

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

FILED

JUL 3 2 18 PM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

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

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

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

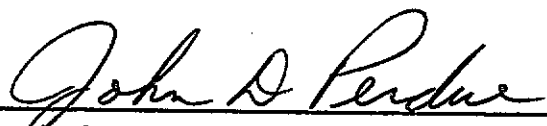
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 6

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.



Authorized Signature

DATE: July 3, 1997

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: State Treasurer's Office

Selection Of State Depositories for Disbursement

LEGISLATIVE RULE TITLE: Accounts Through Competitive Bidding. (112CRS6)

1. Authorizing statute(s) citation W.V. Code Section. 12-1-2

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

May 30, 1997

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

Mailed notification of hearing to: W.V. Governor, Auditor, President of the Senate, Speaker of the House of Delegates, Secretary of Administration, and all W.V. banks.

c. Date of Hearing(s) June 30, 1997

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

Attached No comments received

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

July 3, 1997

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

Anoop K. Bhasin (304) 341-0704

State Capitol Complex, Rm E-122, Charleston, WV 25305

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation: N/A

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.

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 _____

Public Hearing on State Treasurer's Office Rules, Series, 3, 4, 6, 7, 8, 9 and 10
 Capitol Complex Conference Center, Room B

June 30, 1997 at 10:00 p.m.

Registration Document Page 1 of 1

Name	Agency/ Organization	Mailing/Inter Dept. Address	Phone	Note
Jim McMillon	State Treasurer's Office	Room EB56	341-0727	
Anoop K. Bhasin	"	Rm E-122	558-5000	
Jerry Simpson	"	"	"	
Rutha Boggess	"	"	"	
DANIEL E. CANIER	ONE VALLEY BANK	ONE VALLEY SQUARE CHAS. 20324	348-7078	
John Shumate	State Treasurer's Office	Room E-145	558-5000	
BRYAN W. ARCHER	"	Room E-122	8-5000	
Glenda Probst	"	"	558-5000	

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, in that 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.

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	THEREAFTER
ESTIMATED TOTAL COST	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

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

TITLE 112
LEGISLATIVE RULE
STATE TREASURER'S OFFICE

FILED

JUL 3 2 19 PM '97

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

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§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.

**STATEMENT CONCERNING PUBLIC HEARING CONDUCTED JUNE 30, 1997,
AT 10 A.M. AT THE STATE CAPITOL COMPLEX CONFERENCE CENTER,
CONCERNING PROPOSED LEGISLATIVE RULES
DESIGNATED TITLE 112, SERIES 3, 4, 6, 7, 8, 9 AND 10
FOR THE STATE TREASURER'S OFFICE**

Hearing times. The above titled public hearing was opened at 10:09 a.m. after registering all attendees and adjourned at 10:16 a.m.

Attendees. The attendees were: from One Valley Bank in Charleston, Mr. Daniel E. Lanier; and from the State Treasurer's Office, Mr. Jim McMillon, Mr. Anoop K. Bhasin, Mr. Jerry Simpson, Ms. Ratha Boggess, Mr. John Shumate, Mr. Bryan Archer, and Ms. Glenda Probst.

Hearing proceedings. Jim McMillon conducted the hearing. He indicated that notice of this public hearing was filed May 30, 1997 with the Secretary of State and the Legislative Rule Making Review Committee concerning the above titled rules. He asked if anyone had any written comments to submit concerning any of the above titled series of rules. There were no written comments. He asked if there were any verbal or oral comments concerning the above titled series of rules. Mr. Lanier offered only two oral comments (to Series 6 rule, "Selection of State Depositories for Disbursement Accounts Through Competitive Bidding") listed below. There were no other oral comments regarding any of the other series of rules.

Oral comments received and responses to the oral comments concerning Series 6 rule. This is a summary of the oral comments received and responses thereto:

Comment No. 1. Section 3.5 states in part: "...On the date and time set for the bid opening, the bids shall be publicly opened and read aloud..." Will the identity of each bidder be disclosed as part of the reading?

Response to Comment No. 1. Yes, as well as the amount and any other pertinent information.

Comment No. 2. Section 3.2 states in part: "...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..." Is it possible that this notification will be given more than 25 days in advance?

Response to Comment No.2. Yes. This section sets a minimum notification period. As a matter of practice, the notification may be more than 25 days in advance.

Amendments made/recorded and reasons. No amendments to any of the rules are proposed. Comments no. 1 and 2 to Series 6 rule, request an interpretation. It is believed that the responses to comments no. 1 and 2 adequately clarify/interpret the items without need for changes to the language.