

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

Form #3

DO NOT MARK IN THIS BOX

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE NOV 30 1990  
ADMINISTRATIVE LAW DIVISION

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

AGENCY: Board of Investments TITLE NUMBER: 113

CITE AUTHORITY 12-1-2 et seq WV Code

AMENDMENT TO AN EXISTING RULE: YES  NO

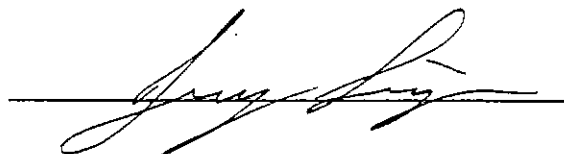
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

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

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: III (3)

TITLE OF RULE BEING PROPOSED: Selection of State Depositories for  
Disbursement Accounts through competitive bidding.

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.



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.

PUBLIC HEARING  
RULES AND REGULATION FOR  
THE BOARD OF INVESTMENTS  
AND THE STATE TREASURER'S OFFICE

A public hearing was held on November 29, 1990, at 9:30 a.m. in the State Capitol Complex Conference Center, Building 7, Room D.

Those present were:

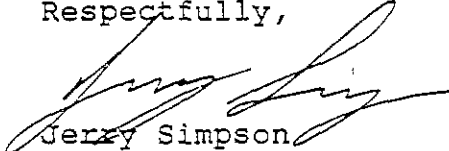
Jerry Simpson, State Treasurer's Office  
Mark Asaad, State Treasurer's Office  
Brenda Warren, State Treasurer's Office

Mr. Simpson called the meeting to order. Mr. Simpson made mention of the rules individually and received or made mention of any comments at that time.

There were no comments received except for the Selection of State Depositories for Disbursement Accounts through Competitive Bidding. There was a comment received from Bowles, Rice, McDavid, Graff & Love who are attorneys for the West Virginia Bankers Association and they made a recommendation as to a change in the method of compensation, Section 4.02, and this will be taken into appropriate consideration.

There being no comments from those present, the hearing was closed at 9:45 a.m.

Respectfully,



Jerry Simpson  
Assistant State Treasurer

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:	FISCAL		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.

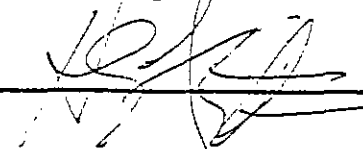
N/A

C. Economic Impact on Citizens/Public at Large.

See 4A.

Date: 10/29/90

Signature of Agency Head or Authorized Representative

  
\_\_\_\_\_

DATE: November 30, 1990

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: State Board of Investments

LEGISLATIVE RULE TITLE: Selection of state depositories for  
disbursement account through competitive bidding.

1. Authorizing statute(s) citation 12-1-2 et seq WV Code

2. a. Date filed in State Register with Notice of Hearing:

Oct 30, 1990

b. What other notice, including advertising, did you  
give of the hearing?

None

c. Date of hearing (s): November 29, 1990

d. Attach list of persons who appeared at hearing, comments  
received, amendments, reasons for amendments.

Attached X No comments received         

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

November 30, 1990

f. Name and phone number of agency person to contact  
for additional information:

Jerry Simpson 343-4000

3. Is 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: \_\_\_\_\_

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

---

d. Attach findings and determinations and reasons:

Attached \_\_\_\_\_

BOWLES RICE  
McDAVID GRAFF & LOVE

ATTORNEYS AT LAW

4TH FLOOR UNITED CENTER  
500 VIRGINIA STREET EAST  
CHARLESTON, WEST VIRGINIA 25301  
304-347-1180  
FACSIMILE 304-347-1196

206 SPRUCE STREET  
MORGANTOWN, WEST VIRGINIA 26505  
304-298-2500  
FACSIMILE 304-298-2513

WRITER'S DIRECT DIAL NUMBER

347-1124

State Treasurer's Office  
State Capitol Building  
Charleston, WV 25305  
Attn: Jerry Simpson

BY HAND

Re: Proposed Regulations:  
Chapter 12-1, Series III

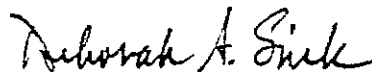
Dear Mr. Simpson:

The West Virginia Bankers Association has requested that we comment on its behalf regarding the proposed regulations governing the servicing of accounts on a bid basis for the State. By way of introduction, the Association is comprised of approximately 215 member banks and bank holding companies and one of its express goals is to review and comment upon proposed regulations affecting the banking industry.

Generally, the Association believes the referenced proposed regulations suggest a workable arrangement pursuant to which local banks may compete for State business. However, we have been requested to draw your attention to the provision addressing the account adjustments made at the end of a contractual period. Section 4.02 provides that any adjustment of \$500 or less will not be made. The Association agrees that de minimus adjustments do not warrant the expenditure of time. However, depending upon the volume of business conducted, \$500 may not be de minimus. Accordingly, a suggested change would be to amend the section to provide that adjustments will be made only if the settlement difference is greater than, for example 1% of the total charge or \$500, whichever is less.

Please contact me at the above number or Thomas A. Winner, Government Relations Officer of the West Virginia Bankers Association at 343-8838 if you have questions or desire additional information. Thank you for your consideration of this matter.

Very truly yours,



Deborah A. Sink

DAS/bal  
cc: Thomas A. Winner  
1240447LTR.90

16TH FLOOR COMMERCE SQUARE • LEE STREET

POST OFFICE BOX 1386

CHARLESTON, WEST VIRGINIA 25325-1386

TELEPHONE 304-347-1100

FACSIMILE 304-343-2867

November 28, 1990

105 W BURKE STREET  
POST OFFICE DRAWER 1419  
MARTINSBURG, WEST VIRGINIA 25401-1419  
304-263-0806  
FACSIMILE 304-267-3822

OLD NATIONAL BANK BUILDING  
EAST WASHINGTON STREET  
POST OFFICE BOX 59  
CHARLES TOWN, WEST VIRGINIA 25414  
304-725-1535  
FACSIMILE 304-725-4417

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.

TABLE OF CONTENTS

Section 1. General

- 1.01. Scope
- 1.02. Authority
- 1.03. General Purpose
- 1.04. Filing Date
- 1.05. Effective Date
- 1.06. Repeal of Former Rule

Section 2. Definitions

Section 3. Procedures for Bidding

- 3.01. Eligibility for Bidding
- 3.02. Notice to Bidders
- 3.03. Contents of Invitations to Bid
- 3.04. Submission of Bids
- 3.05. Bid Opening
- 3.06. Conditions of Bidding

Section 4. Award and Compensation

- 4.01. Criteria for Award
- 4.02. Method of Compensation
- 4.03. Compensation for Ancillary Services

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.

---

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

INDEX

References are to section numbers in West Virginia  
Administrative Rules 12-1, Series III.

---

Authority, 1.02

Award, 4.01

    Criteria for award, 4.01

Bidding, procedures for, 4

    Bid opening, 3.05

    Conditions of bidding, 3.06

    Contents of invitations to bid, 3.03

    Eligibility for bidding, 3.01

    Notice to bidders, 3.02

    Submission of bids, 3.04

Compensating balance, 4.01

    Defined, 2

Compensation, method of, 4.02

    Ancillary services, 4.03

    Compensating balances, 4.03

    Computation and application of compensating balances, 4.02

Definitions, 2

Disbursement account, defined, 2

Effective date, 1.05

WV Adm. Reg. 12-1  
Series III

Eligible depositories, 3

Filing date, 1.04

General purpose, 1.03

Invitation to bid, defined, 2

Repeal of Form Rule, 1.06

Scope, 1.01