WEST VIRGINIA CODE: §5a-8-15

§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 of a county, hereinafter referred to as a county government entity, whether organized and existing under a charter or under general law, shall promote the principles of efficient records management and preservation of local records. A county governing entity may, as far as practical, follow the program established for the uniform management and preservation of county records as set out in rules proposed for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code as proposed by the Records Management and Preservation Board.

(b) In the event a county government entity decides to destroy or otherwise dispose of a county record, the county government entity may, prior to destruction or disposal thereof, offer the record to the director of Archives and History within the Department of Arts, Culture, and History for preservation of the record as a document of historical value. Unless authorized by the Supreme Court of Appeals, the records of courts of record and magistrate courts are not affected by the provisions of this section.

(c)(1) A preservation duplicate of a county government entity record may be stored in any format approved by the board in which the image of the original record is preserved in a form, including electronic file, in which the image is incapable of erasure or alteration and from which a reproduction of the stored record may be retrieved that truly and accurately depicts the image of the original county government record.

(2) Except for those formats, processes, and systems used for the storage of records on the effective date of this section, no alternate format for the storage of county government entity records described in this section is authorized for the storage of county government entity records unless the particular format has been approved pursuant to a legislative rule promulgated by the board in accordance with the provisions of Chapter 29A of this code. The board may prohibit the use of any format, process, or system used for the storage of records upon its determination that the same is not reasonably adequate to preserve the records from destruction, alteration, or decay.

(3) Upon creation of a preservation duplicate that stores an original county government entity record in an approved format that is incapable of erasure or alteration and that may

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be retrieved in a format that truly and accurately depicts the image of the original record, the county government entity may destroy or otherwise dispose of the original in accordance with the provisions of §57-1-7c of this code.

(d) A Records Management and Preservation Board for county government entities is continued, to be composed of 11 members.

(1) Three members shall serve ex officio. One member shall be the curator of the Department of Arts, 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.

(2) The Governor shall appoint eight members of the board, with the advice and consent of the Senate. Not more than five appointments to the board may be from the same political party and four members shall be appointed from each congressional district. Of the eight members appointed by the Governor:

(i) Five appointments shall be county elected officials, one of whom shall be a clerk of a county commission, one of whom shall be a circuit court clerk, one of whom shall be a county commissioner, one of whom shall be a county sheriff, and one of whom shall be a county assessor, to be selected from a list of 15 names. The names of three clerks of county commissions and three circuit court clerks shall be submitted to the Governor by the West Virginia Association of Counties. The names of three county commissioners shall be submitted to the Governor jointly by the West Virginia Association of Counties and the West Virginia County Commissioners Association. The names of three county sheriffs shall be submitted to the Governor by the West Virginia Sheriff's Association. The names of three county assessors shall be submitted to the Governor by the Association of West Virginia Assessors;

(ii) One appointment shall be a county prosecuting attorney to be selected from a list of three names submitted by the West Virginia Prosecuting Attorneys Institute;

(iii) One appointment shall be an attorney licensed in West Virginia and in good standing as a member of the West Virginia State Bar with experience in real estate and mineral title examination, to be selected from a list of three names submitted by the State Bar; and

(iv) One appointment shall be a representative of a local historical or genealogical society.

(e) The members of the board shall serve without compensation but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties as members of the board in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration. In the event the expenses are paid, or are to be paid, by a third party, the member shall not be reimbursed by the state.

(f) The staff of the board shall consist of the Director of Archives and History within the

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Department of Arts, Culture, and History and any additional staff as needed.

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

(h) In addition to the fees charged by the clerk of the county commission under the provisions of §59-1-10 of this code, the clerk shall charge and collect an additional $2 fee for every document containing less than 20 pages filed for recording and an additional $1 fee for each additional 10 pages of document filed for recording. At the end of each month, the clerk of the county commission shall deposit into the Public Records and Preservation Revenue Account as established in the State Treasury all fees collected: *Provided*, That the clerk may retain not more than 10 percent of the fees for costs associated with the collection of the fees. Clerks shall be responsible for accounting for the collection and deposit in the State Treasury of all fees collected by 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 authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 *et seq*. of this code and upon the fulfillment of the provisions set forth in §11B-2-1 *et seq*. of this code.

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

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