

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: 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: Series 10

TITLE OF RULE BEING PROPOSED: _____

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

\$3.40

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

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

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

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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. -- 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 §12-6A-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.

2.9. "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 .

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: State Treasurer's Office

Subject: Reporting of State Debt to the State Treasurer's Office,
112CSR10

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: None

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
Aug 13 9 32 AM '97
FILED

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 contains timetables for the reporting of debt information. It requires each spending unit to file a quarterly written report with the Treasurer and Legislative Auditor setting forth the total debt incurred by the spending unit during the previous quarter, as well as all debt outstanding at the quarter's end.

This section also requires any spending unit intending to incur debt through the issuance of bonds, notes or certificates of indebtedness to submit a written report to the Treasurer at least 30 days prior to the incurrance of the debt.

Finally, this section requires the Treasurer to prepare and distribute quarterly and annual reports of all state debt and proposed debt

Section 4 specifies the information which must be contained in the reports required under Section 3 of the proposed rule. This section also requires all spending units that submitted a report of proposed debt to submit a report of final sale and specifies the information which must be contained in the report.

AUTHORITY

Statutory authority: W.Va. Code, §12-6A-7, which provides, in part, as follows:

The division of debt management shall promulgate rules relating to reporting requirements and its duties under this article and the rules shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code.

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?

No.

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.

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112-10

1 Bill-Treas

H. B. 4212

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(By Delegates Hunt, Linch, Compton, Jenkins,
Faircloth and Riggs)

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

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 reporting of debt capacity.

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

17 That article nine, chapter sixty-four of the code of
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.

4212

1 §64-9-20. Treasurer.

2 The legislative rule filed in the state register on
3 the third day of July, one thousand nine hundred
4 ninety-seven, under the authority of section seven, article
5 six-a, chapter twelve, of this code, modified by the
6 treasurer to meet the objections of the legislative
7 rule-making review committee and refiled in the state
8 register on the twenty-fifth day of September, one thousand
9 nine hundred ninety-seven, relating to the treasurer
10 (reporting of state debt to the state treasurer's office,
11 112 CSR 10), is authorized.

12

13 NOTE: The purpose of this bill is to authorize the
14 Treasurer to promulgate a legislative rule relating to the
15 Reporting of State Debt to the State Treasurer's Office.

16

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

112-10

Senate Bill No. 355

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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