

1 **ENROLLED**

2 **H. B. 2968**

3
4 (By Delegates Boggs and Young)

5 [Passed April 12, 2013; in effect July 1, 2013.]
6
7
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; setting forth the standards the
15 additional medium must meet; requiring the state records
16 administrator to establish a procedure for executive agencies
17 to follow; permitting, consistent with the State Constitution,
18 each house of the Legislature to determine on its own or
19 jointly the procedure for the storage of legislative records;
20 permitting any person or entity to purchase one copy of any
21 archived or preserved state record; and defining a term.

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

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

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

2 **§5A-8-20. Alternate storage of state records.**

3 (a) *Findings and purpose.* -- The Legislature finds that
4 continuous advances in technology have resulted and will continue
5 to result in the development of alternate formats for the
6 nonerasable storage of state records, and that the use of such
7 alternative storage formats, where deemed advisable, promote the
8 efficient and economical administration of government and provide
9 a means for the preservation of valuable records that are subject
10 to decay or destruction. It is the purpose of the Legislature to
11 authorize the storage of state records in those alternate formats,
12 as may be determined by the various branches of the government of
13 this state, that will reasonably ensure that the originals of those
14 records are copied into alternative formats in a manner in which
15 the image of the original records is not erased or altered, and
16 from 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 that chapter which
22 are otherwise authorized for the reproduction of state records, a
23 preservation duplicate of a state record may be stored in any
24 approved format where the image of the original state record is

1 preserved in a form in which the image thereof is incapable of
2 erasure or alteration, and from which a reproduction of the stored
3 state record may be retrieved which truly and accurately depicts
4 the image of the original state record.

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

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

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

13 (C) A procedure is established and followed which ensures
14 that:

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

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

21 (c) *Executive agency records.* --, (1) The alternate
22 formats for the storage of state records described in this section
23 are authorized for the storage of the state records of any agency
24 of this state. The state records administrator shall establish a

1 procedure for executive agencies to follow implementing the
2 provisions of subsection (b) of this section by July 1, 2013. The
3 procedure shall include, at a minimum, the identification of
4 examples of medium and accompanying procedures to be followed for
5 executive agencies when making preservation duplicates of state
6 records on medium readily available, other than microfilm or
7 microfiche.

8 (2) Upon creation of a preservation duplicate from which a
9 reproduction of the stored state record may be retrieved which
10 truly and accurately depicts the image of the original state
11 record, the state records administrator may destroy or otherwise
12 dispose of the original in accordance with the provisions of
13 section seventeen of this article for the destruction of records.

14 (d) *Judicial 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 alternate format for the storage
17 of state records described in this section is authorized for the
18 storage of the state records of any court of this state unless the
19 particular format has been approved by the Supreme Court of Appeals
20 by rule. This section does not prohibit the Supreme Court of
21 Appeals from prohibiting the use of any format, process or system
22 used for the storage of judicial state records upon its
23 determination that the same is not reasonably adequate to preserve
24 the state records from destruction, alteration or decay.

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

10 (e) *Legislative records.* -- In accordance with all
11 applicable provisions of the West Virginia Constitution, the
12 procedures for the storage and destruction of legislative records
13 shall be determined by each house, or by a joint rule.

14 (f) Upon request and payment of a reasonable cost, one copy of
15 any state record archived or preserved pursuant to the provisions
16 of this article shall be provided to any person or entity:
17 *Provided,* That the person or entity that has produced the state
18 record may receive one copy without charge. For the purpose of
19 this subsection "state record" means electronic record created and
20 maintained by state agencies.