

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 for

4 **H. B. 2278**

5
6 (By Delegate Boggs)

7 [Passed March 10, 2012; in effect ninety days from passage.]

8
9
10 AN ACT 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; authorizing the use of additional medium for use in
14 archiving the records; and authorizing county historical
15 societies to obtain one copy of an archived state record
16 without cost.

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

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

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

21 **§5A-8-20. Alternate storage of state records.**

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

1 alternative storage formats, where deemed advisable, promote the
2 efficient and economical administration of government and provide
3 a means for the preservation of valuable records that are subject
4 to decay or destruction. It is the purpose of the Legislature to
5 authorize the storage of state records in those alternate formats,
6 as may be determined by the various branches of the government of
7 this state, that will reasonably ensure that the originals of those
8 records are copied into alternative formats in a manner in which
9 the image of the original records is not erased or altered, and
10 from which true and accurate reproductions of the original state
11 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
25 may be stored on other electronic storage medium or other medium
26 capable of storing digitized documents if:

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

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

5 (C) A procedure is established and followed which ensures
6 that:

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

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

13 (c) *Executive agency records.* -- (1) The alternate formats for
14 the storage of state records described in this section are
15 authorized for the storage of the state records of any agency of
16 this state. The state records administrator shall establish a
17 procedure for executive agencies to follow implementing the
18 provisions of subsection (b) of this section by July 1, 2012. The
19 procedure shall include, at a minimum, the identification of
20 examples of medium and accompanying procedures to be followed for
21 executive agencies when making preservation duplicates of state
22 records on medium readily available, other than microfilm or
23 microfiche.

24 (2) Upon creation of a preservation duplicate from which a
25 reproduction of the stored state record may be retrieved which
26 truly and accurately depicts the image of the original state

1 record, the state records administrator may destroy or otherwise
2 dispose of the original in accordance with the provisions of
3 section seventeen of this article for the destruction of records.

4 (d) *Judicial records.* -- (1) Except for those formats,
5 processes and systems used for the storage of state records on the
6 effective date of this section, no alternate format for the storage
7 of state records described in this section is authorized for the
8 storage of the state records of any court of this state unless the
9 particular format has been approved by the Supreme Court of Appeals
10 by rule. This section does not prohibit the Supreme Court of
11 Appeals from prohibiting the use of any format, process or system
12 used for the storage of judicial state records upon its
13 determination that the same is not reasonably adequate to preserve
14 the state records from destruction, alteration or decay.

15 (2) Upon creation of a preservation duplicate which stores an
16 original judicial state record in an approved format from which a
17 reproduction of the stored state record may be retrieved which
18 truly and accurately depicts the image of the original state
19 record, the court or the clerk thereof creating the same may,
20 consistent with rules of the Supreme Court of Appeals, destroy or
21 otherwise dispose of the original in accordance with the provisions
22 of section seven, article one, chapter fifty-seven of this code for
23 the destruction of records.

24 (e) *Legislative records.* -- In accordance with all applicable
25 provisions of the West Virginia Constitution, the procedures for
26 the storage and destruction of legislative records shall be

1 determined by each house, or by a joint rule.

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