

SB 472

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2002



ENROLLED

SENATE BILL NO. 472

(By Senator Bowman, et al)



PASSED February 20, 2002

In Effect ninety days from Passage

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SECRETARY OF STATE

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Senate Bill No. 472

(By SENATORS BOWMAN, BAILEY, BURNETTE, JACKSON,
KESSLER, MINARD, REDD, ROWE AND SNYDER)

[Passed February 20, 2002; in effect ninety days from passage.]

AN ACT to amend and reenact section fifteen, article eight, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section fifteen-a, all relating to continuing the records management and preservation board.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article eight, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section fifteen-a, all to read as follows:

ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESERVATION ACT.

§5A-8-15. Records management and preservation of county records; alternate storage of county records; records

management and preservation board created; 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
2 and other procedures to manage and preserve public records
3 by counties should be uniform throughout the state where
4 possible.

5 (a) The governing body and the chief elected official of any
6 unit of each county, hereinafter referred to as a county
7 government entity, whether organized and existing under a
8 charter or under general law, shall promote the principles of
9 efficient records management and preservation of local
10 records. Such county governing entity may, as far as practical,
11 follow the program established for the uniform management
12 and preservation of county records as set out in a rule or
13 rules proposed for legislative approval in accordance with the
14 provisions of article three, chapter twenty-nine-a of this code
15 as proposed by the records management and preservation
16 board established herein.

17 (b) In the event any such governing body or the chief elected
18 official of a unit of a county government entity decides to
19 destroy or otherwise dispose of a county record, the governing
20 body or such chief elected official may, prior to destruction or
21 disposal thereof, offer the record to the director of the section
22 of archives and history of the division of culture and history
23 for preservation of the record as a document of historical
24 value. Unless authorized by the supreme court of appeals, the
25 records of courts of record and magistrate courts are not
26 affected by the provisions of this section.

27 (c) A preservation duplicate of a county government entity
28 record may be stored in any format, approved by the board as
29 hereinafter established, where the image of the original
30 record is preserved in a form, including CD-ROM and optical
31 image storage media, in which the image thereof is incapable

32 of erasure or alteration and from which a reproduction of the
33 stored record may be retrieved which truly and accurately
34 depicts the image of the original county government record.

35 Except for those formats, processes and systems used for the
36 storage of records on the effective date of this section, no
37 alternate format for the storage of county government entity
38 records described in this section is authorized for the storage
39 of county government entity records unless the particular
40 format has been approved pursuant to a legislative rule
41 promulgated by the board as herein created in accordance
42 with the provisions of chapter twenty-nine-a of this code.
43 The board as herein established may prohibit the use of any
44 format, process or system used for the storage of records upon
45 its determination that the same is not reasonably adequate to
46 preserve the records from destruction, alteration or decay.

47 Upon creation of a preservation duplicate which stores an
48 original county government entity record in an approved
49 format in which the image thereof is incapable of erasure or
50 alteration and from which a reproduction of the stored record
51 may be retrieved which truly and accurately depicts the
52 image of the original record, the county government entity
53 may destroy or otherwise dispose of the original in accor-
54 dance with the provisions of section seven-c, article one,
55 chapter fifty-seven of this code.

56 (d) There is hereby created a records management and
57 preservation board for county government entities, to be
58 composed of nine members.

59 (1) Three members shall serve ex officio. One member shall
60 be the commissioner of the division of culture and history
61 who shall be the chairman of the board. One member shall be
62 the administrator of the supreme court of appeals. One
63 member shall be the administrator of the governor's office of
64 technology or his or her designee.

65 (2) The governor shall appoint six members of the board
66 with the advice and consent of the Senate. Not more than five

67 appointments to the board may be from the same political
68 party and not more than three members may be appointed
69 from the same congressional district. Of the six members
70 appointed by the governor: (i) Three appointments shall be
71 county elected officials, one of whom shall be a clerk of the
72 county commission, one of whom shall be a circuit court clerk
73 and one of whom shall be a county commissioner, to be
74 selected from a list of nine names, including the names of
75 three clerks of county commissions and three circuit court
76 clerks submitted to the governor by the West Virginia
77 association of counties and the names of three county com-
78 missioners submitted to the governor jointly by the West
79 Virginia association of counties and the West Virginia county
80 commissioners association; (ii) one appointment shall be a
81 county prosecuting attorney to be selected from a list of three
82 names submitted by the West Virginia prosecuting attorneys
83 institute; (iii) one appointment shall be an attorney licensed
84 in West Virginia and in good standing as a member of the
85 state bar with experience in real estate and mineral title
86 examination, to be selected from a list of three names submit-
87 ted by the state bar; and (iv) one appointment shall be a
88 representative of a local historical or genealogical society;

89 (e) The members of the board shall serve without compensa-
90 tion but shall be reimbursed for all reasonable and necessary
91 expenses actually incurred in the performance of their duties
92 as members of the board. In the event the expenses are paid,
93 or are to be paid, by a third party, the member shall not be
94 reimbursed by the state.

95 (f) The staff of the board shall consist of the director of the
96 archives and history section of the division of culture and
97 history and such staff as he or she may designate to assist him
98 or her.

99 (g) On or before the first day of July, two thousand one, the
100 board shall propose rules for legislative approval in accor-
101 dance with the provisions of article three, chapter twenty-
102 nine-a of this code to establish a system of records manage-
103 ment and preservation for county governments: *Provided,*

104 That, for the retention and disposition of records of courts of
105 record and magistrate courts, the implementation of the rule
106 is subject to action of the West Virginia supreme court of
107 appeals. The proposed rule or rules shall include provisions
108 for establishing a program of grants to county governments
109 for making records management and preservation uniform
110 throughout the state. The board is not authorized to propose
111 or promulgate emergency rules under the provisions of this
112 section.

113 (h) On or before the first day of April, two thousand two, the
114 board, in cooperation with the administrator and state
115 executive agencies under the general authority of the gover-
116 nor, shall conduct a study of the records management and
117 preservation needs of state executive agencies. Should the
118 board determine a need for a uniform records management
119 and preservation system for such agencies, it shall recommend
120 that the administrator propose rules for legislative approval
121 in accordance with the provisions of article three, chapter
122 twenty-nine-a of this code to provide for the implementation
123 of a uniform records management and preservation system for
124 state executive agencies.

125 (i) In addition to the fees charged by the clerk of the county
126 commission under the provisions of section ten, article one,
127 chapter fifty-nine of this code, the clerk shall charge and
128 collect an additional one-dollar fee for every document
129 containing less than ten pages filed for recording and an
130 additional one-dollar fee for each additional ten pages of such
131 document filed for recording. At the end of each month, the
132 clerk of the county commission shall deposit into the special
133 public records and preservation account as herein established
134 in the state treasury all fees collected: *Provided*, That the
135 clerk may retain not more than ten percent of such fees for
136 costs associated with the collection of the fees. Clerks shall
137 be responsible for accounting for the collection and deposit in
138 the state treasury of all fees collected by such clerk under the
139 provisions of this section.

140 There is hereby created in the state treasury a special
141 account entitled the "public records and preservation revenue
142 account". The account shall consist of all fees collected under
143 the provisions of this section, legislative appropriations,
144 interest earned from fees, investments, gifts, grants or
145 contributions received by the board. Expenditures from the
146 account shall be for the purposes set forth in this article and
147 are not authorized from collections but are to be made only in
148 accordance with appropriation by the Legislature and in
149 accordance with the provisions of article three, chapter
150 twelve of this code and upon the fulfillment of the provisions
151 set forth in article two, chapter five-a of this code: *Provided,*
152 That for the fiscal year ending the thirtieth day of June, two
153 thousand one, expenditures are authorized from collections
154 rather than pursuant to an appropriation by the Legislature.

155 Subject to the above provision, the board may expend the
156 funds in the account to implement the provisions of this
157 article. In expending funds from the account, the board shall
158 allocate not more than fifty percent of such funds for grants
159 to counties for records management, access and preservation
160 purposes. The board shall provide for applications, set
161 guidelines and establish procedures for distributing grants to
162 counties including a process for appealing an adverse decision
163 on a grant application. Expenditures from the account shall
164 be for the purposes set forth in this section, including the cost
165 of additional staff of the division of archives and history.

§5A-8-15a. Continuation of board.

1 The records management and preservation board shall
2 continue to exist until the first day of July, two thousand
3 three, pursuant to the provisions of article ten, chapter four
4 of this code, unless sooner terminated, continued or reestab-
5 lished pursuant to the provisions of that article.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Handwritten Signature]
.....
Chairman Senate Committee

[Handwritten Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Handwritten Signature]
.....
Clerk of the Senate

[Handwritten Signature]
.....
Clerk of the House of Delegates

[Handwritten Signature]
.....
President of the Senate

[Handwritten Signature]
.....
Speaker House of Delegates

The within is approved this the 4th
Day of March, 2002.

[Handwritten Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 2/26/02

Time 4:45 pm