

1 **H. B. 4420**

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3 (By Delegates White, Hall, Ferns R. Phillips,  
4 D. Poling, Morgan, Stowers and Marcum)

5 [By Request of the Department of Administration]

6 [Introduced February 3, 2012; referred to the  
7 Committee on Finance.]

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10 A BILL to amend and reenact §5A-7-4a of the Code of West Virginia,  
11 1931, as amended, relating to allowing the Information  
12 Services and Communications Division to accumulate invoices  
13 for telecommunication services for a state spending unit under  
14 \$75 and send them to the spending unit in one statement near  
15 the end of the fiscal year.

16 *Be it enacted by the Legislature of West Virginia:*

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

19 **ARTICLE 7. INFORMATION SERVICES AND COMMUNICATIONS DIVISION.**

20 **§5A-7-4a. Payment of legitimate uncontested invoices for**  
21 **telecommunications services; procedures and powers**  
22 **of the Information and Communications Division and**  
23 **Secretary of Administration.**

24 (a) The Legislature finds that it is in the best interest of

1 the state, its spending units and those vendors supplying  
2 telecommunications services to the state and its spending units  
3 that any properly registered and qualified vendor supplying  
4 telecommunications services to two or more spending units under a  
5 shared account is entitled to prompt payment upon presentation of  
6 a legitimate uncontested invoice for telecommunications services to  
7 the division, as provided in the following subsections.

8 (b) To facilitate the administration and payment of  
9 telecommunications services, there is continued in the State  
10 Treasury a special revenue account to be known as the  
11 "Telecommunications Services Payment and Reserve Fund." All moneys  
12 transferred from state spending units pursuant to the requirements  
13 of this section shall be deposited in the account. Expenditures  
14 from the fund shall be made by the director for the exclusive  
15 purposes set forth in this section: *Provided*, That no more than  
16 \$150,000 or the actual amount collected pursuant to subsection (j)  
17 of this section in any fiscal year, whichever is less, may be  
18 expended from the fund in any fiscal year to defray the costs of  
19 administration of this section.

20 (c) Upon receipt of any telecommunications charges from a  
21 properly registered and qualified vendor, the division shall  
22 conduct a preliminary review of the charges. If the division  
23 determines during this preliminary review that: (1) Any of the  
24 charges are not authorized by law or by the contract under which

1 the telecommunications services are provided; (2) no specific  
2 spending unit is designated for any charge; or (3) any charge or  
3 service is not in accordance with contract pricing, the division  
4 shall reject those charges. Within fourteen days of receipt of any  
5 telecommunications charge, the director shall notify a vendor of  
6 any rejected charges and shall include in the notice a description  
7 of the rejected charges, the reasons a charge was rejected and a  
8 proposed resolution of the rejected charge. The director and the  
9 vendor shall attempt to resolve the matter in good faith. Within  
10 ninety days of the receipt of the vendor's invoice or a time period  
11 mutually agreed to by the vendor and secretary, the secretary shall  
12 make the final decision as to the legitimacy of the rejected amount  
13 and determine if payment is warranted. If the final decision of  
14 the secretary is to require payment of the rejected amount, the  
15 secretary shall cause the division to bill that amount to the  
16 appropriate spending unit which shall remit payment of the amount  
17 as required in subsection (d) of this section. If the final  
18 decision of the secretary is to refuse to pay any amount, the  
19 vendor may proceed in accordance with the provisions of article  
20 two, chapter fourteen of this code.

21 (d) Following the preliminary review of the charges, the  
22 director shall fully apportion all telecommunications charges not  
23 rejected during the preliminary review required by subsection (c)  
24 of this section among spending units based on the spending unit's

1 service and usage, as determined by the director. The director  
2 shall send each spending unit a statement of the spending unit's  
3 proportionate share of any telecommunications charges within thirty  
4 days of receipt by the division of the invoice detailing the  
5 telecommunications charges. Monthly statements for a spending unit  
6 of less than \$75 may be accumulated and sent to the spending unit  
7 on one statement near the end of the fiscal year. The director  
8 shall continue to pay any vendor invoices based upon the  
9 requirements of subsection (b) of this section. The statement is  
10 to provide a date of no more than thirty calendar days from the  
11 date the division sends the statement by which the spending unit  
12 shall submit payment or transfer to the telecommunications services  
13 payment and reserve fund all funds necessary to pay for the  
14 spending unit's charges in full: *Provided*, That the statement sent  
15 in last month of the fiscal year shall provide that the transfer  
16 shall be made by July 31. If feasible for the spending unit, the  
17 preferable method of payment is by intergovernmental transfer.

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

23 (f) If a spending unit fails to pay or transfer funds by the  
24 date specified in the statement sent pursuant to subsection (d) of

1 this section, the Secretary of the Department of Administration  
2 shall transfer to the telecommunications services payment and  
3 reserve fund the statement amount plus an additional penalty in the  
4 amount of three percent of the statement amount from any funds  
5 supporting the administration of that spending unit: *Provided,*  
6 That the secretary shall complete all such transfers by July 31 of  
7 each fiscal year. Upon exercising a transfer under the authority  
8 of this subsection, the director shall provide a notification to  
9 the spending unit, including, but not limited to, the date, time,  
10 total amount of the transfer, statement amount and penalty amount.  
11 If a participating spending unit does not maintain funds in the  
12 State Treasury, the secretary may transfer funds by wire from any  
13 depository outside the State Treasury. A participating spending  
14 unit maintaining funds in depositories outside the State Treasury  
15 shall furnish the secretary access to those funds for the exclusive  
16 purposes of this section.

17 (g) If a spending unit contests any portion of its statement,  
18 it shall nonetheless remit payment for the entire statement amount  
19 and notify the division in writing within thirty days of statement  
20 receipt by the spending unit. The secretary shall consider any  
21 contested apportionments of charges and provide a final  
22 determination on the apportionment of legitimate charges.  
23 Corrections or adjustments to apportionments may be effected on  
24 future transfer payments: *Provided,* That legitimate vendor charges

1 are to be fully apportioned. If the basis of the contest is vendor  
2 error, overcharge, service failure, failure to terminate services  
3 as required by the division, or other failure of or error in vendor  
4 performance, the director shall withhold the contested amount from  
5 current or future vendor payments, pending resolution by the  
6 secretary, and the director shall bring the contested matter to the  
7 attention of the vendor. The director and the vendor shall attempt  
8 to resolve the matter in good faith. Within ninety days of the  
9 receipt of the vendor's invoice or a time period mutually agreed to  
10 by the vendor and secretary, the secretary shall make the final  
11 decision as to the legitimacy of the contested amount and determine  
12 if payment is warranted. If the final decision of the secretary is  
13 to refuse to pay any amount, the vendor may proceed in accordance  
14 with the provisions of article two, chapter fourteen of this code.

15 (h) The director shall provide for full payment of legitimate,  
16 uncontested telecommunications charges within ninety days of  
17 receipt of an invoice detailing the telecommunications charges by  
18 the division. Payment for the charges shall be made by the  
19 director from the telecommunications services payment and reserve  
20 fund.

21 (i) The director may direct the discontinuance of  
22 telecommunications services to any spending unit that fails to  
23 comply with the provisions of this section and the vendor supplying  
24 telecommunication services shall comply with the written direction

1 of the director on discontinuance of services.

2 (j) To help defray the additional cost of administering this  
3 section, the director may assess a proportional fee of up to  
4 \$150,000 in aggregate per fiscal year to the participating spending  
5 units based on each spending unit's portion of service and usage.  
6 This fee is to be included in the statement sent to spending units  
7 pursuant to subsection (d) of this section and transferred to the  
8 telecommunications service payment and reserve fund by the date  
9 specified in the statement for the transfer of payment.

10 (k) Notwithstanding any other provision of this code to the  
11 contrary, for purposes of this section, an invoice is considered  
12 received by the division on the date on which the invoice is marked  
13 as received by the division, or three business days after the date  
14 of the postmark made by the United States Postal Service as  
15 evidenced on the envelope in which the invoice is mailed, whichever  
16 is earlier: *Provided*, That if an invoice is received by the  
17 division prior to the date on which the telecommunications services  
18 covered by the invoice are delivered or fully performed, for  
19 purposes of determining the ninety-day time period for payment in  
20 subsection (h) of this section, the invoice is considered received  
21 on the date on which the telecommunications services covered by the  
22 invoice were delivered or fully performed.

23 (l) For purposes of this section, "telecommunications service"  
24 means and includes not only telephone service regulated under

1 chapter twenty-four of this code or under federal law, but also may  
2 include, at the discretion of the Secretary of Administration,  
3 wireless service, voice over Internet protocol service, Internet  
4 service and any other service or equipment used for the electronic  
5 transmission of voice or data: *Provided*, That ~~such~~ the service is  
6 provided under a statewide contract.

7 (m) The director may propose rules for legislative approval in  
8 accordance with the provisions of article three, chapter twenty-  
9 nine-a of this code to effectuate the purposes of this section.  
10 ~~The initial rule filed by the division pursuant to the amendments~~  
11 ~~to this subsection enacted during the regular session of the~~  
12 ~~Legislature in 2005 shall be filed as an emergency rule.~~

NOTE: The purpose of this bill is to allow the Information Services and Communications Division to accumulate invoices under \$75 and send them to the spending unit on one statement near the end of the fiscal year rather than within thirty days.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.