

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Committee Substitute

for

Senate Bill 355

BY SENATORS GAUNCH AND BLAIR

[Originating in the Committee on Government
Organization; Reported on February 1, 2018]

1 A BILL to repeal §5A-7-1, §5A-7-2, §5A-7-3, §5A-7-4, §5A-7-4a, §5A-7-5, §5A-7-6, §5A-7-7, §5A-
2 7-8, §5A-7-9, §5A-7-10, and §5A-7-11 of the Code of West Virginia, 1931, as amended;
3 to amend and reenact §5A-6-4 and §5A-6-8 of said code; and to amend said code by
4 adding thereto two new sections, designated §5A-6-4d and §5A-6-4e, all relating to
5 dissolving the Information Services and Communications Division; repealing article related
6 to Information Services and Communications Division; authorizing Chief Technology
7 Officer to provide training and other services; authorizing Chief Technology Officer provide
8 information services; authorizing Chief Technology Officer to assess fees for services
9 provided; requiring Chief Technology Officer provide fixed schedule of fees for providing
10 information services; setting forth procedure to be followed if spending unit contests
11 schedule; requiring the Chief Technology Officer to oversee telecommunications services
12 to state spending units; requiring the Chief Technology Officer to supervise and maintain
13 the central mailing office; directing the deposit of any moneys received for services;
14 continuing special revenue account for administration of telecommunications services;
15 directing Chief Technology Officer to review receipt of charges received from members;
16 setting forth grounds for Chief Technology Officer to challenge charges with vendor and
17 process for doing so; requiring Office of Technology apportion charges among spending
18 units and bill spending units; requiring Office of Technology pay uncontested amounts due
19 for telecommunications services; requiring state spending units pay statements from
20 Office of Technology; authorizing the secretary to direct the transfer of funds into the
21 special revenue account for unpaid telecommunications services; authorizing the
22 secretary to assess a penalty with notice on spending units for unpaid amounts for
23 telecommunications services; authorizing Chief Technology Officer to invoice spending
24 units for amounts paid on behalf of the spending unit; providing a process for state
25 spending units to contest amounts due; authorizing the Secretary of the Department of
26 Administration to make a final decision on contested amounts due; authorizing Chief

27 Technology Officer to discontinue telecommunication services to spending unit that fails
28 to comply with provisions of article; authorizing a proportional fee be assessed against
29 spending units; defining terms; granting rule-making authority; making technical
30 corrections; authorizing a special fund to receive moneys for services provided by the
31 agency; transferring Information Services and Communication Fund to Office of
32 Technology; closing Chief Technology Officer Administration Fund and transferring any
33 remaining balance; authorizing the Chief Technology Officer to grant waivers for certain
34 services required by statute; and requiring waiver be granted to constitutional officers for
35 certain services upon request.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. OFFICE OF TECHNOLOGY.

§5A-6-4. Powers and duties of the Chief Technology Officer generally.

1 (a) With respect to all state spending units the Chief Technology Officer may:
2 (1) Develop an organized approach to information resource management for this state;
3 (2) Provide training and direct data processing services;
4 ~~(2)~~ (3) Provide technical assistance to the administrators of the various state spending
5 units in developing and improving data processing and telecommunications functions and in the
6 design and management of information systems;
7 ~~(3)~~ (4) Evaluate the economic justification, system design and suitability of information
8 equipment and related services, and review and make recommendations on the purchase, lease
9 or acquisition of information equipment and contracts for related services by the state spending
10 units;
11 ~~(4)~~ (5) Develop a mechanism for identifying those instances where systems of paper forms
12 should be replaced by direct use of information equipment and those instances where applicable
13 state or federal standards of accountability demand retention of some paper processes;
14 ~~(5)~~ (6) Develop a mechanism for identifying those instances where information systems

15 should be linked and information shared, while providing for appropriate limitations on access and
16 the security of information;

17 ~~(6)~~ (7) Create new technologies to be used in government, convene conferences and
18 develop incentive packages to encourage the utilization of technology;

19 ~~(7)~~ (8) Engage in any other activities as directed by the Governor;

20 ~~(8)~~ (9) Provide information services to spending units.

21 (A) Charge The Chief Technology Officer shall assess a fee to the state spending units
22 for information services, evaluations performed and technical assistance provided under the
23 provisions of this section. The Chief Technology Officer shall provide the spending unit a fixed
24 schedule approved by the Governor for fees assessed. If the spending unit contests any portion
25 of the schedule, it shall remit payment for the uncontested amount and notify the Chief Technology
26 Officer in writing within 30 days of the date of receipt of the schedule. The Chief Technology
27 Officer shall work with the spending unit to resolve the contested amount. If no resolution is
28 reached, the Secretary of the Department of Administration shall make a final determination of
29 the contested amount.

30 (B) All Fees collected by the Chief Technology Officer pursuant to this subsection shall be
31 deposited in a special account in the State Treasury to be known as the ~~Chief Technology Officer~~
32 ~~Administration Fund~~ Information Services and Communications Fund authorized in §5A-6-4e of
33 this code; ~~Expenditures from the fund shall be made by the Chief Technology Officer for the~~
34 ~~purposes set forth in this article and are not authorized from collections but are to be made only~~
35 ~~in accordance with appropriation by the Legislature and in accordance with the provisions of~~
36 ~~article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in~~
37 ~~article two, chapter eleven-b of this code: *Provided*, That the provisions of section eighteen, article~~
38 ~~two, chapter eleven-b of this code do not operate to permit expenditures in excess of the spending~~
39 ~~authority authorized by the Legislature. Amounts collected which are found to exceed the funds~~
40 ~~needed for purposes set forth in this article may be transferred to other accounts or funds and~~

41 ~~redesignated for other purposes by appropriation of the Legislature~~

42 ~~(9)~~ (10) Monitor trends and advances in information technology and technical
43 infrastructure;

44 ~~(10)~~ (11) Direct the formulation and promulgation of policies, guidelines, standards and
45 specifications for the development and maintenance of information technology and technical
46 infrastructure, including, but not limited to:

47 (A) Standards to support state and local government exchange, acquisition, storage, use,
48 sharing, and distribution of electronic information;

49 (B) Standards concerning the development of electronic transactions, including the use of
50 electronic signatures;

51 (C) Standards necessary to support a unified approach to information technology across
52 the totality of state government, thereby assuring that the citizens and businesses of the state
53 receive the greatest possible security, value, and convenience from investments made in
54 technology;

55 (D) Guidelines directing the establishment of statewide standards for the efficient
56 exchange of electronic information and technology, including technical infrastructure, between the
57 public and private sectors;

58 (E) Technical and data standards for information technology and related systems to
59 promote efficiency and uniformity;

60 (F) Technical and data standards for the connectivity, priorities, and interoperability of
61 technical infrastructure used for homeland security, public safety and health, and systems
62 reliability necessary to provide continuity of government operations in times of disaster or
63 emergency for all state, county, and local governmental units; and

64 (G) Technical and data standards for the coordinated development of infrastructure related
65 to deployment of electronic government services among state, county, and local governmental
66 units;

67 ~~(11)~~ (12) Periodically evaluate the feasibility of subcontracting information technology
68 resources and services, and to subcontract only those resources that are feasible and beneficial
69 to the state;

70 ~~(12)~~ (13) Direct the compilation and maintenance of an inventory of information technology
71 and technical infrastructure of the state, including infrastructure and technology of all state,
72 county, and local governmental units, which may include personnel, facilities, equipment, goods
73 and contracts for service, wireless tower facilities, geographic information systems, and any
74 technical infrastructure or technology that is used for law enforcement, homeland security, or
75 emergency services;

76 ~~(13)~~ (14) Develop job descriptions and qualifications necessary to perform duties related
77 to information technology as outlined in this article; and

78 ~~(14)~~ (15) Promulgate legislative rules, in accordance with the provisions of chapter twenty-
79 nine-a of this code, as may be necessary to standardize and make effective the administration of
80 the provisions of §5A-6-1 *et seq.* of this code.

81 (b) With respect to executive agencies, the Chief Technology Officer may:

82 (1) Develop a unified and integrated structure for information systems for all executive
83 agencies;

84 (2) Establish, based on need and opportunity, priorities and time lines for addressing the
85 information technology requirements of the various executive agencies of state government;

86 (3) Exercise authority delegated by the Governor by executive order to overrule and
87 supersede decisions made by the administrators of the various executive agencies of government
88 with respect to the design and management of information systems and the purchase, lease or
89 acquisition of information equipment and contracts for related services;

90 (4) Draw upon staff of other executive agencies for advice and assistance in the
91 formulation and implementation of administrative and operational plans and policies;

92 (5) Recommend to the Governor transfers of equipment and human resources from any

93 executive agency and the most effective and efficient uses of the fiscal resources of executive
94 agencies, to consolidate or centralize information-processing operations; and

95 (6) Ensure information technology equipment is properly cleansed before disposal or
96 transfer to another agency or organization, ~~and is responsible for the~~ including ensuring the proper
97 retirement or transfer of information technology equipment that may contain confidential or
98 privileged electronic data. Information technology equipment shall be cleansed using appropriate
99 and effective methods that are commensurate with the data, the decommissioning agency and
100 the planned disposition of the information technology equipment. Following the cleansing, the
101 Chief Technology Officer may distribute the information technology equipment for reuse by
102 another state spending unit, send the information technology equipment to a state authorized
103 recycler or send the information technology equipment to a certified information technology
104 equipment refurbisher. Transfers and disposal of information technology equipment are
105 specifically exempt from the surplus property requirements enumerated in §5A-3-43, §5A-3-44,
106 §5A-3-45, and §5A-3-46 of this code.

107 (c) The Chief Technology Officer may employ the personnel necessary to carry out the
108 work of the Office of Technology and may approve reimbursement of costs incurred by employees
109 to obtain education and training.

110 (d) The Chief Technology Officer shall develop a comprehensive, statewide, four-year
111 strategic information technology and technical infrastructure policy and development plan to be
112 submitted to the Governor and the Joint Committee on Government and Finance. ~~A preliminary~~
113 ~~plan shall be submitted by December 1, 2006, and the final plan shall be submitted by June 1,~~
114 ~~2007~~ The plan shall include, but not be limited to:

115 (A) ~~A discussion of~~ Specific projects to implement the plan;

116 (B) ~~A discussion of the~~ Acquisition, management and use of information technology by
117 state agencies;

118 (C) ~~A discussion of~~ Connectivity, priorities and interoperability of the state's technical

119 infrastructure with the technical infrastructure of political subdivisions and encouraging the
120 coordinated development of facilities and services regarding homeland security, law enforcement
121 and emergency services to provide for the continuity of government operations in times of disaster
122 or emergency;

123 (D) ~~A discussion identifying~~ Identification of potential market demand areas in which
124 expanded resources and technical infrastructure may be expected;

125 (E) ~~A discussion of~~ Necessary technical infrastructure as it relates to higher education and
126 health;

127 (F) ~~A discussion of the~~ Use of public-private partnerships in the development of technical
128 infrastructure and technology services; and

129 (G) ~~A discussion of~~ Coordinated initiatives in website architecture and technical
130 infrastructure to modernize and improve government to citizen services, government to business
131 services, government-to-government relations and internal efficiency and effectiveness of
132 services, including a discussion of common technical data standards and common portals to be
133 utilized by state, county and local governmental units.

134 (e) The Chief Technology Officer shall oversee telecommunications services used by state
135 spending units for the purpose of maximizing efficiency to the fullest possible extent, including:

136 (1) The Chief Technology Officer shall establish Establishing a microwave or other
137 networks and LATA hops;

138 (2) Maintaining an account system for all telephone service to the state;

139 (3) audit Auditing telecommunications services and usage; recommend and develop
140 strategies for the discontinuance of obsolete or excessive utilization;

141 (4) participate Participating in the renegotiation of telecommunications contracts; and

142 (5) To encourage the use of technology and take other actions necessary to provide the
143 greatest value to the state.

144 (f) The Chief Technology Officer shall supervise the central mailing office. The Chief

145 Technology Officer shall collect a fee from each spending unit of state government served by the
146 central mailing office for providing such services. The Chief Technology Officer shall keep the
147 central mailing office open during regular hours of the state spending units. The amounts collected
148 pursuant to this subsection shall be deposited in the special account in the State Treasury known
149 as the postage fund.

**§5A-6-4d. Payment of legitimate uncontested invoices for telecommunications services;
procedures and powers of the Office of Technology and Secretary of
Administration.**

1 (a) To facilitate the administration and payment of telecommunications services, there is
2 continued in the State Treasury a special revenue account to be known as the
3 Telecommunications Services Payment and Reserve Fund. All moneys transferred from state
4 spending units pursuant to the requirements of this section shall be deposited in the account.
5 Expenditures from the fund shall be made by the Chief Technology Officer for telecommunications
6 charges or telecommunications-related equipment, maintenance or services: *Provided*, That no
7 more than \$150,000 or the actual amount collected pursuant to subsection (j) of this section in
8 any fiscal year, whichever is less, may be expended from the fund in any fiscal year to defray the
9 costs of administration of this section.

10 (b) Upon receipt of any telecommunication charges from a properly registered and
11 qualified vendor, the Office of Technology shall conduct a preliminary review of the charges. If
12 the Office of Technology determines during this preliminary review that: (1) Any of the charges
13 are not authorized by law or by the contract under which the telecommunication services are
14 provided; (2) no specific spending unit is designated for any charge; or (3) any charge or service
15 is not in accordance with contract pricing, the Office of Technology shall reject those charges.
16 Within 14 days of receipt of any telecommunication charge, the Office of Technology shall notify
17 a vendor of any rejected charges and shall include in the notice a description of the rejected
18 charges, the reasons a charge was rejected and a proposed resolution of the rejected charge.

19 The Office of Technology and the vendor shall attempt to resolve the matter in good faith. Within
20 90 days of the receipt of the vendor's invoice or a time period mutually agreed to by the vendor
21 and secretary, the secretary shall make the final decision as to the legitimacy of the rejected
22 amount and determine if payment is warranted. If the final decision of the secretary is to require
23 payment of the rejected amount, the secretary shall cause the Office of Technology to bill that
24 amount to the appropriate spending unit which shall remit payment of the amount as required in
25 subsection (c) of this section. If the final decision of the secretary is to refuse to pay any amount,
26 the vendor may proceed in accordance with the provisions of §14-2-1 et seq. of this code.

27 (c) Following the preliminary review of the charges, the Office of Technology shall fully
28 apportion all telecommunication charges not rejected during the preliminary review required by
29 subsection (b) of this section among spending units based on the spending unit's service and
30 usage, as determined by the Office of Technology. The Office of Technology shall send each
31 spending unit a statement of the spending unit's proportionate share of any telecommunication
32 charges within 30 days of receipt by the Office of Technology of the invoice detailing the
33 telecommunication charges. Monthly statements for a spending unit of less than \$75 may be
34 accumulated and sent to the spending unit on one statement near the end of the fiscal year. The
35 Office of Technology shall continue to pay any vendor invoices based upon the requirements of
36 subsection (a) of this section. The statement is to provide a date of no more than 30 calendar
37 days from the date the Officer of Technology sends the statement by which the spending unit
38 shall submit payment or transfer to the telecommunications services payment and reserve fund
39 all funds necessary to pay for the spending unit's charges in full: *Provided*, That the statement
40 sent in the last month of the fiscal year shall provide that the transfer shall be made by July 31. If
41 feasible for the spending unit, the preferable method of payment is by intergovernmental transfer.

42 (d) All spending units shall budget for telecommunication service expenses. Prior to the
43 date provided in each statement sent to a spending unit pursuant to subsection (c) of this section,
44 each spending unit shall pay or transfer the statement amount to the Telecommunication Services

45 Payment and Reserve Fund.

46 (e) If a spending unit contests any portion of its statement, it shall nonetheless remit
47 payment for the entire statement amount and notify the Office of Technology in writing within 30
48 days of statement receipt by the spending unit. The secretary shall consider any contested
49 apportionments of charges and provide a final determination on the apportionment of legitimate
50 charges. Corrections or adjustments to apportionments may be effected on future transfer
51 payments: *Provided*, That legitimate vendor charges are to be fully apportioned. If the basis of
52 the contest is vendor error, overcharge, service failure, failure to terminate services as required
53 by the Office of Technology or other failure of or error in vendor performance, the Office of
54 Technology shall withhold the contested amount from current or future vendor payments, pending
55 resolution by the secretary, and the Office of Technology shall bring the contested matter to the
56 attention of the vendor. The Office of Technology and the vendor shall attempt to resolve the
57 matter in good faith. Within 90 days of the receipt of the vendor's invoice or a time period mutually
58 agreed to by the vendor and secretary, the secretary shall make the final decision as to the
59 legitimacy of the contested amount and determine if payment is warranted. If the final decision of
60 the secretary is to refuse to pay any amount, the vendor may proceed in accordance with the
61 provisions of §14-2-1 *et seq.* of this code.

62 (f) If a spending unit fails to pay or transfer funds by the date specified in the statement
63 sent pursuant to subsection (c) of this section, the Secretary of the Department of Administration
64 shall transfer to the Telecommunication Services Payment and Reserve Fund the statement
65 amount plus an additional penalty in the amount of three percent of the statement amount from
66 any funds supporting the administration of that spending unit: *Provided*, That the secretary shall
67 complete all such transfers by July 31 of each fiscal year. Upon exercising a transfer under the
68 authority of this subsection, the Office of Technology shall provide a notification to the spending
69 unit, including, but not limited to, the date, time, total amount of the transfer, statement amount
70 and penalty amount. If a participating spending unit does not maintain funds in the State Treasury,

71 the secretary may transfer funds by wire from any depository outside the State Treasury. A
72 participating spending unit maintaining funds in depositories outside the State Treasury shall
73 furnish the secretary access to those funds for the exclusive purposes of this section.

74 (g) The Office of Technology shall provide for full payment of legitimate, uncontested
75 telecommunication charges within 90 days of receipt of an invoice detailing the telecommunication
76 charges by the Office of Technology. Payment for the charges shall be made by the Chief
77 Technology Officer from the Telecommunication Services Payment and Reserve Fund.

78 (h) The Chief Technology Officer may direct the discontinuance of telecommunication
79 services to any spending unit that fails to comply with the provisions of this section and the vendor
80 supplying telecommunication services shall comply with the written direction of the Chief
81 Technology Officer on discontinuance of services.

82 (i) To help defray the additional cost of administering this section, the Office of Technology
83 may assess a proportional fee of up to \$150,000 in aggregate per fiscal year to the participating
84 spending units based on each spending unit's portion of service and usage. This fee is to be
85 included in the statement sent to spending units pursuant to subsection (c) of this section and
86 transferred to the Telecommunication Service Payment and Reserve Fund by the date specified
87 in the statement for the transfer of payment.

88 (j) Notwithstanding any other provision of this code to the contrary, for purposes of this
89 section, an invoice is considered received by the Office of Technology on the date on which the
90 invoice is marked as received by the Office of Technology, or three business days after the date
91 of the postmark made by the United States Postal Service as evidenced on the envelope in which
92 the invoice is mailed, whichever is earlier: *Provided*, That if an invoice is received by the Office of
93 Technology prior to the date on which the telecommunication services covered by the invoice are
94 delivered or fully performed, for purposes of determining the 90 day time period for payment in
95 subsection (g) of this section, the invoice is considered received on the date on which the
96 telecommunication services covered by the invoice were delivered or fully performed.

97 (k) For purposes of this section, "telecommunication service" means and includes not only
98 telephone service regulated under chapter 24 of this code or under federal law, but also may
99 include, at the discretion of the Secretary of Administration, wireless service, voice over Internet
100 protocol service, Internet service and any other service or equipment used for the electronic
101 transmission of voice or data: *Provided*, That the service is provided under a statewide contract.

102 (l) The Chief Technology Officer may propose rules for legislative approval in accordance
103 with the provisions of §29A-3-1 *et seq.* of this code to effectuate the purposes of this section.

§5A-6-4e. Special fund created; payments into fund; disbursements from fund.

1 On July 1, 2018, the Information Services and Communication Fund, created in the State
2 Treasury by the former §5A-7-10 of this code shall be transferred to the Office of Technology, and
3 the Chief Technology Officer Administration Fund, previously created in §5A-6-4 of this code,
4 shall be closed and any balance remaining in the fund shall be transferred to the Information
5 Services and Communications Fund. The Information Services and Communications Fund shall
6 consist of appropriations by the Legislature, funds received for services provided pursuant to this
7 article, any federal funds the agency is authorized to receive, and gifts, grants or donations
8 received. Expenditures from the fund shall be made by the Chief Technology Officer for the
9 purposes set forth in this article, and are not authorized from collections, but are to be made only
10 in accordance with appropriation from the Legislature and in §12-3-1 *et seq.* of this code, and
11 upon the fulfillment of the provisions of §11-2B-1 *et seq.* of this code.

§5A-6-8. Exemptions.

1 (a) The provisions of this article do not apply to the Legislature or the judiciary: ~~or any~~
2 ~~state Constitutional officer designated in section two, article seven, chapter six of this code~~
3 *Provided*, That the Chief Technology Officer is authorized to grant waivers to state spending units
4 for services required by this article: *Provided, however*, That the Chief Technology Officer shall,
5 upon request, grant a waiver to any state Constitutional Officer designated in §6-7-2 of this code
6 for the services listed in §5A-6-4(a)(9) of this code.

7 (b) Notwithstanding any other provision of this article to the contrary, except for
8 participation in the compilation and maintenance of an inventory of information technology and
9 technical infrastructure of the state authorized by §5A-6-4 of this code, the provisions of this article
10 do not apply to the West Virginia Board of Education, the West Virginia Department of Education,
11 the county boards of education or the West Virginia Division of Homeland Security and
12 Emergency Management relating to the technology used with the Statewide Interoperable Radio
13 Network, created by §15-14-1 *et seq.* of this code. However, the West Virginia Board of Education,
14 the West Virginia Department of Education, and the county boards of education will attempt to
15 cooperate and collaborate with the Chief Technology Officer to the extent feasible.

16 (c) The Governor may by executive order exempt from the provisions of this article any
17 entity created and organized to facilitate the public and private use of health care information and
18 the use of electronic medical records throughout the state.

ARTICLE 7. INFORMATION SERVICES AND COMMUNICATIONS DIVISION.

§5A-7-1. Definitions.

1 [Repealed.]

§5A-7-2. Division created; purpose; use of facilities; rules and regulations.

1 [Repealed.]

§5A-7-3. Director; appointment and qualifications.

1 [Repealed.]

§5A-7-4. Powers and duties of division generally; professional staff; telephone service.

1 [Repealed.]

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

1 [Repealed.]

§5A-7-5. Control over central mailing office.

1 [Repealed.]

§5A-7-6. Central mailing office employees.

1 [Repealed.]

§5A-7-7. Central mailing office responsibilities.

1 [Repealed.]

§5A-7-8. Use of the central mailing office.

1 [Repealed.]

§5A-7-9. Preparation of mail for special rates.

1 [Repealed.]

**§5A-7-10. Special fund created; payments into fund; charges for services; disbursements
from fund.**

1 [Repealed.]

§5A-7-11. Confidential records.

1 [Repealed.]

NOTE: This purpose of this bill is to dissolve the Information Services and Communications Division under the Office of Technology and to transfer those necessary functions of the agency to the Office of Technology.

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