



**WEST VIRGINIA
SECRETARY OF STATE**

NATALIE E. TENNANT

ADMINISTRATIVE LAW DIVISION

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8/26/2016 3:01:47 PM

OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

**FORM 3 -- NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY **Treasurer**

RULE TYPE **Legislative**

AMENDMENT TO EXISTING RULE Yes TITLE-SERIES 112-

RULE NAME Selection of State Depositories for Disbursement Accounts through Competitive Bidding⁰⁶

CITE AUTHORITY **§12-1-2**

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.

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: 112-06



Rule Id: 10243



Document: 28905



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FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 1)

AGENCY **Treasurer**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **112-**
RULE NAME **Selection of State Depositories for Disbursement Accounts through Competitive Bidding**06

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

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FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 1)

AGENCY Treasurer

RULE TYPE Legislative

AMENDMENT TO EXISTING RULE Yes **TITLE-SERIES** 112-

RULE NAME Selection of State Depositories for Disbursement Accounts through Competitive Bidding⁰⁶

CITE AUTHORITY §12-1-2

AUTHORIZING STATUTE(S) CITATION

§12-1-2

DATE FILED IN STATE REGISTER WITH NOTICE OF HEARING OR PUBLIC COMMENT PERIOD

Wednesday, July 27, 2016

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

The rule was posted on the State Treasurer's Office website: www.wvsto.gov/Legislative-Rules. Notices were sent to all State of West Virginia elected officials and Cabinet Secretaries offices with a request they be forwarded to interested parties within their agencies. Additionally, notices were sent to BB&T, Bowles Rice, City National Bank, United Bank, Wesbanco, West Virginia Association of Community Bankers and the West Virginia Bankers Association.

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED

Friday, August 26, 2016

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 10 -- LEGISLATIVE QUESTIONNAIRE (Page 2)

AGENCY **Treasurer**

RULE TYPE **Legislative**

AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **112-**

RULE NAME **Selection of State Depositories for Disbursement Accounts through Competitive Bidding⁰⁶**

CITE AUTHORITY **§12-1-2**

ATTACH LIST OF PERSONS WHO APPEARED AT HEARING, COMMENTS RECEIVED,
AMENDMENTS, REASONS FOR AMENDMENTS.

No comments received

DATE YOU FILED IN STATE REGISTER THE AGENCY APPROVED PROPOSED LEGISLATIVE RULE
FOLLOWING PUBLIC HEARING: (BE EXACT)

Friday, August 26, 2016

**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 10 -- LEGISLATIVE QUESTIONNAIRE (Page 3)

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CITE AUTHORITY **§12-1-2**

IF THE STATUTE UNDER WHICH YOU PROMULGATED THE SUBMITTED RULES REQUIRES CERTAIN FINDINGS AND DETERMINATIONS TO BE MADE AS A CONDITION PRECEDENT TO THE PROMULGATION. 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.

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 10 -- LEGISLATIVE QUESTIONNAIRE (Page 4)

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RULE NAME Selection of State Depositories for Disbursement Accounts through Competitive Bidding⁰⁶

CITE AUTHORITY **§12-1-2**

DATE OF HEARING OR COMMENT PERIOD

ON WHAT DATE DID YOU FILE IN THE STATE REGISTER THE FINDINGS AND DETERMINATIONS REQUIRED TOGETHER WITH THE REASONS THEREFOR?

ATTACH FINDINGS AND DETERMINATIONS AND REASONS

None

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

Yes
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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-**
RULE NAME **Selection of State Depositories for Disbursement Accounts through Competitive Bidding**06

CITE AUTHORITY **§12-1-2**

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RULE NAME **Selection of State Depositories for Disbursement Accounts through Competitive Bidding⁰⁶**

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 annual impact on the costs and revenues of state government. We estimate mailing all notices and purchasing documents costs the Treasurer's Office approximately \$1,500. However, we do not bid disbursement accounts annually because of the increased cost to the state of bidding frequently. Current methods and means of purchasing will be used.

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-**
RULE NAME **Selection of State Depositories for Disbursement Accounts through Competitive Bidding** 06

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.



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

AGENCY **Treasurer**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **112-**
RULE NAME **Selection of State Depositories for Disbursement Accounts through Competitive Bidding⁰⁶**

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 real costs or savings associated with the revisions to this rule.

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-**

RULE NAME **Selection of State Depositories for Disbursement Accounts through Competitive Bidding⁰⁶**

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-**
RULE NAME **Selection of State Depositories for Disbursement Accounts through Competitive Bidding**06

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, delete definitions of compensating balance and renumber the subsections, amend definitions of invitation to bid to clarify its purpose, add definition of purchasing documents, amend the notice to bidders provision to give more time and recognize electronic bidding and receiving of purchasing documents, clarify that bids must comply with the requirements of the purchasing documents, delete compensation by compensating balance because we do not maintain sufficient balances with the disbursement account bank to permit that method of payment, clarify how the vendor is to submit an invoice and then be paid, and make technical clean ups. The bidding practices in the current rule are no longer viable in a world of electronic bidding, but we have made sure that persons and entities without access to the internet may still participate.

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: 112-06



Rule Id: 10243



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TITLE 112
LEGISLATIVE RULE
STATE TREASURER'S OFFICE

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

§112-6-1. General.

1.1. Scope. -- This rule implements the provisions of W. Va. Code §12-1-2, which requires the Treasurer's Office to select depositories for disbursement accounts through competitive bidding by financial institutions in this State. The provisions of this rule do not apply to trust and investment accounts, activities and proceeds from the sale of general obligation bonds or bonds issued by the School Building Authority, the Parkways Authority, the Housing Development Fund, the Economic Development Authority, the Infrastructure and Jobs Development Counsel, 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.

§112-6-2. Definitions.

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

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

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

2.3. ~~"Depository" or "State 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.~~

2.4.2.3. "Disbursement account" means those accounts from which are paid moneys due from the State of West Virginia or any official, department, board, commission, political subdivision or agency thereof to any political subdivision, person, firm or corporation except moneys paid from investment accounts;

2.5.2.4. "Financial institution" means a state or national bank or a state or federal savings and loan association.

2.6.2.5. "Invitation to bid" means and includes requests for proposals, specifications, general information and other matters customarily included in the solicitation of bids; and the notice sent to potential bidders, either via email or U.S. mail, containing information on the goods and services in connection with one or more disbursement accounts being bid, bidding deadlines, how to obtain bid documents, how to submit bids and any other information the Treasurer considers appropriate.

2.6. “Purchasing Documents” means the request for quotations or the request for proposals and all attachments and other documents related to the bidding of the goods and services in connection with bidding for one or more disbursement accounts.

2.7. “Treasurer” means the West Virginia State Treasurer or his or her designee from the Treasurer’s office.

§112-6-3. Procedures for Bidding.

3.1. Eligibility for Bidding -- ~~Only those financial~~ Financial institutions designated as depositories prior to award are eligible to bid for a disbursement account.

3.2. Notice to Bidders -- ~~At least twenty five (25) days prior to the date on which bids for a disbursement account are due, the Treasurer shall mail to every depository within this state notice that bids are invited on one or more designated disbursement accounts. Any depository within this state interested in bidding on an account shall make written request to the Treasurer’s office for copies of the invitation to bid. The Treasurer’s office upon receipt of the request shall transmit the copies or make the copies available, including all necessary specifications and forms, to the depository. The Treasurer’s office shall maintain a record noting the date of receipt of requests for invitations to bid and the date on which it mailed the invitations.~~ The Treasurer shall send invitations to bid to every depository in this state at least thirty (30) days prior to the date on which bids for a disbursement account are due.

3.3. ~~Contents of Invitations to Bid~~ The invitations shall state the time and place for submission of bids, a description of the account and the services required, the approximate number of transactions or items processed monthly, the duration of the contracts and any other information the Treasurer considers necessary. Purchasing Documents -- The Treasurer shall make the purchasing documents available on the Treasurer’s website and shall mail the purchasing documents to any person or entity that cannot obtain them from the website.

3.4. Submission of Bids -- ~~Depositories in the state shall submit bids on forms provided by the Treasurer’s office, in a sealed envelope addressed to the Treasurer, and conspicuously marked “Sealed Bid for Disbursement Account”. Bidders may not commingle bids for more than one account in the same envelope. Immediately upon receipt of a bid, the Treasurer shall time stamp the envelope, and retain all the sealed bids in the Treasurer’s office until the time set for the bid opening.~~ Financial Institutions shall submit bids in the format and in the time frame required by the Treasurer, as specified in the purchasing documents. The Treasurer shall record the receipt of each bid received to ensure timely receipt prior to the bid deadline.

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

3.6. Conditions of Bidding – All bids are subject to the following conditions:

3.6.1. Bids received after the date and time stated in the ~~invitation~~ purchasing documents are disqualified;

3.6.2. Bids require the signature of an authorized ~~bank~~ officer of the financial institution. For purposes of this section, an authorized ~~bank~~ officer is the president or a vice-president;

3.6.3. ~~Prior to the bid opening, to withdraw a bid, an authorized bank officer shall submit a written request to the Treasurer; and To withdraw a bid, an authorized officer of the bidder shall submit a written request prior to the bid opening;~~

3.6.4. The Treasurer may reject any and all bids if the Treasurer considers rejection in the best interests of the State; and

3.6.5 The bid shall comply with all requirements of the purchasing documents.

§112-6-4. Award and Compensation.

4.1. ~~Criteria for Award - Depending on the services desired, the Treasurer shall invite bids in terms of the price per transaction or per item processed. Subject to the Treasurer's right to reject any and all bids, the bidder submitting the lowest responsible bid in terms of price per transaction or per item processed shall receive the award. The bid price is the basis for the compensating balance as determined under Subsection 4.2 of this section. The purchasing documents shall contain the criteria for award.~~

4.2. Method of Compensation --

4.2.1. ~~The Treasurer shall compensate a depository on a monthly basis by compensating balances or by a State warrant. To determine the monthly compensating balances, the Treasurer shall multiply the bid price per transaction or per item processed times the number of transactions or items processed during the preceding month (the "computation month"). The product obtained is converted to the compensating balance by using the average 90 day U. S. Treasury bill rate (bond equivalent yield) for the computation month. The average 90 day U. S. Treasury bill rate is the rate computed by the Federal Reserve System. The following example illustrates how the compensating balance is computed and applied:~~

~~Under this example, it is assumed that:~~

~~4.2.1.a. The computation month is January;~~

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

~~4.2.1.c. The multiplier for annualization is 12;~~

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

~~4.2.1.e. The number of items processed in the computation month (January) was 50,000.~~

~~Accordingly, the compensating balance required during February is \$360,000, derived as follows:~~

$$50,000 \times ($.03) \times (12)$$

$$.05 = \$360,000$$

~~4.2.2. The Treasurer shall appropriately adjust the compensating balance if any overcompensation or undercompensation occurs during a given month by adjusting the balance for the following month in order to fairly compensate the depository for services rendered. The Treasurer shall perform a settlement monthly if any overcompensation or undercompensation occurs. The Treasurer and the depository shall agree upon a method of account settlement and include the account settlement as part of the negotiated contract for the disbursement account.~~

~~4.3. Compensation for Ancillary Services The Treasurer may in its bid specifications require the depository to furnish certain named ancillary services in the course of providing the basic service for which bids are solicited. For example, the Treasurer may specify that a depository for disbursements shall furnish preprinted checks. The Treasurer may also specify the compensation for the cost of furnishing such~~

~~ancillary services on a flow-through basis. In that event, the Treasurer shall increase the compensating balance in an amount sufficient to compensate the depository for the direct cost of furnishing the ancillary services plus a reasonable amount determined by the Treasurer for the overhead attributable to furnishing the services. The invitation to bid shall include the amount allowed for overhead.~~

The financial institution receiving the purchase order awarded pursuant to the purchasing documents shall submit monthly invoices detailing the goods and services provided at the rates specified in the purchase order. The Treasurer shall review the invoice and if found in order shall make payment in arrears directly to the financial institution.