific statutory provision which is enacted by the Legislature. These bonds are issued by various spending units which are considered part of primary government. Debt service for Special Obligation bonds are made from specifically dedicated fees and other revenues as directed by legislative appropriation. Certain special obligation bonds may be subject to a direct appropriation; therefore, creating a "moral obligation" on the part of the legislature to make funds available as they become due.

2.13. "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.

2.14. "State" means the State of West Virginia.

2.15. "Treasurer" means the West Virginia State Treasurer.

§112-9-3. Debt Capacity Reporting and Timetables.

3.1. Treasurer's Report - Beginning July 1, 1997, the division with the cooperation and support of the budget section of the Department of Administration, the Department of Tax and Revenue and the Bureau of Employment Programs shall issue a report which shall review the size and condition of the State's tax supported debt and estimate the maximum amount of new tax supported debt which may be authorized.

3.2. Debt Impact Statement -- The Debt Impact Statement as defined in Subsection 2.4 shall, at a minimum, include the following:

- 3.2.1. Current net tax supported debt
- 3.2.2. Current net tax supported debt as a percentage of personal income
- 3.2.3. Current net tax supported debt per capital
- 3.2.3. List of assumptions derived from this House/Senate Bill
- 3.2.4. Recommendation of the Treasurer

The debt impact that shall bear the signature of the Treasurer and may include any information which the Treasurer feels is necessary concerning the passage of the House/Senate Bill.

3.2. Additional Information - The division may, pursuant to W. Va. Code §12-6B-4(d), require any additional information from any spending unit to carry out the provisions as outline in W. Va. Code §12-6B.

3.3. Additional Reports and Advisory Opinions - The Treasurer may, as he deems necessary, issue advisory letters, notices and/or opinions on new debt issuance, the condition of the State's outstanding debt and any other factor which the Treasurer determines may directly or indirectly effect the State's credit rating.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules for Reporting of Debt Capacity (112CSR9)

Type of Rule: X Legislative Interpretive Procedural

Agency State Treasurer's Office

Address State Capitol, Room E-145
Charleston, West Virginia 25305
Contact Person: Anoop Bhasin - Telephone (304) 341-0704

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 25,000.	\$ -0-	\$ -0-	\$ 25,000.	\$ 24,000.
PERSONAL SERVICES	20,000.	-0-	-0-	20,000.	22,000.
CURRENT EXPENSE		-0-	-0-		
REPAIRS & ALTERNATIONS	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	3,000.	-0-	-0-	3,000.	-0-
OTHER	2,000.	-0-	-0-	2,000.	2,000.

2. Explanation of above estimates:

The hiring of an additional person to aid debt management and debt capacity is essential to the success of the operation.

3. Objectives of these rules:

To implement the provisions of 12-6B-1 et.seq. which will make recommendations and future projections of the State's debt obligations.

Rule Title: Rules for Reporting of Debt Capacity (112CSR9)

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Other than the employment of one additional person - there should be no other economic impact on State Government.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

None

C. Economic Impact on Citizens/Public at Large.

The economic impact should be similar to that of Debt Management which, by improving the State's credit rating, should lower the State's interest cost and improve efficiency of budget plans and debt issuing decisions.

Date: 5/30/97

Signature of Agency Head or Authorized Representative
