

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

Form #7

Filing Date

FILED

MAY 30 4 56 PM '97

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: State Treasurer's Office TITLE NUMBER: 112CSR6

CITE AUTHORITY: W.V.Code - Section 12-1-2

EMERGENCY 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 RULE BEING FILED AS AN EMERGENCY: Series 6

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 AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

See Attached

Use additional sheets if necessary

  
Signature

DATE: 5/30/97

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: State Treasurer's Office

EMERGENCY RULE TITLE: Selection of State Depositories for Disbursement Accounts  
Through Competitive Bidding (112CSR6)

1. Date of Filing 5/30/97

2. Statutory authority for promulgating emergency rule:

W.V.Code - Section 12-1-2

3. Date of filing of proposed legislative rule: 5/30/97

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule?

This rule promulgated via Senate Bill 563 adopts new language.

5. Has the same or similar emergency rule previously been filed and expired?

N/A

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.

N/A

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.

This rule is required according to legislation passed in  
Senate Bill 563, effective 4/12/97. Substantial harm to the  
public interest could result by operating without this rule.

(See Statement of Circumstances of Proposed Rule)

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**SUMMARY OF PROPOSED RULE**

**TITLE 112**

**LEGISLATIVE RULE**

**STATE TREASURER'S OFFICE**

**SERIES 6**

**SELECTION OF STATE DEPOSITORIES FOR DISBURSEMENT**

**ACCOUNTS THROUGH COMPETITIVE BIDDING**

This rule implements the provisions of W. Va. Code §12-1-2, wherein the State Treasurer's Office is required to select depositories for disbursement accounts through competitive bidding by banks in this State.

**STATEMENT OF CIRCUMSTANCES OF PROPOSED RULE**

**TITLE 112**

**LEGISLATIVE RULE**

**STATE TREASURER'S OFFICE**

**SERIES 6**

**SELECTION OF STATE DEPOSITORIES FOR DISBURSEMENT**

**ACCOUNTS THROUGH COMPETITIVE BIDDING.**

This agency approved rule is needed to comply with provisions of W. Va. Code embodied in Senate Bill 563, passed during the 1997 Regular Legislative Session, effective from passage on April 12, 1997. Senate Bill 563 expanded some of the State Treasurer's functions and duties and transferred several functions and duties of the West Virginia State Board of Investments to the State Treasurer's Office. Without this rule, the public interest can be substantially harmed by the loss of public moneys, since depositories for disbursement accounts can not be selected and hence no state disbursements could be made.

This rule implements the provisions of W. Va. Code §12-1-2, wherein the State Treasurer's Office is required to select depositories for disbursement accounts through competitive bidding by banks in this State.

This rule carries out the legislative intent as stated in the above-cited code section, so that the competitive bidding required thereby will enable the State to obtain the most efficient service at the lowest possible cost.

TITLE 112  
LEGISLATIVE RULE  
STATE TREASURER'S OFFICE

SERIES 6  
SELECTION OF STATE DEPOSITORIES FOR DISBURSEMENT  
ACCOUNTS THROUGH COMPETITIVE BIDDING

**§112-6-1. General.**

1.1. Scope. -- These rules implement the provisions of W. Va. Code §12-1-2, wherein the State Treasurer's Office is required to select depositories for disbursement accounts through competitive bidding by banks in this State.

1.2. Authority. -- W. Va. Code §12-1-2.

1.3. Filing Date. --

1.4. Effective Date. --

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

**§112-6-2. Definitions.**

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

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

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

2.3. "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;

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

2.5. "Treasurer" means the West Virginia Office of the State Treasurer.

**§112-6-3. Procedures for Bidding**

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

3.2. Notice to Bidders - At least twenty-five (25) days prior to the date on which bids will be opened, the Treasurer shall mail to every eligible depository notice that bids will be invited on one or more designated

disbursement accounts. Any bank interested in bidding on an account shall then make written request to the Office of the State Treasurer for copies of the formal invitation to bid, and the Office of the State Treasurer upon receipt of such request, shall transmit such copies, including all necessary specifications and forms, to such depository. The Office of the State Treasurer 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.

3.3. 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 Treasurer considers necessary.

3.4. Submission of Bids - Bids shall be on forms provided by the Office of the State Treasurer and shall be submitted in duplicate in a sealed envelope addressed to the Office of the State Treasurer. 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 Office of the State Treasurer, the time of receipt shall be noted on the envelope and the sealed bids shall be kept in the State Treasurer's offices, together with all other bids, until the time set for the bid opening.

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

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

3.6.1. Bids received after the date and time stated in the invitation may not be considered.

3.6.2. 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.

3.6.3. Prior to the bid opening, bids may be withdrawn after receipt in the Treasurer's office upon written request made by an authorized bank officer.

3.6.4. The Treasurer may reject any and all bids if such action is considered to be in the best interests of the State.

#### **§112-6-4. Award and Compensation.**

4.1. Criteria for Award - Depending on the service to be performed, the Treasurer will invite bids in terms of the price per transaction or per item processed. Accordingly, subject to the Treasurer'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 Subsection 4.2.

4.2. Method of Compensation - Compensation to the depository for its services shall be made by means of either compensating balances computed by the Treasurer on a monthly basis or by a State warrant. To determine the monthly compensating balances, the Treasurer 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 Treasurer 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.

4.3. Compensation for Ancillary Services - The Treasurer 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 Treasurer may specify that a depository for disbursements shall furnish preprinted checks. The Treasurer 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 Treasurer 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 Treasurer ) for the overhead attributable to furnishing such services. The amount to be allowed for such overhead shall be specified in the invitation to bid.

**APPENDIX B**

**FISCAL NOTE FOR PROPOSED RULES**

**Rule Title:** Selection of State Depositories for Disbursement Accounts Through  
Competitive Bidding (112CSR6)

**Type of Rule:**  **Legislative**  **Interpretive**  **Procedural**

**Agency:** State Treasurer's Office

**Address:** State Capitol, Room E-145  
Charleston, West Virginia 25305  
Contact Person: Anoop Bhasin - Telephone (304) 341-0704

**1. Effect of Proposed Rule**

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	HEREAFTER
<b>ESTIMATED TOTAL COST</b>	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
<b>PERSONAL SERVICES</b>					
<b>CURRENT EXPENSE</b>					
<b>REPAIRS &amp; ALTERNATIONS</b>					
<b>EQUIPMENT</b>					
<b>OTHER</b>					

**2. Explanation of above estimates:**

Bids are currently the accepted method of procurement and are a part of the normal expense of the office.

**3. Objectives of these rules:**

Comply with Senate Bill 563 as passed by the Legislature during the 1997 Legislative Session.

**Rule Title:** Selection of State Depositories for Disbursement Accounts Through  
Competitive Bidding (112CSR6)

**4. Explanation of Overall Economic Impact of Proposed Rule.**

**A. Economic Impact on State Government.**

N/A

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

Provide fair, equitable competition for state contracts for state depositories/disbursement accounts.

**C. Economic Impact on Citizens/Public at Large.**

N/A

**Date:** 5/30/97

**Signature of Agency Head or Authorized Representative**

*John Perdue*