

1 **H. B. 2278**

2
3 (By Delegate Boggs)

4 [Introduced January 12, 2011; referred to the
5 Committee on the Judiciary.]

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10 A BILL to amend and reenact §5A-8-20 of the Code of West Virginia,
11 1931, as amended, relating to the creation of preservation
12 duplicates of state records and destruction of the original
13 records; and authorizing the use of additional medium for use
14 in archiving the records.

15 *Be it enacted by the Legislature of West Virginia:*

16 That §5A-8-20 of the Code of West Virginia, 1931, as amended,
17 be amended and reenacted to read as follows:

18 **ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESERVATION ACT.**

19 **§5A-8-20. Alternate storage of state records.**

20 (a) *Findings and purpose.* -- The Legislature finds that
21 continuous advances in technology have resulted and will continue
22 to result in the development of alternate formats for the
23 nonerasable storage of state records, and that the use of such

1 alternative storage formats, where ~~deemed~~ considered advisable,
2 promote the efficient and economical administration of government
3 and provide a means for the preservation of valuable records which
4 are subject to decay or destruction. It is the purpose of the
5 Legislature to authorize the storage of state records in ~~such~~
6 alternate formats, as may be determined by the various branches of
7 the government of this state, that reasonably ensure that the
8 originals of ~~such~~ the records are copied into ~~such~~ formats in a
9 manner in which the image ~~thereof~~ of the records may not be erased
10 or altered, and from which true and accurate reproductions of the
11 original state records may be retrieved.

12 (b) *Approved format.* -- (1) In addition to those formats,
13 processes and systems described in section ten of this article,
14 sections seven-a and seven-c, article one, chapter fifty-seven of
15 this code, and section twelve, article five of said chapter fifty-
16 seven, which are otherwise authorized for the reproduction of state
17 records, a preservation duplicate of a state record may be stored
18 in any approved format where the image of the original state record
19 is preserved in a form in which the image thereof is incapable of
20 erasure or alteration, and from which a reproduction of the stored
21 state record may be retrieved which truly and accurately depicts
22 the image of the original state record.

23 (2) As a substitute for using medium that is incapable of
24 erasure or alteration, a preservation duplicate of a state record

1 may be stored on other electronic storage medium or other medium
2 capable of storing digitized documents if:

3 (A) The medium is stored to maximize its life by minimizing
4 exposure to environmental contaminants;

5 (B) At least two copies of the preservation duplicate are made
6 and one copy is stored in an off-site location; and

7 (C) A procedure is established and followed which ensures
8 that:

9 (i) Modifications in the archiving process are made as
10 technology changes so that the preservation duplicates are readily
11 accessible, which may include migrating the preservation duplicates
12 to different medium or different file formats; and

13 (ii) The medium is periodically examined to determine if the
14 preservation duplicates remain readable and intact.

15 (c) Executive agency records. -- (1) Except for those formats,
16 processes and systems used for the storage of state records on the
17 effective date of this section, no The alternate format formats for
18 the storage of state records described in this section ~~is~~ are
19 authorized for the storage of the state records of any agency of
20 this state. ~~unless the particular format has been approved by the~~
21 state records administrator pursuant to legislative rule
22 promulgated in accordance with the provisions of chapter twenty-
23 nine-a of this code. No provision of this section shall be
24 construed to prohibit the state records administrator from

1 ~~prohibiting the use of any format, process or system used for the~~
2 ~~storage of executive state records upon his or her determination~~
3 ~~that the same is not reasonably adequate to preserve the state~~
4 ~~records from destruction, alteration or decay.~~ The state records
5 administrator shall establish a procedure for executive agencies to
6 follow implementing the provisions of subdivision (2), subsection
7 (b) of this section by July 1, 2011. The procedure shall include,
8 at a minimum, the identification of examples of medium and
9 accompanying procedures to be followed for executive agencies when
10 making preservation duplicates of state records on medium readily
11 available, other than microfilm or microfiche.

12 (2) Upon creation of a preservation duplicate ~~which stores an~~
13 ~~original executive state record in an approved format in which the~~
14 ~~image thereof is incapable of erasure or alteration, and from which~~
15 a reproduction of the stored state record may be retrieved which
16 truly and accurately depicts the image of the original state
17 record, the state records administrator may destroy or otherwise
18 dispose of the original in accordance with the provisions of
19 section seventeen of this article for the destruction of records.

20 (d) *Judicial records.* -- (1) Except for those formats,
21 processes and systems used for the storage of state records on the
22 effective date of this section, no alternate format for the storage
23 of state records described in this section is authorized for the
24 storage of the state records of any court of this state unless the

1 particular format has been approved by the Supreme Court of Appeals
2 by rule. ~~No provision of This section shall be construed to~~ does
3 not prohibit the Supreme Court of Appeals from prohibiting the use
4 of any format, process or system used for the storage of judicial
5 state records upon its determination that the same is not
6 reasonably adequate to preserve the state records from destruction,
7 alteration or decay.

8 (2) Upon creation of a preservation duplicate which stores an
9 original judicial state record in an approved format ~~in which the~~
10 ~~image thereof is incapable of erasure or alteration,~~ and from which
11 a reproduction of the stored state record may be retrieved which
12 truly and accurately depicts the image of the original state
13 record, the court or the clerk thereof creating the same may,
14 consistent with rules of the Supreme Court of Appeals, destroy or
15 otherwise dispose of the original in accordance with the provisions
16 of section seven, article one, chapter fifty-seven of this code for
17 the destruction of records.

18 (e) *Legislative records.* -- ~~(1) Except for those formats,~~
19 ~~processes and systems used for the storage of state records on the~~
20 ~~effective date of this section, no alternate format for the storage~~
21 ~~of state records described in this section is authorized for the~~
22 ~~Storage of the state records of the Legislature unless the~~
23 ~~particular format has been approved in a writing jointly by the~~
24 ~~Speaker of the House of Delegates and the President of the Senate~~

~~1 to the clerks of their respective houses. No provision of this
2 section shall be construed to prohibit the presiding officers of
3 the houses of the Legislature from prohibiting the use of any
4 format, process or system used for the storage of legislative state
5 records upon their determination that the same is not reasonably
6 adequate to preserve the state records from destruction, alteration
7 or decay.~~

~~8 (2) Upon creation of a preservation duplicate which stores an
9 original legislative state record in an approved format in which
10 the image thereof is incapable of erasure or alteration, and from
11 which a reproduction of the stored state record may be retrieved
12 which truly and accurately depicts the image of the original state
13 record, the clerks of the respective houses of the Legislature may
14 destroy or otherwise dispose of the original. However, prior
15 thereto, the clerks shall give written notice of their intention to
16 do so to the director of the section of archives and history of the
17 Division of Culture and History. Upon the written request of the
18 director, given to the clerks within ten days of receipt of said
19 notice, the clerks shall retain the original record for a period of
20 thirty days. In the event the director fails to retrieve the
21 original document from the clerks within the thirty day period, the
22 clerks may destroy or otherwise dispose of the original without
23 further notice to the director. In accordance with section twenty-
24 four, article six of the West Virginia Constitution procedures for~~

1 the storage and destruction of legislative records shall be
2 determined by each house, or by a joint rule.

NOTE: The purpose of this bill is to authorize the use of additional medium for use in archiving government records.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.