

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

Form #3

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2008 AUG 29 PM 1:10

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

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

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: _____

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

**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. I, 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

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 28, 2008

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* Diana Stout, General Counsel, WV State Treasurer's
Office, Bldg. 1, Room E-122, 1900 Kanawha Blvd., E.
Charleston, WV 25305 (304) 558-5000

LEGISLATIVE RULE TITLE: Selection of State Depositories for Receipt Accounts

1. Authorizing statute(s) citation §12-1-2

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
July 30, 2008

b. What other notice, including advertising, did you give of the hearing?
Copy of proposed rule send to members of the banking community, legal community, WV Bankers Association and Community Banker's Association.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 30, 2008 to August 28, 2008

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

Attached Comments Rec'd No comments received One (1)

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

August 29, 2008

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Diana Stout, General Counsel, WV State Treasurer's Office, Bldg. 1, Room E-112,
1900 Kanawha Blvd., E., Charleston, WV 25305 Ph: (304) 341-5000 Fax: (304)
341-7094 Email: diana.stout@wvsto.com

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

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:

- 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 or comment period:

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

**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.

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

FILED

TITLE 112 2008 AUG 29 PM 1:10
LEGISLATIVE RULE
STATE TREASURER'S OFFICE

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. This rule does not apply to proceeds from the sale of general obligation bonds or bonds issued by the School Building Authority, the Parkways, Economic Development and Tourism Authority, the Housing Development Fund, the Economic Development Authority, the Infrastructure and Jobs Development Council, the Water Development Authority or the Hospital Finance Authority. In addition, this rule does not apply to agencies with authority to deposit moneys in financial institutions without approval of the State Treasurer.

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 Sstate government, and any officer or employee thereof, who or which collects moneys due the Sstate.

2.3. "Collaterally Secured Bond" means a continuous bond payable to the Sstate 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 Sstate 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 Sstate 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 Sstate of West Virginia or any of its agencies, boards and commissions or any moneys for which the Sstate 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 sstate 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 sstate 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 sstate funds on deposit with any eligible sstate 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~~ affect 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) calendar 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) calendar 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 business days, the bankers' surety company shall within ~~thirty (30)~~ three (3) business 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 Collaterally Secured 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 Sstate 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 Sstate's account; and

6.1.e. At the same time that the Sstate'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 Sstate 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 Sstate 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 Sstate 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 invoice. 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.

SUMMARY OF COMMENTS AND AMENDMENTS

In addition to filing the proposed rule with the Secretary of State and the Legislative Rulemaking Review Committee, we sent copies to various entities, including the West Virginia Bankers Association and the Community Bankers of West Virginia, requesting comments.

The only external comments we received were from the law firm of Bowles Rice McDavid Graff & Love LLP on behalf of the West Virginia Bankers Association and the Community Bankers of West Virginia. Attached are a copy of that letter and a copy of our letter in response. During our internal review we noted that capitalization was inconsistent, and found a few other problems.

Amendments to the rule include:

1. Clean-up in capitalization for consistency, and in Section 112-7-4.6 we corrected the grammar by changing "affects" to "affect".
2. Section 112-7-1.1 – We have added language to clarify that the rule does not apply to certain issuers of bonds, nor to agencies with authority to make use of financial institutions without approval of the Treasurer.
3. Sections 112-7-4.9 and 4.10 – Issues were raised concerning the calculation of time for each of the matters in these subsections. We have clarified in 4.9 that the time involved is calendar days. In 4.10, we expanded the time frame for notice for insolvency or breach from five calendar days to five business days due to the nature of some holidays. For the time frame in which the bankers' surety company is to remit payment the time frame has been reduced from thirty days to three business days, to generally conform to the time frames specified in various surety bonds.
4. Section 112-7-5 – We have changed the title of the section from Continuous Depository Bonds to Collaterally Secured Bonds to conform to the definition.
5. Section 112-7-7 – We have deleted the words "board and commission" in two areas since these terms are already included in the definition of "agency" in Section 112-7-2.2.
6. Section 112-7-8 – We have inserted the word "invoice" at the end of the first sentence as it was inadvertently omitted.



State of West Virginia

OFFICE OF THE STATE TREASURER
CHARLESTON, WV 25305

JOHN D. PERDUE
STATE TREASURER

PAUL W. HILL
ASSISTANT STATE TREASURER

August 29, 2008

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Sandra M. Murphy, Esq.
Bowles Rice
PO Box 1386
Charleston, WV 25325-1386

Re: Proposed Legislative Rule – 112 CSR 7
Selection of State Depositories for Receipt Accounts

Dear Ms. Murphy:

Thank you for providing comments on proposed Legislative Rule 112 CSR 7, entitled "Selection of State Depositories for Receipt Accounts," on behalf of the West Virginia Bankers Association and the Community Bankers of West Virginia yesterday. We appreciate their input.

We have reviewed your comments and offer the following responses:

1. Section 112-7-3.2.
We appreciate your concerns. However, the language used in Section 112-7-3-3.2 is verbatim from West Virginia Code §12-1-8.
2. Section 112-7-7.
When we drafted the Rule, we used language in Section 112-7-7.1 that contemplated only agencies collecting moneys that were to be deposited into the treasury. We believe the language used excluded the entities you list. However, since you are concerned, we have added language to Section 112-7-1.1 since we believe that is the more appropriate location.
3. Section 112-7-8.
You are absolutely correct. We omitted the word "invoice" at the end of the sentence, and have made the correction.

Again, thank you for the comments. If you have any further comments or have any questions, do not hesitate to contact me.

Sincerely,

Diana Stout
General Counsel

DS:wlh

cc: State Treasurer John Perdue

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August 28, 2008

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Building No. 1, Room E-122
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

WEST VIRGINIA TREASURY
2008 AUG 28 P 10:51
9:57 AM
WJH

Re: Proposed Legislative Rule – Selection of State Depositories for Receipt Accounts

Dear Ms. Stout:

On behalf of the West Virginia Bankers Association and the Community Bankers of West Virginia, we are writing to comment on the proposed Legislative Rule entitled "Selection of State Depositories for Receipt Accounts." Our comments are as follows:

1. Section 112-7-3.2- Qualifications of Depositories for Receipt of Accounts. This Section provides that a bank is not 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 2% of the depository, either in his or her name or beneficially or an interest in the depository".

The Associations respectfully request that this section be either deleted in its entirety, or substantially rewritten. We are particularly concerned about the provision relating to officers, directors and employees of financial institutions. As currently drafted, the regulations would effectively preclude a financial institution from serving as a state depository if one of its employees, officers or directors has a spouse or parent that is employed by the Treasurer's office. First, this requirement will be very difficult to track and monitor. Second, it is not clear whether the bank employee or officer may own any stock in the financial institution or whether the employee is prohibited from owning more than 2% of bank stock. Deletion of, or changes to this section are particularly important because many financial institution provide 401(k) plans or employee stock ownership plans that permit employees to purchase company shares.

Diana Stout, Esq.
August 28, 2008
Page 2

The regulation also applies to employees who are bank "officers". We believe this term is overly broad and should be deleted or changed to "executive officers".

2. Section 12-7-7 - Selection Procedures. The Associations respectfully request that this section be qualified by the statutory language found in West Virginia Code §12-1-2.

First, Section 12-1-2 provides that "boards, commissions and spending units, with authority pursuant to this code to deposit monies in the financial institution without approval of the State Treasurer, shall retain that authority and are not required to have the Treasurer designate a financial institution as a depository."

Second, Section 12-1-2 provides that "the provisions of this section shall not apply to the proceeds from the sale of general obligation bonds or bonds issued by the school building authority, parkways, economic development and tourism authority, housing development fund, economic development authority, infrastructure and jobs development council, water development authority or the hospital finance authority." This section should include these statutory exemptions.

3. Section 112-7-8 Compensation.

Sub-Section 8.1.b. Account Analysis. There appears to be language dropped in the first sentence which reads "the eligible depository shall submit to the Treasurer a monthly."

Thank you for the opportunity to comment on this proposed Legislative Rule. The Associations may have further comments during the consideration of the proposed rule by the Legislative Rulemaking Review Committee and during the 2009 Legislative Session. We respectfully request an opportunity to discuss with you and Treasurer Perdue these comments and other concerns that the Associations have regarding the proposed Rule.

Very truly yours,



Sandra M. Murphy

SMM/jam

cc: Joe Ellison
Donna Tanner



State of West Virginia

OFFICE OF THE STATE TREASURER
CHARLESTON, WV 25305

JOHN D. PERDUE
STATE TREASURER

PAUL W. HILL
ASSISTANT STATE TREASURER

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August 29, 2008

The Honorable Senator Joseph Minard, Chair
Legislative Rule-Making Review Committee
West Virginia Senate
Room 204W, Building 1
State Capitol Complex
Charleston, WV 25305

The Honorable Bonnie Brown, Chair
Legislative Rule-Making Review Committee
West Virginia House of Delegates
Room 207E, Building 1
State Capitol Complex
Charleston, WV 25305

Re: Legislative Rule 112 CSR 7
Selection of State Depositories for Receipt Accounts

Dear Chairman Minard and Chairman Brown:

Permission is requested to repeal the above-stated rule and to replace it with a new rule. Several amendments have been made to West Virginia Code §12-1-1 et seq. over the last few years, particularly enactment this year of House Bill 4692, which changes the methods available to financial institutions to secure the deposit of state funds.

Amendments to Chapter 12 and changes in the banking industry necessitate dramatic revisions to Legislative Rule 112 CSR 7. Enclosed is a blacklined version of the proposed Legislative Rule, indicating the dramatic rewrite of the current rule. With the exception of two definitions, every other provision of the Rule has been changed.

Your favorable decision in this matter will be appreciated. If you have any questions, do not hesitate to contact me or my General Counsel Diana Stout. Thank you for your time and your consideration in this matter.

Sincerely,

John D. Perdue
State Treasurer

JDP:wlh

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TITLE 112
LEGISLATIVE RULE
STATE TREASURER'S OFFICE

SERIES 7
SELECTION OF STATE DEPOSITORIES
FOR RECEIPT ACCOUNTS

§112-7-1. General.

1.1. Scope. -- This legislative rule implements the provisions of W. Va. Code §12-1-2, which requires the Treasurer to select establishes the West Virginia State Treasurer's requirements for the selection of depositories for receipt accounts. This rule does not apply to proceeds from the sale of general obligation bonds or bonds issued by the School Building Authority, the Parkways, Economic Development and Tourism Authority, the Housing Development Fund, the Economic Development Authority, the Infrastructure and Jobs Development Council, the Water Development Authority or the Hospital Finance Authority. In addition, this rule does not apply to agencies with authority to deposit moneys in financial institutions without approval of the State Treasurer.

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 selection of receipt depositories shall enable the state to obtain the most efficient service at the lowest possible cost. 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.

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2.24. "Compensating Balance" means the cash balance which the state 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.

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2.37. "Receipt Accounts" means those accounts in which are deposited moneys belonging to or due the State of West Virginia or any agency of the state; and 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,

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boards and commissions or any moneys for which the state of West Virginia is responsible.

2.49. "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. Selection of Depositories for Receipt Accounts.~~

~~3.1. The Treasurer recognizes that not only the services but the location of state depositories for receipt accounts are of major concern to the agencies whose collections are to be deposited. Accordingly, the Treasurer in cooperation with the affected agencies shall ensure that state depositories for receipts accounts within the state are conveniently located for the agencies and are able to serve their needs.~~

~~3.2. State depository for receipt accounts shall submit proposed fee schedules for types of services rendered by 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 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 state depository for receipt accounts.~~

§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;

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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 affect 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) calendar 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) calendar 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) business days, the bankers' surety company shall within three (3) business 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. Collaterally Secured 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 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

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the United States equal to or greater than the amount of the funds invested by the state through the selected depository.

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§112-7-47. Selection Procedures.

7.1 Each collecting agency 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 also 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 a list of preferred choices for 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 for receipt accounts or other depositories within the state preferred by the agency.

7.2 The Treasurer shall review the information submitted by the agency and shall consider:

~~4.1~~ 7.2.a. The activity of the various accounts;

~~4.2~~ 7.2.b. The reasonable value of the banking services to be rendered;

~~4.3~~ 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

~~4.4~~ 7.2.d. The recommended state depository for receipt accounts proposed fee schedule of the recommended depository, as required by Subsection 5-18.1 of this rule.

§112-7-58. Compensation.

~~58.1. Method of Compensation - A state~~An eligible depository for receipt accounts shall enter into an agreement for services with the Treasury, which agreement shall provide that the eligible depository will be compensated for its services by any one of the following three methods:

~~5.1.1. A compensating balance computed by the Treasurer on a monthly basis using the average collected balance. The Treasurer shall calculate the monthly total fee for the services~~

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~~rendered by a state depository for receipts accounts and it shall be converted to a compensating balance by using the average 90-day U.S. Treasury bill rate (bond equivalent yield).~~

~~This example illustrates the computation and application of the compensating balance:~~

~~5.1.1.a. Assume the average 90-day U.S. Treasury bill rate for the affected month is .10;~~

~~5.1.1.b. The multiplier for annualization is twelve (12); and the fee for the services, if rendered on a fee basis, would equal \$560.0 for the affected month. Accordingly, the compensating balance to be maintained for the next month is \$67,200 derived as follows:~~

$$\frac{(\underline{\$560}) \times 12}{0.10} = \$67,200$$

~~5.1.1.c. 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.~~

~~5.1.2. A compensating balance derived by accumulated receipts in the receipts accounts and periodically transferring the balance to a central receipt depository designated by the Treasurer. This method of compensation shall be used for depositories whose receipts are not of sufficient volume to justify use of the method in subdivision (1) of this section.~~

~~5.1.2.a. The Treasurer may approve and then shall enter a contract with a state depository for receipt accounts to furnish the required services.~~

~~5.1.3. The Treasurer may authorize a state depository for receipt accounts to invoice the Treasurer. In that case, the Treasurer shall pay the invoice with a State warrant.~~

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 invoice. 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.

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§8.2. Compensation for Ancillary Services - The Treasurer may, from time to time, require the depository to furnish certain ancillary services in the course of providing the basic service receipt account services for which it was selected. For example, the Treasurer may specify that a state depository for receipts accounts shall furnish analytical reports. The Treasurer may also specify that a state depository for receipts accounts shall be compensated for the costs to furnish services on a flow-through basis. Thus, the Treasurer shall compensate the state depositories for receipt accounts by one of the three methods in Subsection §8.1 of this Rule.