

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

FILED

May 6 3 32 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: West Virginia State Treasurer TITLE NUMBER: 112

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 9

TITLE OF RULE BEING PROPOSED: 112 Rules for the Reporting of Debt
Capacity

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) S.B. 329

SECTION 64-9-28, PASSED ON March 14, 1998

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: May 7, 1998


Authorized Signature

\$2.80

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

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

Promulgation History

Filed for hearing	May 30, 1997
Hearing held	June 30, 1997
Filed emergency rule	May 30, 1997
Withdrew emergency rule	July 11, 1997
Agency approved rule filed with Secretary of State	July 3, 1997
Modified and Approved by Legislative Rule Making Committee	September 14, 1997
Filed modifications	September 25, 1997
Approved in S.B. 329	March 14, 1998
Final filed	May 6, 1998
Effective date	May 7, 1998

TITLE 112
LEGISLATIVE RULE
STATE TREASURER'S OFFICE

SERIES 9
RULES FOR THE REPORTING OF DEBT CAPACITY

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§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 its 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. -- May 6, 1998

1.4. Effective Date. -- May 7, 1998

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: (1) general obligation bonds of the state net of any refundings, defeasances, reserve requirements or sinking funds; (2) moral obligations of the state net of any refundings, defeasances, reserve requirements or sinking funds; (3) capital leases, lease purchases, mortgages, installment purchases, certificates of participation and any other debt financing transaction extending beyond one year, net of any refundings, defeasances, reserve requirements or sinking funds, which are payable through an annual appropriation of the Legislature. "Net tax supported debt" includes lottery bonds, but does not

include revenue bonds or any other debt that is self-supporting from enterprise revenues: Provided, That the obligation shall not be excluded to the extent the obligations are in default;

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. "Moral Obligation Bond" is a bond secured by a pledge of revenue and a moral commitment of the state of West Virginia to appropriate funds to make up any deficiency of the revenues needed to pay the debt service;

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.

2.15. "Revenue bonds" are bonds secured by a specified revenue stream, often with a lien imposed on the revenues. The revenue stream may be a tax or assessment or the revenues of the project financed.

2.16. "Lottery bonds" are bonds secured by lottery revenues;

2.17. "Revenues" means: (1) total funds deposited in the general revenue; plus (2) the entire related revenue stream for any net tax supported debt which is funded from a source other than the state's general revenue fund; plus (3) an amount equal to any deductions from the gross general revenue for debt service of tax supported debt before the revenue is added to the general revenue fund.

An example of revenue as defined in this subdivision 2.17.2 of this subsection is the State Road Fund revenues. The total revenues of the State Road Fund (exclusive of Federal funds) are used to repay the Road Bonds and are therefore included in revenue.

An example of revenue as defined in subdivision 2.17.3 of this subsection is the amount of severance tax dedicated for repayment of the Infrastructure Bonds. Those dedicated severance taxes are therefor included in revenue.

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

3.1. Annual debt capacity report - The division with the cooperation and support 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. The annual debt capacity report reviews the size and condition of the state's net tax supported debt and estimates the maximum amount of net tax supported debt which should be authorized based upon ratios and guidelines established by the major bond rating agencies. The ratios and guidelines shall be consistently applied based upon the state's definitions.

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;

3.2.5. The recommendation of the Treasurer;

3.2.6. The total debt service as a percentage of revenue;

3.2.7. Current ratios and guidelines as established and/or reported by the major rating agencies; and

3.2.8. A comparison of West Virginia's ratio to other states with similar bond ratings.

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.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: State Treasurer's Office

Subject: Rules for the Reporting of Debt Capacity, 112CSR9

PERTINENT DATES

Filed for public comment: May 30, 1997
Public comment period ended: June 30, 1997
Filed following public comment period: July 3, 1997
Filed LRMRC: July 7, 1997
Filed as emergency: May 30, 1997

Fiscal Impact: \$25,000 increase

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

AUG 13 9 32 AM '97

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ABSTRACT

The proposed rule is new. The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 defines terms.

Section 3 requires the Treasurer, in cooperation with the budget section of the Division of Administration, the Department of Tax and Revenue and the Bureau of Employment Programs, to issue a report reviewing the size and condition of the State's tax supported debt and estimating the maximum amount of new tax supported debt which may be authorized.

This section also specifies information which must be included in a debt impact statement.

AUTHORITY

Statutory authority: W.Va. Code, §12-6B-4, which provides, in part, as follows:

The division shall perform the following functions and duties:

(a) Promulgate rules pursuant to article three, chapter twenty-nine-a of this code, for the management and conduct of its affairs;...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

Yes. The proposed rule is unclear as to who is required to prepare certain reports and when the reports are due.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.

0127

112-9

H. B. 4210

1 Bill-Treasu: (By Delegates Hunt, Linch, Compton, Jenkins,
2 Faircloth and Riggs)

3 [Introduced January 30, 1998; referred to the
4 Committee on Finance then the Judiciary.]

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10 A BILL to amend article nine, chapter sixty-four of the
11 code of West Virginia, one thousand nine hundred
12 thirty-one, as amended, by adding thereto a new
13 section, designated section twenty, relating to
14 authorizing the treasurer to promulgate a legislative
15 rule relating to the procedure for the deposit of
16 moneys with the state treasurer's office by state
17 agencies.

18 *Be it enacted by the Legislature of West Virginia:*

19 That article nine, chapter sixty-four of the code of
20 West Virginia, one thousand nine hundred thirty-one, as
21 amended, be amended by adding thereto a new section,
22 designated section twenty, to read as follows:

23 **ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND**

0127

1 The legislative rule filed in the state register on
2 the third day of July, one thousand nine hundred
3 ninety-seven, under the authority of section four, article
4 six-b, chapter twelve, of this code, modified by the
5 treasurer to meet the objections of the legislative
6 rule-making review committee and refiled in the state
7 register on the twenty-fifth day of September, one thousand
8 nine hundred ninety-seven, relating to the treasurer
9 (reporting of debt capacity, 112 CSR 9), is authorized.

10

11 NOTE: The purpose of this bill is to authorize the
12 Treasurer to promulgate a legislative rule relating to the
13 Reporting of Debt Capacity.

14

15 This section is new; therefore, strike-throughs and
16 underscoring have been omitted.

Senate Bill No. 354

112-9

1 (By Senator(s) Ross, Anderson, Bowman,
2 Macnaughtan, Boley and Buckalew)

3 [Introduced January 30, 1998; referred to the
4 Committee on Finance; and then to the Committee
5 on the Judiciary.]
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10 A BILL to amend article nine, chapter sixty-four of the
11 code of West Virginia, one thousand nine hundred
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15 rule relating to the reporting of debt capacity.

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18 West Virginia, one thousand nine hundred thirty-one, as
19 amended, be amended by adding thereto a new section,
20 designated section twenty, to read as follows:

21 **ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND**
22 **BOARDS TO PROMULGATE LEGISLATIVE RULES.**

23 §64-9-20. **Treasurer.**

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2 the third day of July, one thousand nine hundred
3 ninety-seven, under the authority of section four, article
4 six-b, chapter twelve, of this code, modified by the
5 treasurer to meet the objections of the legislative
6 rule-making review committee and refiled in the state
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