

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

Form #3

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SECRETARY OF STATE
STATE OF WEST VIRGINIA

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Treasurer's Office TITLE NUMBER: 112

CITE AUTHORITY: §12-6B-4

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 09

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

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 25, 2013

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* Diana Stout, General Counsel
State Treasurer's Office, 1900 Kanawha Blvd., E., Bldg. 1,
Room E-145, Charleston, WV 25305
(304) 558-5000 diana.stout@wvsto.com

LEGISLATIVE RULE TITLE: 112 CSR 9 Rules for Reporting Debt Capacity

1. Authorizing statute(s) citation §12-6B-4

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 24, 2013

b. What other notice, including advertising, did you give of the hearing?
Proposed Rules were posted on the Treasurer's Office website www.wvsto.com. Notices were sent to WV Banker's Association, Community Bankers of WV, Bowles Rice McDavid Graff & Love, the Governor's Office, Department of Revenue, Tax Division, Department of Administration, FARS and the State Auditor's Office.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
Public Comment Period ended July 24, 2013 at 5:00 p.m.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached _____ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 26, 2013

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Diana Stout, General Counsel

West Virginia State Treasurer's Office

Bldg. 1, Room E-145

1900 Kanawha Blvd., E.

Charleston, WV 25305

Fax: (304) 341-7094

Ph: (304) 341-0745

Email: diana.stout@wvsto.com

- g. **IF DIFFERENT FROM ITEM 'f',** please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

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:

- 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.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

TITLE 112
LEGISLATIVE RULE
STATE TREASURER'S Office

SERIES 9
RULES FOR THE REPORTING OF DEBT CAPACITY

SUMMARY OF PROPOSED RULE

Enrolled Committee Substitute for H. B. 2837 passed during the 2013 Legislative session (2013 Acts, Chapter 202, effective July 12, 2013) repealed §12-6B-1 et seq., thus making 112 CSR 9 obsolete.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rules for the Reporting of Debt Capacity

Rule Title: _____

Type of Rule: Legislative Interpretive Procedural

Agency: Treasurer's Office

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

Phone Number: (304) 341-0745 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.

2013 Enrolled Committee Substitute for House Bill 2837 authorized the repeal of §12-6B-1 et seq. Therefore, this rule is no longer authorized and will have no impact on costs or revenue.

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.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	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
2. Estimated Total Revenues	0.00	0.00	0.00

Rules for the Reporting of Debt Capacity

Rule Title: _____

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

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TITLE 112
LEGISLATIVE RULE
STATE TREASURER'S OFFICE 2013 JUL 26 PM 4:22

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

SECRETARY OF STATE
STATE OF WEST VIRGINIA

~~§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.~~