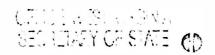


2008 MAR 27 AM II: 05



WEST VIRGINIA LEGISLATURE

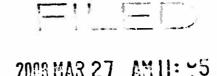
SEVENTY-EIGHTH LEGISLATURE REGULAR SESSION, 2008

ENROLLED

Senate Bill No. 512

(By Senator Bowman)

[Passed March 4, 2008; in effect from passage.]



CHE THE WASTER STATE (D

ENROLLED Senate Bill No. 512

(BY SENATOR BOWMAN)

[Passed March 4, 2008; in effect from passage.]

AN ACT to amend and reenact §5A-8-15 of the Code of West Virginia, 1931, as amended, relating to changing the number of members on the Records Management and Preservation Board for county government entities from nine to eleven members to accurately reflect the actual board membership.

Be it enacted by the Legislature of West Virginia:

That §5A-8-15 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-8-15. 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.

- The Legislature finds that the use of electronic technology and other procedures to manage and preserve public records by counties should be uniform throughout the state where possible.
- (a) The governing body and the chief elected official 5 6 of a county, hereinafter referred to as a county government entity, whether organized and existing 7 under a charter or under general law, shall promote the 8 9 principles of efficient records management and preservation of local records. A county governing 10 entity may, as far as practical, follow the program 11 established for the uniform management 12 13 preservation of county records as set out in rules proposed for legislative approval in accordance with 14 the provisions of article three, chapter twenty-nine-a of 15 this code as proposed by the Records Management and 16 Preservation Board. 17
- 18 (b) In the event a county government entity decides to 19 destroy or otherwise dispose of a county record, the 20 county government entity may, prior to destruction or 21 disposal thereof, offer the record to the Director of the 22 Section of Archives and History of the Division of 23 Culture and History for preservation of the record as a 24 document of historical value. Unless authorized by the 25 Supreme Court of Appeals, the records of courts of record and magistrate courts are not affected by the 26 27 provisions of this section.
- 28 (c)(1) A preservation duplicate of a county 29 government entity record may be stored in any format 30 approved by the board in which the image of the 31 original record is preserved in a form, including CD-32 ROM and optical image storage media, in which the image is incapable of erasure or alteration and from 33 34 which a reproduction of the stored record may be 35 retrieved that truly and accurately depicts the image of the original county government record. 36

- 37 (2) Except for those formats, processes and systems 38 used for the storage of records on the effective date of 39 this section, no alternate format for the storage of 40 county government entity records described in this section is authorized for the storage of county 41 42 government entity records unless the particular format 43 has been approved pursuant to a legislative rule 44 promulgated by the board in accordance with the 45 provisions of chapter twenty-nine-a of this code. The 46 board may prohibit the use of any format, process or 47 system used for the storage of records upon its 48 determination that the same is not reasonably adequate 49 to preserve the records from destruction, alteration or 50 decay.
- 51 (3) Upon creation of a preservation duplicate that 52 stores an original county government entity record in 53 an approved format that is incapable of erasure or 54 alteration and that may be retrieved in a format that 55 truly and accurately depicts the image of the original 56 record, the county government entity may destroy or 57 otherwise dispose of the original in accordance with the 58 provisions of section seven-c, article one, chapter fifty-59 seven of this code.
- 60 (d) A Records Management and Preservation Board 61 for county government entities is continued to be 62 composed of eleven members.
- (1) Three members shall serve ex officio. One member shall be the Commissioner of the Division of Culture and History or designee who shall be the chair of the board. One member shall be the Administrator of the Supreme Court of Appeals or designee. One member shall be the Chief Technology Officer or designee.
- 69 (2) The Governor shall appoint eight members of the 70 board, with the advice and consent of the Senate. Not 71 more than five appointments to the board may be from 72 the same political party and not more than three 73 members may be appointed from the same 74 congressional district. Of the eight members appointed 75 by the Governor:

- 76 (i) Five appointments shall be county elected officials, 77 one of whom shall be a clerk of a county commission, 78 one of whom shall be a circuit court clerk, one of whom 79 shall be a county commissioner, one of whom shall be a 80 county sheriff and one of whom shall be a county 81 assessor, to be selected from a list of fifteen names. The 82 names of three clerks of county commissions and three 83 circuit court clerks shall be submitted to the Governor 84 by the West Virginia Association of Counties. 85 names of three county commissioners shall be 86 submitted to the Governor jointly by the West Virginia 87 Association of Counties and the West Virginia County 88 Commissioners Association. The names of three county 89 sheriffs shall be submitted to the Governor by the West 90 Virginia Sheriff's Association. The names of three 91 county assessors shall be submitted to the Governor by 92 the Association of West Virginia Assessors;
- 93 (ii) One appointment shall be a county prosecuting 94 attorney to be selected from a list of three names 95 submitted by the West Virginia Prosecuting Attorneys 96 Institute;
- 97 (iii) One appointment shall be an attorney licensed in 98 West Virginia and in good standing as a member of the 99 West Virginia State Bar with experience in real estate 100 and mineral title examination, to be selected from a list 101 of three names submitted by the State Bar; and
- 102 (iv) One appointment shall be a representative of a local historical or genealogical society.
- 104 (e) The members of the board shall serve without 105 compensation but shall be reimbursed for all 106 reasonable and necessary expenses actually incurred in 107 the performance of their duties as members of the board 108 in a manner consistent with the guidelines of the Travel 109 Management Office of the Department Administration. In the event the expenses are paid, or 110 111 are to be paid, by a third party, the member shall not be 112 reimbursed by the state.
- 113 (f) The staff of the board shall consist of the Director

- of the Archives and History Section of the Division of Culture and History and any additional staff as needed.
- 116 (g) The board shall propose rules for legislative 117 approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish a 118 119 system of records management and preservation for 120 county governments: *Provided*, That, for the retention 121 and disposition of records of courts of record and 122 magistrate courts, the implementation of the rule is 123 subject to action by the Supreme Court of Appeals of 124 West Virginia. The proposed rules shall include provisions for establishing a program of grants to 125 126 county governments for making records management 127 and preservation uniform throughout the state. The 128 board is not authorized to propose or promulgate 129 emergency rules under the provisions of this section.
- 130 (h) In addition to the fees charged by the clerk of the 131 county commission under the provisions of section ten, 132 article one, chapter fifty-nine of this code, the clerk 133 shall charge and collect an additional one-dollar fee for 134 every document containing less than ten pages filed for 135 recording and an additional one-dollar fee for each 136 additional ten pages of document filed for recording. 137 At the end of each month, the clerk of the county 138 commission shall deposit into the Public Records and 139 Preservation Account as established in the State 140 Treasury all fees collected: Provided, That the clerk 141 may retain not more than ten percent of the fees for 142 costs associated with the collection of the fees. Clerks 143 shall be responsible for accounting for the collection 144 and deposit in the State Treasury of all fees collected by 145 the clerk under the provisions of this section.
 - (i) There is hereby created in the State Treasury a special account entitled the Public Records and Preservation Revenue Account. The account shall consist of all fees collected under the provisions of this section, legislative appropriations, interest earned from fees, investments, gifts, grants or contributions received by the board. Expenditures from the account shall be for the purposes set forth in this article and are not

146

147

148

149

150

151

152

153

- authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter eleven-b of this code.
- 160 (j) Subject to the above provision, the board may 161 expend the funds in the account to implement the 162 provisions of this article. In expending funds from the 163 account, the board shall allocate not more than fifty percent of the funds for grants to counties for records 164 165 management, access and preservation purposes. The 166 board shall provide for applications, set guidelines and 167 establish procedures for distributing grants to counties, including a process for appealing an adverse decision 168 169 on a grant application. Expenditures from the account 170 shall be for the purposes set forth in this section, 171 including the cost of additional staff of the Division of 172 Archives and History.

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

Chairman Sendte Committee Ckairman House Committee Originated in the Senate. In effect from passage. Clerk of the Senate Clerk of the House of Delegates President of the Senate Speaker House of Delegates The within US UPPLONE 2008.

PRESENTED TO THE GOVERNOR

MAR 1 7 2008

11:12an