

**H. B. 2843**

(By Delegates Caputo, Manchin, Longstreth,  
T. Campbell and Marshall)

[Introduced January 25, 2011; referred to the  
Committee on Government Organization then Finance.]

**FISCAL  
NOTE**

A BILL to amend and reenact §5A-8-15 of the Code of West Virginia, 1931, as amended, relating to public records management and preservation; requiring county government entities to offer records to the Director of the Section of Archives and History of the Division of Culture and History prior to destroying or disposing of them; and allowing the allocation of funds in the Public Records and Preservation Revenue Account for grants to counties for records management, access and preservation purposes in accordance with legislative rule.

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

That §5A-8-15 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-8-15. Records management and preservation of county records; alternate storage of county records; Records Management and Preservation Board; qualifications and appointment of members; reimbursement of expenses;**

1           **staffing; rule-making authority; study of records**  
2           **management needs of state agencies; grants to**  
3           **counties.**

4           The Legislature finds that the use of electronic technology  
5 and other procedures to manage and preserve public records by  
6 counties should be uniform throughout the state where possible.

7           (a) The governing body and the chief elected official of a  
8 county, hereinafter referred to as a county government entity,  
9 whether organized and existing under a charter or under general  
10 law, shall promote the principles of efficient records management  
11 and preservation of local records. A county governing entity may,  
12 as far as practical, follow the program established for the uniform  
13 management and preservation of county records as set out in rules  
14 proposed for legislative approval in accordance with the provisions  
15 of article three, chapter twenty-nine-a of this code as proposed by  
16 the Records Management and Preservation Board.

17           (b) In the event a county government entity decides to destroy  
18 or otherwise dispose of a county record, the county government  
19 entity ~~may shall,~~ prior to destruction or disposal ~~thereof~~ of the  
20 record, offer the record to the Director of the Section of Archives  
21 and History of the Division of Culture and History for preservation  
22 ~~of the record~~ as a document of historical value. Unless authorized  
23 by the Supreme Court of Appeals, the records of courts of record  
24 and magistrate courts are not affected by the provisions of this  
25 section.

1       (c) (1) A preservation duplicate of a county government entity  
2 record may be stored in any format approved by the board in which  
3 the image of the original record is preserved in a form, including  
4 CD-ROM and optical image storage media, in which the image is  
5 incapable of erasure or alteration and from which a reproduction of  
6 the stored record may be retrieved that truly and accurately  
7 depicts the image of the original county government record.

8       (2) Except for those formats, processes and systems used for  
9 the storage of records on the effective date of this section, no  
10 alternate format for the storage of county government entity  
11 records described in this section is authorized for the storage of  
12 county government entity records unless the particular format has  
13 been approved pursuant to a legislative rule promulgated by the  
14 board in accordance with the provisions of chapter twenty-nine-a of  
15 this code. The board may prohibit the use of any format, process  
16 or system used for the storage of records upon its determination  
17 that the same is not reasonably adequate to preserve the records  
18 from destruction, alteration or decay.

19       (3) Upon creation of a preservation duplicate that stores an  
20 original county government entity record in an approved format that  
21 is incapable of erasure or alteration and that may be retrieved in  
22 a format that truly and accurately depicts the image of the  
23 original record, the county government entity may destroy or  
24 otherwise dispose of the original in accordance with the provisions  
25 of section seven-c, article one, chapter fifty-seven of this code.

1 (d) A Records Management and Preservation Board for county  
2 government entities is continued to be composed of eleven members.

3 (1) Three members shall serve ex officio. One member ~~shall be~~  
4 is the Commissioner of the Division of Culture and History or  
5 designee who shall be the chair of the board. One member ~~shall be~~  
6 is the Administrator of the Supreme Court of Appeals or designee.  
7 One member ~~shall be~~ is the Chief Technology Officer or designee.

8 (2) The Governor shall appoint eight members of the board,  
9 with the advice and consent of the Senate. Not more than five  
10 appointments to the board may be from the same political party and  
11 not more than three members may be appointed from the same  
12 congressional district. Of the eight members appointed by the  
13 Governor:

14 (i) Five appointments shall be county elected officials,  
15 selected from a list of fifteen names, and consist of a clerk of a  
16 county commission, a circuit court clerk, a county commissioner, a  
17 county sheriff and a county assessor. ~~one of whom shall be a clerk~~  
18 ~~of a county commission, one of whom shall be a circuit court clerk,~~  
19 ~~one of whom shall be a county commissioner, one of whom shall be a~~  
20 ~~county sheriff and one of whom shall be a county assessor, to be~~  
21 ~~selected from a list of fifteen names.~~ The names of three clerks  
22 of county commissions and three circuit court clerks shall be  
23 submitted to the Governor by the West Virginia Association of  
24 Counties. The names of three county commissioners shall be  
25 submitted to the Governor jointly by the West Virginia Association

1 of Counties and the West Virginia County Commissioner's  
2 Association. The names of three county sheriffs shall be submitted  
3 to the Governor by the West Virginia Sheriff's Association. The  
4 names of three county assessors shall be submitted to the Governor  
5 by the Association of West Virginia Assessors;

6 (ii) One appointment shall be a county prosecuting attorney to  
7 be selected from a list of three names submitted by the West  
8 Virginia Prosecuting Attorney's Institute;

9 (iii) One appointment shall be an attorney licensed in West  
10 Virginia and in good standing as a member of the West Virginia  
11 State Bar with experience in real estate and mineral title  
12 examination, to be selected from a list of three names submitted by  
13 the West Virginia State Bar; and

14 (iv) One appointment shall be a representative of a local  
15 historical or genealogical society.

16 (e) The members of the board shall serve without compensation  
17 but shall be reimbursed for all reasonable and necessary expenses  
18 actually incurred in the performance of their duties as members of  
19 the board in a manner consistent with the guidelines of the Travel  
20 Management Office of the Department of Administration. In the  
21 event the expenses are paid, or are to be paid, by a third party,  
22 the member ~~shall not be~~ is not reimbursed by the state.

23 (f) The staff of the board ~~shall consist~~ consists of the  
24 Director of the Archives and History Section of the Division of  
25 Culture and History and any additional staff as needed.

1 (g) The board shall propose rules for legislative approval in  
2 accordance with the provisions of article three, chapter  
3 twenty-nine-a of this code to establish a system of records  
4 management and preservation for county governments. ~~Provided,~~  
5 ~~That,~~ For the retention and disposition of records of courts of  
6 record and magistrate courts, the implementation of the rule is  
7 subject to action by the Supreme Court of Appeals of West Virginia.  
8 The proposed rules shall include provisions for establishing a  
9 program of grants to county governments for ~~making records~~  
10 ~~management and preservation uniform throughout the state records~~  
11 management, access and preservation purposes. The board is not  
12 authorized to propose or promulgate emergency rules under the  
13 provisions of this section.

14 (h) In addition to ~~the~~ fees charged by the clerk of the county  
15 commission under the provisions of section ten, article one,  
16 chapter fifty-nine of this code, the clerk shall charge and collect  
17 an additional one-dollar fee for every document containing less  
18 than ten pages filed for recording and an additional one-dollar fee  
19 for each additional ten pages of document filed for recording. At  
20 the end of each month, the clerk of the county commission shall  
21 deposit into the Public Records and Preservation Account as  
22 established in the State Treasury all fees collected ~~Provided,~~  
23 except that the clerk may retain not more than ten percent of the  
24 fees for costs associated with the collection of the fees. Clerks  
25 ~~shall be~~ are responsible for accounting for the collection and

1 deposit in the State Treasury of all fees collected by the clerk  
2 under the provisions of this section.

3       (i) There is ~~hereby created~~ continued in the State Treasury a  
4 special account entitled the Public Records and Preservation  
5 Revenue Account. The account ~~shall consist~~ consists of all fees  
6 collected under the provisions of this section, legislative  
7 appropriations, interest earned from fees, investments, gifts,  
8 grants or contributions received by the board. Expenditures from  
9 the account ~~shall be~~ are for the purposes set forth in this article  
10 and are not authorized from collections but are to be made only in  
11 accordance with appropriation by the Legislature and in accordance  
12 with the provisions of article three, chapter twelve of this code  
13 and upon the fulfillment of the provisions set forth in article  
14 two, chapter eleven-b of this code.

15       (j) Subject to the above provision, the board may expend the  
16 funds in the account to implement the provisions of this article.  
17 In expending funds from the account, the board ~~shall allocate not~~  
18 ~~more than fifty percent of the~~ may allocate funds for grants to  
19 counties for records management, access and preservation purposes  
20 in accordance with legislative rule promulgated pursuant to  
21 subsection (g) of this section. The board shall provide for  
22 applications, set guidelines and establish procedures for  
23 distributing grants to counties including a process for appealing  
24 an adverse decision on a grant application. Expenditures from the  
25 account ~~shall be~~ are for the purposes set forth in this section,

1 including the cost of additional staff of the Division of Archives  
2 and History.

NOTE: The purpose of this bill is to require county government entities to offer records to the Director of the Section of Archives and History of the Division of Culture and History prior to destroying or disposing of them and to allow the allocation of funds for grants to counties for records management, access and preservation in accordance with legislative rule.

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