WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1961

ENROLLED

SENATE BILL NO. 13

(By Mr. President)

PASSED March 9th, 1961
In Effect from Passage
ENROLLED

Senate Bill No. 13
(By MR. CARSON, MR. PRESIDENT)

[Passed March 9, 1961; in effect ninety days from passage.]

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article designated article ten, relating to records management and preservation of essential records.

Be it enacted by the Legislature of West Virginia:

That chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article designated article ten, to read as follows:


Section 1. Short Title.—This act shall be known as the "Records Management and Preservation of Essential Records Act."
Sec. 2. Declaration of Policy.—The legislature declares that programs for the efficient and economical management of state and local records will promote economy and efficiency in the day to day record-keeping activities of state and local government and will facilitate and expedite government operations; that records containing information essential to the operation of government and to the protection of the rights and interests of persons must be protected against the destructive effects of all forms of disaster and must be available when needed. It is necessary, therefore, to adopt special provisions for the selection and preservation of essential state and local records thereby providing for the protection and availability of such information.

Sec. 3. Definitions.—As used in this act:

(a) “Disaster” means any occurrence of fire, flood, storm, earthquake, explosion, epidemic, riot, sabotage or other condition of extreme peril resulting in substantial damage or injury to persons or property within this state, whether such occurrence is caused by an act of God, nature or man, including an enemy of the United States.
(b) "Records" means document, book, paper, photograph, sound recording or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included within the definition of records as used in this act.

(c) "State record" means:

(1) A record of a department, office, commission, board or other agency, however designated, of the state government.

(2) A record of the state legislature.

(3) A record of any court of record, whether of statewide or local jurisdiction.

(4) Any record designated or treated as a state record under state law.

(d) "Local record" means a record of a county, city, town, authority or any public corporation or political
entity whether organized and existing under charter or
under general law unless the record is designated or
treated as a state record under state law.
(e) "Agency" means any department, office, commis-
sion, board or other unit, however designated, of the exec-
utive branch of state government.
(f) "Preservation duplicate" means a copy of an essen-
tial state record which is used for the purpose of preserv-
ing such state record pursuant to this act.

Sec. 4. Categories of Records to be Preserved.—State or
local records which are within the following categories
are essential records which shall be preserved pursuant to
this act:
Category A. Records containing information necessary
to the operation of government in the emergency created
by a disaster.
Category B. Records not within category A but con-
taining information necessary to protect the rights and
interest of persons or to establish and affirm the powers
and duties of governments in the resumption of operations
after a disaster.
Sec. 5. *State Records Administrator.*—The commissioner of finance and administration is hereby designated the state records administrator, hereinafter called the administrator. The administrator shall establish and administer in the executive branch of state government a records management program, which will apply efficient and economical management methods to the creation, utilization, maintenance and retention, preservation and disposal of state records; and shall establish and maintain a program for the selection and preservation of essential state records and shall advise and assist in the establishment of programs for the selection and preservation of essential local records.

Sec. 6. *Records Management and Preservation Advisory Committee.*—A records management and preservation advisory committee is hereby established to advise the administrator and to perform such other duties as this act requires. The records management and preservation advisory committee shall be composed of the following members: the governor, auditor, attorney general, president of the senate, speaker of the house of delegates, the presi-
dent of the supreme court of appeals, a judge of a circuit
court to be appointed by the governor, the state director
of civil and defense mobilization, or their respective desig-
nated representatives. The advisory committee shall des-
ignate one of its members to be chairman, and it shall
adopt rules for the conduct of its business. The advisory
committee shall meet whenever called by its chairman or
the administrator. The members of the advisory com-
mittee shall serve without compensation but shall be re-
imbursed for their actual expenses incurred while per-
forming their duties as members of the advisory com-
mittee.

Sec. 7. Duties of Administrator.—The administrator
shall, with due regard for the functions of the agencies
concerned:

(a) Establish standards, procedures, and techniques for
effective management of records.

(b) Make continuing surveys of paper work operations
and recommend improvements in current records man-
agement practices including the use of space, equipment
and supplies employed in creating, maintaining, storing
and servicing records.
(c) Establish standards for the preparation of schedules providing for the retention of state records of continuing value and for the prompt and orderly disposal of state records no longer possessing sufficient administrative, legal, or fiscal value to warrant their further keeping.

(d) Shall select the state records which are essential and determine their category pursuant to this act. In accordance with the rules and regulations promulgated by the administrator each person who has custody or control of state records shall (1) inventory the state records in his custody or control; (2) submit to the administrator a report thereon containing such information as the administrator directs and containing his recommendations as to which state records are essential; and (3) periodically review his inventory and his report and, if necessary, revise his report so that it is current, accurate and complete.

(e) Obtain reports from agencies as are required for the administration of the program.

Sec. 8. Rules and Regulations.—The administrator shall promulgate such rules and regulations concerning the management and selection and preservation of essential
state records as are necessary or proper to effectuate the purpose of this act.

Sec. 9. Duties of Agency Heads.—The head of each agency shall:

(a) Establish and maintain an active, continuing program for the economical and efficient management of the records of the agency.

(b) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decision, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency's activities.

(c) Submit to the administrator, in accordance with the standards established by him, schedules proposing the length of time each state record series warrants retention for administrative, legal or fiscal purposes after it has been received by the agency. The head of each agency also shall submit lists of state records in his custody that are not needed in the transaction of current business and that do not have sufficient administrative, legal or fiscal value
to warrant their further keeping for disposal in conformity
with the requirements of section ten of this act.

(d) Cooperate with the administrator in the conduct
of surveys made by him pursuant to the provisions of
this act.

(e) Comply with the rules, regulations, standards and
procedures issued by the administrator.

Sec. 10. Essential State Records; Preservation Duplic-
cates.—(a) The administrator may make or cause to be
made preservation duplicates or may designate as preser-
vation duplicates existing copies of essential state records.

A preservation duplicate shall be durable, accurate, com-
plete and clear, and a preservation duplicate made by
means of photography, microphotography, photocopying,
film or microfilm shall be made in conformity with the
standards prescribed therefor by the administrator.

(b) A preservation duplicate made by a photographic,
photostatic, microfilm, micro-card, miniature photographic,
or other process which accurately reproduces or forms a
durable medium for so reproducing the original, shall
have the same force and effect for all purposes as the orig-
inal record whether the original record is in existence or not. A transcript, exemplification or certified copy of such preservation duplicate shall be deemed for all purposes to be a transcript, exemplification or certified copy of the original record.

Sec. 11. Essential State Records; Safekeeping.—(a) The administrator shall prescribe the place and manner of safekeeping of essential state records and preservation duplicates and may establish, with the approval of the legislature, storage facilities therefor. The administrator may provide for storage outside the state.

(b) When in the opinion of the administrator the legally designated or customary location of an essential state record is such that the essential state record may be destroyed or unavailable in the event of a disaster caused by an enemy of the United States:

(1) The administrator shall store a preservation duplicate at another location and permit such state record to remain at its legally designated or customary location;

(2) The administrator shall store such state record at a location other than its legally designated or customary
location and deposit at the legally designated or customary location a preservation duplicate for use in lieu of the state record; or

(3) The administrator may store such state record at a location other than its legally designated or customary location without providing for a preservation duplicate upon a determination that it is impracticable to provide for a preservation duplicate and that the state record is not frequently used. Such determination shall be made by the administrator and the regularly designated custodian of such state record, but if they disagree the determination shall be made by the administrator.

(c) The requirements of subsection (b) of this section shall not prohibit the administrator from removing an essential state record or preservation duplicate from the legally designated or customary location of the state record if a disaster caused by an enemy of the United States has occurred or is imminent.

Sec. 12. Essential State Records; Maintenance, Inspection and Use.—(a) The administrator shall properly
maintain essential state records and preservation duplicates stored by him.

(b) An essential state record or preservation duplicate stored by the administrator may be recalled by the regularly designated custodian of the state record for temporary use when necessary for the proper conduct of his office and shall be returned by such custodian to the administrator immediately after such use.

(c) When an essential state record is stored by the administrator, the administrator, upon request of the regularly designated custodian of the state record, shall provide for its inspection, or for the making or certification of copies thereof, and such copies when certified by the administrator shall have the same force and effect as if certified by the regularly designated custodian.

Sec. 13. Essential State Records; Confidential Records.

—When a state record is required by law to be treated in a confidential manner and is an essential state record, the administrator in effectuating the purpose of the act with respect to such state record, shall protect its confidential nature.
Sec. 14. Essential State Records; Review of Program.—

2 The administrator shall review periodically but at least
3 once a year the program for the selection and preservation
4 of essential state records, including the classification of
5 records and the provisions for preservation duplicates and
6 for safekeeping of essential state records or preservation
7 duplicates to ensure that the purposes of this act are ac-
8 complished.

Sec. 15. Records Management and Preservation of Local Records.—The governing body of each county, city,
2 town, authority or any public corporation or political en-
3 tity whether organized and existing under a charter or
4 under general law shall promote the principles of efficient
5 records management and preservation of local records.
6 Such governing body may, as far as practical, follow the
7 program established for the management and preserva-
8 tion of state records. The administrator shall, upon the
9 request of a local governing body, provide advice and as-
10 sistance in the establishment of a local records manage-
11 ment and preservation program.
Sec. 16. Assistance to Legislative and Judicial Branches.

Upon request, the records administrator shall assist and advise in the establishment of records management programs in the legislative and judicial branches of state government and shall, as required by them, provide program services similar to those available to the executive branch of state government pursuant to the provisions of this act.

Sec. 17. Disposal of Records.—No record shall be destroyed or otherwise disposed of by any agency of the state, unless it is determined by the administrator that the record has no further administrative, legal, fiscal, research or historical value.

Sec. 18. Destruction of Non-Record Materials.—Non-record materials or materials not included within the definition of records as contained in this act may, if not otherwise prohibited by law, be destroyed at any time by the agency in possession of such materials without the prior approval of the administrator. The administrator may formulate procedures and interpretation to guide in the disposal of non-record materials.
Sec. 19. Annual Report.—The administrator shall make an annual written report to the governor for transmission to the legislature. The report shall describe the status and progress of programs established pursuant to this act and shall include the recommendations of the administrator for improvements in the management and preservation of records in the state government.

Sec. 20. Separability Clause.—If a part of this act is invalid, all valid parts that are separable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are separable from the invalid applications.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 17th day of March, 1961.

Governor