

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2012



SECOND ENROLLMENT

COMMITTEE SUBSTITUTE
FOR

House Bill No. 2278

(By Delegate Boggs)



Amended and again passed, in an effort to meet
the objections of the Governor, March 16, 2012

To Take Effect Ninety Days From Passage

S E C O N D
E N R O L L M E N T

COMMITTEE SUBSTITUTE

FOR

H. B. 2278

(BY DELEGATE BOGGS)

[Amended and again passed; in an effort to meet
the objections of the Governor, March 16, 2012;
to take effect ninety days from passage.]

AN ACT to amend and reenact §5A-8-20 of the Code of West Virginia, 1931, as amended, relating to the creation of preservation duplicates of state records and destruction of the original records; authorizing the use of additional medium for use in archiving the records; and authorizing county historical societies to obtain a copy of an archived state record.

Be it enacted by the Legislature of West Virginia:

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

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

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

- 1 (a) *Findings and purpose.* -- The Legislature finds that
- 2 continuous advances in technology have resulted and will

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

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

29 (2) As a substitute for using medium that is incapable of
30 erasure or alteration, a preservation duplicate of a state record
31 may be stored on other electronic storage medium or other
32 medium capable of storing digitized documents if:

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

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

37 (C) A procedure is established and followed which
38 ensures that:

39 (i) Modifications in the archiving process are made as
40 technology changes so that the preservation duplicates are
41 readily accessible, which may include migrating the
42 preservation duplicates to different medium or different file
43 formats; and

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

46 (c) *Executive agency records.* -- (1) The alternate formats
47 for the storage of state records described in this section are
48 authorized for the storage of the state records of any agency
49 of this state. The state records administrator shall establish a
50 procedure for executive agencies to follow implementing the
51 provisions of subsection (b) of this section by July 1, 2012.
52 The procedure shall include, at a minimum, the identification
53 of examples of medium and accompanying procedures to be
54 followed for executive agencies when making preservation
55 duplicates of state records on medium readily available, other
56 than microfilm or microfiche.

57 (2) Upon creation of a preservation duplicate from which
58 a reproduction of the stored state record may be retrieved
59 which truly and accurately depicts the image of the original
60 state record, the state records administrator may destroy or
61 otherwise dispose of the original in accordance with the
62 provisions of section seventeen of this article for the
63 destruction of records.

64 (d) *Judicial records.* -- (1) Except for those formats,
65 processes and systems used for the storage of state records on
66 the effective date of this section, no alternate format for the
67 storage of state records described in this section is authorized
68 for the storage of the state records of any court of this state
69 unless the particular format has been approved by the
70 Supreme Court of Appeals by rule. This section does not
71 prohibit the Supreme Court of Appeals from prohibiting the
72 use of any format, process or system used for the storage of
73 judicial state records upon its determination that the same is
74 not reasonably adequate to preserve the state records from
75 destruction, alteration or decay.

76 (2) Upon creation of a preservation duplicate which
77 stores an original judicial state record in an approved format
78 from which a reproduction of the stored state record may be
79 retrieved which truly and accurately depicts the image of the
80 original state record, the court or the clerk thereof creating
81 the same may, consistent with rules of the Supreme Court of
82 Appeals, destroy or otherwise dispose of the original in
83 accordance with the provisions of section seven, article one,
84 chapter fifty-seven of this code for the destruction of records.

85 (e) *Legislative records.* -- In accordance with all
86 applicable provisions of the West Virginia Constitution, the
87 procedures for the storage and destruction of legislative
88 records shall be determined by each house, or by a joint rule.

89 (f) Upon request and payment of a reasonable cost, one
90 copy of any state record archived or preserved pursuant to the
91 provisions of this article shall be provided to any person or
92 entity: *Provided,* That the person or entity that has produced
93 the state record may receive one copy without charge.

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

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2012.

Governor