



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

8/29/2024 2:40:40 PM

Office of West Virginia  
Secretary Of State

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

AGENCY: Office of Technology TITLE-SERIES: 163-05  
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No  
RULE NAME: 163-05 Telecommunications Payments Made By State Spending Units

**PRIMARY CONTACT**

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CITE STATUTORY AUTHORITY: W.Va. Code §5A-6-1, et seq.

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

During West Virginia Legislature's 2024 Regular Session, HB 5432 passed. The legislation merges the Information Services and Communication Division (IS&C) into the West Virginia Office of Technology (WVOT). This filing places current IS&C rules into WVOT's Series.

The rule provides procedures for collection of payments from state spending units for telecommunication services.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 7/29/2024

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 8/29/2024

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The rule provides procedures for collection of payments from state spending units for telecommunication services.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

During West Virginia Legislature's 2024 Regular Session, HB 5432 passed. The legislation merges the Information Services and Communication Division (IS&C) into the West Virginia Office of Technology (WVOT). This filing places current IS&C rules into WVOT's Series.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

None

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

None

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

None

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2024 Increase/Decrease (use "-")	2025 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0	0	0
<b>Personal Services</b>	0	0	0
<b>Current Expenses</b>	0	0	0
<b>Repairs and Alterations</b>	0	0	0
<b>Assets</b>	0	0	0
<b>Other</b>	0	0	0
<b>2. Estimated Total Revenues</b>	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

No fiscal impact on the state or state agencies.

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

Yes  
**Misty Peal -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**



TITLE 163  
LEGISLATIVE RULE  
WEST VIRGINIA OFFICE OF TECHNOLOGY (WVOT)

SERIES 5  
TELECOMMUNICATIONS PAYMENTS BY SPENDING UNITS

§163-5-1. General.

1.1. Scope. -- This Legislative Rule provides procedures for the collection of payments from State spending units for telecommunications services as defined in W. Va. Code §5A-6-4(d).

1.2. Authority. -- W.Va. Code §5A-6-1, et seq.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Date. -- This rule shall terminate and have no further force or effect upon August 1, 2030.

§163-5-2. Definitions.

2.1. As used in this rule, all terms have the same meaning as provided in W. Va. Code Section 5A-6- and as follows:

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

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

2.1.3. "Due Date" means the date no more than 30 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.

2.1.4. "Fund Application" means the "Office of Technology Fund Application.

2.1.5. "Invoice" means the vendor's invoice and any components that list all of the services and charges that WVOT is expected to apportion out to the spending units for reimbursement.

2.1.6. "WVOT" means the West Virginia Office of Technology within the Department of Administration as established in W. Va. Code §5A-6-1.

2.1.7. "Legitimate Uncontested Invoice" means an invoice for shared account telecommunication services that is received by the WVOT 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.

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2.1.8. "Office of Technology Fund" means the fund created by West Virginia Code §5A-6-3(b).

2.1.9. "Received" or "receipt" means the date the invoice is emailed.

2.1.10. "Rejected Invoice" means an invoice has been rejected for processing by WVOT 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.

2.1.11. "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.

2.1.12. "State Treasury" means any payments that are processed outside of the State's Enterprise Resource Planning system.

2.1.13. "Statement" means an itemized listing of all telecommunications charges for each spending unit.

2.1.14. "Statement Due Date" means the last day the spending unit must submit full payment or transfer payment to the WVOT Fund.

2.1.15. "Telecommunications Change Request" means a request form that is completed by the spending unit for requesting telecommunications services and then submitted to WVOT for processing and authorization.

2.1.16. "Telecommunications Services Expenses" means the expenses associated with the "Administration Costs".

2.1.17. "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.

**§163-5-3. Applicability.**

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

**§163-5-4. WVOT Review of Invoices; Apportionment of charges; Statements to Spending Units.**

4.1. Preliminary Review of Invoice

4.1.1. WVOT shall receive and review all invoices for telecommunications services provided to spending units through the statewide contract.

4.1.2. All telecommunications invoices will be deemed received by WVOT as of the date on the invoice or the date the invoice was received electronically, whichever is later.

4.2. Rejected invoices

4.2.1. WVOT shall reject any charges if:

4.2.1.a. Any charges are not authorized by law or the contract under which telecommunications services are provided or designated;

4.2.1.b. No specific spending unit is designated for the charge; or

4.2.1.c. Any charge or service is not in accordance with the contract pricing

4.2.2. WVOT will notify the vendor within 45 days of receiving an invoice if any charges are rejected and include in the notice a description of rejected charges and a proposed resolution.

4.3. Charges should be apportioned for payment to the appropriate spending units within 60 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.

4.4. WVOT shall ensure that all statements itemizing the apportioned telecommunications charges by spending unit are audited within 30 days and invoiced to agencies within 60 days;

#### 4.5. Statements to Spending Units

4.5.1. WVOT will submit statements to each spending unit within 60 days from receipt of a Legitimate Uncontested Invoice detailing telecommunications charges. 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.

4.6. WVOT shall 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 Office of Technology fund within the required statement due date.

4.7. WVOT will track all statements sent to each spending unit and then apply all payments made against the same.

4.8. WVOT may negotiate on behalf of the spending units any disputed charges.

#### §163-5-5. Administrative Service Fee.

Assess a Telecommunications Service Expense fee up to 5% to all spending units based on each spending unit's portion of service and usage. Fee percentage is to be determined by the Chief Information Officer annually.

#### §163-5-6. 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. 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.

6.1.1. Any spending unit with monies 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 the WVOT fund by the due date on the statement.

6.2.2. The Chief Information Officer, or their designee, must be notified in writing of all disputed charges within 30 days of receipt of the statement by the spending unit.

6.2.3. The spending unit's written notice to the Chief Information Officer, or their designee, must include: 1) the statement due date, number and total charges; 2) the contested charges and the reason for contesting the charges; and 3) a proposed resolution.

6.3. Review of Contested Charges

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

6.3.1.a. WVOT will bring the contested matter to the attention of the vendor, in writing within 30 business days from receipt of the spending unit's notification of contested charges if it cannot be resolved by WVOT internally

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

6.3.1.d. Within 90 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.e. 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. 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 WVOT.

**§163-5-7. Payments.**

7.1. Payments for services to the Office of Technology fund.

7.1.1. Spending units are required to submit or transfer payments in full to the WVOT fund by the statement due 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. WVOT shall make full payment to the vendor for all legitimate, uncontested telecommunication charges within 90 days of receiving an invoice for telecommunication services.

7.2.2. For the purposes of determining the 90-day time period for payment provided by section

7.2.3. An invoice received by WVOT prior to the date on which the telecommunications services covered by the invoice are delivered 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 WVOT fund by the statement due date, the Secretary of the Department of Administration shall transfer to the WVOT 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 Chief Information Officer, or their designee, 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 Chief Information Officer 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 WVOT.

7.4.2. A spending unit be given a written notice from WVOT 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 Chief Information Officer may submit a written direction to the telecommunications vendor(s) to reinstate those services. The spending unit will be responsible for any and all costs associated with any service that is discontinued or discontinued and then reinstated.

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

## **§163-5-8. 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 WVOT of an authorized and WVOT-approved Telecommunications Change Request form. If a vendor provides new service without the authorized form, WVOT shall not be responsible for the charges.

### 8.1. Current Vendors

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8.1.1. For all vendors currently invoicing WVOT 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 incurred.

8.1.2. For all vendors currently invoicing spending units via an individual account (direct billing), WVOT is to be provided with a list of these spending units. The accounts for these spending units are to be consolidated on to the newly created shared account.

8.2. Invoices for Telecommunications Services.

8.2.1. All shared account invoices are to be sent electronically to WVOT's Telecommunications Unit.

8.2.2. Vendors must make reasonable efforts to tender correct invoices for telecommunication services in a format approved by WVOT. 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 two billing cycles of the receipt date of the contested charges. This will ensure all balances reflected on an invoice are legitimate charges only.