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CLERK OF COURTS  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
FIRST REGULAR SESSION, 2013



**ENROLLED**

**House Bill No. 2968**

(By Delegate(s) Boggs and Young)



Passed April 12, 2013

In effect July 1, 2013.

HB 2968

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H. B. 2968

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(BY DELEGATE(S) BOGGS AND YOUNG)

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[Passed April 12, 2013; in effect July 1, 2013.]

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**AN ACT 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:

**ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESERVATION  
ACT.****§5A-8-20. Alternate storage of state records.**

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

16       (b) *Approved format.* — (1) In addition to those formats,  
17 processes and systems described in section ten of this article,  
18 sections seven-a and seven-c, article one, chapter fifty-seven of  
19 this code, and section twelve, article five of that chapter which  
20 are otherwise authorized for the reproduction of state records, a  
21 preservation duplicate of a state record may be stored in any  
22 approved format where the image of the original state record is  
23 preserved in a form in which the image thereof is incapable of  
24 erasure or alteration, and from which a reproduction of the stored  
25 state record may be retrieved which truly and accurately depicts  
26 the image of the original state record.

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

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

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

35 (C) A procedure is established and followed which ensures  
36 that:

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

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

43 (c) *Executive agency records.* — (1) The alternate formats  
44 for the storage of state records described in this section are  
45 authorized for the storage of the state records of any agency of  
46 this state. The state records administrator shall establish a  
47 procedure for executive agencies to follow implementing the  
48 provisions of subsection (b) of this section by July 1, 2013. The  
49 procedure shall include, at a minimum, the identification of  
50 examples of medium and accompanying procedures to be  
51 followed for executive agencies when making preservation  
52 duplicates of state records on medium readily available, other  
53 than microfilm or microfiche.

54 (2) Upon creation of a preservation duplicate from which a  
55 reproduction of the stored state record may be retrieved which  
56 truly and accurately depicts the image of the original state  
57 record, the state records administrator may destroy or otherwise  
58 dispose of the original in accordance with the provisions of  
59 section seventeen of this article for the destruction of records.

60 (d) *Judicial records.* — (1) Except for those formats,  
61 processes and systems used for the storage of state records on the

62 effective date of this section, no alternate format for the storage  
63 of state records described in this section is authorized for the  
64 storage of the state records of any court of this state unless the  
65 particular format has been approved by the Supreme Court of  
66 Appeals by rule. This section does not prohibit the Supreme  
67 Court of Appeals from prohibiting the use of any format, process  
68 or system used for the storage of judicial state records upon its  
69 determination that the same is not reasonably adequate to  
70 preserve the state records from destruction, alteration or decay.

71 (2) Upon creation of a preservation duplicate which stores an  
72 original judicial state record in an approved format from which  
73 a reproduction of the stored state record may be retrieved which  
74 truly and accurately depicts the image of the original state  
75 record, the court or the clerk thereof creating the same may,  
76 consistent with rules of the Supreme Court of Appeals, destroy  
77 or otherwise dispose of the original in accordance with the  
78 provisions of section seven, article one, chapter fifty-seven of  
79 this code for the destruction of records.

80 (e) *Legislative records.* — In accordance with all applicable  
81 provisions of the West Virginia Constitution, the procedures for  
82 the storage and destruction of legislative records shall be  
83 determined by each house, or by a joint rule.

84 (f) Upon request and payment of a reasonable cost, one copy  
85 of any state record archived or preserved pursuant to the  
86 provisions of this article shall be provided to any person or  
87 entity: *Provided*, That the person or entity that has produced the  
88 state record may receive one copy without charge. For the  
89 purpose of this subsection “state record” means electronic record  
90 created and maintained by state agencies.



**PRESENTED TO THE GOVERNOR**

**APR 25 2013**

Time 11:40am