

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1961

ENROLLED

SENATE BILL NO. 13

(By Mr. Carson, Mr. President)

PASSED March 9th 1961

In Effect sixty days 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:

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(by 76)* **Article 10. Public Records/ Management and Preservation Act.**

Section 1. *Short Title.*—This act shall be known as the
2 “Records Management and Preservation of Essential Rec-
3 ords Act.”

Sec. 2. *Declaration of Policy.*—The legislature declares
2 that programs for the efficient and economical manage-
3 ment of state and local records will promote economy and
4 efficiency in the day to day record-keeping activities of
5 state and local government and will facilitate and expedite
6 government operations; that records containing informa-
7 tion essential to the operation of government and to the
8 protection of the rights and interests of persons must be
9 protected against the destructive effects of all forms of
10 disaster and must be available when needed. It is neces-
11 sary, therefore, to adopt special provisions for the selec-
12 tion and preservation of essential state and local records
13 thereby providing for the protection and availability of
14 such information.

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

2 (a) "Disaster" means any occurrence of fire, flood,
3 storm, earthquake, explosion, epidemic, riot, sabotage or
4 other condition of extreme peril resulting in substantial
5 damage or injury to persons or property within this state,
6 whether such occurrence is caused by an act of God,
7 nature or man, including an enemy of the United States.

8 (b) "Records" means document, book, paper, photo-
9 graph, sound recording or other material, regardless of
10 physical form or characteristics, made or received pur-
11 suant to law or ordinance or in connection with the trans-
12 action of official business. Library and museum material
13 made or acquired and preserved solely for reference or
14 exhibition purposes, extra copies of documents preserved
15 only for convenience of reference, and stocks of publica-
16 tions and of processed documents are not included within
17 the definition of records as used in this act.

18 (c) "State record" means:

19 (1) A record of a department, office, commission, board
20 or other agency, however designated, of the state govern-
21 ment.

22 (2) A record of the state legislature.

23 (3) A record of any court of record, whether of state-
24 wide or local jurisdiction.

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

27 (d) "Local record" means a record of a county, city,
28 town, authority or any public corporation or political

29 entity whether organized and existing under charter or
30 under general law unless the record is designated or
31 treated as a state record under state law.

32 (e) "Agency" means any department, office, commis-
33 sion, board or other unit, however designated, of the exec-
34 utive branch of state government.

35 (f) "Preservation duplicate" means a copy of an essen-
36 tial state record which is used for the purpose of preserv-
37 ing such state record pursuant to this act.

Sec. 4. *Categories of Records to be Preserved.*—State or
2 local records which are within the following categories
3 are essential records which shall be preserved pursuant to
4 this act:

5 Category A. Records containing information necessary
6 to the operation of government in the emergency created
7 by a disaster.

8 Category B. Records not within category A but con-
9 taining information necessary to protect the rights and
10 interest of persons or to establish and affirm the powers
11 and duties of governments in the resumption of operations
12 after a disaster.

Sec. 5. *State Records Administrator.*—The commission-
2 er of finance and administration is hereby designated the
3 state records administrator, hereinafter called the admin-
4 istrator. The administrator shall establish and administer
5 in the executive branch of state government a records
6 management program, which will apply efficient and eco-
7 nomical management methods to the creation, utilization,
8 maintenance and retention, preservation and disposal of
9 state records; and shall establish and maintain a program
10 for the selection and preservation of essential state rec-
11 ords and shall advise and assist in the establishment of
12 programs for the selection and preservation of essential
13 local records.

Sec. 6. *Records Management and Preservation Advisory*
2 *Committee.*—A records management and preservation
3 advisory committee is hereby established to advise the
4 administrator and to perform such other duties as this act
5 requires. The records management and preservation ad-
6 visory committee shall be composed of the following mem-
7 bers: the governor, auditor, attorney general, president of
8 the senate, speaker of the house of delegates, the presi-

9 dent of the supreme court of appeals, a judge of a circuit
10 court to be appointed by the governor, the state director
11 of civil and defense mobilization, or their respective desig-
12 nated representatives. The advisory committee shall des-
13 ignate one of its members to be chairman, and it shall
14 adopt rules for the conduct of its business. The advisory
15 committee shall meet whenever called by its chairman or
16 the administrator. The members of the advisory com-
17 mittee shall serve without compensation but shall be re-
18 imbursed for their actual expenses incurred while per-
19 forming their duties as members of the advisory com-
20 mittee.

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

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

6 (b) Make continuing surveys of paper work operations
7 and recommend improvements in current records man-
8 agement practices including the use of space, equipment
9 and supplies employed in creating, maintaining, storing
10 and servicing records.

11 (c) Establish standards for the preparation of schedules
12 providing for the retention of state records of continuing
13 value and for the prompt and orderly disposal of state
14 records no longer possessing sufficient administrative, le-
15 gal, or fiscal value to warrant their further keeping.

16 (d) ~~Shall~~[§] select the state records which are essential
17 and determine their category pursuant to this act. In ac-
18 cordance with the rules and regulations promulgated by
19 the administrator each person who has custody or control
20 of state records shall (1) inventory the state records in
21 his custody or control; (2) submit to the administrator a
22 report thereon containing such information as the admin-
23 istrator directs and containing his recommendations as to
24 which state records are essential; and (3) periodically
25 review his inventory and his report and, if necessary, re-
26 vise his report so that it is current, accurate and complete.
27 (e) Obtain reports from agencies as are required for
28 the administration of the program.

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29 Sec. 8. *Rules and Regulations.*—The administrator shall
30 promulgate such rules and regulations concerning the
31 management and selection and preservation of essential

4 state records as are necessary or proper to effectuate the
5 purpose of this act.

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

3 (a) Establish and maintain an active, continuing pro-
4 gram for the economical and efficient management of the
5 records of the agency.

6 (b) Make and maintain records containing adequate
7 and proper documentation of the organization, functions,
8 policies, decision, procedures and essential transactions of
9 the agency designed to furnish information to protect the
10 legal and financial rights of the state and of persons di-
11 rectly affected by the agency's activities.

12 (c) Submit to the administrator, in accordance with
13 the standards established by him, schedules proposing the
14 length of time each state record series warrants retention
15 for administrative, legal or fiscal purposes after it has been
16 received by the agency. The head of each agency also
17 shall submit lists of state records in his custody that are
18 not needed in the transaction of current business and that
19 do not have sufficient administrative, legal or fiscal value

20 to warrant their further keeping for disposal in conformity
21 with the requirements of section ten of this act.

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

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

Sec. 10. *Essential State Records; Preservation Dupli-*

2 cates.—(a) The administrator may make or cause to be
3 made preservation duplicates or may designate as preser-
4 vation duplicates existing copies of essential state records.
5 A preservation duplicate shall be durable, accurate, com-
6 plete and clear, and a preservation duplicate made by
7 means of photography, microphotography, photocopying,
8 film or microfilm shall be made in conformity with the
9 standards prescribed therefor by the administrator.

10 (b) A preservation duplicate made by a photographic,
11 photostatic, microfilm, micro-card, miniature photographic,
12 or other process which accurately reproduces or forms a
13 durable medium for so reproducing the original, shall
14 have the same force and effect for all purposes as the orig-

15 inal record whether the original record is in existence or
16 not. A transcript, exemplification or certified copy of such
17 preservation duplicate shall be deemed for all purposes
18 to be a transcript, exemplification or certified copy of the
19 original record.

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

7 (b) When in the opinion of the administrator the le-
8 gally designated or customary location of an essential
9 state record is such that the essential state record may be
10 destroyed or unavailable in the event of a disaster caused
11 by an enemy of the United States:

12 (1) The administrator shall store a preservation dupli-
13 cate at another location and permit such state record to
14 remain at its legally designated or customary location; *or*

15 (2) The administrator shall store such state record at
16 a location other than its legally designated or customary

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17 location and deposit at the legally designated or custom-
18 ary location a preservation duplicate for use in lieu of the
19 state record; or

20 (3) The administrator may store such state record at a
21 location other than its legally designated or customary
22 location without providing for a preservation duplicate
23 upon a determination that it is impracticable to provide
24 for a preservation duplicate and that the state record is
25 not frequently used. Such determination shall be made
26 by the administrator and the regularly designated cus-
27 todian of such state record, but if they disagree the de-
28 termination shall be made by the administrator.

29 (c) The requirements of subsection (b) of this section
30 shall not prohibit the administrator from removing an es-
31 sential state record or preservation duplicate from the
32 legally designated or customary location of the state rec-
33 ord if a disaster caused by an enemy of the United States
34 has occurred or is imminent.

Sec. 12. *Essential State Records; Maintenance, Inspec-*

2 *tion and Use.*—(a) The administrator shall properly

3 maintain essential state records and preservation dupli-
4 cates stored by him.

5 (b) An essential state record or preservation duplicate
6 stored by the administrator may be recalled by the reg-
7 ularly designated custodian of the state record for tem-
8 porary use when necessary for the proper conduct of his
9 office and shall be returned by such custodian to the ad-
10 ministrator immediately after such use.

11 (c) When an essential state record is stored by the ad-
12 ministrator, the administrator, upon request of the reg-
13 ularly designated custodian of the state record, shall pro-
14 vide for its inspection, or for the making or certification
15 of copies thereof, and such copies when certified by the
16 administrator shall have the same force and effect as if
17 certified by the regularly designated custodian.

Sec. 13. *Essential State Records; Confidential Records.*

2 —When a state record is required by law to be treated in
3 a confidential manner and is an essential state record, the
4 administrator in effectuating the purpose of the act with
5 respect to such state record, shall protect its confidential
6 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 Lo-*

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

Sec. 16. *Assistance to Legislative and Judicial Branches.*

2 —Upon request, the records administrator shall assist and
3 advise in the establishment of records management pro-
4 grams in the legislative and judicial branches of state
5 government and shall, as required by them, provide pro-
6 gram services similar to those available to the executive
7 branch of state government pursuant to the provisions of
8 this act.

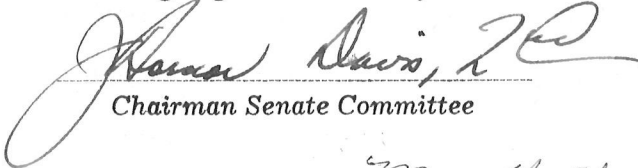
Sec. 17. *Disposal of Records.*—No record shall be de-
2 stroyed or otherwise disposed of by any agency of the
3 state, unless it is determined by the administrator that
4 the record has no further administrative, legal, fiscal, re-
5 search or historical value.

Sec. 18. *Destruction of Non-Record Materials.*—Non-
2 record materials or materials not included within the defi-
3 nition of records as contained in this act may, if not other-
4 wise prohibited by law, be destroyed at any time by the
5 agency in possession of such materials without the prior
6 approval of the administrator. The administrator may
7 formulate procedures and interpretation to guide in the
8 disposal of non-record materials.

Sec. 19. *Annual Report.*—The administrator shall make
2 an annual written report to the governor for transmission
3 to the legislature. The report shall describe the status
4 and progress of programs established pursuant to this act
5 and shall include the recommendations of the adminis-
6 trator for improvements in the management and preser-
7 vation of records in the state government.

Sec. 20. *Separability Clause.*—If a part of this act is in-
2 valid, all valid parts that are separable from the invalid
3 part remain in effect. If a part of this act is invalid in one
4 or more of its applications, the part remains in effect in
5 all valid applications that are separable from the invalid
6 applications.

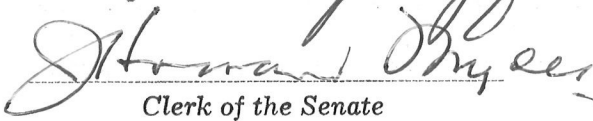
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee


Chairman House Committee

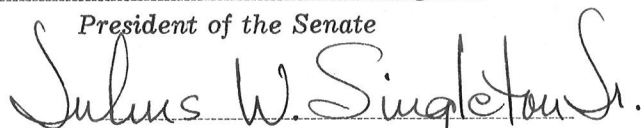
Originated in the Senate.

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