

**WEST VIRGINIA  
SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #6

**FILED**

MAY 6 3 34 PM '98

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: West Virginia State Treasurer TITLE NUMBER: 112

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 113CSR3

TITLE OF RULE BEING AMENDED: Selection of State Depositories for  
Disbursement Accounts Through Competitive Bidding

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

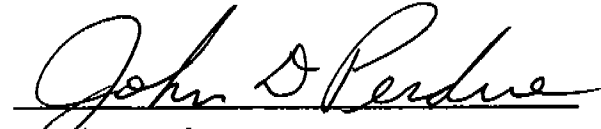
TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) S.B. 329

SECTION 64-9-28, PASSED ON March 14, 1998

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON  
THE FOLLOWING DATE: May 7, 1998

  
Authorized Signature

\$2.80

**TITLE 112  
LEGISLATIVE RULE  
STATE TREASURER'S OFFICE**

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

**Promulgation History**

Filed for hearing	May 30, 1997
Hearing held	June 30, 1997
Filed emergency rule	May 30, 1997
Withdrew emergency rule	July 11, 1997
Agency approved rule filed with Secretary of State	July 3, 1997
Modified and approved by Legislative Rule Making Committee	September 15, 1997
Filed with Legislative Rule Making Committee	September 25, 1997
Approved in S.B. 329	March 14, 1998
Final filed	May 6, 1998
Effective date	May 7, 1998

TITLE 112  
LEGISLATIVE RULE  
STATE TREASURER'S OFFICE

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

FILED  
May 6 3 34 PM '98  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**§112-6-1. General.**

1.1. Scope. -- This rule implements the provisions of W.Va. Code §12-1-2, which requires the Treasurer's Office 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. -- May 6, 1998

1.4. Effective Date. -- May 7, 1998

1.5. General Purpose. -- The purpose of this rule is to carry out the legislative intent as stated in W.Va. Code §12-1-2, so that the required competitive bidding will enable the State to obtain the most efficient service at the lowest possible cost.

**§112-6-2. Definitions.**

For purposes of this rule, unless a different meaning is clearly required by the context:

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

2.2. "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;

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

2.4. "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 for a disbursement account will be opened, the Treasurer shall mail, to every eligible depository within this state, notice that bids will be invited on one or more designated disbursement accounts. Any depository within this state interested in bidding on an account shall then make written request to the Treasurer's office for copies of the formal invitation to bid, and the Treasurer's office upon receipt of the request, shall transmit the copies, including all necessary specifications and forms, to the depository. The Treasurer's office 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 - Depositories with the state shall submit bids on forms provided by the Treasurer's office in duplicate, in a sealed envelope addressed to the Treasurer, and 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, the Treasurer shall time stamp the envelope, and retain all the sealed bids in the Treasurer's office until the time set for the bid opening.

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

3.6. Conditions of Bidding - All bids are 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; or

3.6.4. The Treasurer may reject any and all bids if that 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 shall 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 shall 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 Subsection 4.2 of this section.

4.2. Method of Compensation –

4.2.1. Compensation to the depository within the state 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 (the "computation month"). The product 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 illustrates how the compensating balance shall be computed and applied:

Under this example, it is assumed that:

4.2.1.a. The computation month is January;

4.2.1.b. The average 90-day U. S. Treasury bill rate for the computation month (January) was 5%;

4.2.1.c. The multiplier for annualization is 12;

4.2.1.d. The bid price per item was three cents (\$.03); and

4.2.1.e. 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:

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

4.2.2. The Treasurer shall appropriately adjust the compensating balance if any overcompensation or undercompensation occurs during a given month by adjusting the balance for the following month in order to fairly compensate the depository for services rendered. The Treasurer shall perform a settlement monthly if any overcompensation or undercompensation occurs. The Treasurer and the depository within the state 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 that event, the Treasurer shall increase the compensating balance in an amount sufficient to compensate the depository for the direct cost of furnishing the ancillary services plus a reasonable amount determined by the Treasurer for the overhead attributable to furnishing the services. The amount to be allowed for the overhead shall be specified in the invitation to bid.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

**Agency:** State Treasurer's Office

**Subject:** Selection of State Depositories for Disbursement  
Accounts Through Competitive Bidding, 112CSR6

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PERTINENT DATES

Filed for public comment: May 30, 1997  
Public comment period ended: June 30, 1997  
Filed following public comment period: July 3, 1997  
Filed LRMRC: July 7, 1997  
Filed as emergency: May 30, 1997

Fiscal Impact: None

FILED  
AUG 13 9 32 AM '97  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

ABSTRACT

The proposed rule is new. The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 defines terms.

Section 3 provides that only a bank which has been designated as a State depository may bid for a disbursement account. It requires the Treasurer to provide State depositories with 25 days notice prior to opening bids on a disbursement account. It also specifies the contents of the invitation to bid and the procedure for the submission and awarding of bids.

Section 4 states that subject to the Treasurer's right to reject any and all bid, a contract will be awarded to the bidder who submits the lowest responsible bid in terms of price per transaction or per item processed. It requires that a depository be compensated either through compensating balances or the issuance of a state warrant and specifies the method for calculating compensating balances. This section also allows the Treasurer to compensate state depositories for ancillary services.

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AUTHORITY

Statutory authority: W.Va. Code, §12-1-2, which provides, in part, as follows:

...The state treasurer shall select depositories for disbursement accounts through competitive bidding by eligible banks in this state. The treasurer shall promulgate rules and regulations, in accordance with the provisions of article three, chapter twenty-nine-a of this code, prescribing the procedures and criteria for the bidding and selection. The treasurer shall, in the invitations for bids, specify the approximate amounts of deposits, the duration of contracts to be awarded and such other contractual terms as it considers to be in the best interests of the state, consistent with obtaining the most efficient service at the lowest cost...

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ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.

LB 17

112-6

H. B. 4197

1 Bill-SP, Adr

(By Delegates Hunt, Linch, Compton, Jenkins,  
Faircloth and Riggs)

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[Introduced January 30, 1998; referred to the  
Committee on the Judiciary.]

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10 A BILL to amend article six, chapter sixty-four of the code  
11 of West Virginia, one thousand nine hundred  
12 thirty-one, as amended, by adding thereto a new  
13 section, designated section two, relating to  
14 authorizing the state police to promulgate a  
15 legislative rule relating to administration.

16 *Be it enacted by the Legislature of West Virginia:*

17 That article six, chapter sixty-four of the code of  
18 West Virginia, one thousand nine hundred thirty-one, as  
19 amended, be amended by adding thereto a new section,  
20 designated section two, to read as follows:

21 **ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF MILITARY**  
22 **AFFAIRS AND PUBLIC SAFETY TO PROMULGATE LEGISLATIVE,**  
23 **RULES.**

4197

1 §64-9-20. Treasurer.

2 The legislative rule filed in the state register on  
3 the third day of July, one thousand nine hundred  
4 ninety-seven, under the authority of section two, article  
5 one, chapter twelve, of this code, modified by the  
6 treasurer to meet the objections of the legislative  
7 rule-making review committee and refiled in the state  
8 register on the twenty-fifth day of September, one thousand  
9 nine hundred ninety-seven, relating to the treasurer  
10 (selection of state depositories for disbursement accounts  
11 through competitive bidding, 112 CSR 6), is authorized.

12

13 NOTE: The purpose of this bill is to authorize the  
14 Treasurer to promulgate a legislative rule relating to the  
15 Selection of State Depositories for Disbursement Accounts  
16 Through Competitive Bidding.

17

18 This section is new; therefore, strike-throughs and  
19 underscoring have been omitted.

112-6

**Senate Bill No. 356**

1 (By Senator(s) Ross, Anderson, Bowman,  
2 Macnaughtan, Boley and Buckalew)

3 [Introduced January 30, 1998; referred to the  
4 Committee on Finance; and then to the Committee  
5 on the Judiciary.]  
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10 A BILL to amend article nine, chapter sixty-four of the  
11 code of West Virginia, one thousand nine hundred  
12 thirty-one, as amended, by adding thereto a new  
13 section, designated section twenty, relating to  
14 authorizing the treasurer to promulgate a legislative  
15 rule relating to the selection of state depositories  
16 for disbursement accounts through competitive bidding.

17 *Be it enacted by the Legislature of West Virginia:*

18 That article nine, chapter sixty-four of the code of  
19 West Virginia, one thousand nine hundred thirty-one, as  
20 amended, be amended by adding thereto a new section,  
21 designated section twenty, to read as follows:

22 **ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND**  
23 **BOARDS TO PROMULGATE LEGISLATIVE RULES.**

1 §64-9-20. Treasurer.

2 The legislative rule filed in the state register on  
3 the third day of July, one thousand nine hundred  
4 ninety-seven, under the authority of section two, article  
5 one, chapter twelve, of this code, modified by the  
6 treasurer to meet the objections of the legislative  
7 rule-making review committee and refiled in the state  
8 register on the twenty-fifth day of September, one thousand  
9 nine hundred ninety-seven, relating to the treasurer  
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