

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

FILED

JUL 3 2 24 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: 112CSR10

CITE AUTHORITY W.V. Code Section 12-6A-7

AMENDMENT TO AN EXISTING RULE: YES NO

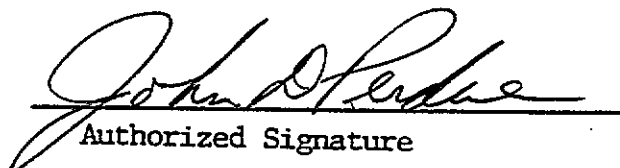
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 10

TITLE OF RULE BEING PROPOSED: Rules For The Reporting Of State
Debt To The State Treasurer's Office.

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

Rules For Reporting State Debt To The
LEGISLATIVE RULE TITLE: State Treasurer's Office. (112CSR10)

1. Authorizing statute(s) citation W.V. Code Section 12-6A-7

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.

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?

d. Attach findings and determinations and reasons:

Attached _____

SUMMARY OF PROPOSED RULE

TITLE 112

LEGISLATIVE RULE

STATE TREASURER'S OFFICE

SERIES 10

**RULES FOR THE REPORTING OF STATE DEBT TO THE
STATE TREASURER'S OFFICE**

This rule implements the provisions of W. Va. Code §12-6A-1 et seq., wherein the Office of the State Treasurer's Division of Debt Management is responsible for the recording and reporting of debt issued by the State, its agencies, boards, commissions and authorities.

STATEMENT OF CIRCUMSTANCES OF PROPOSED RULE

TITLE 112

LEGISLATIVE RULE

STATE TREASURER'S OFFICE

SERIES 10

RULES FOR THE REPORTING OF STATE DEBT TO THE

STATE TREASURER'S OFFICE

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 sound fiscal and policies based on the State's ability to meet its total debt service cannot be created or managed.

This rule carries out the legislative intent, as stated in W. Va. 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.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules for the Reporting of State Debt to the State
Treasurer's Office (112CSR10)

Type of Rule: **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	HEREAFTER
ESTIMATED TOTAL COST	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

No Changes

3. Objectives of these rules:

To comply with the provision of Senate Bill 563 which was passed during the 1997 Regular Legislative Session.

Rule Title:

Rules for the Reporting of State Debt to the
State Treasurer's Office (112CSR10)

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

No new impact - the ability of an agency to file an Annual Report will save some time and postage for some agencies.

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

None

C. Economic Impact on Citizens/Public at Large.

We hope that this rule will continue to strengthen prudent debt management practices; therefore, the economic impact should be seen through a lower interest cost on West Virginia's bonds.

Date: 5/30/97

Signature of Agency Head or Authorized Representative

John Ferrel

TITLE 112
LEGISLATIVE RULE
STATE TREASURER'S OFFICE

SERIES 10
RULES FOR THE REPORTING OF STATE DEBT TO THE
STATE TREASURER'S OFFICE

FILED

JUL 3 2 25 PM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§112-10-1. General.

1.1. Scope. -- This rule implements the provisions of W. Va. Code §12-6A-1 et seq., wherein the State Treasurer's Division of Debt Management is responsible for the recording and reporting of debt issued by the State, its agencies, boards, commissions and authorities.

1.2. Authority. -- W. Va. Code §12-6A-7.

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 §12-6A-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.

§112-10-2. Definitions.

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

2.1. "Agency" means and includes any department, board, authority, commission, division, branch office or other spending unit of State Government.

2.2. "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:

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

2.2.2. 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.

2.2.3. 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.

2.2.4. 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.

2.3. "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.

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

2.5. "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 .

2.6. "Division" means the division of debt management.

2.7. "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.

2.8. "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.

2.9. "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.

2.10. "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.

2.11. "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.

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 such 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.

§112-10-3. Debt Information Reporting Timetables.

3.1. Time Table for Reporting Total Debt - As of July 1, 1997 each spending unit shall, within fifteen days following the end of each calendar quarter, submit a written report to the Treasurer 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. A State spending unit having no debt shall be required to only submit an annual report: Provided, that the spending unit shall immediately notify the division of any change in the spending unit's debt outstanding. The report shall contain the information specified in Subsection 4.1 of this Rule.

3.2. Time Table for Reporting A Proposed Offering of Debt - Beginning July 1, 1997, each spending unit intending to incur debt through the issuance of bonds, notes or certificates of indebtedness shall submit a written report to the Treasurer no later than thirty days prior to incurring the debt closing. The report shall contain the information specified in Subsection 4.2 of this Rule.

3.3. Treasurer's Report - Beginning July 1, 1997 the Treasurer 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 Treasurer 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.

§112-10-4. Reporting Information Requirements.

4.1. Debt Incurred - Each spending unit shall submit a quarterly debt report to the Treasurer, pursuant to W. Va. Code §12-6A-6, containing the following information where applicable:

4.1.1. The name of the spending unit;

4.1.2. The amount and type of debt incurred during the quarter;

4.1.3. The amount and type of debt outstanding at the end of the quarter;

4.1.4. 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.

4.1.5. 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;

4.1.6. The total debt service on the debt for the quarter;

4.1.7. The net interest cost and true interest cost on the debt, per series issued during the quarter;

4.1.8. The actual rate of interest per maturity;

4.1.9. 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;

4.1.10. The dollar amount of debt repayment during the quarter;

4.1.11. The repayment or amortization schedule of all debt issued during the quarter;

4.1.12. The security for the debt issued during the quarter, and

4.1.13. All other information specified by the Treasurer .

4.2. Proposed Debt - Each spending unit shall submit to the Treasurer a report of proposed debt, no later than thirty days prior to closing. The report shall be on a form approved by the Treasurer, which shall include, where applicable and available, the following information:

4.2.1. The name of the spending unit;

4.2.2. The estimated amount and type of debt to be incurred by the spending unit;

4.2.3. A preliminary copy of the official statement;

4.2.4. 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.

4.2.5. The terms and conditions of the debt if not set forth in the preliminary official statement;

4.2.6. The reason for the debt issuance and use of the debt offering proceeds;

4.2.7. The source of funds utilized for repayment of the debt; and

4.2.8. All other information specified by the Treasurer .

4.3. Report of Final Sale - All spending units submitting a report of proposed debt, as specified in Subsection 3.2 of this Rule, shall submit a report of final sale. The report, of Final Sale to the Treasurer following the issuance of the debt, shall be separate from the quarterly report required in Subsection 3.1. The report, shall be on a form approved by the Treasurer, shall include, where applicable, the following information:

4.3.1. The name of the spending unit;

4.3.2. The amount and type of debt incurred by the spending unit;

4.3.3. A copy of the official statement or offering circular;

4.3.4. 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;

4.3.5. The terms and conditions of the debt if not set forth in the official statement or offering circular;

4.3.6. The reason for the debt issuance and use of the debt offering proceeds;

4.3.7. Actual rate of interest per maturity;

4.3.8. The net interest cost and true interest cost on the debt, per series;

4.3.9. The source of funds utilized for repayment of the debt, and a schedule, by year, for the collection of the funds;

4.3.10. The repayment schedule;

4.3.11. A debt service schedule showing the payments due over the life of the debt;

4.3.12. The security for the debt;

4.3.13. The amortization schedule for the debt; and

4.3.14. All other information specified by the Treasurer .

**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.