

**WEST VIRGINIA  
SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #3

**FILED**

**JUL 3 2 23 PM '97**

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: State Treasurer's Office TITLE NUMBER: 112CSR9

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

AMENDMENT TO AN EXISTING RULE: YES  NO

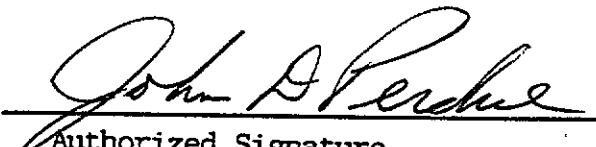
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 9

TITLE OF RULE BEING PROPOSED: Rules For The Reporting Of Debt  
Capacity.

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.

  
Authorized Signature

DATE: July 3, 1997

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: State Treasurer's Office

LEGISLATIVE RULE TITLE: Rules For Reporting Of Debt Capacity. (112CSR9)

1. Authorizing statute(s) citation W.V. Code Section 12-6B-4

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

May 30, 1997

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

Mailed notification of hearing to: W.V. Governor, Auditor, President of the Senate, Speaker of the House of Delegates, Secretary of Administration, all W.V. Banks and State Bond Attorneys

c. Date of Hearing(s) June 30, 1997

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

Attached X No comments received X

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

July 3, 1997

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

Anoop K. Bhasin (304) 341-0704

State Capitol Complex, Rm E-122, Charleston, WV, 25305

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: N/A

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.

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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?

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d. Attach findings and determinations and reasons:

Attached \_\_\_\_\_

Public Hearing on State Treasurer's Office Rules, Series, 3, 4, 6, 7, 8, 9 and 10  
 Capitol Complex Conference Center, Room B

June 30, 1997 at 10:00 p.m.

Registration Document Page 1 of 1

Name	Agency/ Organization	Mailing/Inter Dept. Address	Phone	Note
Jim McMillon	State Treasurer's Office	Room E356	341-0727	
Anoop K. Bhasin	"	Rm E-122	558-5000	
Jerry Simpson	"	"	"	
Ratna Baggess	"	"	"	
DANIEL E. CANIER	ONE VALLEY BANK	ONE VALLEY SQUARE CAP. BLDG	341-7078	
John Shumate	State Treasurer's Office	Room E-145	558-6000	
BRYAN W. ARCHER	"	Room E-122	8-5000	
Glenda Probst	"	"	558-5000	

**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 in that 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 it's debt obligations, it's 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.

**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
<b>ESTIMATED TOTAL COST</b>	\$ 25,000.	\$ -0-	\$ -0-	\$ 25,000.	\$ 24,000.
<b>PERSONAL SERVICES</b>	20,000.	-0-	-0-	20,000.	22,000.
<b>CURRENT EXPENSE</b>		-0-	-0-		
<b>REPAIRS &amp; ALTERNATIONS</b>	-0-	-0-	-0-	-0-	-0-
<b>EQUIPMENT</b>	3,000.	-0-	-0-	3,000.	-0-
<b>OTHER</b>	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.**

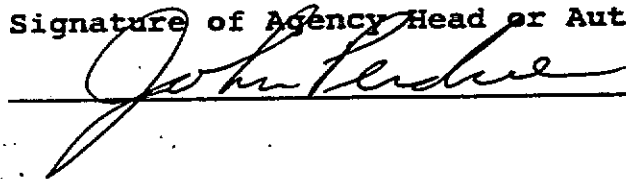
None

**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**



FILED

JUL 3 2 23 PM '97

TITLE 112  
LEGISLATIVE RULE  
STATE TREASURER'S OFFICE

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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 it's debt obligations, it's 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.

**STATEMENT CONCERNING PUBLIC HEARING CONDUCTED JUNE 30, 1997,  
AT 10 A.M. AT THE STATE CAPITOL COMPLEX CONFERENCE CENTER,  
CONCERNING PROPOSED LEGISLATIVE RULES  
DESIGNATED TITLE 112, SERIES 3, 4, 6, 7, 8, 9 AND 10  
FOR THE STATE TREASURER'S OFFICE**

**Hearing times.** The above titled public hearing was opened at 10:09 a.m. after registering all attendees and adjourned at 10:16 a.m.

**Attendees.** The attendees were: from One Valley Bank in Charleston, Mr. Daniel E. Lanier; and from the State Treasurer's Office, Mr. Jim McMillon, Mr. Anoop K. Bhasin, Mr. Jerry Simpson, Ms. Ratha Boggess, Mr. John Shumate, Mr. Bryan Archer, and Ms. Glenda Probst.

**Hearing proceedings.** Jim McMillon conducted the hearing. He indicated that notice of this public hearing was filed May 30, 1997 with the Secretary of State and the Legislative Rule Making Review Committee concerning the above titled rules. He asked if anyone had any written comments to submit concerning any of the above titled series of rules. There were no written comments. He asked if there were any verbal or oral comments concerning the above titled series of rules. Mr. Lanier offered only two oral comments (to Series 6 rule, "Selection of State Depositories for Disbursement Accounts Through Competitive Bidding") listed below. There were no other oral comments regarding any of the other series of rules.

**Oral comments received and responses to the oral comments concerning Series 6 rule.** This is a summary of the oral comments received and responses thereto:

*Comment No. 1.* Section 3.5 states in part: "...On the date and time set for the bid opening, the bids shall be publicly opened and read aloud..." Will the identity of each bidder be disclosed as part of the reading?

*Response to Comment No. 1.* Yes, as well as the amount and any other pertinent information.

*Comment No. 2.* Section 3.2 states in part: "...At least twenty-five (25) days prior to the date on which bids will be opened, the Treasurer shall mail to every eligible depository notice that bids will be invited on one or more designated disbursement accounts..." Is it possible that this notification will be given more than 25 days in advance?

*Response to Comment No.2.* Yes. This section sets a minimum notification period. As a matter of practice, the notification may be more than 25 days in advance.

**Amendments made/recorded and reasons.** No amendments to any of the rules are proposed. Comments no. 1 and 2 to Series 6 rule, request an interpretation. It is believed that the responses to comments no. 1 and 2 adequately clarify/interpret the items without need for changes to the language.