

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 2278**

4
5 (By Delegate Boggs)

6 (Originating in the Committee on the Judiciary)

7
8 [February 22, 2012]

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

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

24 (2) As a substitute for using medium that is incapable of
25 erasure or alteration, a preservation duplicate of a state record
26 may be stored on other electronic storage medium or other medium

1 capable of storing digitized documents if:

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

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

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

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

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

14 (c) *Executive agency records.* -- (1) ~~Except for those formats,~~
15 ~~processes and systems used for the storage of state records on the~~
16 ~~effective date of this section, no~~ The alternate format formats for
17 the storage of state records described in this section ~~is~~ are
18 authorized for the storage of the state records of any agency of
19 this state. ~~unless the particular format has been approved by the~~
20 ~~state records administrator pursuant to legislative rule~~
21 ~~promulgated in accordance with the provisions of chapter twenty-~~
22 ~~nine-a of this code. No provision of this section shall be~~
23 ~~construed to prohibit the state records administrator from~~
24 ~~prohibiting the use of any format, process or system used for the~~
25 ~~storage of executive state records upon his or her determination~~
26 ~~that the same is not reasonably adequate to preserve the state~~

1 ~~records from destruction, alteration or decay.~~ The state records
2 administrator shall establish a procedure for executive agencies to
3 follow implementing the provisions of subsection (b) of this
4 section by July 1, 2012. The procedure shall include, at a
5 minimum, the identification of examples of medium and accompanying
6 procedures to be followed for executive agencies when making
7 preservation duplicates of state records on medium readily
8 available, other than microfilm or microfiche.

9 (2) Upon creation of a preservation duplicate ~~which stores an~~
10 ~~original executive state record in an approved format in which the~~
11 ~~image thereof is incapable of erasure or alteration,~~ and from which
12 a reproduction of the stored state record may be retrieved which
13 truly and accurately depicts the image of the original state
14 record, the state records administrator may destroy or otherwise
15 dispose of the original in accordance with the provisions of
16 section seventeen of this article for the destruction of records.

17 (d) *Judicial records.* -- (1) Except for those formats,
18 processes and systems used for the storage of state records on the
19 effective date of this section, no alternate format for the storage
20 of state records described in this section is authorized for the
21 storage of the state records of any court of this state unless the
22 particular format has been approved by the Supreme Court of Appeals
23 by rule. ~~No provision of This section shall be construed to~~ does
24 not prohibit the Supreme Court of Appeals from prohibiting the use
25 of any format, process or system used for the storage of judicial
26 state records upon its determination that the same is not

1 reasonably adequate to preserve the state records from destruction,
2 alteration or decay.

3 (2) Upon creation of a preservation duplicate which stores an
4 original judicial state record in an approved format ~~in which the~~
5 ~~image thereof is incapable of erasure or alteration,~~ and from which
6 a reproduction of the stored state record may be retrieved which
7 truly and accurately depicts the image of the original state
8 record, the court or the clerk thereof creating the same may,
9 consistent with rules of the Supreme Court of Appeals, destroy or
10 otherwise dispose of the original in accordance with the provisions
11 of section seven, article one, chapter fifty-seven of this code for
12 the destruction of records.

13 (e) *Legislative records.* -- ~~(1) Except for those formats,~~
14 ~~processes and systems used for the storage of state records on the~~
15 ~~effective date of this section, no alternate format for the storage~~
16 ~~of state records described in this section is authorized for the~~
17 ~~Storage of the state records of the Legislature unless the~~
18 ~~particular format has been approved in a writing jointly by the~~
19 ~~Speaker of the House of Delegates and the President of the Senate~~
20 ~~to the clerks of their respective houses. No provision of this~~
21 ~~section shall be construed to prohibit the presiding officers of~~
22 ~~the houses of the Legislature from prohibiting the use of any~~
23 ~~format, process or system used for the storage of legislative state~~
24 ~~records upon their determination that the same is not reasonably~~
25 ~~adequate to preserve the state records from destruction, alteration~~
26 ~~or decay.~~

1 ~~(2) Upon creation of a preservation duplicate which stores an~~
2 ~~original legislative state record in an approved format in which~~
3 ~~the image thereof is incapable of erasure or alteration, and from~~
4 ~~which a reproduction of the stored state record may be retrieved~~
5 ~~which truly and accurately depicts the image of the original state~~
6 ~~record, the clerks of the respective houses of the Legislature may~~
7 ~~destroy or otherwise dispose of the original. However, prior~~
8 ~~thereto, the clerks shall give written notice of their intention to~~
9 ~~do so to the director of the section of archives and history of the~~
10 ~~Division of Culture and History. Upon the written request of the~~
11 ~~director, given to the clerks within ten days of receipt of said~~
12 ~~notice, the clerks shall retain the original record for a period of~~
13 ~~thirty days. In the event the director fails to retrieve the~~
14 ~~original document from the clerks within the thirty day period, the~~
15 ~~clerks may destroy or otherwise dispose of the original without~~
16 ~~further notice to the director. In accordance with section twenty-~~
17 ~~four, article six of the West Virginia Constitution procedures for~~
18 ~~the storage and destruction of legislative records shall be~~
19 ~~determined by each house, or by a joint rule.~~

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