



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Treasurer TITLE-SERIES: 112-10
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: Reporting Debt
CITE STATUTORY AUTHORITY: §12-6A-7

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 07/29/2021 12:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: James G Fuerhoff
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Charleston, WV 25305
EMAIL: james.fuerhoff@wvsto.com

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

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

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

Updates to the legislative rule include the addition of a sunset provision, updates to the definition of lease, and re-numbering throughout the rule to comply with updated drafting standards.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

None

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

None

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

None

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

James G Fuerhoff -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

112CSR10

TITLE 112
LEGISLATIVE RULE
STATE TREASURER'S OFFICE

SERIES 10
REPORTING DEBT

§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. – ~~May 6, 2014.~~

1.4. Effective Date. – ~~July 1, 2014.~~

~~1.5. Repeal of former rule. — This legislative rule repeals and replaces W. Va. 112CSR10 “Rules for the Reporting of State Debt to the State Treasurer’s Office” filed May 6, 1998 and effective May 7, 1998.~~

1.5. Sunset Provision. — This rule shall terminate and have no further force or effect on August 1, 2027.

§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.a. The lease transfers ownership of the leased asset at the end of the lease term;~~

~~_____ 2.1.b. 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.c. 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.d. 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.~~

112CSR10

2.1. "Lease" means the definition as stated by the Government Accounting Standards Board (GASB), which states: a lease is a contract that conveys control of the right to use another entity's nonfinancial asset as specified in the contract for a period of time in an exchange or exchange-like transaction. Examples of a nonfinancial assets include buildings, land, vehicles, and equipment. Any contract that meets this definition should be accounted for under the lease guidance.

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. "Division" means the Division of Debt Management in the office of the State Treasurer.

2.4. "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.

2.5. "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.

2.6. "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.

2.7. "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. "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.

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

2.10. "Treasurer" means the West Virginia State Treasurer or his or her designee.

§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 15th 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 outstanding debt or financial condition.

112CSR10

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

~~3.4.a.~~ 3.4.1. The name of the spending unit;

~~3.4.b.~~ 3.4.2. The amount and type of debt outstanding at the end of the quarter;

~~3.4.c.~~ 3.4.3. The total debt service on the debt for the quarter;

~~3.4.d.~~ 3.4.4. The true interest cost on the debt per bond series issued;

~~3.4.e.~~ 3.4.5. The maturity of each bond series issued;

~~3.4.f.~~ 3.4.6. The dollar amount of debt repayment during the quarter;

~~3.4.g.~~ 3.4.7. The amount and type of debt incurred during the quarter, if not already reported;

~~3.4.h.~~ 3.4.8. The source of funds used 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.i.~~ 3.4.9. All costs and expenses incurred in the issuance of debt during the quarter, if not already reported;

~~3.4.j.~~ 3.4.10. A copy of the transcript, including the official or offering statement or circular, setting forth both the terms and conditions of debt issued during the quarter, if not already reported;

~~3.4.k.~~ 3.4.11. The repayment or amortization schedule of all debt issued during the quarter, if not already reported;

~~3.4.l.~~ 3.4.12. The security for the debt, if not already reported; and

~~3.4.m.~~ 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 30 days prior to the debt closing. The report shall contain the information and be in the format specified by the Treasurer.

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

~~4.2.a.~~ 4.2.1. The name and address of the issuer;

~~4.2.b.~~ 4.2.2. The proposed sale date;

112CSR10

~~4.2.e.~~ 4.2.3. The estimated amount and type of debt to be issued;

~~4.2.d.~~ 4.2.4. Whether the sale is to be competitive or negotiated;

~~4.2.e.~~ 4.2.5. Whether the interest is exempt from federal and state taxation and the applicability of alternative minimum taxation;

~~4.2.f.~~ 4.2.6. The amount for refunding;

~~4.2.g.~~ 4.2.7. The repayment sources;

~~4.2.h.~~ 4.2.8. The purposes of the financing;

~~4.2.i.~~ 4.2.9. The names of the principal parties to the transaction, including, without limitation:

~~4.2.i.1.~~ 4.2.9.a. The bond counsel;

~~4.2.i.2.~~ 4.2.9.b. The tax counsel;

~~4.2.i.3.~~ 4.2.9.c. The trustee;

~~4.2.i.4.~~ 4.2.9.d. The financial advisor;

~~4.2.i.5.~~ 4.2.9.e. The auditor;

~~4.2.i.6.~~ 4.2.9.f. The underwriter, placement agent or purchaser;

~~4.2.i.7.~~ 4.2.9.g. The underwriter's counsel;

~~4.2.i.8.~~ 4.2.9.h. The name and contact information of person completing form; and

~~4.2.i.9.~~ 4.2.9.i. The name and information for contact person of issuer;

~~4.2.j.~~ 4.2.10. The terms and conditions of the debt if they are not set forth in the preliminary offering statement;

~~4.2.k.~~ 4.2.11. A preliminary copy of the offering statement;

~~4.2.l.~~ 4.2.12. The source of funds used 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.m.~~ 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 30 days after closing on the debt. The report shall contain the information and be 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.a.~~ 5.3.1. The name and address of the issuer;
- ~~5.3.b.~~ 5.3.2. The issue name;
- ~~5.3.c.~~ 5.3.3. The date of issuance;
- ~~5.3.d.~~ 5.3.4. The principal;
- ~~5.3.e.~~ 5.3.5. The purpose of the sale;
- ~~5.3.f.~~ 5.3.6. The true interest cost;
- ~~5.3.g.~~ 5.3.7. The amount and type of debt issued;
- ~~5.3.h.~~ 5.3.8. A copy of the official or offering statement or circular;
- ~~5.3.i.~~ 5.3.9. A copy of the transcript;
- ~~5.3.j.~~ 5.3.10. All costs and expenses incurred in the issuance of the debt, including:
 - ~~5.3.j.1.~~ 5.3.10.a. The bond counsel;
 - ~~5.3.j.2.~~ 5.3.10.b. The issuer counsel;
 - ~~5.3.j.3.~~ 5.3.10.c. The accounting and auditing;
 - ~~5.3.j.4.~~ 5.3.10.d. The financial advisor;
 - ~~5.3.j.5.~~ 5.3.10.e. The bond insurance or other credit enhancement;
 - ~~5.3.j.6.~~ 5.3.10.f. The rating agencies;
 - ~~5.3.j.7.~~ 5.3.10.g. The underwriters, placement agent or purchaser;
 - ~~5.3.j.8.~~ 5.3.10.h. The underwriter's counsel;
 - ~~5.3.j.9.~~ 5.3.10.i. The tax counsel;

112CSR10

~~5.3.j.10.~~ 5.3.10.j. The trustee's fees;

~~5.3.j.11.~~ 5.3.10.k. The trustee's counsel fees;

~~5.3.j.12.~~ 5.3.10.l. The printing fees;

~~5.3.j.13.~~ 5.3.10.m. The auditor's fees;

~~5.3.j.14.~~ 5.3.10.n. The credit enhancement fees - The spending unit shall specify nature of the credit enhancement and the anticipated future cost, if any; and

~~5.3.j.15.~~ 5.3.10.o. Any other fees and costs requested by the Treasurer;

~~5.3.k.~~ 5.3.11. The terms and conditions of the debt if not set forth in the official or offering statement or circular;

~~5.3.l.~~ 5.3.12. The source of funds used for repayment of the debt, and a schedule, by year, for the collection of the funds; and

~~5.3.m.~~ 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 the report.

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 Reports.

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 of the next preceding fiscal year.

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.

112CSR10

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.a.~~ 8.2.1. The current net tax supported debt;

~~8.2.b.~~ 8.2.2. The current net tax supported debt as a percentage of personal income;

~~8.2.c.~~ 8.2.3. The current net tax supported debt per capita;

~~8.2.d.~~ 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.e.~~ 8.2.5. The recommendation of the Treasurer;

~~8.2.f.~~ 8.2.6. The total debt service as a percentage of revenue;

~~8.2.g.~~ 8.2.7. The current ratios and guidelines as established and reported by the major rating agencies; and

~~8.2.h.~~ 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/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 affect the State's credit rating.