

FILED

2005 MAY -3 A 8: 59

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005

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**ENROLLED**

## House Bill No. 3104

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

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Passed April 9, 2005

In Effect Ninety Days from Passage

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**E N R O L L E D**

## **H. B. 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.**

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

9 (b) To facilitate the administration and payment of telecom-  
10 munications services, there is continued in the State Treasury  
11 a special revenue account to be known as the "Telecommunica-  
12 tions Services Payment and Reserve Fund." All moneys  
13 transferred from state spending units pursuant to the require-  
14 ments of this section shall be deposited in the account. Expendi-  
15 tures from the fund shall be made by the Director for the  
16 exclusive purposes set forth in this section: *Provided*, That no  
17 more than one hundred and fifty thousand dollars or the actual  
18 amount collected pursuant to subsection (j) of this section in  
19 any fiscal year, whichever is less, may be expended from the  
20 fund in any fiscal year to defray the costs of administration of  
21 this section.

22 (c) Upon receipt of any telecommunications charges from  
23 a properly registered and qualified vendor, the Division shall  
24 conduct a preliminary review of the charges. If the Division  
25 determines during this preliminary review that: (1) any of the  
26 charges are not authorized by law or by the contract under  
27 which the telecommunications services are provided; (2) no  
28 specific spending unit is designated for any charge; or (3) any  
29 charge or service is not in accordance with contract pricing, the  
30 Division shall reject those charges. Within fourteen days of  
31 receipt of any telecommunications charge, the Director shall  
32 notify a vendor of any rejected charges and shall include in the  
33 notice a description of the rejected charges, the reasons a charge  
34 was rejected and a proposed resolution of the rejected charge.

35 The Director and the vendor shall attempt to resolve the matter  
36 in good faith. Within ninety days of the receipt of the vendor's  
37 invoice or a time period mutually agreed to by the vendor and  
38 Secretary, the Secretary shall make the final decision as to the  
39 legitimacy of the rejected amount and determine if payment is  
40 warranted. If the final decision of the Secretary is to require  
41 payment of the rejected amount, the Secretary shall cause the  
42 Division to bill that amount to the appropriate spending unit  
43 which shall remit payment of the amount as required in  
44 subsection (d) of this section. If the final decision of the  
45 Secretary is to refuse to pay any amount, the vendor may  
46 proceed in accordance with the provisions of article two,  
47 chapter fourteen of this code.

48 (d) Following the preliminary review of the charges, the  
49 Director shall fully apportion all telecommunications charges  
50 not rejected during the preliminary review required by subsec-  
51 tion (c) of this section among spending units based on the  
52 spending unit's service and usage, as determined by the  
53 Director. The Director shall send each spending unit a statement  
54 of the spending unit's proportionate share of any telecommuni-  
55 cations charges within thirty days of receipt by the Division of  
56 the invoice detailing the telecommunications charges. The  
57 statement is to provide a date of no more than thirty calendar  
58 days from the date the Division sends the statement by which  
59 the spending unit shall submit payment or transfer to the  
60 telecommunications services payment and reserve fund all  
61 funds necessary to pay for the spending unit's charges in full:  
62 *Provided*, That the statement sent in last month of the fiscal  
63 year shall provide that the transfer shall be made by the thirty-  
64 first day of July. If feasible for the spending unit, the preferable  
65 method of payment is by intergovernmental transfer.

66 (e) All spending units shall budget for telecommunications  
67 service expenses. Prior to the date provided in each statement  
68 sent to a spending unit pursuant to subsection (d) of this section,

69 each spending unit shall pay or transfer the statement amount  
70 to the telecommunications services payment and reserve fund.

71 (f) If a spending unit fails to pay or transfer funds by the  
72 date specified in the statement sent pursuant to subsection (d)  
73 of this section, the Secretary of the department of administra-  
74 tion shall transfer to the telecommunications services payment  
75 and reserve fund the statement amount plus an additional  
76 penalty in the amount of three percent of the statement amount  
77 from any funds supporting the administration of that spending  
78 unit: *Provided*, That the Secretary shall complete all such  
79 transfers by the thirty-first day of July of each fiscal year. Upon  
80 exercising a transfer under the authority of this subsection, the  
81 Director shall provide a notification to the spending unit,  
82 including, but not limited to, the date, time, total amount of the  
83 transfer, statement amount and penalty amount. If a participat-  
84 ing spending unit does not maintain funds in the state treasury,  
85 the Secretary may transfer funds by wire from any depository  
86 outside the state treasury. A participating spending unit  
87 maintaining funds in depositories outside the State Treasury  
88 shall furnish the Secretary access to those funds for the exclu-  
89 sive purposes of this section.

90 (g) If a spending unit contests any portion of its statement,  
91 it shall nonetheless remit payment for the entire statement  
92 amount and notify the Division in writing within thirty days of  
93 statement receipt by the spending unit. The Secretary shall  
94 consider any contested apportionments of charges and provide  
95 a final determination on the apportionment of legitimate  
96 charges. Corrections or adjustments to apportionments may be  
97 effected on future transfer payments: *Provided*, That legitimate  
98 vendor charges are to be fully apportioned. If the basis of the  
99 contest is vendor error, overcharge, service failure, failure to  
100 terminate services as required by the Division, or other failure  
101 of or error in vendor performance, the Director shall withhold  
102 the contested amount from current or future vendor payments,

103 pending resolution by the Secretary, and the Director shall bring  
104 the contested matter to the attention of the vendor. The Director  
105 and the vendor shall attempt to resolve the matter in good faith.  
106 Within ninety days of the receipt of the vendor's invoice or a  
107 time period mutually agreed to by the vendor and Secretary, the  
108 Secretary shall make the final decision as to the legitimacy of  
109 the contested amount and determine if payment is warranted. If  
110 the final decision of the Secretary is to refuse to pay any  
111 amount, the vendor may proceed in accordance with the  
112 provisions of article two, chapter fourteen of this code.

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

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

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

133 (k) Notwithstanding any other provision of this code to the  
134 contrary, for purposes of this section, an invoice is considered

135 received by the Division on the date on which the invoice is  
136 marked as received by the Division, or three business days after  
137 the date of the postmark made by the United States postal  
138 service as evidenced on the envelope in which the invoice is  
139 mailed, whichever is earlier: *Provided*, That if an invoice is  
140 received by the Division prior to the date on which the telecom-  
141 munications services covered by the invoice are delivered or  
142 fully performed, for purposes of determining the ninety-day  
143 time period for payment in subsection (h) of this section, the  
144 invoice is considered received on the date on which the  
145 telecommunications services covered by the invoice were  
146 delivered or fully performed.

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

156 (m) The Director may propose rules for legislative approval  
157 in accordance with the provisions of article three, chapter  
158 twenty-nine-a of this code to effectuate the purposes of this  
159 section. The initial rule filed by the Division pursuant to the  
160 amendments to this subsection enacted during the regular  
161 session of the Legislature in two thousand five shall be filed as  
162 an emergency rule.

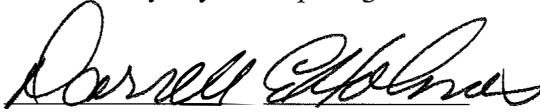
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


  
Chairman Senate Committee

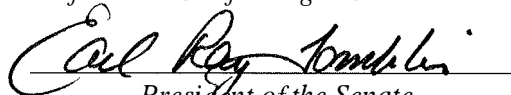
  
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

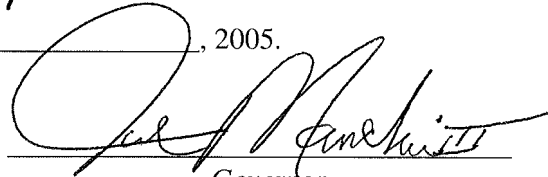
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

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

  
Governor



PRESENTED TO THE  
GOVERNOR

MAY 2 2005

Time 10:35 *pm*