

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

Senate Bill 508

BY SENATOR WOODRUM

[Originating in the Committee on Government

Organization; reported on March 26, 2021]

1 A BILL to amend and reenact §5A-8-15 of the Code of West Virginia, 1931, as amended, relating
2 to public records management and preservation; and increasing available funds in the
3 Public Records and Preservation Revenue Account for grants to counties for records
4 management, access, and preservation purposes.

Be it enacted by the Legislature of West Virginia:

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.**

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 Archives and History within the Department of Arts, Culture, and
14 History for preservation of the record as a document of historical value. Unless authorized by the

15 Supreme Court of Appeals, the records of courts of record and magistrate courts are not affected
16 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 electronic file, in which the image is incapable of erasure or alteration and from which a
20 reproduction of the stored record may be retrieved that truly and accurately depicts the image of
21 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 §29A-3-1 *et seq.* of this code. The board may prohibit
27 the use of any format, process, or system used for the storage of records upon its determination
28 that 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 curator of the
38 Department of Arts, Culture, and History or designee who shall be the chair of the board. One
39 member shall be the administrator of the Supreme Court of Appeals or designee. One member
40 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 Archives and History within the
67 Department of Arts, Culture, and History and any additional staff as needed.

68 (g) The board shall propose rules for legislative approval in accordance with the provisions
69 of §29A-3-1 *et seq.* of this code to establish a system of records management and preservation
70 for county governments: *Provided, That*, for the retention and disposition of records of courts of
71 record and magistrate courts, the implementation of the rule is subject to action by the Supreme
72 Court of Appeals of West Virginia. The proposed rules shall include provisions for establishing a
73 program of grants to county governments for making records management and preservation
74 uniform throughout the state.

75 (h) In addition to the fees charged by the clerk of the county commission under the
76 provisions of §59-1-10 of this code, the clerk shall charge and collect an additional \$1 fee for
77 every document containing ~~less~~ fewer than 10 pages filed for recording and an additional \$1 fee
78 for each additional 10 pages of document filed for recording. The county clerk shall, in the sole
79 discretion of the county commission, increase the fee charged and collected from \$1 to \$2 for
80 every document containing fewer than 20 pages filed for recording and an additional \$1 fee for
81 each additional 10 pages of document filed for recording. At the end of each month, the clerk of
82 the county commission shall deposit into the Public Records and Preservation Revenue Account
83 as established in the State Treasury all fees collected: *Provided, That* the clerk may retain not
84 more than 10 percent of the fees for costs associated with the collection of the fees. Clerks shall
85 be responsible for accounting for the collection and deposit in the State Treasury of all fees
86 collected by the clerk under the provisions of this section.

87 (i) There is hereby created in the State Treasury a special account entitled the Public
88 Records and Preservation Revenue Account. The account shall consist of all fees collected under
89 the provisions of this section, legislative appropriations, interest earned from fees, investments,
90 gifts, grants, or contributions received by the board. Expenditures from the account shall be for
91 the purposes set forth in this article and are not authorized from collections but are to be made

92 only in accordance with appropriation by the Legislature and in accordance with the provisions of
93 §12-3-1 *et seq.* of this code and upon the fulfillment of the provisions set forth in §11B-2-1 *et seq.*
94 of this code.

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