

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

2013 JUN 24 11:11:49

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: Treasurer's Office TITLE NUMBER: 112

RULE TYPE: Legislative CITE AUTHORITY: §12-6A-7

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 10

TITLE OF RULE BEING AMENDED: Reporting Debt

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 24 2013 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

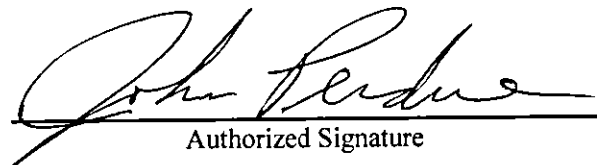
Diana Stout, General Counsel

WV State Treasurer's Office  
Bldg. 1, Room E-145

1900 Kanawha Blvd., E.  
Charleston, WV 25305

(304) 558-5000  
diana.stout@wvsto.com

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

## Harrison, Wilma

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**From:** Debra A. Graham <debra.graham@wvlegislature.gov>  
**Sent:** Wednesday, June 19, 2013 11:13 AM  
**To:** Harrison, Wilma  
**Subject:** Re: FW: Repeal of former Rule

Go ahead and do a repeal and replace.  
On 6/19/2013 8:58 AM, Harrison, Wilma wrote:

*Wilma Harrison*

West Virginia State Treasurer's Office  
Bldg. 1, Room E-145  
1900 Kanawha Blvd., E.  
Charleston, WV 25305  
Ph: (304) 341-0745  
Fax: (304) 341-7094

**From:** Harrison, Wilma  
**Sent:** Tuesday, June 18, 2013 4:08 PM  
**To:** '[DAGRAHAM@WVNM.WVNET.EDU](mailto:DAGRAHAM@WVNM.WVNET.EDU)'  
**Subject:** Repeal of former Rule  
**Importance:** High

Debra:

We are ready to file Proposed Rule 112 CSR 10 and request your permission to repeal the former rule and replace it with the proposed rule due to the volume of strike-throughs and underscores. I have attached a copy of both versions for your review.

*Wilma Harrison*

West Virginia State Treasurer's Office  
Bldg. 1, Room E-145  
1900 Kanawha Blvd., E.  
Charleston, WV 25305  
Ph: (304) 341-0745  
Fax: (304) 341-7094

--  
Debra A. Graham, Chief Counsel  
Legislative Rule-Making Review Committee  
1900 Kanawha Blvd., East  
State Capitol Complex  
Room MB49  
Charleston, WV 25305  
(304) 347-4841 Phone  
(304) 347-4901 Fax

TITLE 112  
LEGISLATIVE RULE  
STATE TREASURER'S Office

SERIES 10  
REPORTING DEBT

SUMMARY OF PROPOSED RULE

West Virginia Code §12-6A-7 requires the State Treasurer to propose legislative rules for reporting debt and other duties of the Division of Debt Management. Proposed legislative rule 112 CSR 10 contains major revisions from the 1998 rule relating to revisions authorized in Enrolled Committee Substitute for H. B. 2837 passed during the 2013 Legislative session (2013 Acts, Chapter 202, effective July 12, 2013). The large amounts of revisions necessitated major amounts of strike-throughs and underscores. Due to this, we have chosen to repeal the former Rule and replace it with the attached Rule.

The proposed rule defines numerous terms pertaining to reporting debt. Spending units are to submit quarterly reports to the Division of Debt Management in the Treasurer's Office pertaining to their outstanding debt as of the end of calendar quarter, a proposed debt issuance report prior to the issuance of debt and a report of final sale after the issuance of debt. The Division of Debt Management is required to prepare a quarterly and an annual Debt Position Report of the outstanding debt of state spending units and an annual Debt Capacity Report pertaining to the size and condition of the state's net tax supported debt and an estimate of debt which may be issued based upon ratios and guidelines established by the major rating agencies. Upon request of the Governor or a Legislator, the Division is to prepare a debt impact statement. The Treasurer is also authorized to issue advisory letters, notices and opinions as the Treasurer considers necessary.

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

2013 JUN 24 AM 11:49

**SERIES 10  
REPORTING DEBT**

STATE

**§112-10-1. General.**

1.1. Scope. -- This rule establishes the reporting requirements for debt issued by the State and its spending units.

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

1.3. Filing Date. -- \_\_\_\_\_.

1.4. Effective Date. -- \_\_\_\_\_.

1.5. Repeal of former rule. -- This legislative rule repeals and replaces WV 112CSR10 "Rules for the Reporting of State Debt to the State Treasurer's Office" filed May 6, 1998 and effective May 7, 1998.

**§112-10-2. 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. "Certificates of Participation" means a method of financing or refinancing the purchase of assets, involving a lease in which certificates are issued to evidence the holders' rights and interest in lease payments.

2.3. "Debt" means bonds, notes, certificates of participation, certificate transactions, capital leases, lease purchases, mortgages, securitizations and all other forms of securities evidencing specific amounts owed and payable on demand or determinable dates.

2.4. "Debt Impact Report" means a report prepared by the Division which includes information pertaining to a proposed issuance of debt by the state or its spending units.

2.5. "Division" means the Division of Debt Management.

2.6. "General Obligation Bonds" means bonds backed by the full faith and credit and the taxing power of the issuer. The issuance of general obligation bonds by the state requires a constitutional amendment approved by two-thirds of both houses of the Legislature and a majority vote of qualified voters.

2.7. "Installment Purchase" means a lease agreement in excess of one year providing for the application of payments toward the purchase price of the assets financed and for which the payments are expressly subject to legislative appropriation.

2.8. "Lease Purchase" means a lease agreement in excess of one year providing for the application of payments, in whole or in part, toward the purchase price for the assets financed or providing a specified purchase option price for the assets financed, and which payments are subject to legislative appropriation.

2.9. "Moral Obligation Bonds" means debt for which the state or a spending unit has made a nonbinding covenant to make up any deficiency in debt service.

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.

2.11. "Net Tax Supported Debt" means the amount of tax supported debt less any applicable refundings, defeasances, escrow accounts, reserve requirements and sinking funds.

2.12. "Revenue Bonds and Notes" means bonds or notes issued to finance a project from which a revenue stream is created and dedicated toward debt service payments.

2.13. "Spending unit" means a state department, agency, board, commission, committee, authority or other entity of the state with the power to issue and secure debt,

which excludes local political subdivisions of the state.

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

2.15. "Tax supported debt" means: (1) general obligation bonds of the state; (2) moral obligation bonds of the state and its spending units; (3) capital leases, installment purchases, lease purchases, mortgages, certificates of participation and any other similar debt financing transaction extending beyond one year issued by the state and its spending units; and (4) any other debt issued by the state and its spending units which is not self-supporting. Debt issued by the West Virginia Housing Development Fund, Economic Development Authority, Hospital Finance Authority, Parkways Authority, Public Energy Authority, Solid Waste Management Board and Water Development Authority, with the exception of debt secured by lottery revenues or secured by a lease with the Secretary of Administration, is not tax supported debt.

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

### **§112-10-3. Quarterly Report.**

3.1 Timeframe - A spending unit that has debt shall submit a report to the Division and the Legislative Auditor for each calendar quarter by the fifteenth day of the following month, with the report containing the information and in the format specified by the Treasurer.

3.2 A spending unit having no debt shall only submit an annual report.

3.3 A spending unit shall immediately notify the Division of any change in its debt outstanding or financial condition.

3.4 The quarterly report of a spending unit with debt shall contain the following information, as applicable:

3.4.1. The name of the spending unit;

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

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

3.4.4. The true interest cost on the debt per series issued;

3.4.5. The maturity of each series issued;

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

3.4.7. The amount and type of debt incurred during the quarter, if not already reported;

3.4.8. The source of funds utilized for repayment of debt issued during the quarter, and a schedule, by year, for the collection of the funds, if not already reported;

3.4.9. All costs and expenses incurred in the issuance of debt during the quarter, if not already reported;

3.4.10. A copy of the transcript, including the official or offering statement or circular or setting forth both the terms and conditions of debt issued during the quarter, if not already reported;

3.4.11. The repayment or amortization schedule of all debt issued during the quarter, if not already reported;

3.4.12. The security for the debt, if not already reported; and

3.4.13. All other information specified by the Treasurer.

#### **§112-10-4. Proposed Debt Issuance Report.**

4.1. Each spending unit intending to incur debt shall submit a report to the Division no later than thirty days prior to the debt closing, which report containing the information and in the format specified by the Treasurer.

4.2. The report of proposed debt issuance shall contain the following information, as applicable:

4.2.1. The name and address of the issuer;

4.2.2. Proposed sale date;

4.2.3. The estimated amount and type of debt to be issued;

4.2.4. Whether the sale is to be competitive or negotiated;

4.2.5. Whether the interest is exempt from federal and state taxation and applicability of alternative minimum taxation;

4.2.6. Amount for refunding;

4.2.7. Repayment sources;

4.2.8 Purposes of the financing;

4.2.9 Names of the principal parties to the transaction, including, without limitation:

- a. Bond counsel;
- b. Tax counsel;
- c. Trustee;
- d. Financial advisor;
- e. Auditor;
- f. Underwriter, placement agent or purchaser;
- g. Underwriter's counsel;
- h. Name and contact information of person completing form; and
- i. Name and information for contact person of issuer.

4.2.10. The terms and conditions of the debt if they are not set forth in the preliminary offering statement;

4.2.11. A preliminary copy of the offering statement;

4.2.12. The source of funds utilized for repayment of debt and a schedule, by year, for the collection of the funds. A schedule is not required if the source of revenue is the general revenue fund; and

4.2.13. All other information specified by the Treasurer.

#### **§112-10-5. Report of Final Sale.**

5.1. Each spending unit issuing debt shall submit a report of final sale to the Division in the format specified by the Division no later than thirty days after closing on the debt, with the report containing the information and in the format specified by the Treasurer.

5.2 The report of final sale is not the same as the quarterly report.

5.3. The report shall include the following information, as applicable:

5.3.1. Name and address of the issuer;

5.3.2. Issue name;

5.3.3. Date of issuance;



5.3.4. Principal;

5.3.5. Purpose;

5.3.6. True interest cost;

5.3.7. Amount and type of debt issued;

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

5.3.9. A copy of the transcript;

5.3.10. All costs and expenses incurred in the issuance of the debt, including:

a. Bond counsel;

b. Issuer counsel;

c. Accounting and auditing;

d. Financial advisor;

e. Bond insurance or other credit enhancement;

f. Rating agencies;

g. Underwriters, placement agent or purchaser;

h. Underwriter's counsel;

i. Tax counsel; and

j. Trustee's fees;

k. Trustee's counsel fees;

l. Printing fees;

m. Auditor's fees; and

n. Credit enhancement fees - The spending unit shall specify nature of the credit enhancement and the anticipated future cost, if any; and

o. Any other fees and costs requested by the Treasurer.

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

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

5.3.13. Any other information specified by the Treasurer.

#### **§112-10-6. Debt Position Reports.**

6.1 The Division shall issue a report on the status of the debt of the state and its spending units for the periods ending each calendar quarter within 30 days of the month following the close of each calendar quarter. The Division shall submit copies of the June 30 and December 31 reports to the Governor, President of the Senate, Speaker of the House of Delegates, members of the Joint Committee on Government and Finance, Legislative Auditor and to anyone else requesting.

6.2 The Division shall issue an annual report on the status of the debt of the state and its spending units as of June 30 each year.

#### **§112-10-7. Debt Capacity Report.**

7.1. The Division, with the cooperation and support of the Department of Administration, the Department of Revenue and the Bureau of Employment Programs, shall issue an annual debt capacity report on or before January 15 of each year for the period ending June 30.

7.2. The annual debt capacity report shall review the size and condition of the state's net tax supported debt and estimate the maximum amount of net tax supported debt which the state and its spending units may authorize based upon ratios and guidelines established by the major bond rating agencies to keep West Virginia within an average to low range of nationally recognized debt limits.

#### **§112-10-8. Debt impact statement.**

8.1. The Division shall prepare a debt impact statement at the request of the Governor or any member of the Legislature.

8.2. A debt impact statement shall at a minimum include the following:

8.2.1. Current net tax supported debt;

8.2.2. Current net tax supported debt as a percentage of personal income;

8.2.3. Current net tax supported debt per capita;

8.2.4. A list of assumptions derived from the House or Senate bill or other information provided for which the debt impact statement is being prepared;

8.2.5. The recommendation of the Treasurer;

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

8.2.7. Current ratios and guidelines as established and reported by the major rating agencies; and

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

**§112-10-9. Other.**

9.1. The Division may require any additional information from any spending unit it determines is necessary to carry out the provisions of W. Va. Code §12-6A-1 et seq.

9.2. The Division shall post copies of its quarterly and annual reports on the Division website.

9.3. Additional Reports and Advisory Opinions - The Treasurer may, as he or she considers necessary, issue advisory letters, notices and 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 affect the State's credit rating.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: 112 CSR 10 Reporting Debt

Type of Rule:  Legislative  Interpretive  Procedural

Agency: Treasurer's Office

Address: Bldg. 1, Room E-145  
1900 Kanawha Blvd., E.  
Charleston, wV 25305

Phone Number: (304) 558-5000 Email: diana.stout@wvsto.com

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This proposed rule revises the procedures for reporting of debt and will have no economic impact on the costs or revenues of the state.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

<b>FISCAL YEAR</b>			
Effect of Proposal	Current Increase/Decrease (use "--")	Next Increase/Decrease (use "--")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0.00	0.00	0.00
Personal Services	0.00	0.00	
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
<b>2. Estimated Total Revenues</b>	0.00	0.00	0.00

Rule Title: 112 CSR 10 Reporting Debt

Rule Title: \_\_\_\_\_

- 3. Explanation of above estimates (including long-range effect):**  
Please include any increase or decrease in fees in your estimated total revenues.

N/A

**MEMORANDUM**

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

N/A

Date: June 18, 2013

Signature of Agency Head or Authorized Representative

*Diana Dault*