

**Senate Bill No. 399**

(By Senators McCabe and Snyder)

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[Introduced February 2, 2011; referred to the Committee on  
Government Organization; and then to the Committee on Finance.]

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A BILL to amend and reenact §5A-7-4a of the Code of West Virginia,  
1931, as amended, relating to adding new language allowing  
invoices under \$75 to accumulate and be mailed in one  
statement near the end of the fiscal year.

*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.**

(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

1 shared account is entitled to prompt payment upon presentation of  
2 a legitimate uncontested invoice for telecommunications services to  
3 the division, as provided in the following subsections.

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

16 (c) Upon receipt of any telecommunications charges from a  
17 properly registered and qualified vendor, the division shall  
18 conduct a preliminary review of the charges. If the division  
19 determines during this preliminary review that: (1) Any of the  
20 charges are not authorized by law or by the contract under which  
21 the telecommunications services are provided; (2) no specific  
22 spending unit is designated for any charge; or (3) any charge or  
23 service is not in accordance with contract pricing, the division  
24 shall reject those charges. Within fourteen days of receipt of any  
25 telecommunications charge, the director shall notify a vendor of  
26 any rejected charges and shall include in the notice a description

1 of the rejected charges, the reasons a charge was rejected and a  
2 proposed resolution of the rejected charge. The director and the  
3 vendor shall attempt to resolve the matter in good faith. Within  
4 ninety days of the receipt of the vendor's invoice or a time period  
5 mutually agreed to by the vendor and secretary, the secretary shall  
6 make the final decision as to the legitimacy of the rejected amount  
7 and determine if payment is warranted. If the final decision of  
8 the secretary is to require payment of the rejected amount, the  
9 secretary shall cause the division to bill that amount to the  
10 appropriate spending unit which shall remit payment of the amount  
11 as required in subsection (d) of this section. If the final  
12 decision of the secretary is to refuse to pay any amount, the  
13 vendor may proceed in accordance with the provisions of article  
14 two, chapter fourteen of this code.

15 (d) Following the preliminary review of the charges, the  
16 director shall fully apportion all telecommunications charges not  
17 rejected during the preliminary review required by subsection (c)  
18 of this section among spending units based on the spending unit's  
19 service and usage, as determined by the director. The director  
20 shall send each spending unit a statement of the spending unit's  
21 proportionate share of any telecommunications charges within thirty  
22 days of receipt by the division of the invoice detailing the  
23 telecommunications charges. Monthly statements for a spending unit  
24 of less than \$75 may be accumulated and sent to the spending unit  
25 on one statement near the end of the fiscal year. The statement is  
26 to provide a date of no more than thirty calendar days from the

1 date the division sends the statement by which the spending unit  
2 shall submit payment or transfer to the telecommunications services  
3 payment and reserve fund all funds necessary to pay for the  
4 spending unit's charges in full: *Provided*, That the statement sent  
5 in last month of the fiscal year shall provide that the transfer  
6 shall be made by July 31. If feasible for the spending unit, the  
7 preferable method of payment is by inter-governmental transfer.

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

13 (f) If a spending unit fails to pay or transfer funds by the  
14 date specified in the statement sent pursuant to subsection (d) of  
15 this section, the Secretary of the Department of Administration  
16 shall transfer to the telecommunications services payment and  
17 reserve fund the statement amount plus an additional penalty in the  
18 amount of three percent of the statement amount from any funds  
19 supporting the administration of that spending unit: *Provided*,  
20 That the secretary shall complete all such transfers by July 31 of  
21 each fiscal year. Upon exercising a transfer under the authority  
22 of this subsection, the director shall provide a notification to  
23 the spending unit, including, but not limited to, the date, time,  
24 total amount of the transfer, statement amount and penalty amount.  
25 If a participating spending unit does not maintain funds in the  
26 State Treasury, the Secretary may transfer funds by wire from any

1 depository outside the State Treasury. A participating spending  
2 unit maintaining funds in depositories outside the State Treasury  
3 shall furnish the secretary access to those funds for the exclusive  
4 purposes of this section.

5 (g) If a spending unit contests any portion of its statement,  
6 it shall nonetheless remit payment for the entire statement amount  
7 and notify the division in writing within thirty days of statement  
8 receipt by the spending unit. The secretary shall consider any  
9 contested apportionments of charges and provide a final  
10 determination on the apportionment of legitimate charges.  
11 Corrections or adjustments to apportionments may be effected on  
12 future transfer payments: *Provided*, That legitimate vendor charges  
13 are to be fully apportioned. If the basis of the contest is vendor  
14 error, overcharge, service failure, failure to terminate services  
15 as required by the division, or other failure of or error in vendor  
16 performance, the director shall withhold the contested amount from  
17 current or future vendor payments, pending resolution by the  
18 secretary, and the director shall bring the contested matter to the  
19 attention of the vendor. The director and the vendor shall attempt  
20 to resolve the matter in good faith. Within ninety days of the  
21 receipt of the vendor's invoice or a time period mutually agreed to  
22 by the vendor and secretary, the secretary shall make the final  
23 decision as to the legitimacy of the contested amount and determine  
24 if payment is warranted. If the final decision of the secretary is  
25 to refuse to pay any amount, the vendor may proceed in accordance  
26 with the provisions of article two, chapter fourteen of this code.

1 (h) The director shall provide for full payment of legitimate,  
2 uncontested telecommunications charges within ninety days of  
3 receipt of an invoice detailing the telecommunications charges by  
4 the division. Payment for the charges shall be made by the  
5 director from the telecommunications services payment and reserve  
6 fund.

7 (i) The director may direct the discontinuance of  
8 telecommunications services to any spending unit that fails to  
9 comply with the provisions of this section and the vendor supplying  
10 telecommunication services shall comply with the written direction  
11 of the director on discontinuance of services.

12 (j) To help defray the additional cost of administering this  
13 section, the director may assess a proportional fee of up to  
14 \$150,000 in aggregate per fiscal year to the participating spending  
15 units based on each spending unit's portion of service and usage.  
16 This fee is to be included in the statement sent to spending units  
17 pursuant to subsection (d) of this section and transferred to the  
18 telecommunications service payment and reserve fund by the date  
19 specified in the statement for the transfer of payment.

20 (k) Notwithstanding any other provision of this code to the  
21 contrary, for purposes of this section, an invoice is considered  
22 received by the division on the date on which the invoice is marked  
23 as received by the division, or three business days after the date  
24 of the postmark made by the United States postal service as  
25 evidenced on the envelope in which the invoice is mailed, whichever  
26 is earlier: *Provided*, That if an invoice is received by the

1 division prior to the date on which the telecommunications services  
2 covered by the invoice are delivered or fully performed, for  
3 purposes of determining the ninety-day time period for payment in  
4 subsection (h) of this section, the invoice is considered received  
5 on the date on which the telecommunications services covered by the  
6 invoice were delivered or fully performed.

7 (l) For purposes of this section, "telecommunications service"  
8 means and includes not only telephone service regulated under  
9 chapter twenty-four of this code or under federal law, but also may  
10 include, at the discretion of the Secretary of Administration,  
11 wireless service, voice over Internet protocol service, Internet  
12 service and any other service or equipment used for the electronic  
13 transmission of voice or data: *Provided*, That such service is  
14 provided under a statewide contract.

15 (m) The director may propose rules for legislative approval in  
16 accordance with the provisions of article three, chapter twenty-  
17 nine-a of this code to effectuate the purposes of this section.  
18 The initial rule filed by the division pursuant to the amendments  
19 to this subsection enacted during the regular session of the  
20 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.