

E N R O L L E D

H. B. 2968

(BY DELEGATE(S) BOGGS AND YOUNG)

[Passed April 12, 2013; in effect July 1, 2013.]

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; setting forth the standards the additional medium must meet; requiring the state records administrator to establish a procedure for executive agencies to follow; permitting, consistent with the State Constitution, each house of the Legislature to determine on its own or jointly the procedure for the storage of legislative records; permitting any person or entity to purchase one copy of any archived or preserved state record; and defining a term.

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

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

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

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

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

35 (C) A procedure is established and followed which ensures
36 that:

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

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

43 (c) *Executive agency records.* — (1) The alternate formats
44 for the storage of state records described in this section are
45 authorized for the storage of the state records of any agency of
46 this state. The state records administrator shall establish a
47 procedure for executive agencies to follow implementing the
48 provisions of subsection (b) of this section by July 1, 2013. The
49 procedure shall include, at a minimum, the identification of
50 examples of medium and accompanying procedures to be
51 followed for executive agencies when making preservation
52 duplicates of state records on medium readily available, other
53 than microfilm or microfiche.

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

60 (d) *Judicial records.* — (1) Except for those formats,
61 processes and systems used for the storage of state records on the

62 effective date of this section, no alternate format for the storage
63 of state records described in this section is authorized for the
64 storage of the state records of any court of this state unless the
65 particular format has been approved by the Supreme Court of
66 Appeals by rule. This section does not prohibit the Supreme
67 Court of Appeals from prohibiting the use of any format, process
68 or system used for the storage of judicial state records upon its
69 determination that the same is not reasonably adequate to
70 preserve the state records from destruction, alteration or decay.

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

80 (e) *Legislative records.* — In accordance with all applicable
81 provisions of the West Virginia Constitution, the procedures for
82 the storage and destruction of legislative records shall be
83 determined by each house, or by a joint rule.

84 (f) Upon request and payment of a reasonable cost, one copy
85 of any state record archived or preserved pursuant to the
86 provisions of this article shall be provided to any person or
87 entity: *Provided*, That the person or entity that has produced the
88 state record may receive one copy without charge. For the
89 purpose of this subsection “state record” means electronic record
90 created and maintained by state agencies.

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

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect July 1, 2013.

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 _____, 2013.

Governor

