WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION

Form #3

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FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE July 29, 2005
ADMINISTRATIVE LAW DIVISION

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: Information Services & Communications - Dept of Admin TITLE NUMBER: 161

CITE AUTHORITY: Legislative Rule

AMENDMENT TO AN EXISTING RULE: YES X NO ___

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 2

TITLE OF RULE BEING AMENDED: Telecommunications Payments by Spending Units

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ___

TITLE OF RULE BEING PROPOSED: ___

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Helen Wilson

Authorized Signature

Robin [illegible]

WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION

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2005 JUL 29 P 5:38

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$5.40

Agency:	Department of Administration Information Services & Communications Division		
		Title Number:	161
Rule Type: Legislative Rule		Cite Authority:	5A-7-4a

STATEMENT OF CIRCUMSTANCE
AND BRIEF SUMMARY

During the past several years, there were extremely large claims filed against the State of West Virginia by telecommunications vendors in the Court of Claims for unpaid telephone bills. As a result of those claims, the Legislature passed Senate Bill 700 during the 2004 session which requires the Department of Administration to immediately take responsibility for seeing that phone bills were paid timely to prevent any further claims. These rules outline the process involved for implementing the legislation. They also outline the duties and responsibilities of all parties involved and the impact it will have upon them.

BRIEF SUMMARY OF COMMENTS RECEIVED; AGENCY RESPONSE; AND AMENDMENTS

Vendor Comments:

Several comments were received from several higher education institutions. The comments of substance are reflected below:

Comment 1: The primary objection is regarding the increase in the amount IS&C can bill for processing centralized invoices from $150,000 to $300,000. There is no documented justification as to the reason for the increase. This is an increased cost to government and education units of 100% within one year of the SB700 enactment. What will happen in year two, three, etc.? Are there expense and/or process controls in place to monitor the transactions?

Agency Response 1: The expenses required to audit, enter, and process the 3,000 separate invoices each month, and then perform accounts receivable functions for the amounts due exceeded $300,000 during the initial year. We believe that by working with the vendors, we can work through the contested charges and combine some of the invoices to cut down on the time required. The fiscal note showed true costs rather than those costs allowed in the Code so the fiscal note will be amended.

Amendment 1: The fiscal note is being amended to show the processing fee as $150,000 with a notation on the real costs of performing the requirements of Senate Bill 700.

Comment 2: The implementation of SB 700 has increased several WVU units' workload, operational costs, and frustration with IS&C processes and response or lack of response. There needs to be a more coordinated, efficient and timely communication effort originating with IS&C to government and education units. The original $150,000 was to cover IS&C costs associated with providing these services.

Agency Response 2: This initial year has not been as coordinated as we had hoped but we will be billing and performing the required accounts receivable functions in a more timely manner in year two.

Amendment 2: The fiscal note is being amended.

Comment 3: This will have a negative financial impact on users assuming that all of these fees are passed on to the user, at a time when we are all constantly evaluating budgets and implementing cost savings procedures.

Agency Response 3: As a revolving fund, IS&C must pass on the costs of performing services but the amount will reduced.

Amendment 3: The fiscal note will be amended.

Comment 4: No one in Higher Ed appreciates the processes that are occurring for telecommunication invoices handled by the IS&C staff responsible – much less the fact that they are threatening to charge more for the service (or lack of service).

Agency Response 4: The cost for processing is being amended to show the processing fee as $150,000 with a notation on the real costs for performing the requirements of Senate Bill 700.

Amendment 4: The fiscal note will be amended.

Comment 5: IS&C's billing for this fiscal year was months behind and last-minute billings during June caused many frustrations for both the higher institution's fiscal operations and vendors.

Agency Response 5: IS&C was not staffed to meet the unexpected volume of the invoices covered under Senate Bill 700. This problem has been addressed.

Amendment 5: We believe this problem has been addressed.

Comment 6: There is a growing consensus among public higher education institutions that Senate Bill 700 is not working and that our institutions should be allowed to receive invoices directly from telecommunications vendors and to pay those vendors directly. IS&C offers little value to this process and certainly not $300,000 worth of value. Our institutions and the Auditor's Office are capable of reviewing telecommunications invoices, as they review all other types of invoices on a daily basis, to determine whether we are being charged the proper amount. Furthermore, our higher education institutions generally pay all other bills promptly (e.g., telecommunications billings seem to be the only area where we see large Court of Claims judgment amounts).

Agency Response 6: The current contracts provide that the telecommunications vendors bill one single entity. This is by choice by the vendor community and is the same process used in other states. The state's cost would be increased if the vendors were required to bill each agency/entity separately. In addition, we have found from past experience that accounts receivable records must be kept by the state so that Court of Claims issues are minimized.

Amendment 6: This change has not been implemented.

Comment 7: IS&C have made threats to make transfers for transactions they indicate are late. The notification we received in the past week was incorrect – two of the three invoices were already paid by us and if we did not stop the transaction in the Auditor's Office it would have been double paid.

Agency Response 6: Accounts Receivable calls were made to each entity with a request for the appropriate numbers to track the payments in WVFIMS. We made two calls and then told the agencies that we would have to take the money according to the Senate Bill. This upset many agencies.

Amendment 7: No changes were made.

FILED

2005 JUL 29 P 5: 38

OFFICE WEST VIRGINIA
SECRETARY OF STATE

TITLE 161

DEPARTMENT OF ADMINISTRATION

INFORMATION SERVICES AND COMMUNICATIONS (IS&C)

SERIES 2

Telecommunications Payments by Spending Units

§161-2-1. General.

1.1. Scope. – This Legislative Rule is an explanation and clarification of operative procedures for the telecommunications payments by State spending units as defined in W. V a. Code §5A-7-4a.

1.2. Authority. - W. Va. Code §5A-7-4a.

1.3. Filing Date. – June 28, 2005

1.4 Effective Date. –

§161-2-2. Definitions.

As used in this rule, all terms have the same meaning as provided in W.Va. Code Section 5A-7-1 and as follows:

(a.) "Administration costs" means the costs (personnel, supplies, etc.) associated with administering the Legislative Rules governing W. Va. Code §5A-7-4a.

(b.) "Business days" means any day the State of West Virginia is open for business excluding official holidays and emergency closings.

(c.) "Components" means any ancillary documentation or backup data (hard copy, electronic copies, etc.) that are required to complete the apportionment of the charges identified on the invoice.

(d.) "Due Date" means the date no more than thirty calendar days from the date the division sends a statement by which the spending unit shall submit payment or transfer to the fund all funds necessary to pay the spending unit's charges in full.

(e.) "Fund Application" means the "Telecommunications Services Payment and Reserve Fund Application.

(f.) "Invoice" means the vendor's invoice and any components that list all of the services and charges that IS&C is expected to apportion out to the spending units for reimbursement.

(g.) "IS&C" or ' the Division' means the Information Services and Communications Division of the Department of Administration as established in W. Va. Code §5A-7-2.

(h.) "Legitimate Uncontested Invoice" means an invoice for shared account telecommunication services that is received by the Information Services and Communications Division (IS&C) of the Department of Administration which does not include: (1) charges not allowed, either by State law or contractually; (2) designation of specific spending unit for said service; (3) charges in error due to, but not limited to, overcharge, service failure, failure on the vendor's part to terminate services as requested or other failure of or error in vendor performance; and (4) where applicable, charges and/or services that are not in accordance with contract pricing.

(i.) "Received" or "receipt" means the date on which the invoice is marked as received by IS&C, or three business days after the date of the postmark made by the United States postal service as evidenced on the envelope in which the invoice is mailed, whichever is earlier.

(j.) "Rejected Invoice" means an invoice has been rejected for processing by IS&C for any of the following reasons: (a) charges not allowed, either by State law or contractually; (b) lack of designation of a specific spending unit for said service; and (c) where applicable, charges and/or services that are not in accordance with contract pricing.

(k.) "Shared Account" means an invoice for telecommunications services as defined in §5A-7-4a(k) that includes charges for two or more spending units.

(l.) "Spending Unit" means a department, agency or institution of the state government for which an appropriation is requested, or to which an appropriation is made by the Legislature: *Provided,* That spending unit does not include the Legislature or the judiciary.

(m.)"State Treasury" means any payments that are processed outside of the State's Financial Information Management System (FIMS).

(n.) "Statement" means an itemized listing of all telecommunications charges for each spending unit.

(o.) "Statement Date" means the last day the spending unit must submit full payment or transfer payment to the telecommunications services payment and reserve fund.

(p.) "Telecommunications Change Request" means a request form that is completed by the spending unit for requesting telecommunications services and then submitted to IS&C for processing and authorization.

(q.) "Telecommunications Services Expenses" means the expenses associated with the "Administration Costs".

(r.) "Vendor" means a vendor supplying telecommunications services to the state and its spending units which is properly registered and qualified and which supplies telecommunication services to two or more spending units under a shared account.

§161-2-3. Applicability.

This legislative rule applies to all spending units of that have their telecommunications services billed on the state's shared account.

§161-2-4. Authority of the Director.

4.1 The Director shall:

(a.) Ensure that all telecommunications shared account invoices are received from a properly registered and qualified vendor;

(b.) Review all shared account invoices received from properly registered and qualified vendors;

(c.) Apportion all telecommunications charges among spending units based on the spending unit's service and usage, as determined by the director;

(d.) Ensure that all statements itemizing the apportioned telecommunications charges by spending unit are sent out within thirty days of receipt by IS&C;

(e.) Assess a Telecommunications Service Expense fee to all spending units based on each spending unit's portion of service and usage.

(f.) Track all payments received from the spending units and provide the Secretary with a list of those spending units who have not transferred or submitted full payment to the telecommunications services payment and reserve fund within the required statement date.

(g) Negotiate on behalf of the spending units any disputed charges.

§161-2-5. IS&C Duties and Rights.

5.1 Preliminary Review of Invoice

5.1.1. All telecommunications invoices, when received at IS&C, will be marked as received with the date on which the invoice arrived at IS&C.

5.1.2 Charges will be apportioned for payment to the appropriate spending units within 30 days of the invoice being received. Each telecommunications invoice received for a shared account will be apportioned among the spending units based on the spending unit's service and usage, as determined by the Director.

5.2. Statements to Spending Units

5.2.1 Within thirty days of the receipt of an invoice detailing telecommunications charges, the Director will submit statement (s) to each spending unit. The Statement will include: (a) a unique identify code for each spending unit; (b) a payment or transfer due date; and (c) a detailed listing of all telecommunications charges, including the Telecommunications Service Expense.

5.2.2 A statement sent in the last month of the fiscal year will provide that payment is due by the thirty first day of July.

5.3. Accounting of Charges.

5.3.1. IS&C will track all statements sent to each spending unit and then apply all payments made against same. Agencies will be notified when a payment has not been received as of the statement date.

5.3.2. IS&C will, by vendor account, track all_charges and payments. This information will be provided to the vendors on a routine basis, which will be, at a minimum, on a quarterly basis.

§161-2-6. Spending Units' Duties and Rights.

6.1. All spending units will be required to complete and have approved a Fund Application by the date indicated on the application.

6.1.1. Any spending unit with moneys in the state treasury that fails to have an approved Fund Application on file by the required date may be subject to discontinuance of telecommunications services.

6.1.2. Any participating spending unit maintaining funds in depositories outside the state treasury shall furnish the Secretary access to those funds for the exclusive purposes of this section. Such spending units are required to file a Fund Application to meet this requirement. Failure to have an approved Fund Application on file by the required date will result in termination of that spending unit's telecommunication services and prohibit any new activity until the Fund Application is provided.

6.2. Contested Charges on Statement

6.2.1. Spending units contesting a statement or any portion of a statement, must, nonetheless, remit for payment the entire statement amount to telecommunications services payment and reserve fund by the due date printed on the statement.

6.2.2. The Director must be notified, in writing, of all disputed charges within thirty days of receipt of the statement by the spending unit.

6.2.3. The spending unit's written notice to the Director must include: 1) the statement date, number and total charges; 2) the contested charges and the reason for contesting the charges; and 3) a <u>proposed</u> resolution.

6.3. Review of Contested Charges

6.3.1. If the basis of a contested charge is overcharge, service failure, failure on the vendor's part to terminate services as requested or other failure of or error in vendor performance, IS& will withhold the contested amount from the current or future vendor payments, pending resolution of the contest.

6.3.1.1. IS&C will bring the contested matter to the attention of the vendor, in writing within ten business days from receipt of the spending unit's notification of contested charges.

6.3.1.2. Notice to the vendor will include: 1) the account number; 2) invoice number and date; 3) the contested charges and the reason for contesting the charges; and 3) a proposed resolution.

6.3.1.3. Contested charges that cannot be resolved in good faith between the Director and the vendor within seventy-five days of the receipt of vendor's invoice will be brought to the attention of the Secretary.

6.3.1.4. Within ninety days of the receipt of the vendor's invoice or a time period mutually agreed to by the vendor and the Secretary, the Secretary shall make the final decision as to the legitimacy of the contested amount and determine if payment is warranted.

6.3.1.5. If the Secretary's decision is to refuse payment, the vendor may proceed in accordance with the provisions of article two, chapter fourteen of the West Virginia State Code.

6.3.2. If the charge being contested is due to the apportionment of the charges, IS&C will submit a written recommendation to the Secretary who will provide a final determination. Should the Secretary find in favor of the spending unit that amount will be applied to the spending unit's next statement.

6.3.3. The spending unit will be notified of the final determination of any charges that are contested within ten business days of receipt of the contested charges and appropriate action will be taken by IS&C.

§161-2-7. Payments.

7.1. Payments to the telecommunications services payment and reserve fund.

7.1.1. Spending units are required to submit or transfer payments in full to the telecommunications services payment and reserve fund by the statement date.

7.1.2. Spending units are required to remit full payment even if a portion of the statement's costs are being disputed (refer to §161-2-6.3 for submitting contested charges).

7.2. Payments to the telecommunications vendors.

7.2.1. IS&C shall make full payment for all legitimate, uncontested telecommunication charges to within ninety days of receipt by IS&C of an invoice for telecommunication services.

7.2.2. For the purposes of determining the ninety-day time period for payment provided by section 7.2.1, an invoice received by IS&C prior to the date on which the telecommunications services covered by the invoice are delievered or fully performed is considered to be received on the date on which the telecommunications services covered by the invoice are delivered or fully performed.

7.3. Late Payments.

7.3.1. In the event a spending unit fails to transfer funds or submit payment in full to the telecommunications services payment and reserve fund by the statement date, the secretary of the department of administration shall transfer to the telecommunications services payment and reserve fund the statement amount plus an additional penalty in the amount of three percent of the statement amount from any funds supporting the administration of that spending unit.

7.3.2. Upon exercising a transfer pursuant to section 7.3.1, the Director will notify the spending unit, in writing, of the transfer. Notification will include, but is not limited to, the date, time, total amount of the transfer, statement amount, and penalty amount.

7.3.3. A spending unit that does not have sufficient funds in the state treasury or depository to make full payment will be notified, in writing, of the insufficiency. The spending unit will have five days from receipt of the notice of insufficiency to make payment in full along with the three percent penalty charge based on the total statement amount.

7.4 Discontinuance of Service.

7.4.1 A spending unit failing to make funds available after five days of receiving "Notice of Insufficient Funds" may have its telecommunications service discontinued. Prior to discontinuance, the Director shall notify the Joint Committee of Government and Finance and shall, with the approval of the Secretary, discontinue services for the Agency Head of the delinquent spending unit until an acceptable payment plan is submitted and approved by IS&C.

7.4.2 A spending unit be given a written notice from IS&C that the telecommunications vendor(s) has been notified to discontinue services to the spending unit.

7.4.3 If service is discontinued and the spending unit, in turn, makes full payment (including penalty costs), the Director may submit a written direction to the telecommunications vendor(s) to reinstitute those services. The spending unit will be responsible for any and all costs associated with any service that is discontinued or discontinued and then reinstituted.

7.4.4 Until a spending unit is in good standing it will not be permitted to obtain any new telecommunications services.

§161-2-8. Vendors' Duties and Rights.

The provisions of this series section shall govern any new telecommunication vendor that provides services to spending units via a shared account. All vendors, both current and new, are to provide telecommunications services to spending units on the shared account only upon receipt from IS&C of an authorized and IS&C-approved Telecommunications Change Request form. If a vendor provides new service without the authorized form, IS&C shall not be responsible for the charges.

~~8.1. Current Vendors~~

~~8.1.1. For all vendors currently invoicing IS&C on behalf of spending units for services procured via a state-issued purchase order, a new shared account(s) shall be created and in effect to reflect all charges that are incurred for the July 2004 billing month.~~

~~8.1.2. For all vendors currently invoicing spending units via an individual account (direct billing), IS&C is to be provided with a list of these spending units no later than October 1, 2004. The accounts for these spending units are to be consolidated on to the newly created shared account no later than December 31, 2004.~~

~~8.1.3. Any charges incurred from July 1, 2004 to December 31, 2004 that were not merged on to the new shared account shall not be the responsibility of IS&C unless authorized by the Secretary.~~

~~8.2. Invoices submitted for payment.~~

~~8.2.1. Vendors are required to submit all invoices to IS&C that include more than one spending unit. If vendors are providing services to spending units governed by the pricing included in the applicable state-issued contract then the charges for these services must be included on the shared account.~~

8.1 All shared account invoices are to be mailed to IS&C's Telecommunications Unit.

~~8.2.2~~

8.2 Vendors must make reasonable efforts to tender correct invoices for telecommunication services in a format approved by IS&C. If a vendor's company policy prohibits changes to its invoicing process, which results in the vendor's invoice being contested the vendor can submit a supplemental invoice or a letter that itemizes the off-setting charges. This will allow the original invoice to be considered a legitimate, uncontested invoice. If a vendor submits a supplement invoice or letter, these charges on the supplemental invoice or letter must be reflected on the vendor's invoice within the next 2 billing cycles of the receipt date of the contested charges. This will ensure all balances reflected on an invoice are legitimate charges only.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Telecommunications Payments by Spending Unit

Type of Rule: [x] Legislative [X] Interpretive [X] Procedural

Agency: Information Services & Communications Division, Department of Administration

Address: One Davis Square, P.O. Box 50110, Charleston, WV 25305-0110

Phone Number: 304-558-1066 Email: hwilson@wvadmin.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

Past telecommunications servicses have not been paid by spending units, forcing the vendors to file with the Court of Claims. This bill will hold IS&C accountable to insure that agencies are billed their share of the telecommunications expenses, agencies pay IS&C what they are billed, and IS&C pays the vendors. This will avoid monies being taken out of the General Fund to pay past due amounts.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

	FISCAL YEAR		
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	15,996,642.00	16,000,000.00	16,000,000.00
Personal Services	150,000.00	150,000.00	150,000.00
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	15,996,642.00	16,000,000.00	16,000,000.00

Rule Title: ____________________

Rule Title: Telecommunications Payments by Spending Unit

3. Explanation of above estimates (including long-range effect):
Please include any increase or decrease in fees in your estimated total revenues.

The $150,000 was provided for in the legislation. The $16,000,000 is "pass through" monies - the vendors bill IS&C, IS&C bills the agencies, IS&C collects the money from the agencies, and then IS&C pays the vendors.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

The $150,000 does not cover the IS&C expenses required to support the requirements of Senate Bill 700. The number of invoices total over 3,000 separate invoices per month and the number of billable accounts total over 250. Our personal services alone exceeds $300,000.

Date: Revised July 29, 2005

Signature of Agency Head or Authorized Representative

Helen Wilson

QUESTIONNAIRE

DATE: July 29, 2005

TO: Legislative Rule-Making Review Committee

FROM: Helen Wilson
Director, IS&C
Department of Administration
One Davis Square
Charleston, WV 25305

LEGISLATIVE RULE TITLE: 161, Series 2, Telecommunications Payments by Spending Units

1. Authorizing statute(s) citation W.Va. Code 5A-7-4a

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

   June 29, 2005

   b. What other notice, including advertising, did you give of the hearing?

   Mailing to all agency coordinators with phone bills and all vendors

   c. Date of Public Hearing(s) or Public Comment Period Ended:

   July 29, 2005

   d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

   Attached X No comments received

   e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

   July 29, 2004

   f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (please type)

   Donna Lipscomb, Executive Coordinator

   Department of Administration

1900 Kanawha Boulevard, East

State Capitol, Room E-119

Charleston, WV 25305

304-558-3392

g. IF DIFFERENT FROM ITEM "f", please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (please type)

Helen Wilson, Director of IS&C

Davis Square, Capitol Street

Charleston, WV 25301

304-558-1066

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

June 18, 2004 through July 18, 2004

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

August 17, 2004

d. Attach findings and determinations and reasons:

Attached X

STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR

Joe Manchin III
Governor

Kyle Schafer
Chief Technology Officer

July 29, 2005

Via Hand-Delivery

The Honorable Betty Ireland
Secretary of State
Building 1, Suite 157K
1900 Kanawha Boulevard, East
Charleston, WV 25305

Re: Legislative Rules

Dear Secretary Ireland,

I am enclosing an original and fifteen copies of the documents listed below for filing. The proposed rules are in regard to telecommunications payments by state spending units. I will provide the copies of the enclosed documents to the Legislative Rule Making Review Committee once they are marked filed by your office.

The documents enclosed consist of the following:

1. Notice of Agency Approval of a Proposed Rule and Filing with the Legislative Rule-Making Review Committee,
2. Statement of Circumstance and Brief Summary of the rules,
3. Brief Summary of comments received, agency response, and amendments,
4. Proposed Rules,
5. Fiscal Note
6. Questionnaire

Thank you very much for your assistance. If you have any questions, or need any additional information, please do not hesitate to give me a call.

Sincerely,

Helen Wilson

Helen Wilson
Director, IS&C

Enclosures

Governor's Office of Technology
One Davis Square
321 Capitol Street - P. O. Box 50608
Charleston, West Virginia 25301
Phone 304/558-3784
Fax 304/558-0136