

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #2

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2008 JUL 30 PM 3: 14

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia State Treasurer's Office TITLE NUMBER: 112

RULE TYPE: Legislative CITE AUTHORITY: §12-1-2

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 7

TITLE OF RULE BEING AMENDED: Selection of State Depositories for Receipt Accounts

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON August 28, 2008 AT 10:00 a.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Diana Stout, General Counsel
WV State Treasurer's Office
Bldg. 1, Room E-122
1900 Kanawha Blvd., E.
Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

FILED

TITLE 112
LEGISLATIVE RULE
STATE TREASURER'S OFFICE

2008 JUL 30 PM 3: 14

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 7

SELECTION OF STATE DEPOSITORIES FOR RECEIPT ACCOUNTS

§112-7-1. General.

1.1. Scope. -- This legislative rule establishes the West Virginia State Treasurer's requirements for the selection of depositories for receipt accounts.

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

1.3. Filing Date. -

1.4. Effective Date. -

1.5. Repeal of former rule. - This legislative rule repeals and replaces WV 112CSR7 "Selection of State Depositories for Receipt Accounts" filed May 6, 1998 and effective May 7, 1998.

§112-7-2. Definitions.

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

2.1. "Account Analysis" means a system of compensation by which the Treasurer and an eligible depository enter into a contract that provides for monthly invoices to the Treasurer with detailed account activities billed at the contracted rate, less any earnings, allowances or credits.

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

2.3. "Collaterally Secured Bond" means a continuous bond payable to the State of West Virginia, conditioned upon the prompt payment, whenever lawfully required, of any state funds, or any part thereof. The form of the collaterally secured bond

must be approved by the West Virginia Banking Commissioner and the Attorney General pursuant to W.Va. Code §31A-4-31. Subject to the approval of the Treasurer, the amount of the bond may be increased or decreased or the bond may be replaced by a new bond. Collateral for the bond shall consist of bonds of the United States, bonds or letters of credit of the federal land banks, of the federal home loan banks, or bonds of the State of West Virginia or any county, district or municipality of the State, or other bonds, letters of credit or securities approved by the Treasurer.

2.4. "Compensating Balance" means the cash balance which the Treasurer will maintain with a depository to compensate the depository for its services.

2.5. "Deposit Guaranty Bond" means a bond underwritten by an insurance company authorized to do business in this State providing coverage for deposits of state funds that are in excess of the amounts insured by an agency of the federal government.

2.6. "Depository," "Eligible Depository," "Eligible State Depository" or "State Depository" means a state or national bank or a state or federal savings and loan association that meets the criteria of this rule for becoming a depository for the deposit of state funds.

2.7. "Receipt Accounts" means those accounts in which state funds are deposited.

2.8. "State Funds" means any moneys belonging to or received by the State of West Virginia or any of its agencies, boards and commissions or any moneys for which the State of West Virginia is responsible.

2.9. "Treasurer" means the West Virginia State Treasurer.

2.10. "Valid Bankers' Surety Company" means a bankers' surety company that meets the criteria established by this rule and which the Treasurer has approved as acceptable for insuring an eligible depository through the issuance of a deposit guaranty bond.

§112-7-3. Qualification of Depositories for Receipt Accounts.

3.1. In order to qualify as an eligible depository for deposits of state funds, a depository shall:

3.1.a. Be a state or national bank or a state or federal savings and loan association registered, operating and doing business in the State of West Virginia;

3.1.b. For deposits of state funds less than one hundred thousand dollars (\$100,000.00), be insured by an agency of the federal government;

3.1.c. For deposits of state funds over one hundred thousand dollars (\$100,000.00) be insured by either:

3.1.c.i. An agency of the federal government, or

3.1.c.ii. A deposit guaranty bond issued by a valid bankers' surety company acceptable to the Treasurer;

3.1.d. Not have on deposit state funds in excess of ninety percent (90%) of the value of collateral pledged on the collaterally secured bond given by the depository, the value of which shall be determined by the Treasurer; and

3.1. e. Meet all other requirements and provisions of the W.Va. Code.

3.2. No depository in this State may serve or be eligible for designation as a state depository if any employee of the Treasurer's office, or a spouse or minor child of that employee, is an officer, director or employee of the depository or owns greater than two percent (2%) of the depository either in his or her own name or beneficially or an interest in the depository.

3.3. An eligible State depository for receipt accounts shall submit proposed fee schedules for types of services rendered by the state depository for receipt accounts, including, but not limited to services such as wire transfers, checks cashed, returned checks and cash handling. The proposed fee schedules are subject to review and approval by the Treasurer. If the fee schedules are approved by the Treasurer, then the Treasurer shall enter into a contract with the eligible state depository for receipt accounts to furnish the required

services. If the fee schedules are not approved by the Treasurer, then the Treasurer may negotiate satisfactory revised fee schedules with that state depository for receipt accounts or select another eligible state depository for receipt accounts.

§112-7-4. Valid Banker's Surety Companies Issuing Deposit Guaranty Bonds.

4.1. The Treasurer may approve a bankers' surety company as acceptable after receipt and review of a request for approval, receipt of evidence that the surety company has met all of the requirements of this rule, a review of information obtained through an independent investigation of the surety company by the office of the Treasurer, and consideration of such other information as the Treasurer, in his or her discretion, considers appropriate.

4.2. Before a state depository may be insured through a deposit guaranty bond, the depository must first determine that the surety company issuing the bond is a valid bankers' surety company approved as acceptable by the Treasurer. Any depository insured through a deposit guaranty bond issued by a bankers' surety company that is not approved by the Treasurer shall not receive or hold for deposit any state funds.

4.3. Any bankers' surety company that wishes to provide a deposit guaranty bond to an eligible State depository to insure state funds shall first submit to the Treasurer a written request for approval as a valid bankers' surety company. A surety company shall not issue a deposit guaranty bond to insure State funds on deposit with any eligible State depository without receiving prior written approval from the Treasurer.

4.4. In order to qualify as a valid bankers' surety company, the surety company shall provide to the Treasurer:

4.4.a. Evidence that it is registered to do business in the State of West Virginia and is in good standing with the West Virginia Insurance Commissioner and the West Virginia Banking Commissioner;

4.4.b. Evidence that it has at least one current superior rating by a nationally recognized statistical rating service, such as A.M. Best or Moody's;

4.4.c. A statement that it agrees to abide by all applicable laws, rules and requirements of the United States of America and the State of West Virginia, including, but not limited to, those of the West Virginia Insurance Commissioner, the West Virginia Banking Commissioner and the West Virginia State Treasurer; and

4.4.d. Its most recent annual report.

4.5. Upon request of the Treasurer, the surety company shall further submit any clarifying or additional information as may be required for investigation and consideration of the company.

4.6. In considering approval of a bankers' surety company, the Treasurer shall consider all other relevant factors and available information acquired through due diligence that affects a company's viability and capacity to provide valid deposit guaranty bonds to eligible depositories in this state.

4.7. All valid bankers' surety companies shall submit quarterly and annual reports and filings required by the Treasurer, including, but not limited to, statements of financial condition and verification a rating has not changed. Information required from the surety companies may be filed electronically or in such other manner as determined by the Treasurer.

4.8. All valid bankers' surety companies are subject to review by the Treasurer's office on a quarterly basis or more frequently if the Treasurer believes it is warranted. If, after any review, the Treasurer determines that a bankers' surety company no longer meets the Treasurer's requirements, the Treasurer shall rescind the approval of the surety company, immediately notify the surety company and the affected state depository of the rescission of the approval, and take such other actions as the Treasurer determines necessary in order to protect state funds.

4.9. Any valid bankers' surety company that has issued a deposit guaranty bond insuring state funds shall provide the Treasurer at least thirty (30) days' advance written notice of intent to amend, cancel or not renew the bond. Any state

depository that has notice the surety company may or will amend, cancel or not renew its deposit guaranty bond shall immediately, and in no event in not less than thirty (30) days, notify the Treasurer and forward a copy of any notice received to the Treasurer.

4.10. If a state depository insured through a deposit guaranty bond issued by a valid bankers' surety company becomes insolvent or in any way breaches its contract with the Treasurer and fails to cure such insolvency or breach within five (5) calendar days, the bankers' surety company shall within thirty (30) days of written notice from the Treasurer remit to the State of West Virginia the amount of funds determined by the Treasurer as required to make the state treasury whole.

4.11. The Treasurer may require a state depository to post a collaterally secured bond and pledge securities in lieu of a deposit guaranty bond if the Treasurer believes it necessary to protect State funds.

§112-7-5. Continuous Depository Bonds.

5.1. The Treasurer may deposit money with an eligible depository in excess of the amount insured by an agency of the federal government or through a deposit guaranty bond issued by a valid banker's surety company if the depository provides a collaterally secured bond in the amount of not less than Ten Thousand Dollars (\$10,000).

5.2. The amount of state funds on deposit in any depository in excess of either the amount insured by an agency of the federal government or the amount insured by a deposit guaranty bond issued by a valid bankers surety company shall not exceed ninety percent (90%) of the value of collateral pledged on the collaterally secured bond given by the depository.

5.3. The value of the collateral used by an eligible depository shall be determined by the Treasurer.

§112-7-6. Certificates of Deposit.

6.1. A state depository is not required to provide a bond or security in lieu of bond if the deposits accepted are placed in certificates of deposit meeting the following requirements:

6.1.a. The funds are invested through a designated State depository selected by the Treasurer;

6.1.b. The selected depository arranges for the deposit of the funds in certificates of deposit in one or more banks or savings and loan associations wherever located in the United States, for the account of the state;

6.1.c. The full amount of principal and accrued interest of each certificate of deposit is insured by the Federal Deposit Insurance Corporation;

6.1.d. The selected depository acts as custodian for the State's account; and

6.1.e. At the same time that the State's funds are deposited and the certificates of deposit are issued, the selected depository receives an amount of deposits from customers of other financial institutions wherever located in the United States equal to or greater than the amount of the funds invested by the State through the selected depository.

§112-7-7. Selection Procedures.

7.1. Each agency, board and commission collecting moneys for deposit in the state treasury shall notify the Treasurer of its anticipated collections and deposits, including the extent of the activity in its accounts, size of its accounts, frequency of deposits, special services that may be needed, and other information requested by the Treasurer. The agency may submit its preferred choice or a list of preferred choices of State depositories for receipt accounts. If the agency submits a preferred choice or list, it shall also submit a statement of the reasons for its preference. However, the Treasurer is not required to select a state depository preferred by an agency, board or commission.

7.2. The Treasurer shall review the information submitted and consider:

7.2.a. The activity of the various accounts;

7.2.b. The reasonable value of the banking services to be rendered;

7.2.c. The value and importance of the deposits to the economy of the communities and the various areas of the State affected; and

7.2.d. The proposed fee schedule of the recommended depository, as required by Subsection 8.1 of this rule.

§112-7-8. Compensation.

8.1. Method of Compensation - An eligible state depository for receipt accounts shall enter into an agreement for services with the Treasurer, which agreement shall provide that the eligible depository will be compensated for its services by any one of the following methods:

8.1.a. Compensating Balance: The compensating balance shall be negotiated by the Treasurer and the eligible depository and shall be based, in part, on the anticipated activity expected at the depository. The compensating balance left in the Treasurer's accounts shall offset fees. The compensating balance agreement is subject to periodic review by the Treasurer and re-negotiation or adjustment, as the Treasurer determines; or

8.1.b. Account Analysis: The eligible depository shall submit to the Treasurer a monthly. The invoice shall reflect the total amount of actual activity for the period billed at the rates established in its agreement with the Treasurer, less any earnings, allowances or credits to which the Treasurer may be entitled, and any other information required by the Treasurer, which may include, without limitation, current monthly average balances, service descriptions, earnings allowance rates, and a summary of balances and charges. The Treasurer shall pay such invoices with a state check or through an electronic funds transaction.

8.2. Compensation for Ancillary Services - The Treasurer may, from time to time, require a depository to furnish certain ancillary services in the course of providing the receipt account services for which it was selected. The Treasurer shall

compensate the depository by one of the methods in subsection 8.1 of this Rule.

Fiscal Note

112 CSR 7

West Virginia State Treasurer's Office
July 30, 2008

Fiscal Note Summary

Legislative Rule 112 CSR 7 provides for the selection of state depositories for receipt accounts. The Rule provides definitions, lists the requirements to qualify, describes how each security option may be utilized, offers selection procedures and then clarifies the methods of compensation.

Financial institutions desiring to have state funds deposited are required to secure those deposits, a good public practice. Prior to enactment of House Bill 4692, depositories had two options to secure the deposit of state funds, either by keeping deposits under \$100,000, the ceiling amount the Federal Deposit Insurance Corporation insures, or to post collaterally secured bonds when deposits exceed \$100,000. House Bill 4692 added two other methods of securing deposits in excess of \$100,000, through the use of multiple certificates of deposit for one deposit and use of a deposit guaranty bond issued by a valid bankers surety company.

The Rule has been amended to include all legislatively authorized methods of securing public deposits. The State Treasurer's Office anticipates an initial, but small, increase in work when the bankers' surety companies are initially reviewed and approved. The reason for there to be no real cost is because we anticipate only one to three surety companies will seek review and approval.

Effect of Proposal	Fiscal Year		
	2009 Increase/Decrease	2010 Increase/Decrease	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expense	0	0	0
Repairs & Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

**BRIEF SUMMARY
AND
STATEMENT OF CIRCUMSTANCES**

House Bill 4692, enacted March 7, 2008, amended West Virginia Code §12-1-4 and §12-1-5. The amendments affect how depositories may secure deposits of state funds.

Prior to the enactment of House Bill 4692, depositories had two options to secure deposits of state funds, either by having deposits in the amount of less than \$100,000 at any time, which is the amount covered by the Federal Deposit Insurance Corporation, or by posting a collaterally secured bond and pledging collateral.

House Bill 4692 provides alternatives to the requirement that collaterally secured bonds be posted when deposits exceed \$100,000. These amendments authorize use of multiple certificates of deposit for one deposit and use of a deposit guaranty bond issued by a valid bankers' surety company.

West Virginia Code §12-1-2(c) requires the State Treasurer to propose legislative rules for selecting depositories. Proposed legislative rule 112CSR7 contains major revisions from the 1998 rule because of the additional methods of securing deposits authorized in House Bill 4692. The large amounts of revisions necessitated major amounts of strike-throughs and underscores. Due to this, we have chosen to repeal the former Rule and replace it with the attached Rule.

The proposed rule defines numerous terms, lists the requirements to qualify as a state depository for receipt accounts, describes how each security option may be utilized and then offers selection procedures. In addition, the methods of compensation have been clarified.