



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

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6/28/2021 4:13:47 PM

Office of West Virginia  
Secretary Of State

**NOTICE OF PUBLIC COMMENT PERIOD**

AGENCY: Treasurer TITLE-SERIES: 112-02

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Substitute Checks--Exceptional Items Fund

CITE STATUTORY AUTHORITY: §12-4-11

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 07/28/2021 4:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: James Fuerhoff

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PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

The legislative rule sets forth the procedures for the issuance of substitute checks in compliance with the provisions of §12-4-11.

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

This legislative is being updated to reformat the rule to comply with current rule drafting standards, to include a sunset provision, and to bring the rule into conformity with current practice.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

None

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

None

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

None

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	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
<b>2. Estimated Total Revenues</b>	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 2  
SUBSTITUTE CHECKS – EXCEPTIONAL ITEMS FUND

**§112-2-1. General.**

1.1. Scope. -- ~~These rules implement the provisions of the above mentioned Code section which authorizes the State Auditor and State Treasurer to promulgate joint Rules and Regulations establishing procedures and conditions for issuance of substitute checks to payees in cases where state checks originally issued were erroneous or where such checks have been lost, mutilated, destroyed, stolen or forged.~~ This rule implements the provisions of W. Va. Code §12-4-11.

1.2. Authority. – W. Va. Code §12-4-11.

1.3. Filing Date. – ~~August 7, 1979~~

1.4. Effective Date. – ~~September 17, 1979.~~

1.5. Sunset Provision. – This rule shall terminate and have no further force or effect on August 1, 2027.

**§112-2-2. ~~Procedures And Conditions For Issuance Of Duplicate Or Substitute Checks.~~ Definitions.**

~~(a) Where the originally issued check contains a material error or has been mutilated to the extent that the payee cannot cash said check, the issuing agency shall return said check to the Treasurer with a requisition for a duplicate check. The Auditor and Treasurer shall cause said duplicate check to be issued on the same account and with the same check number as the original check.~~

~~(b) Upon receipt by the Treasurer of notification that an originally issued check has not been received by the payee or has been lost, stolen, or irretrievably destroyed, the Treasurer shall forthwith issue a stop payment order to the bank on which such check is drawn. If the bank honors the stop payment order, the Auditor and Treasurer shall cause a new check to be issued out of the same account as is used for the replacement of checks not cashed within six months.~~

~~(c) In the event the bank refuses to honor the stop payment order specified in subsection (b), of these rules the Treasurer shall notify the issuing agency of the bank's refusal. If the payee on said check then request a substitute check the following procedure shall apply:~~

~~(1) The payee shall furnish to the Treasurer, through the issuing agency; (i) an affidavit certifying to the nonreceipt, loss, theft or destruction of the original check, as the case may be; and (ii) a lost instrument bond, which shall be in substantially the form set forth on page 1 of the appendix to these rules; and~~

~~(2) The Treasurer shall review the affidavit and bond and, if he finds that said documents are in proper form, he shall transmit to the Auditor a requisition for payment from the exceptional items fund along with the affidavit and bond. Nothing in these rules shall preclude the Auditor from requiring additional supporting information pursuant to his authority under article three, chapter twelve of the Code if he believes such additional information is necessary to support the claim for payment.~~

~~(d) If, upon issuance of a stop payment order under the circumstances specified in subsection (b) of these rules, the bank notifies the Treasurer that the originally issued check has been presented and cashed, the Treasurer shall send a copy of such paid check to the issuing agency, which shall notify the payee that the check has already been paid. If the payee claims that such check is a forgery, the payee shall furnish to the Treasurer, through the issuing agency and affidavit certifying to such forgery. Such affidavit shall be in substantially the form as set forth on page 2 of the appendix to these rules. The payee shall also furnish a lost instrument bond as provided in subsection (c) above, and all other procedures set forth in subsection (c) of these rules, shall thereupon apply. Nothing in these rules shall preclude the state from pursuing claims against a bank or any other party arising out of the cashing of a forged check.~~

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 an agency, who or which collects moneys due the State.

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

2.3. "Auditor" means the West Virginia State Auditor or his or her designee.

2.4. "Substitute check" refers to the state check that is reissued after an original state check is cancelled.

2.5. "Treasurer" means the West Virginia State Treasurer or his or her designee.

### **§112-2-3. Procedures for Substitute Checks**

3.1. An agency desiring to obtain a substitute check shall submit a request to the Treasurer.

3.2. When the Treasurer is notified that an originally issued state check is erroneous, lost, mutilated, stolen, destroyed, or involves forgery, or that payment is no longer required, the Treasurer shall issue a stop payment order to the financial institution on which the check was drawn.

3.3. If the financial institution honors the stop payment order, the Auditor and the Treasurer shall issue the substitute check on the account on which the original check was written.

3.4. If the financial institution refuses to honor the stop payment order because the check has been presented and cashed, the Treasurer shall notify the agency of the refusal and shall send a copy of the paid check to the agency. The agency shall notify the payee that the check has already been paid. If the payee claims the check endorsement was forged, the payee shall furnish an affidavit in the form specified by the Treasurer to the agency, which shall submit the affidavit to the Treasurer. If the Treasurer

**112CSR2**

finds the affidavit acceptable and upon completion of an investigation that finds the payee is not at fault, the Auditor and the Treasurer shall issue a replacement check on the account on which the original check was written.

3.5. The Treasurer may pursue claims arising out of stolen or forged state checks against any entity involved.