

# H. B. 2968

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(BY DELEGATE(S) BOGGS AND YOUNG)

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[Introduced March 19, 2013; referred to the  
Committee on the Judiciary.]

A BILL 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 ~~which~~  
8   that are subject to decay or destruction. It is the purpose of the  
9   Legislature to authorize the storage of state records in ~~such~~ 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 ~~such~~ those records are copied into ~~such~~  
13  alternative formats in a manner in which the image ~~thereof may~~

14 of the original records is not ~~be~~ erased or altered, and from  
15 which true and accurate reproductions of the original state  
16 records may be retrieved.

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

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

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

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

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

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

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

44        *(c) Executive agency records. —* ~~(1) Except for those~~  
45        ~~formats, processes and systems used for the storage of state~~  
46        ~~records on the effective date of this section, no alternate format~~  
47        ~~for the storage of state records described in this section is~~  
48        ~~authorized for the storage of the state records of any agency of~~  
49        ~~this state unless the particular format has been approved by the~~  
50        ~~state records administrator pursuant to legislative rule~~  
51        ~~promulgated in accordance with the provisions of chapter~~  
52        ~~twenty-nine-a of this code. No provision of this section shall be~~  
53        ~~construed to prohibit the state records administrator from~~

54 ~~prohibiting the use of any format, process or system used for the~~  
55 ~~storage of executive state records upon his or her determination~~  
56 ~~that the same is not reasonably adequate to preserve the state~~  
57 ~~records from destruction, alteration or decay.~~

58 ~~(2) Upon creation of a preservation duplicate which stores an~~  
59 ~~original executive state record in an approved format in which~~  
60 ~~the image thereof is incapable of erasure or alteration, and from~~  
61 ~~which a reproduction of the stored state record may be retrieved~~  
62 ~~which truly and accurately depicts the image of the original state~~  
63 ~~record, the state records administrator may destroy or otherwise~~  
64 ~~dispose of the original in accordance with the provisions of~~  
65 ~~section seventeen of this article for the destruction of records.~~

66 (1) The alternate formats for the storage of state records  
67 described in this section are authorized for the storage of the  
68 state records of any agency of this state. The state records  
69 administrator shall establish a procedure for executive agencies  
70 to follow implementing the provisions of subsection (b) of this  
71 section by July 1, 2013. The procedure shall include, at a  
72 minimum, the identification of examples of medium and  
73 accompanying procedures to be followed for executive agencies

74 when making preservation duplicates of state records on medium  
75 readily available, other than microfilm or microfiche.

76 (2) Upon creation of a preservation duplicate from which a  
77 reproduction of the stored state record may be retrieved which  
78 truly and accurately depicts the image of the original state  
79 record, the state records administrator may destroy or otherwise  
80 dispose of the original in accordance with the provisions of  
81 section seventeen of this article for the destruction of records.

82 (d) *Judicial records.* — (1) Except for those formats,  
83 processes and systems used for the storage of state records on the  
84 effective date of this section, no alternate format for the storage  
85 of state records described in this section is authorized for the  
86 storage of the state records of any court of this state unless the  
87 particular format has been approved by the Supreme Court of  
88 Appeals by rule. ~~No provision of this section shall be construed~~  
89 ~~to~~ This section does not prohibit the Supreme Court of Appeals  
90 from prohibiting the use of any format, process or system used  
91 for the storage of judicial state records upon its determination  
92 that the same is not reasonably adequate to preserve the state  
93 records from destruction, alteration or decay.

94       (2) Upon creation of a preservation duplicate which stores an  
95   original judicial state record in an approved format ~~in which the~~  
96   ~~image thereof is incapable of erasure or alteration, and from~~  
97   which a reproduction of the stored state record may be retrieved  
98   which truly and accurately depicts the image of the original state  
99   record, the court or the clerk thereof creating the same may,  
100   consistent with rules of the Supreme Court of Appeals, destroy  
101   or otherwise dispose of the original in accordance with the  
102   provisions of section seven, article one, chapter fifty-seven of  
103   this code for the destruction of records.

104       (e) *Legislative records.* — ~~(1) Except for those formats,~~  
105   ~~processes and systems used for the storage of state records on the~~  
106   ~~effective date of this section, no alternate format for the storage~~  
107   ~~of state records described in this section is authorized for the~~  
108   ~~storage of the state records of the Legislature unless the~~  
109   ~~particular format has been approved in a writing jointly by the~~  
110   ~~Speaker of the House of Delegates and the President of the~~  
111   ~~Senate to the clerks of their respective houses. No provision of~~  
112   ~~this section shall be construed to prohibit the presiding officers~~  
113   ~~of the houses of the Legislature from prohibiting the use of any~~

114 ~~format, process or system used for the storage of legislative state~~  
115 ~~records upon their determination that the same is not reasonably~~  
116 ~~adequate to preserve the state records from destruction,~~  
117 ~~alteration or decay.~~

118       (2) ~~Upon creation of a preservation duplicate which stores an~~  
119 ~~original legislative state record in an approved format in which~~  
120 ~~the image thereof is incapable of erasure or alteration, and from~~  
121 ~~which a reproduction of the stored state record may be retrieved~~  
122 ~~which truly and accurately depicts the image of the original state~~  
123 ~~record, the clerks of the respective houses of the Legislature may~~  
124 ~~destroy or otherwise dispose of the original. However, prior~~  
125 ~~thereto, the clerks shall give written notice of their intention to~~  
126 ~~do so to the director of the section of archives and history of the~~  
127 ~~Division of Culture and History. Upon the written request of the~~  
128 ~~director, given to the clerks within ten days of receipt of said~~  
129 ~~notice, the clerks shall retain the original record for a period of~~  
130 ~~thirty days. In the event the director fails to retrieve the original~~  
131 ~~document from the clerks within the thirty day period, the clerks~~  
132 ~~may destroy or otherwise dispose of the original without further~~  
133 ~~notice to the director. In accordance with all applicable~~



134 provisions of the West Virginia Constitution, the procedures for  
135 the storage and destruction of legislative records shall be  
136 determined by each house, or by a joint rule.

137 (f) Upon request and payment of a reasonable cost, one copy  
138 of any state record archived or preserved pursuant to the  
139 provisions of this article shall be provided to any person or  
140 entity: *Provided*, That the person or entity that has produced the  
141 state record may receive one copy without charge. For the  
142 purpose of this subsection “state record” means electronic record  
143 created and maintained by state agencies.

NOTE: The purpose of this bill is to authorize the use of an additional medium for use in archiving the records. The bill sets forth the standards the additional medium must meet. The bill requires the state records administrator to establish a procedure for executive agencies to follow. The bill permits, 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. The bill permits any person or entity to purchase one copy of any archived or preserved state record. The bill defines a term.

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





