

COMMITTEE SUBSTITUTE

FOR

H. B. 2278

(BY DELEGATE BOGGS)

(Originating in the Committee on the Judiciary)
[February 22, 2012]

A BILL 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 one copy of an archived state record without cost.

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 ~~which~~ that are subject to decay or
9 destruction. It is the purpose of the Legislature to authorize
10 the storage of state records in ~~such~~ those alternate formats, as
11 may be determined by the various branches of the
12 government of this state, that will reasonably ensure that the
13 originals of ~~such~~ those records are copied into ~~such~~
14 alternative formats in a manner in which the image ~~thereof~~ of
15 the original records ~~may~~ is not ~~be~~ erased or altered, and from
16 which true and accurate reproductions of the original state
17 records may be retrieved.

18 (b) *Approved format.* -- (1) In addition to those formats,
19 processes and systems described in section ten of this article,
20 sections seven-a and seven-c, article one, chapter fifty-seven of
21 this code, and section twelve, article five of said chapter fifty-
22 seven, which are otherwise authorized for the reproduction of
23 state records, a preservation duplicate of a state record may be
24 stored in any approved format where the image of the original
25 state record is preserved in a form in which the image thereof is
26 incapable of erasure or alteration, and from which a reproduction
27 of the stored state record may be retrieved which truly and
28 accurately depicts the image of 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) ~~Except for those~~
47 ~~formats, processes and systems used for the storage of state~~
48 ~~records on the effective date of this section, no The alternate~~
49 ~~format formats for the storage of state records described in~~
50 ~~this section is are authorized for the storage of the state~~
51 ~~records of any agency of this state. unless the particular~~
52 ~~format has been approved by the state records administrator~~
53 ~~pursuant to legislative rule promulgated in accordance with~~
54 ~~the provisions of chapter twenty-nine-a of this code. No~~
55 ~~provision of this section shall be construed to prohibit the~~

56 ~~state records administrator from prohibiting the use of any~~
57 ~~format, process or system used for the storage of executive~~
58 ~~state records upon his or her determination that the same is~~
59 ~~not reasonably adequate to preserve the state records from~~
60 ~~destruction, alteration or decay. The state records~~
61 administrator shall establish a procedure for executive
62 agencies to follow implementing the provisions of subsection
63 (b) of this section by July 1, 2012. The procedure shall
64 include, at a minimum, the identification of examples of
65 medium and accompanying procedures to be followed for
66 executive agencies when making preservation duplicates of
67 state records on medium readily available, other than
68 microfilm or microfiche.

69 (2) Upon creation of a preservation duplicate ~~which~~
70 ~~stores an original executive state record in an approved~~
71 ~~format in which the image thereof is incapable of erasure or~~
72 ~~alteration, and from which a reproduction of the stored state~~
73 ~~record may be retrieved which truly and accurately depicts~~
74 ~~the image of the original state record, the state records~~

75 administrator may destroy or otherwise dispose of the
76 original in accordance with the provisions of section
77 seventeen of this article for the destruction of records.

78 (d) *Judicial records.* -- (1) Except for those formats,
79 processes and systems used for the storage of state records on
80 the effective date of this section, no alternate format for the
81 storage of state records described in this section is authorized
82 for the storage of the state records of any court of this state
83 unless the particular format has been approved by the
84 Supreme Court of Appeals by rule. ~~No provision of This~~
85 ~~section shall be construed to~~ does not prohibit the Supreme
86 Court of Appeals from prohibiting the use of any format,
87 process or system used for the storage of judicial state
88 records upon its determination that the same is not reasonably
89 adequate to preserve the state records from destruction,
90 alteration or decay.

91 (2) Upon creation of a preservation duplicate which
92 stores an original judicial state record in an approved format
93 ~~in which the image thereof is incapable of erasure or~~

94 ~~alteration, and from which a reproduction of the stored state~~
95 ~~record may be retrieved which truly and accurately depicts~~
96 ~~the image of the original state record, the court or the clerk~~
97 ~~thereof creating the same may, consistent with rules of the~~
98 ~~Supreme Court of Appeals, destroy or otherwise dispose of~~
99 ~~the original in accordance with the provisions of section~~
100 ~~seven, article one, chapter fifty-seven of this code for the~~
101 ~~destruction of records.~~

102 (e) *Legislative records.* -- ~~(1) Except for those formats;~~
103 ~~processes and systems used for the storage of state records on~~
104 ~~the effective date of this section, no alternate format for the~~
105 ~~storage of state records described in this section is authorized~~
106 ~~for the Storage of the state records of the Legislature unless~~
107 ~~the particular format has been approved in a writing jointly~~
108 ~~by the Speaker of the House of Delegates and the President~~
109 ~~of the Senate to the clerks of their respective houses. No~~
110 ~~provision of this section shall be construed to prohibit the~~
111 ~~presiding officers of the houses of the Legislature from~~
112 ~~prohibiting the use of any format, process or system used for~~

113 ~~the storage of legislative state records upon their~~
114 ~~determination that the same is not reasonably adequate to~~
115 ~~preserve the state records from destruction, alteration or~~
116 ~~decay.~~

117 (2) ~~Upon creation of a preservation duplicate which~~
118 ~~stores an original legislative state record in an approved~~
119 ~~format in which the image thereof is incapable of erasure or~~
120 ~~alteration, and from which a reproduction of the stored state~~
121 ~~record may be retrieved which truly and accurately depicts~~
122 ~~the image of the original state record, the clerks of the~~
123 ~~respective houses of the Legislature may destroy or otherwise~~
124 ~~dispose of the original. However, prior thereto, the clerks~~
125 ~~shall give written notice of their intention to do so to the~~
126 ~~director of the section of archives and history of the Division~~
127 ~~of Culture and History. Upon the written request of the~~
128 ~~director, given to the clerks within ten days of receipt of said~~
129 ~~notice, the clerks shall retain the original record for a period~~
130 ~~of thirty days. In the event the director fails to retrieve the~~
131 ~~original document from the clerks within the thirty day~~

132 ~~period, the clerks may destroy or otherwise dispose of the~~
133 ~~original without further notice to the director. In accordance~~
134 ~~with section twenty-four, article six, of the West Virginia~~
135 ~~Constitution, procedures for the storage and destruction of~~
136 ~~legislative records shall be determined by each house, or by~~
137 ~~a joint rule.~~

138 (f) Upon request, one copy of any state record archived
139 or preserved pursuant to the provisions of this article, shall be
140 provided to any county historical society without cost.