WEST VIRGINIA SECRETARY OF STATE

NATALIE E. TENNANT

ADMINISTRATIVE LAW DIVISION

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WEST VIRGINIA SECRETARY OF STATE

FORM 1 -- NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE (Page 1)

AGENCY **Treasurer**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **112-07**
RULE NAME **Selection of State Depositories for Receipt Accounts**

CITE AUTHORITY **§12-1-2**

COMMENTS LIMITED TO
Written

DATE OF PUBLIC HEARING

LOCATION OF PUBLIC HEARING

DATE WRITTEN COMMENT PERIOD ENDS
Friday, August 26, 2016 9:00 AM

WRITTEN COMMENTS MAY BE MAILED TO
Diana Stout, General Counsel
WV State Treasurer's Office
1900 Kanawha Blvd., E.
Bldg. 1, Room E-145
Charleston, WV 25305

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
Diana Stout -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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FORM 1 -- NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE (Page 2)

AGENCY **Treasurer**

RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **112-07**

RULE NAME **Selection of State Depositories for Receipt Accounts**

CITE AUTHORITY **§12-1-2**

PROVIDE A BRIEF SUMMARY OF YOUR PROPOSAL

Rule revisions add a sunset provision, clarify the definition of account analysis, amend the amount required for collateral to conform to changes in the Code, and make technical clean ups.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

Diana Stout -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

Title-Series: 112-07 Rule Id: 10242 Document: 27783

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WEST VIRGINIA SECRETARY OF STATE

FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 1)

AGENCY **Treasurer**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **112-07**
RULE NAME **Selection of State Depositories for Receipt Accounts**

CITE AUTHORITY §12-1-2

PRIMARY CONTACT
Diana Stout
1900 Kanawha Blvd., E.
Bldg. 1, Room E-145
Charleston, STATE ZIP

SECONDARY CONTACT
Wilma Harrison
1900 Kanawha Blvd., E.
Bldg. 1, Room E-145
Charleston, STATE SECONDARY ZIP SECONDARY

Diana Stout -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 1)

AGENCY **Treasurer**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **112-07**
RULE NAME **Selection of State Depositories for Receipt Accounts**

CITE AUTHORITY §12-1-2

SUMMARIZE IN A CLEAR AND CONCISE MANNER WHAT IMPACT THIS MEASURE WILL HAVE ON COSTS AND REVENUES OF STATE GOVERNMENT.

Revisions to the current rule will have no impact on the costs and revenues of state government.

Diana Stout -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 2)

AGENCY **Treasurer**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **112-07**
RULE NAME **Selection of State Depositories for Receipt Accounts**

CITE AUTHORITY §12-1-2

FISCAL NOTE DETAIL -- SHOW OVER-ALL EFFECT IN ITEM 1 AND 2 AND, IN ITEM 3, GIVE AN EXPLANATION OF BREAKDOWN BY FISCAL YEAR, INCLUDING LONG-RANGE EFFECT.

Effect Of Proposal	Current Increase/Decrease (use ' - ')	Next Increase/Decrease (use ' - ')	Fiscal Year (Upon Full Implementation)
ESTIMATED TOTAL COST	0	0	0
PERSONAL SERVICES	0	0	0
CURRENT EXPENSES	0	0	0
REPAIRS AND ALTERATIONS	0	0	0
ASSETS	0	0	0
OTHER	0	0	0
ESTIMATED TOTAL REVENUES	0	0	0

Diana Stout -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 3)

AGENCY **Treasurer**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **112-07**
RULE NAME **Selection of State Depositories for Receipt Accounts**

CITE AUTHORITY **§12-1-2**

3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT). PLEASE INCLUDE ANY INCREASE OR DECREASE IN FEES IN YOUR ESTIMATED TOTAL REVENUES.

The Treasurer's Office does not believe there will be any costs or revenues associated with the revisions to this rule as it conforms the rule to current Code.

Diana Stout -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 4)

AGENCY **Treasurer**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **112-07**
RULE NAME **Selection of State Depositories for Receipt Accounts**

CITE AUTHORITY §12-1-2

PLEASE IDENTIFY ANY AREAS OF VAGUENESS, TECHNICAL DEFECTS, REASONS THE PROPOSED RULE WOULD NOT HAVE A FISCAL IMPACT, AND OR ANY SPECIAL ISSUES NOT CAPTURED ELSEWHERE ON THIS FORM.

None.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Diana Stout -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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FORM 12 -- BRIEF SUMMARY AND STATEMENT OF CIRCUMSTANCES (Page 1)

AGENCY **Treasurer**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **112-07**
RULE NAME **Selection of State Depositories for Receipt Accounts**

CITE AUTHORITY **§12-1-2**

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

Rule revisions add a sunset provision, clarify the definition of account analysis, amend the amount required for collateral to conform to changes in the Code, and make technical clean ups. W. Va. Code §12-1-2 requires the Treasurer to propose rules for legislative approval governing the procedure for deposits. When reviewing the current rule, the Treasurer determined the minor revisions were needed in addition to amending the amount of collateral required to conform to Code.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
Diana Stout -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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 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.

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

1.3. Filing Date. -- ~~May 6, 2014.~~

1.4. Effective Date. -- ~~July 1, 2014.~~

1.5. Sunset Provision. -- This rule remains in effect for five years after the effective date.

' 112-7-2. Definitions.

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

2.1. AAccount Analysis@ means a system of determining compensation by which the Treasurer and 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. AAgency@ means and includes any department, board, commission, division, branch office or other separate unit of state government, and any officer or employee who or which collect moneys due the state.

2.3. ACollaterally Secured Bond@ means a continuous bond payable to the state of West Virginia, conditioned upon the prompt payment, whenever lawfully required, of any moneys of an agency. In accordance with W. Va. Code '31A-4-31, the West Virginia Commissioner of Financial Institutions and the Attorney General must approve the form of the collaterally secured bond. The Treasurer may require increases or decreases in the amount of the bond or replacement 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. ACompensating Balance@ means the cash balance which the Treasurer maintains with a depository to compensate the depository for its services.

2.5. ADeposit 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. ADepository@ or AState Depository@ means a financial institution insured by an agency of the federal government which has posted any required collaterally secured bond and which is approved by the Treasurer.

2.7. AFinancial institution@ means a state or national bank or a state or federal savings and loan association.

2.8. AReceipt Accounts@ means those accounts in which state funds are deposited.

2.9. AState Funds@ means any moneys belonging to or received by the state of West Virginia or any of its agencies or any moneys for which the state of West Virginia is responsible.

2.10. ATreasurer@ means the West Virginia State Treasurer <u>or his or her designee from the Treasurer's office.</u>

2.11. AValid 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 a 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 a depository, a depository shall:

3.1.a. Be a financial institution registered, operating and doing business in the State of West Virginia;

3.1.b. Be insured by an agency of the federal government;

3.1.c. For deposits of state funds in excess of any amount insured by an agency of the federal government, be insured by:

3.1.c.1. A deposit guaranty bond issued by a valid bankers= surety company acceptable to the Treasurer; and/or

3.1.c.2. A collaterally secured bond, first approved by the Treasurer, in an amount of not less than Ten Thousand Dollars ($10,000.00);

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.~~ <u>Provide collateral of at least one hundred two percent (102%) of the amount of state funds on deposit with that financial institution in excess of the</u>

amount insured by an agency of the federal government. The Treasurer shall determine the value of the collateral; and

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

3.2. A state depository for receipt accounts shall submit proposed fee schedules for the 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 may 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.

' 112-7-4. Valid Bankers= 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 Treasurer, and consideration of any other information the Treasurer considers appropriate.

4.2. Before a state depository may be insured through a deposit guaranty bond, the depository shall first determine that the surety company issuing the bond is a valid bankers= surety company approved 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 a 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 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 Commissioner of Financial Institutions;

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 Commissioner of Financial Institutions 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 the Treasurer may require 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 depositories in this state.

4.7. All approved 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 any other manner determined by the Treasurer.

4.8. All approved 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 any actions the Treasurer determines necessary in order to protect state funds.

4.9. Any approved bankers= surety company that 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 depository insured through a deposit guaranty bond issued by a approved bankers= surety company becomes insolvent or in any way breaches its contract with the Treasurer and fails to cure the 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.

4.12. A deposit guaranty bond issued by an approved bankers= surety company to insure state funds on deposit with a state depository may only secure those funds in the custody of the Treasurer.

' 112-7-5. Collaterally Secured Bonds.

5.1. The Treasurer may deposit money with a 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 may not exceed ninety percent (90%) of the value of collateral pledged on the collaterally secured bond given by the depository.~~ A depository shall provide collateral of at least one

hundred two percent (102%) of the amount of state funds on deposit with that financial institution in excess of 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.

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

5.4. If a state depository insured through a collaterally secured bond or through letters of credit becomes insolvent or in any way breaches its contract with the Treasurer and fails to cure the insolvency or breach within five (5) business days, the holder of the collateral or the obligor for the letters of credit for the depository shall, within three (3) business days, upon written demand, remit to the Treasurer the collateral securing state funds on deposit with the state depository.

' 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 financial institutions 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 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 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 any 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 to the Treasurer. 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.

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 - A depository for receipt accounts shall enter into an agreement for services with the Treasurer. The agreement shall provide that the depository may be compensated for its services by either of the following methods:

8.1.a. Compensating Balance: The compensating balance shall be negotiated by the Treasurer and the 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 necessary; or

8.1.b. Account Analysis: The 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. Additional information may include, without limitation, current monthly average balances, service descriptions, earnings allowance rates, and a summary of balances and charges. The Treasurer shall pay the 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.