

SB 512

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LESLIE BOWMAN
SECRETARY OF STATE

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.]

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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.**

1 The Legislature finds that the use of electronic
2 technology and other procedures to manage and
3 preserve public records by counties should be uniform
4 throughout the state where possible.

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

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
26 record and magistrate courts are not affected by the
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
33 image is incapable of erasure or alteration and from
34 which a reproduction of the stored record may be
35 retrieved that truly and accurately depicts the image of
36 the original county government record.

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
41 section is authorized for the storage of county
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.

63 (1) Three members shall serve ex officio. One member
64 shall be the Commissioner of the Division of Culture
65 and History or designee who shall be the chair of the
66 board. One member shall be the Administrator of the
67 Supreme Court of Appeals or designee. One member
68 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. The
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
103 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 of
110 Administration. In the event the expenses are paid, or
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

114 of the Archives and History Section of the Division of
115 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
118 three, chapter twenty-nine-a of this code to establish a
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
125 provisions for establishing a program of grants to
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.

146 (i) There is hereby created in the State Treasury a
147 special account entitled the Public Records and
148 Preservation Revenue Account. The account shall
149 consist of all fees collected under the provisions of this
150 section, legislative appropriations, interest earned from
151 fees, investments, gifts, grants or contributions received
152 by the board. Expenditures from the account shall be
153 for the purposes set forth in this article and are not

154 authorized from collections but are to be made only in
155 accordance with appropriation by the Legislature and
156 in accordance with the provisions of article three,
157 chapter twelve of this code and upon the fulfillment of
158 the provisions set forth in article two, chapter eleven-b
159 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
164 percent of the funds for grants to counties for records
165 management, access and preservation purposes. The
166 board shall provide for applications, set guidelines and
167 establish procedures for distributing grants to counties,
168 including a process for appealing an adverse decision
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.

Candy White
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Darrell G. Blus
.....
Clerk of the Senate

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

Carl Roy Tomblin
.....
President of the Senate

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

The within *is approved* this
the *27th* Day of *May*, 2008.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 17 2008

Time 11:17am