

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

FILED

SEP 25 1 27 PM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: WV State Treasurer TITLE NUMBER: 112CSR9

CITE AUTHORITY W.Va. Code 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: 112CSR9

TITLE OF RULE BEING PROPOSED: Rules for the Reporting of Debt Capacity

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.

John D. Perdue

Authorized Signature

TITLE 112
LEGISLATIVE RULE
STATE TREASURER'S OFFICE

FILED

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SERIES 9
RULES FOR THE REPORTING OF DEBT CAPACITY

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§112-9-1. General.

1.1. Scope. -- This rule implements the provisions of W. Va. Code §12-6B-1 et seq., which provides that 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, and to incur new debt, and for conducting 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; or

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. "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 .

2.3. "Debt Impact Statement" means a signed statement from the Treasurer which contains the information specified in Subsection 3.2 of this Rule and may accompany, at the request of a member of the Legislature, a bill introduced to the West Virginia Legislature which authorizes the issuance of debt.

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

2.5. "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 two-thirds of both houses of the Legislature and a majority vote by the public.

2.6. "Installment 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.

2.7. "Mortgage" 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.

2.8. "Net Tax Supported Debt" means all General Obligation bonds as defined in subsection 2.5 of this section, special obligation bonds as defined in subsection 2.11 of this section, capital leases as defined in subsection 2.1 of this section, and other debt as defined in subsection 2.9 of this section minus reasonable and necessary deductions which should be taken into consideration including but not limited to debt service reserve funds, escrow portfolios, defeasance and refunding.

2.9. "Other Debt" includes installment purchases as defined in subsection 2.6 of this section; mortgages as defined in subsection 2.7 of this section; and short-term debt as defined in subsection 2.10 of this section.

2.10. "Short-Term Debt" means notes which generally have a term of five years or less, including but not limited to tax anticipation notes, revenue anticipation notes, grant anticipation notes and certificates of participation.

2.11. "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.

2.12. "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 debt, with the exclusion of local political subdivisions of the State.

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

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

§112-9-3. Debt capacity and debt impact reporting.

3.1. Annual debt capacity report - 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 an annual report, on or before October 1st of each year, which reviews the size and condition of the State's tax supported debt and estimates the maximum amount of new tax supported debt which may prudently be authorized.

3.2. Debt impact statement - The Treasurer shall prepare a debt impact statement, only at the request of any member of the Legislature of West Virginia, which 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 capita;
- 3.2.4. A list of assumptions derived from the House or Senate bill for which the debt impact statement is being prepared; and
- 3.2.5. The recommendation of the Treasurer.

3.3. 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 outlined in W. Va. Code §12-6B-1 et seq.

3.4. Additional Reports and Advisory Opinions - The Treasurer may, as he or she considers 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.



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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

State Capitol - Room MB-49
Charleston, West Virginia 25305
(304) 347-4840

Senator: Mike Ross, Co-Chairman
Delegate: Mark Hunt, Co-Chairman
Counsel: Debra A. Graham

September 14, 1997

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Audrey R. Ross, Admin. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Anoop K. Bhasin
State Treasurer's Office
State Capitol Complex
Building I, Room E-122
Charleston, WV 25303

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Rules for Reporting Debt Capacity (112CSR9)

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.