

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4339

**FISCAL
NOTE**

BY DELEGATES ESPINOSA, HOWELL, HAMRICK,

HOUSEHOLDER, COWLES AND NELSON

[Introduced January 29, 2018; Referred
to the Committee on Government Organization then
Finance.]

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; authorizing the Chief
 6 Technology Officer to provide training and other services and to assess fees for services
 7 provided; requiring the Chief Technology Officer to oversee telecommunications services
 8 to state spending units; requiring the Chief Technology Officer to supervise and maintain
 9 the central mailing office; directing the deposit of any moneys received for services;
 10 creating a special revenue account for administration of telecommunications services;
 11 authorizing the Chief Technology Officer to review and pay uncontested amounts due for
 12 telecommunications services; providing a process for state spending units to contest
 13 amounts due; authorizing the Chief Technology Officer to invoice spending units for
 14 amounts paid on behalf of the spending unit; authorizing the Secretary of the Department
 15 of Administration to make a final decision on contested amounts due; authorizing the
 16 secretary to direct the transfer of funds into the special revenue account for unpaid
 17 telecommunications services; authorizing the secretary to assess a penalty with notice on
 18 spending units for unpaid amounts for telecommunications services; authorizing a special
 19 fund to receive moneys for services provided by the agency; and authorizing the Chief
 20 Technology Officer to grant waivers for certain services required by statute.

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

28 (B) ~~All~~ Fees collected by the Chief Technology Officer pursuant to this subsection shall be
29 deposited in a special account in the State Treasury to be known as the ~~Chief Technology Officer~~

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

40 ~~(9)~~ (10) Monitor trends and advances in information technology and technical
41 infrastructure;

42 ~~(10)~~ (11) Direct the formulation and promulgation of policies, guidelines, standards and
43 specifications for the development and maintenance of information technology and technical
44 infrastructure, including, but not limited to:

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

47 (B) Standards concerning the development of electronic transactions, including the use of
48 electronic signatures;

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

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

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

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

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

65 ~~(11)~~ (12) Periodically evaluate the feasibility of subcontracting information technology
66 resources and services, and to subcontract only those resources that are feasible and beneficial
67 to the state;

68 ~~(12)~~ (13) Direct the compilation and maintenance of an inventory of information technology
69 and technical infrastructure of the state, including infrastructure and technology of all state, county
70 and local governmental units, which may include personnel, facilities, equipment, goods and
71 contracts for service, wireless tower facilities, geographic information systems and any technical
72 infrastructure or technology that is used for law enforcement, homeland security or emergency
73 services;

74 ~~(13)~~ (14) Develop job descriptions and qualifications necessary to perform duties related
75 to information technology as outlined in this article; and

76 ~~(14)~~ (15) Promulgate legislative rules, in accordance with the provisions of chapter twenty-
77 nine-a of this code, as may be necessary to standardize and make effective the administration of
78 the provisions of §5A-6-1 *et seq.* of this code.

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

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

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

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

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

90 (5) Recommend to the Governor transfers of equipment and human resources from any
91 executive agency and the most effective and efficient uses of the fiscal resources of executive
92 agencies, to consolidate or centralize information-processing operations; and

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

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

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

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

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

116 (C) ~~A discussion of~~ Connectivity, priorities and interoperability of the state's technical
117 infrastructure with the technical infrastructure of political subdivisions and encouraging the
118 coordinated development of facilities and services regarding homeland security, law enforcement
119 and emergency services to provide for the continuity of government operations in times of disaster
120 or emergency;

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

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

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

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

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

134 ~~(1) The Chief Technology Officer shall establish~~ Establishing a microwave or other
135 networks and LATA hops;

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

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

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

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

142 (f) The Chief Technology Officer shall supervise the central mailing office. The Chief
143 Technology Officer shall collect a fee from each spending unit of state government served by the
144 central mailing office for providing such services. The Chief Technology Officer shall keep the
145 central mailing office open during regular hours of the state spending units. The amounts collected
146 pursuant to this subsection shall be deposited in the special account in the State Treasury known
147 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 telecommunications 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 telecommunications 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 telecommunications 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 telecommunications 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 telecommunications
32 charges within 30 days of receipt by the Office of Technology of the invoice detailing the
33 telecommunications 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 telecommunications 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 Telecommunications
45 Services Payment and Reserve Fund.

46 (e) If a spending unit fails to pay or transfer funds by the date specified in the statement
47 sent pursuant to subsection (c) of this section, the Secretary of the Department of Administration
48 shall transfer to the Telecommunications Services Payment and Reserve Fund the statement
49 amount plus an additional penalty in the amount of three percent of the statement amount from
50 any funds supporting the administration of that spending unit: *Provided*, That the secretary shall
51 complete all such transfers by July 31 of each fiscal year. Upon exercising a transfer under the
52 authority of this subsection, the Office of Technology shall provide a notification to the spending
53 unit, including, but not limited to, the date, time, total amount of the transfer, statement amount
54 and penalty amount. If a participating spending unit does not maintain funds in the State Treasury,
55 the secretary may transfer funds by wire from any depository outside the State Treasury. A
56 participating spending unit maintaining funds in depositories outside the State Treasury shall
57 furnish the secretary access to those funds for the exclusive purposes of this section.

58 (f) If a spending unit contests any portion of its statement, it shall nonetheless remit
59 payment for the entire statement amount and notify the Office of Technology in writing within 30
60 days of statement receipt by the spending unit. The secretary shall consider any contested
61 apportionments of charges and provide a final determination on the apportionment of legitimate

62 charges. Corrections or adjustments to apportionments may be effected on future transfer
63 payments: *Provided*, That legitimate vendor charges are to be fully apportioned. If the basis of
64 the contest is vendor error, overcharge, service failure, failure to terminate services as required
65 by the Office of Technology or other failure of or error in vendor performance, the Office of
66 Technology shall withhold the contested amount from current or future vendor payments, pending
67 resolution by the secretary, and the Office of Technology shall bring the contested matter to the
68 attention of the vendor. The Office of Technology and the vendor shall attempt to resolve the
69 matter in good faith. Within 90 days of the receipt of the vendor's invoice or a time period mutually
70 agreed to by the vendor and secretary, the secretary shall make the final decision as to the
71 legitimacy of the contested amount and determine if payment is warranted. If the final decision of
72 the secretary is to refuse to pay any amount, the vendor may proceed in accordance with the
73 provisions of §14-2-1 *et seq.* of this code.

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

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

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

88 in the statement for the transfer of payment.

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

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

103 (l) The Chief Technology Officer may propose rules for legislative approval in accordance
104 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 Only 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 waive responsibilities required by
 4 this article at the discretion of the Chief Technology Officer when requested by spending units.

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

14 (c) The Governor may by executive order exempt from the provisions of this article any
 15 entity created and organized to facilitate the public and private use of health care information and
 16 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.

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and underscoring indicates new language that would be added.