

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

Senate Bill 576

SENATOR MAYNARD, *original sponsor*

[Originating in the Committee on Government
Organization; reported on February 5, 2020]

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, §5A-8-15, and §5A-8-17 of said code, all relating to records
4 management of public records; defining terms; dissolving the formal advisory committee;
5 updating the authority of the administrator; allowing for records of historical value; updating
6 the authority of agency heads related to records management; providing for electronic
7 storage and electronic formats for records; repealing the requirement that administrator
8 must store agencies' essential records; removing the requirement that administrator notify
9 agencies of essential records destruction; providing that 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.

1 The Secretary of the Department of Administration is hereby designated the state records
2 administrator, hereinafter called the administrator. The secretary may designate someone within
3 the department to carry out the duties of the administrator. The administrator shall establish and
4 administer in the Department of Administration of the executive branch of state government a
5 records management program, which will apply efficient and economical management methods
6 to the creation, utilization, maintenance, and retention, preservation, and disposal of state
7 records; and shall establish and maintain a program for the selection and preservation of essential
8 state records and shall advise and assist in the establishment of programs for the selection and
9 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 Any agency subject to this article shall control and at all times be the owner of its records.

2 When a state record is required by law to be treated in a confidential manner and is an essential
3 state record, the ~~administrator~~ agency, in effectuating the purpose of this article with respect to
4 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-8-15. Records management and preservation of county records; alternate storage of
county records; Records Management and Preservation Board; qualifications and
appointment of members; reimbursement of expenses; staffing; rule-making
authority; study of records management needs of state agencies; grants to
counties.**

1 The Legislature finds that the use of electronic technology and other procedures to
2 manage and preserve public records by counties should be uniform throughout the state where
3 possible.

4 (a) The governing body and the chief elected official of a county, hereinafter referred to as
5 a county government entity, whether organized and existing under a charter or under general law,
6 shall promote the principles of efficient records management and preservation of local records. A
7 county governing entity may, as far as practical, follow the program established for the uniform
8 management and preservation of county records as set out in rules proposed for legislative
9 approval in accordance with the provisions of §29A-3-1 *et seq.* of this code as proposed by the

10 Records Management and Preservation Board.

11 (b) In the event a county government entity decides to destroy or otherwise dispose of a
12 county record, the county government entity may, prior to destruction or disposal thereof, offer
13 the record to the Director of ~~the Section of~~ Archives and History of within the ~~Division of~~
14 Department of Arts, Culture, and History for preservation of the record as a document of historical
15 value. Unless authorized by the Supreme Court of Appeals, the records of courts of record and
16 magistrate courts are not affected by the provisions of this section.

17 (c)(1) A preservation duplicate of a county government entity record may be stored in any
18 format approved by the board in which the image of the original record is preserved in a form,
19 including ~~CD-ROM and optical image storage media~~ electronic file, in which the image is
20 incapable of erasure or alteration and from which a reproduction of the stored record may be
21 retrieved that truly and accurately depicts the image of the original county government record.

22 (2) Except for those formats, processes, and systems used for the storage of records on
23 the effective date of this section, no alternate format for the storage of county government entity
24 records described in this section is authorized for the storage of county government entity records
25 unless the particular format has been approved pursuant to a legislative rule promulgated by the
26 board in accordance with the provisions of chapter 29A of this code. The board may prohibit the
27 use of any format, process, or system used for the storage of records upon its determination that
28 the same is not reasonably adequate to preserve the records from destruction, alteration, or
29 decay.

30 (3) Upon creation of a preservation duplicate that stores an original county government
31 entity record in an approved format that is incapable of erasure or alteration and that may be
32 retrieved in a format that truly and accurately depicts the image of the original record, the county
33 government entity may destroy or otherwise dispose of the original in accordance with the
34 provisions of §57-1-7c of this code.

35 (d) A Records Management and Preservation Board for county government entities is

36 continued, to be composed of 11 members.

37 (1) Three members shall serve ex officio. One member shall be the ~~Commissioner~~ Curator
38 of the ~~Division of~~ Department of Arts, Culture, and History or designee who shall be the chair of
39 the board. One member shall be the Administrator of the Supreme Court of Appeals or designee.
40 One member shall be the Chief Technology Officer or designee.

41 (2) The Governor shall appoint eight members of the board, with the advice and consent
42 of the Senate. Not more than five appointments to the board may be from the same political party
43 and not more than three members may be appointed from the same congressional district. Of the
44 eight members appointed by the Governor:

45 (i) Five appointments shall be county elected officials, one of whom shall be a clerk of a
46 county commission, one of whom shall be a circuit court clerk, one of whom shall be a county
47 commissioner, one of whom shall be a county sheriff, and one of whom shall be a county
48 assessor, to be selected from a list of 15 names. The names of three clerks of county commissions
49 and three circuit court clerks shall be submitted to the Governor by the West Virginia Association
50 of Counties. The names of three county commissioners shall be submitted to the Governor jointly
51 by the West Virginia Association of Counties and the West Virginia county commissioners
52 Association. The names of three county sheriffs shall be submitted to the Governor by the West
53 Virginia Sheriff's Association. The names of three county assessors shall be submitted to the
54 Governor by the Association of West Virginia assessors;

55 (ii) One appointment shall be a county prosecuting attorney to be selected from a list of
56 three names submitted by the West Virginia Prosecuting Attorneys Institute;

57 (iii) One appointment shall be an attorney licensed in West Virginia and in good standing
58 as a member of the West Virginia State Bar with experience in real estate and mineral title
59 examination, to be selected from a list of three names submitted by the State Bar; and

60 (iv) One appointment shall be a representative of a local historical or genealogical society.

61 (e) The members of the board shall serve without compensation but shall be reimbursed

62 for all reasonable and necessary expenses actually incurred in the performance of their duties as
63 members of the board in a manner consistent with the guidelines of the Travel Management Office
64 of the Department of Administration. In the event the expenses are paid, or are to be paid, by a
65 third party, the member shall not be reimbursed by the state.

66 (f) The staff of the board shall consist of the Director of ~~the Archives and History Section~~
67 ~~of within the Division of~~ Department of Arts, Culture, and History and any additional staff as
68 needed.

69 (g) The board shall propose rules for legislative approval in accordance with the provisions
70 of §29A-3-1 *et seq.* of this code to establish a system of records management and preservation
71 for county governments: *Provided, That,* for the retention and disposition of records of courts of
72 record and magistrate courts, the implementation of the rule is subject to action by the Supreme
73 Court of Appeals of West Virginia. The proposed rules shall include provisions for establishing a
74 program of grants to county governments for making records management and preservation
75 uniform throughout the state. ~~The board is not authorized to propose or promulgate emergency~~
76 ~~rules under the provisions of this section.~~

77 (h) In addition to the fees charged by the clerk of the county commission under the
78 provisions of §59-1-10 of this code, the clerk shall charge and collect an additional \$1 fee for
79 every document containing less than 10 pages filed for recording and an additional \$1 fee for
80 each additional 10 pages of document filed for recording. At the end of each month, the clerk of
81 the county commission shall deposit into the Public Records and Preservation Revenue Account
82 as established in the State Treasury all fees collected: *Provided, That* the clerk may retain not
83 more than 10 percent of the fees for costs associated with the collection of the fees. Clerks shall
84 be responsible for accounting for the collection and deposit in the State Treasury of all fees
85 collected by the clerk under the provisions of this section.

86 (i) There is hereby created in the State Treasury a special account entitled the Public
87 Records and Preservation Revenue Account. The account shall consist of all fees collected under

88 the provisions of this section, legislative appropriations, interest earned from fees, investments,
89 gifts, grants, or contributions received by the board. Expenditures from the account shall be for
90 the purposes set forth in this article and are not authorized from collections but are to be made
91 only in accordance with appropriation by the Legislature and in accordance with the provisions of
92 §12-3-1 *et seq.* of this code and upon the fulfillment of the provisions set forth in §11B-2-1 *et seq.*
93 of this code.

94 (j) Subject to the above provision, the board may expend the funds in the account to
95 implement the provisions of this article. In expending funds from the account, the board shall
96 allocate not more than 50 percent of the funds for grants to counties for records management,
97 access, and preservation purposes. The board shall provide for applications, set guidelines, and
98 establish procedures for distributing grants to counties, including a process for appealing an
99 adverse decision on a grant application. Expenditures from the account shall be for the purposes
100 set forth in this section, including the cost of additional staff of the Division of Archives and History.

§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~~ 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.