

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **House Bill 4390**

BY DELEGATES HOWELL, HAMRICK AND LINVILLE

(BY REQUEST OF THE WEST VIRGINIA OFFICE OF  
TECHNOLOGY)

[Introduced January 16, 2020; Referred to the  
Committee on Technology and Infrastructure then  
Government Organization]

1 A BILL to repeal §5A-8-6 and §5A-8-12 of the Code of West Virginia, 1931, as amended; and to  
 2 amend and reenact §5A-8-3, §5A-8-4, §5A-8-5, §5A-8-7, §5A-8-9, §5A-8-10, §5A-8-11,  
 3 §5A-8-13, §5A-8-14 and §5A-8-17 of said code, all relating to records management of  
 4 public records; defining terms; dissolving the formal advisory committee; updating the  
 5 authority of the administrator; allowing for records of historical value; updating the authority  
 6 of agency heads related to records management; providing for electronic storage and  
 7 electronic formats for records; repealing the requirement that the administrator must store  
 8 agencies' essential records; removing the requirement that the administrator notify  
 9 agencies of essential records destruction; providing that the administrator may approve  
 10 request by agencies to destroy their essential records; and making technical changes.

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

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

**§5A-8-3. Definitions.**

1 As used in this article:  
 2 “Agency” means any department, office, commission, board, or other unit, however  
 3 designated, of the executive branch of state government.  
 4 “Agency Records Manager” means an employee appointed by the agency’s chief  
 5 executive officer or agency head to manage the agency’s records inventory and to act as liaison  
 6 with the administrator.  
 7 ~~(a)~~ “Disaster” means any occurrence of fire, flood, storm, earthquake, explosion, epidemic,  
 8 riot, sabotage, or other condition of extreme peril resulting in substantial damage or injury to  
 9 persons or property within this state, whether such occurrence is caused by an act of God, nature,  
 10 or man, including an enemy of the United States.  
 11 “Local record” means a record of a county, city, town, authority, or any public corporation  
 12 or political entity whether organized and existing under charter or under general law unless the  
 13 record is designated or treated as a state record under state law.

14 “Preservation duplicate” means a copy of an essential state record which is used for the  
 15 purpose of preserving such state record pursuant to this article.

16 (b) “Record” means document, electronic file, book, paper, photograph, sound recording  
 17 or other material, regardless of physical form or characteristics, made or received pursuant to law  
 18 or ordinance or in connection with the transaction of official state government business. Library  
 19 and museum material made or acquired and preserved solely for reference or exhibition  
 20 purposes, extra copies of documents preserved only for convenience of reference, and stocks of  
 21 publications and of processed documents are not included within the definition of records as used  
 22 in this article.

23 (c) “State record” means:

24 (1) (A) A record of a department, office, commission, board, spending unit, or other  
 25 agency, however designated, of the state government.

26 (2) (B) A record of the State Legislature.

27 (3) (C) A record of any court of record, whether of statewide or local jurisdiction.

28 (4) (D) Any record designated or treated as a state record under state law.

29 (d) ~~“Local record” means a record of a county, city, town, authority or any public~~  
 30 ~~corporation or political entity whether organized and existing under charter or under general law~~  
 31 ~~unless the record is designated or treated as a state record under state law.~~

32 (e) ~~“Agency” means any department, office, commission, board or other unit, however~~  
 33 ~~designated, of the executive branch of state government.~~

34 (f) ~~“Preservation duplicate” means a copy of an essential state record which is used for~~  
 35 ~~the purpose of preserving such state record pursuant to this article~~

#### **§5A-8-4. Categories of records to be preserved.**

1 State or local records which are within the following categories are essential records which  
 2 shall be preserved pursuant to this article:

3 Category A. Records containing information necessary to the operation of government in

4 the emergency created by a disaster.

5 Category B. Records not within category A but containing information necessary to protect  
6 the rights and interest of persons or to establish and affirm the powers and duties of governments  
7 in the resumption of operations after a disaster.

8 Category C. Records with historical value justifying permanent retention.

**§5A-8-5. State records administrator.**

9 The Secretary of the Department of Administration is hereby designated the state records  
10 administrator, hereinafter called the administrator. The secretary may designate someone within  
11 the department to carry out the duties of the administrator. The administrator shall establish and  
12 administer in the Department of Administration of the executive branch of state government a  
13 records management program, which will apply efficient and economical management methods  
14 to the creation, utilization, maintenance, and retention, preservation, and disposal of state  
15 records; and shall establish and maintain a program for the selection and preservation of essential  
16 state records and shall advise and assist in the establishment of programs for the selection and  
17 preservation of essential local records.

**§5A-8-6. Records management and preservation advisory committee.**

1 [Repealed.]

**§5A-8-7. Duties of administrator.**

1 The administrator shall, with due regard for the functions of the agencies concerned:

2 (a) Establish standards, procedures, and techniques for effective management of records;

3 (b) Make continuing surveys of ~~paperwork~~ document operations and recommend  
4 improvements in current records management practices including the use of space, technology  
5 equipment, and supplies employed in creating, maintaining, storing, and servicing records;

6 (c) Establish standards for the preparation of schedules providing for the retention of state  
7 records of continuing value and for the prompt and orderly disposal of state records no longer  
8 possessing sufficient administrative, legal, or fiscal value to warrant ~~their further keeping~~ storage;

- 9           (d) ~~Select the state records which are essential and determine their category pursuant to~~  
10 ~~this article.~~ Solicit input from agencies on essential records and data classification of information  
11 contained in the records. In accordance with the rules and regulations promulgated by the  
12 administrator, each ~~person who~~ agency that has custody or control of state records shall: (1)  
13 Inventory the state records in his or her custody or control; (2) submit to the administrator a report  
14 thereon containing such information as the administrator directs and containing recommendations  
15 as to which state records are essential; and (3) periodically review his or her inventory and his or  
16 her report and, if necessary, revise the report so that it is current, accurate and complete; and
- 17           (e) Obtain reports from agencies as are required for the administration of the program.

**§5A-8-9. Duties of agency heads.**

- 1           The head of each agency shall:
- 2           (a) Establish and maintain an active, continuing program for the economical and efficient  
3 management of the records of the agency;
- 4           **(b) Designate and notify the administrator of an agency records manager to act as a point**  
5 **of contact between the administrator and the agency on issues related to management of the**  
6 **state records within the agency’s control or custody;**
- 7           **~~(b)~~ (c)** Make and maintain records containing adequate and proper documentation of the  
8 organization, functions, policies, decisions, procedures, and essential transactions of the agency  
9 designed to furnish information to protect the legal and financial rights of the state and of persons  
10 directly affected by the agency’s activities;
- 11           **~~(c)~~ (d)** Submit to the administrator, in accordance with the standards established by him  
12 or her, schedules proposing the length of time each state record series warrants retention for  
13 administrative, legal, or fiscal purposes after it has been received by the agency. ~~The head of~~  
14 ~~each agency~~ Each agency records manager also shall submit lists of state records in custody of  
15 the agency that are not needed in the transaction of current business and that do not have  
16 sufficient administrative, legal, or fiscal value to warrant ~~their further keeping~~ storage for disposal

17 in conformity with the requirements of §5A-8-10 of this code;

18 (e) Designate those records of the agency that are essential state records, at least  
19 annually, and report the designated essential state records to the administrator;

20 (f) Provide for the preservation and safekeeping of essential state records in an  
21 appropriate manner;

22 ~~(d)~~ (g) Cooperate with the administrator in the conduct of surveys made pursuant to the  
23 provisions of this article.

24 ~~(e)~~ (h) Comply with the rules, regulations, standards, and procedures issued by the  
25 administrator; and

26 ~~(f)~~ (i) First obtain the administrator's written approval before purchasing or acquiring any  
27 equipment, technology, or supplies used or to be used to store or preserve records of the agency.  
28 ~~If such approval is obtained the agency will submit a requisition to the Finance Division together~~  
29 ~~with a copy of the administrator's said approval~~

**§5A-8-10. Essential state records – Preservation duplicates.**

1 ~~(a) The administrator~~ agency head may make or cause to be made preservation duplicates  
2 or may designate as preservation duplicates existing copies of essential state records. A  
3 preservation duplicate shall be durable, accurate, complete, and clear, and a preservation  
4 duplicate made by means of photography, microphotography, photocopying, film, microfilm,  
5 electronic file, or digital image stored on unalterable media shall be made in conformity with the  
6 standards prescribed therefor by the administrator.

7 (b) A preservation duplicate made by a photographic, photostatic, microfilm, microcard,  
8 miniature photographic, electronic file, digital image, or other process which accurately  
9 reproduces or forms a durable and unalterable medium for so reproducing the original, shall have  
10 the same force and effect for all purposes as the original record whether the original record is in  
11 existence or not. A transcript, exemplification, or certified copy of such preservation duplicate shall  
12 be deemed for all purposes to be a transcript, exemplification, or certified copy of the original

13 record.

**§5A-8-11. Essential state records – Safekeeping.**

1 (a) The administrator shall prescribe ~~the place and a~~ manner of safekeeping of essential  
2 state records and preservation duplicates and may establish, with the approval of the Legislature,  
3 storage facilities therefor. The administrator may provide for physical storage outside the state or  
4 electronic storage.

5 (b) When in the opinion of the administrator the legally designated or customary location  
6 of an essential state record is such that the essential state record may be destroyed or unavailable  
7 in the event of a disaster: ~~caused by an enemy of the United States~~

8 (1) The ~~administrator~~ agency with custody of the essential state record shall store a  
9 preservation duplicate at another location and permit such state record to remain at its legally  
10 designated or customary location; or

11 (2) The ~~administrator~~ agency shall store such state record at a location other than its  
12 legally designated or customary location and deposit at the legally designated or customary  
13 location a preservation duplicate for use in lieu of the state record; or

14 (3) The ~~administrator~~ agency may store such state record at a location other than its legally  
15 designated or customary location, without providing for a preservation duplicate, upon a  
16 determination that it is impracticable to provide for a preservation duplicate and that the state  
17 record is not frequently used. Such determination shall be made by the administrator and the  
18 regularly designated custodian of such state record, but if they disagree the determination shall  
19 be made by the administrator.

20 (c) The requirements of subsection (b) of this section shall not prohibit the administrator  
21 from removing an essential state record or preservation duplicate from the legally designated or  
22 customary location of the state record if a disaster ~~caused by an enemy of the United States~~  
23 occurred or is imminent.

**§5A-8-12. Essential state records – Maintenance, inspection, and use.**

1 [Repealed.]

**§5A-8-13. Essential state records – Confidential records.**

1 When a state record is required by law to be treated in a confidential manner and is an  
2 essential state record, the ~~administrator~~ custodian of the record in effectuating the purpose of this  
3 article with respect to such state record, shall protect its confidential nature.

**§5A-8-14. Essential state records – Review of program.**

1 The administrator shall review ~~periodically but at least once a year~~ the program at least  
2 annually for the selection and preservation of essential state records designated by the agencies,  
3 including the classification of records and the provisions for preservation duplicates, and for  
4 safekeeping of essential state records or preservation duplicates to ensure that the purposes of  
5 this article are accomplished.

**§5A-8-17. Disposal of records.**

1 (a) Except as provided in §57-1-7a of this code, no record shall be destroyed or otherwise  
2 disposed of by any agency of the state, unless it is determined by the administrator and the  
3 Director of ~~the section~~ of Archives and History of within the ~~Division of~~ Department of Arts, Culture  
4 and History that the record has no further administrative, legal, fiscal, research, or historical value.  
5 In the event the administrator is of the opinion that the record has no further administrative, legal,  
6 fiscal, research, or historical value, the administrator shall ~~prior thereto, give written notice of the~~  
7 ~~administrator's intention to direct the destruction or other disposal of the record to the director.~~  
8 ~~Upon the written request of the director, given to the administrator within ten days of receipt of~~  
9 ~~said notice, the administrator shall direct the retention of the record for a period of thirty days. In~~  
10 ~~the event the director fails to retrieve the original document from the administrator or the~~  
11 ~~administrator's designee within the thirty day period, the administrator may direct the destruction~~  
12 ~~or other disposal of the original without further notice to the director~~ approve if appropriate a  
13 request for disposal of the records and notify both the Director of Archives and History and the  
14 agency that is the custodian of the records that they may be destroyed.



- 15            (b) The provisions of this section are not applicable to the judicial branch, the West Virginia  
16 House of Delegates, the West Virginia Senate, or the Joint Committee on Government and  
17 Finance.

NOTE: The purpose of this bill is to update and streamline the Records Management and Preservation Act to reflect current and modern practices of storing and destroying public records. The bill repeals the formal advisory committee and the requirement that the administrator store agencies' essential records. The bill provides agencies more authority to make decisions for storage of, formats and destruction of the agencies' records rather than the administrator. The bill requires agencies to appoint someone within the agency to serve as an agency records manager.

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