WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2005

ENROLLED

House Bill No. 3104

(By Delegates Michael, White, H.K., Kominar, Stalnaker, Boggs, Thompson, Proudfoot, Palumbo, White, G., Anderson, Border and Wakim)

Passed April 9, 2005

In Effect Ninety Days from Passage
AN ACT to amend and reenact §5A-7-4a of the Code of West Virginia, 1931, as amended, relating to the payment of telecommunications charges; authorizing the Director to review and reject telecommunications charges under certain circumstances and authorizing emergency rules in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §5A-7-4a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. INFORMATION SERVICES AND COMMUNICATIONS DIVISION.

§5A-7-4a. Payment of legitimate uncontested invoices for telecommunications services; procedures and powers of the information and communications Division and Secretary of administration.
Enr. H. B. 3104]

(a) The Legislature finds that it is in the best interest of the state, its spending units and those vendors supplying telecommunications services to the state and its spending units that any properly registered and qualified vendor supplying telecommunications services to two or more spending units under a shared account is entitled to prompt payment upon presentation of a legitimate uncontested invoice for telecommunications services to the Division, as provided in the following subsections.

(b) To facilitate the administration and payment of telecommunications services, there is continued in the State Treasury a special revenue account to be known as the “Telecommunications Services Payment and Reserve Fund.” All moneys transferred from state spending units pursuant to the requirements of this section shall be deposited in the account. Expenditures from the fund shall be made by the Director for the exclusive purposes set forth in this section: Provided, That no more than one hundred and fifty thousand dollars or the actual amount collected pursuant to subsection (j) of this section in any fiscal year, whichever is less, may be expended from the fund in any fiscal year to defray the costs of administration of this section.

(c) Upon receipt of any telecommunications charges from a properly registered and qualified vendor, the Division shall conduct a preliminary review of the charges. If the Division determines during this preliminary review that: (1) any of the charges are not authorized by law or by the contract under which the telecommunications services are provided; (2) no specific spending unit is designated for any charge; or (3) any charge or service is not in accordance with contract pricing, the Division shall reject those charges. Within fourteen days of receipt of any telecommunications charge, the Director shall notify a vendor of any rejected charges and shall include in the notice a description of the rejected charges, the reasons a charge was rejected and a proposed resolution of the rejected charge.
The Director and the vendor shall attempt to resolve the matter in good faith. Within ninety days of the receipt of the vendor’s invoice or a time period mutually agreed to by the vendor and Secretary, the Secretary shall make the final decision as to the legitimacy of the rejected amount and determine if payment is warranted. If the final decision of the Secretary is to require payment of the rejected amount, the Secretary shall cause the Division to bill that amount to the appropriate spending unit which shall remit payment of the amount as required in subsection (d) of this section. If the final decision of the Secretary is to refuse to pay any amount, the vendor may proceed in accordance with the provisions of article two, chapter fourteen of this code.

(d) Following the preliminary review of the charges, the Director shall fully apportion all telecommunications charges not rejected during the preliminary review required by subsection (c) of this section among spending units based on the spending unit’s service and usage, as determined by the Director. The Director shall send each spending unit a statement of the spending unit’s proportionate share of any telecommunications charges within thirty days of receipt by the Division of the invoice detailing the telecommunications charges. The statement is to provide a date of no more than thirty calendar days from the date the Division sends the statement by which the spending unit shall submit payment or transfer to the telecommunications services payment and reserve fund all funds necessary to pay for the spending unit’s charges in full: Provided, That the statement sent in last month of the fiscal year shall provide that the transfer shall be made by the thirty-first day of July. If feasible for the spending unit, the preferable method of payment is by intergovernmental transfer.

(e) All spending units shall budget for telecommunications service expenses. Prior to the date provided in each statement sent to a spending unit pursuant to subsection (d) of this section,
each spending unit shall pay or transfer the statement amount to the telecommunications services payment and reserve fund.

(f) If a spending unit fails to pay or transfer funds by the date specified in the statement sent pursuant to subsection (d) of this section, the Secretary of the department of administration shall transfer to the telecommunications services payment and reserve fund the statement amount plus an additional penalty in the amount of three percent of the statement amount from any funds supporting the administration of that spending unit: Provided, That the Secretary shall complete all such transfers by the thirty-first day of July of each fiscal year. Upon exercising a transfer under the authority of this subsection, the Director shall provide a notification to the spending unit, including, but not limited to, the date, time, total amount of the transfer, statement amount and penalty amount. If a participating spending unit does not maintain funds in the state treasury, the Secretary may transfer funds by wire from any depository outside the state treasury. A participating spending unit maintaining funds in depositories outside the State Treasury shall furnish the Secretary access to those funds for the exclusive purposes of this section.

(g) If a spending unit contests any portion of its statement, it shall nonetheless remit payment for the entire statement amount and notify the Division in writing within thirty days of statement receipt by the spending unit. The Secretary shall consider any contested apportionments of charges and provide a final determination on the apportionment of legitimate charges. Corrections or adjustments to apportionments may be effected on future transfer payments: Provided, That legitimate vendor charges are to be fully apportioned. If the basis of the contest is vendor error, overcharge, service failure, failure to terminate services as required by the Division, or other failure of or error in vendor performance, the Director shall withhold the contested amount from current or future vendor payments,
pending resolution by the Secretary, and the Director shall bring
the contested matter to the attention of the vendor. The Director
and the vendor shall attempt to resolve the matter in good faith.
Within ninety days of the receipt of the vendor’s invoice or a
time period mutually agreed to by the vendor and Secretary, the
Secretary shall make the final decision as to the legitimacy of
the contested amount and determine if payment is warranted. If
the final decision of the Secretary is to refuse to pay any
amount, the vendor may proceed in accordance with the
provisions of article two, chapter fourteen of this code.

(h) The Director shall provide for full payment of legiti-
mate, uncontested telecommunications charges within ninety
days of receipt of an invoice detailing the telecommunications
charges by the Division. Payment for the charges shall be made
by the Director from the telecommunications services payment
and reserve fund.

(i) The Director may direct the discontinuance of telecom-
munications services to any spending unit that fails to comply
with the provisions of this section and the vendor supplying
telecommunication services shall comply with the written
direction of the Director on discontinuance of services.

(j) To help defray the additional cost of administering this
section, the Director may assess a proportional fee of up to one
hundred fifty thousand dollars in aggregate per fiscal year to the
participating spending units based on each spending unit’s
portion of service and usage. This fee is to be included in the
statement sent to spending units pursuant to subsection (d) of
this section and transferred to the telecommunications service
payment and reserve fund by the date specified in the statement
for the transfer of payment.

(k) Notwithstanding any other provision of this code to the
contrary, for purposes of this section, an invoice is considered
received by the Division on the date on which the invoice is
marked as received by the Division, or three business days after
the date of the postmark made by the United States postal
service as evidenced on the envelope in which the invoice is
mailed, whichever is earlier: Provided, That if an invoice is
received by the Division prior to the date on which the telecom-
communications services covered by the invoice are delivered or
fully performed, for purposes of determining the ninety-day
time period for payment in subsection (h) of this section, the
invoice is considered received on the date on which the
telecommunications services covered by the invoice were
delivered or fully performed.

(l) For purposes of this section, “telecommunications
service” means and includes not only telephone service
regulated under chapter twenty-four of this code or under
federal law, but also may include, at the discretion of the
Secretary of administration, wireless service, voice over
internet protocol service, internet service and any other service
or equipment used for the electronic transmission of voice or
data: Provided, That such service is provided under a Statewide
Contract.

(m) The Director may propose rules for legislative approval
in accordance with the provisions of article three, chapter
twenty-nine-a of this code to effectuate the purposes of this
section. The initial rule filed by the Division pursuant to the
amendments to this subsection enacted during the regular
session of the Legislature in two thousand five shall be filed as
an emergency rule.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the ___ day of May, 2005.

Governor
PRESENTED TO THE GOVERNOR

MAY 2 2005

Time 10:35