

**H. B. 2968**

(By Delegates Boggs and Young)  
[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:

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

2 **§5A-8-20. Alternate storage of state records.**

3 (a) *Findings and purpose.* -- The Legislature finds that  
4 continuous advances in technology have resulted and will continue  
5 to result in the development of alternate formats for the  
6 nonerasable storage of state records, and that the use of such  
7 alternative storage formats, where deemed advisable, promote the  
8 efficient and economical administration of government and provide  
9 a means for the preservation of valuable records ~~which~~ that are  
10 subject to decay or destruction. It is the purpose of the  
11 Legislature to authorize the storage of state records in ~~such~~ those  
12 alternate formats, as may be determined by the various branches of  
13 the government of this state, that will reasonably ensure that the  
14 originals of ~~such~~ those records are copied into ~~such~~ alternative  
15 formats in a manner in which the image ~~thereof may~~ of the original  
16 records is not ~~be~~ erased or altered, and from which true and  
17 accurate reproductions of the original state records may be  
18 retrieved.

19 (b) *Approved format.* -- (1) In addition to those formats,  
20 processes and systems described in section ten of this article,  
21 sections seven-a and seven-c, article one, chapter fifty-seven of  
22 this code, and section twelve, article five of ~~said~~ that chapter  
23 ~~fifty-seven~~, which are otherwise authorized for the reproduction of  
24 state records, a preservation duplicate of a state record may be

1 stored in any approved format where the image of the original state  
2 record is preserved in a form in which the image thereof is  
3 incapable of erasure or alteration, and from which a reproduction  
4 of the stored state record may be retrieved which truly and  
5 accurately depicts the image of the original state record.

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

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

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

14 (C) A procedure is established and followed which ensures  
15 that:

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

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

22 (c) Executive agency records. -- (1) Except for those formats,  
23 processes and systems used for the storage of state records on the  
24 effective date of this section, no alternate format for the storage

~~1 of state records described in this section is authorized for the  
2 storage of the state records of any agency of this state unless the  
3 particular format has been approved by the state records  
4 administrator pursuant to legislative rule promulgated in  
5 accordance with the provisions of chapter twenty-nine-a of this  
6 code. No provision of this section shall be construed to prohibit  
7 the state records administrator from prohibiting the use of any  
8 format, process or system used for the storage of executive state  
9 records upon his or her determination that the same is not  
10 reasonably adequate to preserve the state records from destruction,  
11 alteration or decay.~~

~~12 (2) Upon creation of a preservation duplicate which stores an  
13 original executive state record in an approved format in which the  
14 image thereof is incapable of erasure or alteration, and from which  
15 a reproduction of the stored state record may be retrieved which  
16 truly and accurately depicts the image of the original state  
17 record, the state records administrator may destroy or otherwise  
18 dispose of the original in accordance with the provisions of  
19 section seventeen of this article for the destruction of records.~~

~~20 (1) The alternate formats for the storage of state records  
21 described in this section are authorized for the storage of the  
22 state records of any agency of this state. The state records  
23 administrator shall establish a procedure for executive agencies to  
24 follow implementing the provisions of subsection (b) of this~~

1 section by July 1, 2013. The procedure shall include, at a  
2 minimum, the identification of examples of medium and accompanying  
3 procedures to be followed for executive agencies when making  
4 preservation duplicates of state records on medium readily  
5 available, other than microfilm or microfiche.

6 (2) Upon creation of a preservation duplicate from which a  
7 reproduction of the stored state record may be retrieved which  
8 truly and accurately depicts the image of the original state  
9 record, the state records administrator may destroy or otherwise  
10 dispose of the original in accordance with the provisions of  
11 section seventeen of this article for the destruction of records.

12 (d) *Judicial records.* -- (1) Except for those formats,  
13 processes and systems used for the storage of state records on the  
14 effective date of this section, no alternate format for the storage  
15 of state records described in this section is authorized for the  
16 storage of the state records of any court of this state unless the  
17 particular format has been approved by the Supreme Court of Appeals  
18 by rule. ~~No provision of this section shall be construed to~~ This  
19 section does not prohibit the Supreme Court of Appeals from  
20 prohibiting the use of any format, process or system used for the  
21 storage of judicial state records upon its determination that the  
22 same is not reasonably adequate to preserve the state records from  
23 destruction, alteration or decay.

24 (2) Upon creation of a preservation duplicate which stores an

1 original judicial state record in an approved format ~~in which the~~  
2 ~~image thereof is incapable of erasure or alteration,~~ and from which  
3 a reproduction of the stored state record may be retrieved which  
4 truly and accurately depicts the image of the original state  
5 record, the court or the clerk thereof creating the same may,  
6 consistent with rules of the Supreme Court of Appeals, destroy or  
7 otherwise dispose of the original in accordance with the provisions  
8 of section seven, article one, chapter fifty-seven of this code for  
9 the destruction of records.

10 (e) *Legislative records.* -- ~~(1) Except for those formats,~~  
11 ~~processes and systems used for the storage of state records on the~~  
12 ~~effective date of this section, no alternate format for the storage~~  
13 ~~of state records described in this section is authorized for the~~  
14 ~~storage of the state records of the Legislature unless the~~  
15 ~~particular format has been approved in a writing jointly by the~~  
16 ~~Speaker of the House of Delegates and the President of the Senate~~  
17 ~~to the clerks of their respective houses. No provision of this~~  
18 ~~section shall be construed to prohibit the presiding officers of~~  
19 ~~the houses of the Legislature from prohibiting the use of any~~  
20 ~~format, process or system used for the storage of legislative state~~  
21 ~~records upon their determination that the same is not reasonably~~  
22 ~~adequate to preserve the state records from destruction, alteration~~  
23 ~~or decay.~~

24 ~~(2) Upon creation of a preservation duplicate which stores an~~

~~1 original legislative state record in an approved format in which  
2 the image thereof is incapable of erasure or alteration, and from  
3 which a reproduction of the stored state record may be retrieved  
4 which truly and accurately depicts the image of the original state  
5 record, the clerks of the respective houses of the Legislature may  
6 destroy or otherwise dispose of the original. However, prior  
7 thereto, the clerks shall give written notice of their intention to  
8 do so to the director of the section of archives and history of the  
9 Division of Culture and History. Upon the written request of the  
10 director, given to the clerks within ten days of receipt of said  
11 notice, the clerks shall retain the original record for a period of  
12 thirty days. In the event the director fails to retrieve the  
13 original document from the clerks within the thirty day period, the  
14 clerks may destroy or otherwise dispose of the original without  
15 further notice to the director. In accordance with all applicable  
16 provisions of the West Virginia Constitution, the procedures for  
17 the storage and destruction of legislative records shall be  
18 determined by each house, or by a joint rule.~~

19 (f) Upon request and payment of a reasonable cost, one copy of  
20 any state record archived or preserved pursuant to the provisions  
21 of this article shall be provided to any person or entity:  
22 Provided, That the person or entity that has produced the state  
23 record may receive one copy without charge. For the purpose of  
24 this subsection "state record" means electronic record created and

1 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.