

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FILED

SEP 25 1 26 PM 197

Form #4

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: W.V. State Treasurer TITLE NUMBER: 112CSR10

CITE AUTHORITY W.Va. Code 12-6A-7

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 113CSR10

TITLE OF RULE BEING AMENDED: Rules for the Reporting of State Debt
to the State Treasurer's Office

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

TITLE OF RULE BEING PROPOSED: _____

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

SEP 25 1 26 PM '97

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

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., under which 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; or

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. "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 .

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

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

2.7. "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.

2.8. "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. "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.

2.10. "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.

2.11. "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.

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

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

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

3.1. Time Table for Reporting Total Debt - 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 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 - 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 the debt closing. The report shall contain the information specified in Subsection 4.2 of this Rule.

3.3. Treasurer's Report - The Treasurer shall prepare and issue quarterly reports and an annual report of all State 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 and subsection 3.1 of this rule, 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; and

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 - The report of proposed debt, as required by Subsection 3.2 of this rule, 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; and

f. Auditors;

4.2.5. The terms and conditions of the debt if they are 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 that submitted a report of proposed debt, as required by subsection 3.2 of this Rule, shall submit a report of final sale following the issuance of the debt. This report of final sale shall be separate from the quarterly report required in Subsection 3.1 of this rule. The report, shall be on a form approved by the Treasurer and 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; and

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. The 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 .



FILED

SEP 22 10 16 AM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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 1, Room E-122
Charleston, WV 25303

FROM: Legislative Rule-Making Review Committee

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

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.