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WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

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OFFICE OF THE SECRETARY OF STATE
STATE

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: IV

TITLE OF RULE BEING FILED AS AN EMERGENCY: Selection of State
Depositories for Receipt Accounts

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.

[Signature]

2.30

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Selection of State Depositories for Receipt Accounts

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 1981. 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 proposed 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 receipt accounts.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

These proposed rules will continue to allow the Board to provide depositories for the deposit of state funds by all state agencies regardless of their location in an efficient and cost effective manner.

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

N/A

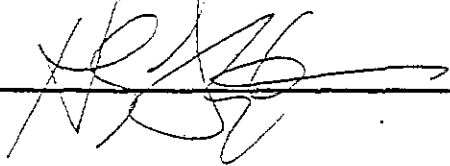
C. Economic Impact on Citizens/Public at Large.

See 4A.

Date: _____

10/29/90

Signature of Agency Head or Authorized Representative



DATE: --January 3, 1991

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia State Board of Investments

EMERGENCY RULE TITLE:

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

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 proposed 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 receipt accounts.

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
West Virginia State Board of Investments

Chapter 12-1
Series IV

Subject: Selection of State Depositories for Receipt Accounts

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS
West Virginia State Board of Investments

Chapter 12-1
Series IV

Subject: Selection of State Depositories for Receipt Accounts

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 receipt accounts.

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 selection of receipt depositories 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 CSR 4 "Selection of State Depositories for Receipt Accounts" effective July 8, 1981.

Section 2. Definitions.

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

"Agency" means and includes any department, board, commission, division, branch office or other separate unit of a state agency, and any officer or employee thereof, who or which collects moneys due the State;

"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; and

"Receipt accounts" means those accounts in which are deposited moneys belonging to or due the State of West Virginia or any official, department, board, commission or agency, thereof.

Section 3. Selection of Depositories for Receipt Accounts.

The Board recognizes that not only the services but the location of receipts depositories are of major concern to the agencies whose collections are to be deposited. Accordingly, the Board in cooperation with the affected agencies shall ensure that receipts depositories are conveniently located for the agencies and are able to serve their needs.

Section 4. Procedures.

Each collecting agency shall notify the Board of its anticipated collections and deposits including the extent of activity of its accounts, size of accounts, frequency of deposits, special services that may be needed and other information requested by the Board. The agency also may submit its preferred choice or a list of preferred choices of banks. If the agency submits such preferred choice or list, it shall submit therewith a statement of the reasons for its preference. However, the Board is not bound to select the bank or banks preferred by the agency. The Board shall review the information submitted by the agency and shall consider:

- 1) The activity of the various accounts;
- 2) The reasonable value of the banking services to be rendered;
- 3) The value and importance of such deposits to the economy of the communities and the various areas of the State affected; and
- 4) The recommended depository's proposed fee schedule as required by Section 5.01 of these rules.

Section 5. Compensation.

5.01. Method of Compensation - Compensation to the depository for its services shall be made by means of either of the following three methods:

1) A compensating balance computed by the Board on a monthly basis using the average collected balance. The depository shall submit proposed fee schedules for types of services rendered by the depository, including but not limited to services such as wire transfers, checks cashed, returned checks, and cash handling. The proposed fee schedules shall be subject to review and approval by the Board. If the fee schedules are approved by the Board, a contract shall be entered into with the depository for the furnishing of the required services. If the fee schedules are not approved by the Board, the Board may negotiate satisfactory revised fee schedules with the depository or select another depository. The monthly total fee for the services rendered shall be converted to a compensating balance by using the average 90-day U. S. Treasury bill rate (bond equivalent yield).

The following example will illustrate how the compensating balance will be computed and applied:

- 1) Assume that the average 90-day U. S. Treasury bill rate for the affected month is .10;
- 2) The multiplier for annualization is twelve; and the fee for the services, if rendered on a fee basis, would equal \$560.00 for the affected month.

Accordingly, the compensating balance to be maintained for the next month is \$67,200 derived as follows:

$$\frac{(560) \times 12}{.10} = \$67,200$$

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.

2) A compensating balance derived by accumulated receipts in the receipts account and periodically transferring such balance to a central depository designated by the Board. This method of compensation would be used for depositories whose receipts would not be sufficient volume to justify use of the method in subdivision (1) of this section.

Upon Board approval, a contract shall be entered into with the depository for the furnishing of required services.

3) The Board may authorize the bank to invoice the Board. In such case, the Board will pay the invoice with a State warrant.

5.02. Compensation for Ancillary Services - The Board may, from time to time, require the depository to furnish certain ancillary services in the course of providing the basic service for which it was selected. For example, the Board may specify that a depository for receipts shall furnish analytical reports. The Board may also specify that the depository shall be compensated for the cost of furnishing services on a flow-through basis. In such event, the bank shall be compensated for such service by one of the three methods described in section 5.01.

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
West Virginia State Board of Investments

Chapter 12-1

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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 4, Selection of State Depositories for
Receipt Accounts

DATE FILED AS AN EMERGENCY RULE: January 3, 1991

DECISION NO. 9-91

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

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

JAN 23 PM 2:54

FILED

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help we can get)

DECISION EMERGENCY RULE DECISION (ERD 9-91)

AGENCY: West Virginia State Board of Investments
RULE: New Rule, Series 4, Selection of State Depositories
for Receipt Accounts
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.

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 9-91 or ERD 9-91 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.



KEN HECHLER
SECRETARY OF STATE

Entered _____

FILED
1991 JAN 23 PM 2:54
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SECRETARY OF STATE