

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
KEN HECHLER  
**ADMINISTRATIVE LAW DIVISION**

Form #7

*original*  
*1/4/91* *TC*  
**FILED**  
1991 JAN -3 AM 10:12  
OFFICE OF THE SECRETARY OF STATE  
WEST VIRGINIA

**NOTICE OF AN EMERGENCY RULE**

AGENCY: West Virginia State Board of Investments TITLE NUMBER: 113

CITE AUTHORITY: W. Va. Code Chapter 12-1-2 et seq

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES\_\_\_, NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: III

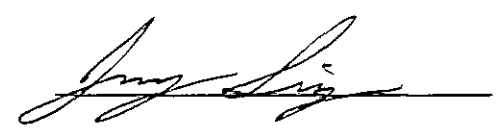
TITLE OF RULE BEING FILED AS AN EMERGENCY: Selection of State  
Depositories for Disbursement Accounts through Competitive Bidding.

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

With the passage of SB-8 by the second special session of the 1990 legislature, various sections of Chapter 12 were changed transferring authority for cash management and investments to the State Board of Investments. On December 19, 1990, the Board authorized the implementation of these changes to occur on January 3, 1991. Since these rules are an integral part of these changes, they had to be filed on an emergency basis.

Use Additional Sheets If Necessary.



3.60

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Selection of State Depositories for Disbursement Accounts through competitive bidding.

Type of Rule:  Legislative  Interpretive  Procedural

Agency Board of Investments Address \_\_\_\_\_  
State Capitol - Charleston, WV 25305

1. Effect of Proposed Rule:	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

N/A

2. Explanation of above estimates:

These rules repeals and replaces the original rules filed in 1989. It is not anticipated that these rules will require the expenditure of any additional funds.

3. Objectives of these rules:

The general purpose of these rules is to aid in the implementation of the legislative finding and purpose set forth in Section Two, Article One, Chapter Twelve of the Code, wherein the Board is required to select depositories for disbursement accounts through competitive bidding by banks in this state.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

These proposed rules will continue to allow the State to receive the best bid when selecting a bank to process the checks issued by the State.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

N/A

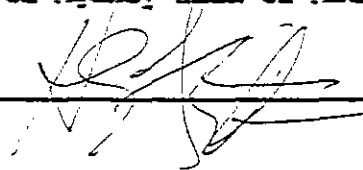
C. Economic Impact on Citizens/Public at Large.

See 4A.

Date: \_\_\_\_\_

10/29/90

Signature of Agency Head or Authorized Representative



WEST VIRGINIA ADMINISTRATIVE REGULATIONS  
West Virginia State Board of Investments

Chapter 12-1  
Series III

Subject: Selection of State Depositories for Disbursement  
Accounts Through Competitive Bidding.

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DATE: January 3, 1991

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia State Board of Investments

EMERGENCY RULE TITLE: Selection of State Depositories for Disbursement Accounts through Competitive Bidding.

1. Date of filing: January 3, 1991
2. Statutory authority for promulgating the emergency rule: Chapter 12-1-2 et seq W. Va. Code
3. Date of filing of proposed legislative rule: 11-30-90
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?  
Repeals current legislative rules and replaces with new language.
5. Has the same or similar emergency rule previously been filed and expired?  
No
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.  
With the passage of SB-8 by the second special session of the 1990 legislature, various sections of Chapter 12 were changed transferring authority for cash management and investments to the State Board of Investments. On December 19, 1990, the Board authorized the implementation of these changes to occur on January 3, 1991. Since these rules are an integral part of these changes, they had to be filed on an emergency basis.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

N/A

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8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

Due to the second special session of the 1990 legislature, the Board of Investments was required to hire its own staff and all investment activity and cash management was transferred from the Treasurer's Office to the Board of Investments. In order to implement these

legislative changes which effect the immediate cash flow of the State and the investment of the State's Moneys, these rules must be promulgated on an emergency basis. Otherwise, the State will be without available funds to pay bills or investment.

The general purpose of these rules is to aid in the implementation of the legislative finding and purpose set forth in Section Two, Article One, Chapter Twelve of the Code, wherein the Board is required to select depositories for disbursement accounts through competitive bidding by banks in this state.

WEST VIRGINIA ADMINISTRATIVE REGULATIONS  
West Virginia State Board of Investments

Chapter 12-1  
Series III  
(1979-Amendments 1990; Sections 2.01, 3.01,  
3.02, and 3.03)

Subject: Selection of State Depositories for Disbursement  
Accounts Through Competitive Bidding.

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Section 1. General.

1.01. Scope - These rules implement the provisions of section two, article one, chapter twelve of the code of West Virginia, 1931, as amended, wherein the State Board of Investments is required to select depositories for disbursement accounts through competitive bidding by banks in this State.

1.02. Authority - West Virginia Code §12-1-2.

1.03. General Purpose - The purpose of these rules is to carry out the legislative intent as stated in the above-mentioned code section, so that the competitive bidding required thereby will enable the State to obtain the most efficient service at the lowest possible cost.

1.04. Filing Date -

1.05. Effective Date -

1.06. Repeal of Former Rule - This Legislative Rule repeals and replaces West Virginia 113 CSR3 "Selection of State Depositories for Disbursement Accounts through Competitive Bidding" effective March 10, 1989.

## Section 2. Definitions

For purposes of these rules, unless a different meaning is clearly required by the context:

"Board" means the West Virginia State Board of Investments;

"Code" means the 1931 code of West Virginia, as amended;

"Compensating balance" means the cash balance which the State will maintain with a depository to compensate the depository for its services;

"Disbursement account" means those accounts from which are paid moneys due from the State of West Virginia or any official, department, board, commission, political subdivision or agency thereof to any political subdivision, person, firm or corporation except moneys paid from investment accounts;

"Invitation to bid" means and includes requests for proposals, specifications, general information and other matter customarily included in the solicitation of bids;

Section 3. Procedures for Bidding

3.01. Eligibility for Bidding - Only those banks that have been designated to serve as depositories for State funds are eligible to bid for the disbursement account.

3.02. Notice to Bidders - At least twenty-five (25) days prior to the date on which bids will be opened, the Board shall mail to every eligible depository notice that bids will be invited on one or more designated accounts. Any bank interested in bidding on an account shall then make written request to the Board of Investments for copies of the formal invitation to bid, and the Board of Investments upon receipt of such request, shall transmit such copies, including all necessary specifications and forms, to such depository. The Board of Investments shall maintain a record noting the date of receipt of requests for formal invitations to bid and the date on which it mailed the invitations.

3.03. Contents of Invitations to Bid - The invitations shall state the time and place for submission of bids and shall include a description of the account and the service required, the approximate number of transactions or items to be processed monthly, the duration of contracts to be awarded, the designated account number of the accounts for which bids are being sought, and such other information as the Board deems necessary.

3.04. Submission of Bids - Bids shall be on forms provided by the Board of Investments and shall be submitted in

duplicate in a sealed envelope addressed to the State Board of Investments. The envelope shall be conspicuously marked "Sealed Bid for Disbursement Account". The bidder shall also note on the envelope the account number as designated in the invitation to bid. Bidders may not commingle bids for more than one account in the same envelope. Immediately upon receipt of bids by the Board of Investments, the time of receipt shall be noted on the envelope and the sealed bids shall be kept in the State Board of Investment's offices, together with all other bids, until the time set for the bid opening.

3.05. Bid Opening - On the date and time set for the bid opening, the bids shall be publicly opened and read aloud. The Board shall promptly analyze the bids and make awards as provided in Section 4 of these rules.

3.06. Conditions of Bidding - All bids shall be subject to the following conditions:

(a) Bids received after the date and time stated in the invitation may not be considered.

(b) Bids may not be considered unless signed by an authorized bank officer. For purposes of this section, an authorized bank officer may be either the president, a vice-president or the cashier.

(c) Prior to the bid opening, bids may be withdrawn after receipt in the Board's office upon written request made by an authorized bank officer. Such written request shall be made by telegram.

(d) The Board may reject any and all bids if such action is deemed to be in the best interests of the State.

#### Section 4. Award and Compensation

4.01. Criteria for Award - Depending on the service to be performed, the Board will invite bids in terms of the price per transaction or per item processed. Accordingly, subject to the Board's right to reject any and all bids, the contract will be awarded in each case to the bidder who submits the lowest responsible bid in terms of price per transaction or per item processed. The bid price will be the basis for the compensating balance as provided in the following Section 4.02.

4.02. Method of Compensation - Compensation to the depository for its services shall be made by means of either compensating balances computed by the Board on a monthly basis or by a State warrant. To determine the monthly compensating balances, the Board shall multiply the depository's bid price per transaction or per item processed, times the number of transactions or items processed during the preceding month (hereinafter called the "computation month"). The product thus obtained shall be converted to the compensating balance

by using the average 90-day U. S. Treasury bill rate (bond equivalent yield) for the computation month. The average 90-day U. S. Treasury bill rate shall be the rate as computed by the Federal Reserve System. The following example will illustrate how the compensating balance will be computed and applied:

Under this example, it is assumed that:

- (1) The computation month is January;
- (2) The average 90-day U. S. Treasury bill rate for the computation month (January) was 5%;
- (3) The multiplier for annualization is 12;
- (4) The bid price per item was three cents (\$.03); and
- (5) The number of items processed in the computation month (January) was 50,000.

Accordingly, the compensating balance to be maintained in the bank during February is \$360,000, derived as follows:

$$\frac{50,000 \times ($.03) \times (12)}{.05} = \$360,000$$

If any overcompensation or undercompensation occurs during a given month, the compensating balance for the following month shall be appropriately adjusted in order to fairly compensate the depository for services rendered. A settlement will be made at the expiration of the contractual period if any overcompensation or undercompensation occurs. The Board and Bank shall agree upon a method of account settlement and include the account settlement as part of the negotiated contract for the Disbursement Account.

4.03. Compensation for Ancillary Services - The Board may in its bid specifications require the depository to furnish certain named ancillary services in the course of providing the basic service for which bids are solicited. For example, the Board may specify that a depository for disbursements shall furnish preprinted checks. The Board may also specify that the depository shall be compensated for the cost of furnishing such ancillary services on a flow-through basis. In such event, the Board shall increase the compensating balance in an amount sufficient to compensate the depository for the direct cost of furnishing such ancillary services plus a reasonable amount (as determined by the Board) for the overhead attributable to furnishing such services. The amount to be allowed for such overhead shall be specified in the invitation to bid.

WEST VIRGINIA ADMINISTRATIVE REGULATIONS  
West Virginia State Board of Investments

Chapter 12-1

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par. 7 It is the determination of the Secretary of State that the Board has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §12-6-5(5) reads:

*(5) Promulgate and enforce bylaws and rules for the management and conduct of its affairs.*

par. 9 §12-1-2 of the WV Code further states in part:

*The board of investments shall promulgate rules and regulations, in accordance with the provisions of §29A-1-1 et seq. of the code of West Virginia, as amended, concerning depositories for receipt accounts and investment accounts prescribing the selection criteria, procedures, compensation and such other contractual terms as it considers to be in the best interests of the state giving due consideration to: (1) The activity of the various accounts maintained therein; (2) the reasonable value of the banking services rendered or to be rendered the state by such depositories; and (3) the value and importance of such deposits to the economy of the communities and the various areas of the state affected thereby.*

par. 10 It is the determination of the Secretary of State that the Board has not exceeded its statutory authority in promulgating this emergency rule.

par. 11 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:

*(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.*

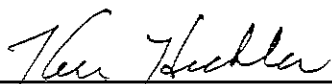
par. 12 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 13 The facts and circumstances as presented by the Board are as follows:

With the passage of S.B. 8 by the second special session of the 1990 Legislature, various sections of Chapter 12 were changed transferring authority for cash management and investments to the State Board of Investments. On December 19, 1990, the Board authorized the implementation of these changes to occur on January 3, 1991. Since these rules are an integral part of these changes, they had to be filed on an emergency basis.

par. 14 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in 29A-3-15(g) . . ."immediate preservation of public peace, health, safety or welfare" and "to prevent substantial harm to public interest."

par. 15 This decision shall be cited as Emergency Rule Decision 8-91 or ERD 8-91 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the WV State Board of Investments, the Attorney General and the Legislative Rule Making Review Committee.



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KEN HECHLER  
SECRETARY OF STATE

Entered \_\_\_\_\_

FILED

1991 JAN 23 PM 2:54

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE



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(Plus all the volunteer  
help we can get)

STATE OF WEST VIRGINIA  
SECRETARY OF STATE  
Charleston 25305

January 15, 1991

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Board of Investments

RULE: New Rule, Series 3, Selection of State Depositories for Disbursement Accounts through Competitive Bidding

DATE FILED AS AN EMERGENCY RULE: January 3, 1991

DECISION NO. 8-91

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

KEN HECHLER  
Secretary of State

1991 JAN 23 PM 2:54  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE  
FILED

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## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

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#### DECISION                      EMERGENCY RULE DECISION (ERD 8-91)

AGENCY: West Virginia State Board of Investments  
RULE: New Rule, Series 3, Selection of State Depositories  
for Disbursement Accounts through Competitive Bidding  
FILED AS AN EMERGENCY RULE: January 3, 1991

- par. 1 The WV Board of Investments (Board) has filed the above new rule as an emergency.
- par. 2 West Virginia Code 29A-3-15A requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Board has filed this emergency rule with supporting documents with the Secretary of State on January 3, 1991, and with the LRMRC on January 3, 1991.