



WEST VIRGINIA SECRETARY OF STATE

KRIS WARNER

ADMINISTRATIVE LAW DIVISION

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6/26/2026 3:05:50 PM

Office of West Virginia
Secretary Of State

NOTICE OF AN EMERGENCY RULE

AGENCY: Treasurer TITLE-SERIES: 112-01
RULE TYPE: Legislative Amendment to Existing Rule: No
RULE NAME: West Virginia Security for Deposits Act
Collateralization of Public Fund Deposits

CITE STATUTORY AUTHORITY FOR PROMULGATING EMERGENCY RULE:

§12-1B-7

IF THE EMERGENCY RULE WAS PROMULGATED TO COMPLY WITH A TIME LIMIT ESTABLISHED BY CODE OR FEDERAL STATUTE OR REGULATION, CITE THE CODE PROVISION, FEDERAL STATUTE OR REGULATION AND TIME LIMIT ESTABLISHED THEREIN:

N/A

PRIMARY CONTACT:

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THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY THE SECRETARY OF STATE OR THE 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST. THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

The West Virginia Public Deposits Act was passed into law during the 2022 Regular Session via SB 438 and further updated during the 2024 Regular Session via HB 4801. West Virginia Code §12-1B-7 authorizes the Treasurer to promulgate emergency rules as necessary to effectuate the provisions of article 1B. The Treasurer's Office has announced, as required by the law, the commencement of the Public Deposits Program beginning on July 6, 2026.

DOES THIS EMERGENCY RULE REPEAL A CURRENT RULE? No

HAS THE SAME OR SIMILAR EMERGENCY RULE PREVIOUSLY BEEN FILED AND OR EXPIRED? No

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

None

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

While the total upfront implementation and annual costs of the program are not yet known, the Treasurer's Office currently intends to cover all associated expenses without requiring fees from financial institutions. This will likely result in a reduction to the office's special revenue account.

C. ECONOMIC IMPACT ON THE STATE OR ITS RESIDENTS:

None

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2026 Increase/Decrease (use "-")	2027 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. 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
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

James G Fuerhoff--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 1
WEST VIRGINIA SECURITY FOR DEPOSITS ACT
COLLATERIZATION OF PUBLIC FUND DEPOSITS

§112-1-1. General.

1.1. Scope – This rule establishes the procedures for the administration of the West Virginia Security for Public Deposits Act (“Act”), W.Va. Code §12-1B-1 et. seq. and implements the provisions of W. Va. Code 12-1-5. This rule does not apply to investments made by the State Treasurer, the Board of Treasury Investments, the Investment Management Board, or any other investments of the state.

1.2. Authority. – W. Va. Code §12-1B-7 and §12-1-5

1.3. Filing Date. –

1.4. Effective Date. –

§112-1-2. Definitions.

2.1. “Act” means the West Virginia Security for Public Deposits Act.

2.2. “Average balance” shall be determined by totaling each depositor’s reported depository account balance and dividing the amount by the prior month’s ending balance.

2.3. “Banking Business Day” means any day on which the offices of the financial institution are open to the public for carrying on substantially all its business functions, typically Monday through Friday, excluding holidays.

2.4. “Collateral” means an asset pledged by the designated state depository on behalf of a public depositor depositing public deposits with the Treasurer to cover potential losses of those public deposits.

2.5. “Collaterally 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.

2.6 “Contingent Liability” means a liability that may occur depending on the outcome of a future event, such as the default of a financial institution.

2.7. “Dedicated Single Bank Method” means the securing of uninsured public deposits without accepting the contingent liability for the losses of public deposits of other designated state depositories as provided in W.Va. Code §12-1-5 and the provisions of this rule.

2.8. “Default” or “Insolvent” means the failure or refusal of any designated state depository to return any public deposit upon demand or at maturity, the issuance of an order of supervisory authority restraining

such depository from making payments of deposit liabilities, or the appointment of a receiver for such depository.

2.9. “Deposit Placement Program” means a program that arranges for the redeposit of funds into deposit accounts in one or more federally insured banks or savings and loan associations that are located in the United States, effectively increasing the insured coverage of the funds.

2.10. “Depository Agreement” means a contract between the State Treasurer’s Office and a financial institution that authorizes the institution to serve as a designated state depository and to accept deposits and/or provide banking services to the State of West Virginia and other public depositors of the State.

2.11. “Designated State Depository” means any state or national bank or any state or federal savings and loan association in this state meeting the requirements of this Act.

2.12. “Federal Deposit Insurance Corporation (FDIC)” means an independent agency created by Congress to maintain stability and public confidence in the nation’s financial system. The FDIC insures deposits; examines and supervises financial institutions for safety, soundness, and consumer protection; makes large and complex financial institutions resolvable; and manages receiverships.

2.13. “Federal employer identification number” or “FEIN” means the unique nine-digit number assigned by the Internal Revenue Service to business entities operating in the United States for the purposes of identification. Collateral coverage will be determined at this level.

2.14. “Market Value” means the value of a security priced on a same banking business day basis or not older than one banking business day.

2.15. “Multibank Pooled Method” means securing uninsured public deposits of all political subdivisions by accepting the contingent liability for the losses of public deposits of other designated state depositories choosing this method.

2.16. “Political Subdivision” means any county, municipality, board of education, corporation or instrumentality of one or more counties or municipalities, or any other government organization.

2.17. “Public Deposit” means funds of a public depositor held by a designated state depository authorized to receive or administer such moneys from public depositor for deposit in any of the following types of accounts: time deposits; demand deposits; savings deposits; or any other transaction accounts.

2.18. “Public Depositor” means the state or any county, municipality, spending unit, or other political subdivision of the state.

2.19. “Qualified Escrow Agent”, also known as Safekeeping Agent, means the bank or trust company selected by the State Treasurer through the Request for Proposal (RFP) process to hold collateral pledged to secure public deposits.

2.20. “Reporting Period” means the reporting due from the designated state depository and/or the public depositor to be completed monthly, or as prescribed by the Treasurer.

2.21. “Required Collateral” means the amount of collateral required to secure public deposits on deposit.

2.22. “State Treasurer” or “Treasurer” means the State Treasurer of West Virginia or his or her designee.

2.23. “State 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.

2.24. “Treasurer’s Online Collateral System” means the electronic system created and maintained by the State Treasurer’s Office, for collateral submission and reporting.

2.25. “Uninsured” means public monies deposited with an eligible depository which exceed the amount insured by an agency of the federal government, such as FDIC.

2.26. “West Virginia Security for Public Deposits Program” or “Program” means the WV Code, rules and procedures developed by the State Treasurer to enable designated state depositories to secure public deposits pursuant to the West Virginia Security for Public Deposits Act.

§112-1-3. Eligible collateral.

3.1. All designated state depositories holding public deposits shall secure and collateralize uninsured public deposits with a collaterally secured bond, known as a continuous bond, which may be increased or decreased in amount or may be replaced by a new bond with the approval of the State Treasurer. All collateral securities shall be delivered to or deposited for the account of the Treasurer of the State of West Virginia. The Treasurer may determine at any time if a type of bond is no longer acceptable or if new types of bonds may be permitted.

3.2. The eligible collateral security for the bond shall consist of:

3.2.1. Bonds of the United States;

3.2.2. Bonds or letters of credit of the federal land banks;

3.2.3. Bonds or letters of credit of the federal home loan banks;

3.2.4. Bonds of the State of West Virginia or of any county, district or municipality of this state or outside states; or

3.2.5. Bonds, letters of credit, or securities approved by the Treasurer.

§112-1-4. Valuation of collateral.

4.1. Each designated state depository will value its securities at current market value at the initial pledging of a security.

4.1.1. On a monthly basis, the current market value of securities will be determined by the Treasurer as of the last banking day of the immediately preceding month for reporting purposes.

4.2. The current market value of collateral must be equal to or greater than a depository's required collateral.

4.3. Upon written notice to any or all designated state depositories, the Treasurer may approve and require certain securities be valued at a rate less than 100% of their market value for reporting purposes if securities are:

4.3.1. Difficult to value due to no pricing source or value is not yet available, e.g. for new market securities or bonds; or

4.3.2. Securities are subject to rapid declines in value due to bond calls or downgrades of securities.

§112-1-5. Dedicated Method Collateral Pledging Level

5.1. The actual total amount of all public deposits held and reported at the close of business on the last banking day of the immediately preceding month, less the amount covered by an agency of the federal government, such as the FDIC, multiplied by 102% or the average balance of public deposits for the immediately preceding month, less the amount covered by an agency of the federal government, such as the FDIC, multiplied by 102%, whichever is greater.

§112-1-6. Multibank Pooled Method Collateral Pledging Level.

6.1. The Treasurer will determine the collateral pledging level based on the bank rating from a third-party rating service which takes into consideration established performance guidelines.

6.2. Collateral for uninsured balances of public deposits will be pledged using a graduated tiered approach. Each tier will be based on dollar amount of uninsured balances in conjunction with a pledging level percentage, in accordance with the Treasurer's internal procedures.

6.3. Required collateral must be posted at a level of not less than the following percentages:

6.3.1. 50% Level: actual total of all public deposits held and reported at the close of business on the last banking day of the immediately preceding month, less the amount insured by an agency of the federal government such as the FDIC multiplied by 50% or average balance of public deposits for the immediately preceding month, less the amount insured by an agency of the federal government such as the FDIC multiplied by 50%, whichever is greater.

6.3.2. 75% Level: actual total of all public deposits held and reported at the close of business on the last banking day of the immediately preceding month, less the amount insured by an agency of the federal government such as the FDIC multiplied by 75% or the average balance of public deposits for the immediately preceding month, less the amount insured by an agency of the federal government such as the FDIC multiplied by 75%, whichever is greater.

6.3.3. 100% Level: actual total of all public deposits held and reported at the close of business on the last banking day of the immediately preceding month, less the amount insured by an agency of the federal government such as the FDIC multiplied by 100% or the average balance of public deposits for the immediately preceding month, less the amount insured by an agency of the federal government such as the FDIC multiplied by 100%, whichever is greater.

6.4. The Treasurer may require a designated state depository to pledge collateral at 102% of its uninsured public deposits or require collateral via the Dedicated Single Bank method if the designated state depository has violated the terms and conditions of the Program or for other reasons deemed sufficient, such as the financial condition of the designated state depository.

6.5. The Treasurer reserves the right to require a larger balance of collateral to be pledged by any financial institution.

§112-1-7. Qualification of collateral sufficiency.

7.1. The Treasurer shall calculate the collateral percentage required in the collateral pledging level section. The calculation shall be the total of public deposits on deposit per FEIN less the insurance provided by an agency of the federal government such as the FDIC.

7.2. The collateral shall be valued as of the settlement date the pledge was submitted in the name of the Treasurer.

7.3. Securities pledged as collateral by a designated state depository will be valued at market value and compared to the required collateral percentage to ensure collateral sufficiency.

7.4. Letters of credit pledged as collateral by a designated state depository will be valued at the maximum amount available to be drawn. The sufficiency shall be computed as of the day the collateral pledge is submitted.

§112-1-8. Requirements for designated state depositories with public deposits.

8.1. Public deposits must be deposited in an account(s) held by a designated state depository approved by the Treasurer.

8.2. To be established as a designated state depository they must complete the required forms and agreements to accept and hold any public deposits.

8.3. Designated state depositories holding public deposits must monitor its uninsured deposits daily and maintain appropriate collateralization.

8.4. If the designated state depository receives a large deposit outside of normal business hours and the deposit results in an amount more than what was previously collateralized, the designated state depository must notify the Treasurer and will have two (2) banking business days to increase the collateral to required value.

8.5. Designated state depositories utilizing deposit placement programs must follow guidelines within these rules and any other statutory requirements related to collateralization.

§112-1-9. Substitution of eligible collateral.

9.1. A designated state depository may substitute or exchange eligible collateral at any time.

9.2. Release of collateral requires approval of the Treasurer prior to a designated state depository releasing previously pledged collateral so long as such release by the designated state depository will not reduce the current market value of its current pledged collateral below the required collateral amount, including irrevocable letters of credit issued by a Federal Home Loan Bank.

9.3. Any collateral substituted must be equal to or greater than the current market value of the collateral released and be adequately sufficient for any public deposits held, including irrevocable letters of credit issued by a Federal Home Loan Bank.

§112-1-10. Release of collateral

10.1. Release of collateral requires approval of the Treasurer prior to a designated state depository releasing previously pledged collateral so long as such release by the designated state depository will not reduce the current market value of its current pledged collateral below the required collateral amount, including eligible irrevocable letters of credit issued by a Federal Home Loan Bank.

10.2. The Treasurer may require the depository to confirm balances prior to a release of security at any time and signed by an officer of the designated state depository.

§112-1-11. Requirements for the qualified escrow agent.

11.1. The qualified escrow agent must hold all pledged collateral for the primary benefit of the Treasurer.

11.2. The qualified escrow agent must provide reporting of the collateral in accordance with section 13 of this rule.

§112-1-12. Requirements for public depositors.

12.1. Each public depositor will ensure their depository is a designated state depository approved by the Treasurer's Office. The public depositor will inform the depository their account will be used for public deposits according to WV Code 12-1B-1 *et. seq.* and must be collateralized as prescribed by the Treasurer.

§112-1-13. Reporting.

13.1. Designated state depositories.

13.1.1. Each designated state depository shall submit required reporting data to the Treasurer through the Treasurer's Online Collateral System monthly by required reporting deadline in accordance with the Treasurer's internal procedures.

13.1.2. Each designated state depository holding "state funds" shall report, on a quarterly basis, the amount of total state funds on deposit and be verified by affidavit by a designated officer of the depository per West Virginia Code §12-1-11.

13.1.3. Failure to file reports:

13.1.3.a. The Treasurer shall notify the designated state depository and each public depositor who has uninsured public deposits in the depository that the depository failed to comply by the fifth (5) business day after the due date.

13.1.3.b. The designated state depository may cure the filing of the reports and the Treasurer will notify each public depositor who was notified that the depository has complied.

13.1.3.c. If a designated state depository fails to cure, they will be assessed a fine as described in the penalty section after receiving notice from the Treasurer.

13.1.3.d. Multiple violations for failure to file reports could result in the dissolution of the depository agreement with the Treasurer.

13.2. Public depositors.

13.2.1. Each public depositor will provide an annual confirmation attesting to the accuracy of the public deposit balances reported to the Treasurer during the previous fiscal year ending June 30.

13.2.2. Public depositors shall notify the Treasurer of any unresolved discrepancy between the information provided and the designated state depositors' records.

13.3. Treasurer's Duties.

13.3.1. The Treasurer will provide available reports to the auditors of any public depositor regarding the status of any designated state depository's collateral account and its compliance with the reporting requirements.

13.3.2. The Treasurer shall notify any public depositor with accounts at a designated state depository and the designated state depository of any irregularities, including, but not limited to, the late filing of the required reports, deficiencies in the pledged collateral by the designated state depository, or any fees or penalties related to deficiencies or noncompliance.

§112-1-14. Penalties.

14.1. Suspension of authority to receive public deposits:

14.1.1. The Treasurer may rescind the authority of a designated state depository to receive further public deposits for failure to comply with the Act or its regulations.

14.1.2. A designated state depository that continues to hold public deposits after its authority to do so has been rescinded remains fully subject to the provisions of the Act. This includes, without limitation, continuing to meet collateralization and reporting requirements and acting as a designated state depository for purposes of the Code of West Virginia.

14.2. Monetary penalties:

14.2.1. The Treasurer may assess the following penalties against designated state depositories for noncompliance:

14.2.1.a. \$500 fine for each day a designated state depository fails to maintain the required collateral with the qualified escrow agent, excluding the two business days for large deposits noted above at 8.4.

14.2.1.b. \$200 fine for each day a designated state depository fails to provide the required reports.

14.2.1.c. Any extra actual expenses incurred by the Treasurer for noncompliance by any entity covered under the Act.

14.3. Notification and payment of monetary fines and penalties:

14.3.1. The Treasurer shall inform the entity in writing when a fine or penalty will be assessed.

14.3.2. Fines and penalties are due and payable within 60 days of notice.

14.3.3. If a fine or penalty is imposed and the entity fails to pay the fine or penalties imposed, the Treasurer shall promptly notify each public depositor.

14.3.4. The Treasurer may post on the Treasurer's Office public web page the entity is out of compliance with collateral requirements under the program. Any entity previously noncompliant must become compliant to participate in the Program.

§112-1-15. Appeal.

15.1. Entities facing adverse action under the Act, including both monetary and non-monetary penalties, may appeal such action to the Treasurer.

15.2. Entities must submit a written appeal to the Treasurer within seven (7) banking business days of notice from the Treasurer. The appeal must include the following information:

15.2.1. Reason for appeal;

15.2.2. Information to refute the adverse action; and

15.2.3. Any additional information requested by the Treasurer.

15.3. Upon receipt of appeal, the Treasurer will grant or deny the appeal in accordance with the Treasurer's internal procedures and data presented by the appealing party as well as data maintained by the Treasurer.

15.4. The Treasurer has the exclusive authority to grant or deny the appeal.

15.5. If the appeal is granted on behalf of the appealing party, the Treasurer will notify the appealing party in writing and any penalty, fine, or other action is null and void.

15.6. If the appeal is denied, the Treasurer will notify the appealing party in writing and any penalty, fine, or other action will be in effect.

§112-1-16. Determination of default or insolvency.

16.1. The defaulting or insolvent designated state depository is required to remain in compliance with the Treasurer's rules until a new designated state depository is implemented.

16.2. The Treasurer will determine if a designated state depository is in default or insolvent if the designated state depository:

16.2.1. Fails to return a public depositor's public deposits including earned interest in accordance with the terms of the depository agreement;

16.2.2. Subject to a court order or formal action by a supervisory authority that has the effect of restraining the eligible depository from making payments of deposit liabilities;

16.2.3. Has had a receiver appointed by a supervisory authority; or

16.2.4. Breaches its contract with the Treasurer in any way and fails to cure the insolvency or breach within five (5) banking business days.

16.3. If the Treasurer determines a designated state depository is in default or insolvent, the Treasurer shall provide notice of the default or insolvency to all public depositors who have deposited public deposits with the defaulting or insolvent designated state depository.

16.4. If the Treasurer determines an eligible designated state depository is in default or insolvent, the Treasurer shall revoke authorization for the designated state depository to make substitutions of eligible collateral.

§112-1-17. Payment of losses due to insolvency.

17.1. If it is determined a designated state depository is in default or insolvent according to section 16 of this rule and a different designated state depository is committed, the Treasurer shall:

17.1.1. Transfer the deposits from the defaulting or insolvent designated state depository to the new designated state depository and collateralize in accordance with the new designated state depository's method and level; and

17.1.2. Provide notice of the transfer to the public depositors.

17.2. If it is determined a designated state depository is in default or insolvent according to section 16 of this rule and a new designated state depository is not identified, the Treasurer shall take possession of the required collateral and:

17.2.1. Liquidate the required collateral and distribute the proceeds on a pro-rata basis to the public depositors.

17.2.2. If participating in the Multibank Pooled Method and collateralization is at a rate below 100%, the contingent liability must be computed on a pro-rata basis for each designated state depository participating in the Multibank Pooled Method. Assessments will be based on designated state depository average uninsured deposit balances for the immediately preceding 52-week reporting period plus any liquidation costs incurred.

17.3. If the Treasurer determines the default of a designated state depository is not due to the insolvency or receivership of the designated state depository, any transfer, distribution, or liquidation of required collateral by the Treasurer will allow the designated state depository to reduce account balances correspondingly for public deposits subject to the transfer, distribution, or liquidation.

§112-1-18. Selection of Method of Collateralization

18.1. All designated state depositories will be onboarded under the Dedicated Single Bank Method. The collateralization method can be updated each quarter, if desired, during the election period set forth by the Treasurer.

18.2. A designated state depository may update their method of collateralization by giving written notice to the State Treasurer.

18.3. The designated public depository shall continue to file monthly reports with the Treasurer.