WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1996

ENROLLED

Com. Sub. For
HOUSE BILL No. 4204

(By Delegates Stowers, Prejean, Border)

Passed March 9, 1996

In Effect Ninety Days from Passage
AN ACT to amend and reenact sections fifteen and seventeen, article eight, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section twenty; to amend and reenact sections seven-a and seven-c, article one, chapter fifty-seven of said code; and to further amend said article by adding thereto a new section, designated section seven-d, all relating to management and preservation of government records; offering government records to director of the section of archives and history of the division of culture and history for historical or other preservation purposes prior to destruction or disposal; preservation of government records by state records administrator, courts and Legislature; and providing copies of government records in computer disk, optical disk or other format.

Be it enacted by the Legislature of West Virginia:

That sections fifteen and seventeen, article eight, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section twenty; that sections seven-a and seven-c, article one, chapter fifty-seven of said code be amended and reenacted; and that said article be further amended by adding
thereto a new section, designated section seven-d, all to read as follows:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESERVATION ACT.

§5A-8-15. Records management and preservation of local records.

(a) The governing body of each county, city, town, authority or any public corporation or political 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. Such governing body may, as far as practical, follow the program established for the management and preservation of state records. The administrator shall, upon the request of a local governing body, provide advice and assistance in the establishment of a local records management and preservation program.

(b) In the event any such governing body decides to destroy or otherwise dispose of a local record, the governing body may, prior to destruction or disposal thereof, offer the record to the director of the section of archives and history of the division of culture and history for preservation of the record as a document of historical value.

§5A-8-17. Disposal of records.

Except as provided in section seven-a, article one, chapter fifty-seven of this code, no record shall be destroyed or otherwise disposed of by any agency of the state, unless it is determined by the administrator and the director of the section of archives and history of the division of culture and history that the record has no further administrative, legal, fiscal, research or historical value. In the event the administrator is of the opinion that the record has no further administrative, legal, fiscal, research or historical value, the administrator shall, prior thereto, give written notice of the administrator's intention to direct the destruction or other disposal of the record to the director. Upon the written request of the director,
given to the administrator within ten days of receipt of
said notice, the administrator shall direct the retention of
the record for a period of thirty days. In the event the
director fails to retrieve the original document from the
administrator or the administrator's designee within the
thirty day period, the administrator may direct the
destruction or other disposal of the original without
further notice to the director.

§5A-8-20. Alternate storage of state records.

(a) Findings and purpose — The Legislature finds
that continuous advances in technology have resulted and
will continue to result in the development of alternate
formats for the nonerasable storage of state records, and
that the use of such alternative storage formats, where
deemed advisable, promote the efficient and economical
administration of government and provide a means for the
preservation of valuable records which are subject to
decay or destruction. It is the purpose of the Legislature
to authorize the storage of state records in such alternate
formats, as may be determined by the various branches of
the government of this state, that reasonably ensure that
the originals of such records are copied into such formats
in a manner in which the image thereof may not be erased
or altered, and from which true and accurate
reproductions of the original state records may be
retrieved.

(b) Approved format — In addition to those formats,
processes and systems described in section ten of this
article, sections seven-a and seven-c, article one, chapter
fifty-seven of this code, and section twelve, article five of
said chapter fifty-seven, which are otherwise authorized
for the reproduction of state records, a preservation
duplicate of a state record may be stored in any approved
format where the image of the original state record is
preserved in a form in which the image thereof is
incapable of erasure or alteration, and from which a
reproduction of the stored state record may be retrieved
which truly and accurately depicts the image of the
original state record.

(c) Executive agency records — (1) Except for those
formats, processes and systems used for the storage of state records on the effective date of this section, no alternate format for the storage of state records described in this section is authorized for the storage of the state records of any agency of this state unless the particular format has been approved by the state records administrator pursuant to legislative rule promulgated in accordance with the provisions of chapter twenty-nine-a of this code. No provision of this section shall be construed to prohibit the state records administrator from prohibiting the use of any format, process or system used for the storage of executive state records upon his or her determination that the same is not reasonably adequate to preserve the state records from destruction, alteration or decay.

(2) Upon creation of a preservation duplicate which stores an original executive state record in an approved format in which the image thereof is incapable of erasure or alteration, and from which a reproduction of the stored state record may be retrieved which truly and accurately depicts the image of the original state record, the state records administrator may destroy or otherwise dispose of the original in accordance with the provisions of section seventeen of this article for the destruction of records.

(d) Judicial records — (1) Except for those formats, processes and systems used for the storage of state records on the effective date of this section, no alternate format for the storage of state records described in this section is authorized for the storage of the state records of any court of this state unless the particular format has been approved by the supreme court of appeals by rule. No provision of this section shall be construed to prohibit the supreme court of appeals from prohibiting the use of any format, process or system used for the storage of judicial state records upon its determination that the same is not reasonably adequate to preserve the state records from destruction, alteration or decay.

(2) Upon creation of a preservation duplicate which stores an original judicial state record in an approved format in which the image thereof is incapable of erasure
or alteration, and from which a reproduction of the stored
state record may be retrieved which truly and accurately
depicts the image of the original state record, the court or
the clerk thereof creating the same may destroy or
otherwise dispose of the original in accordance with the
provisions of section seven, article one, chapter fifty-seven
of this code for the destruction of records.

(e) Legislative records — (1) Except for those
formats, processes and systems used for the storage of
state records on the effective date of this section, no
alternate format for the storage of state records described
in this section is authorized for the storage of the state
records of the Legislature unless the particular format has
been approved in a writing jointly by the speaker of the
House of Delegates and the president of the Senate to the
clerks of their respective houses. No provision of this
section shall be construed to prohibit the presiding
officers of the houses of the Legislature from prohibiting
the use of any format, process or system used for the
storage of legislative state records upon their
determination that the same is not reasonably adequate to
preserve the state records from destruction, alteration or
decay.

(2) Upon creation of a preservation duplicate which
stores an original legislative state record in an approved
format in which the image thereof is incapable of erasure
or alteration, and from which a reproduction of the stored
state record may be retrieved which truly and accurately
depicts the image of the original state record, the clerks of
the respective houses of the Legislature may destroy or
otherwise dispose of the original. However, prior thereto,
the clerks shall give written notice of their intention to do
so to the director of the section of archives and history of
the division of culture and history. Upon the written
request of the director, given to the clerks within ten days
of receipt of said notice, the clerks shall retain the original
record for a period of thirty days. In the event the
director fails to retrieve the original document from the
clerks within the thirty day period, the clerks may destroy
or otherwise dispose of the original without further notice
to the director.
CHAPTER 57. EVIDENCE AND WITNESSES.

ARTICLE 1. LEGISLATIVE ACTS AND RESOLUTIONS; PUBLIC RECORDS.

§57-1-7a. Use of photographic copies in evidence; state records, papers or documents; destruction or transfer to archives of originals; destruction of canceled checks and paid and canceled bonds and coupons.

Any public officer of the state may, with the approval of the state records administrator, cause any or all records, papers or documents kept by him to be photographed, microphotographed, microfilmed or reproduced on film. Such photographic film shall be of durable material and the device used to reproduce such records on such film shall be one which accurately reproduces the original thereof in all details.

Such photographs, microphotographs, microfilms or photographic film shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies. A transcript, exemplification or certified copy thereof shall, for all purposes recited herein, be deemed to be a transcript, exemplification or certified copy of the original. Whenever photographs, microphotographs, microfilms or reproductions on film have been made and put in conveniently accessible fireproof files, and provision has been made for preserving, examining and using the same, the respective heads of the departments, divisions, institutions and agencies of the state may, with the approval of the state records administrator, cause the records and papers so photographed, microphotographed or reproduced on film, or any part thereof, to be destroyed; but before any such records, papers or documents are authorized to be destroyed, the state records administrator shall obtain the advice and counsel of the state historian and archivist, or his designated representative, as to the desirability of placing the said records, papers and documents in the archives of that department. In the event the administrator is of the opinion that the record has no further administrative, legal,
fiscal, research or historical value, the administrator may
destroy or otherwise dispose of the record, paper or
document if otherwise permitted to do so after complying
with the provisions of section seventeen, article eight,
chapter five-a of this code. Notwithstanding any other
provisions of this code to the contrary, the state treasurer
may at his discretion destroy any canceled checks of the
state after ten years have elapsed since the date of the
check, whether or not such checks have been
photographed, microphotographed, microfilmed or repro-
duced on film: Provided, That any canceled bonds or
interest coupons of any bond issues of this state in the
custody of the treasurer, or for which the treasurer acts as
fiscal agent or paying agent, may at his discretion be
destroyed by one of the two methods described below:

Method I — The treasurer shall maintain a permanent
record for the purpose of recording the destruction of
bonds and coupons, showing the following: (1) With
respect to bonds, the purpose of issuance, the date of issue,
denomination, maturity date, and total principal amount;
and (2) with respect to coupons, the purpose of issue and
date of the bonds to which the coupons appertain, the
maturity date of the coupons, and, as to each maturity
date, the denomination, quantity and total amount of
coupons.

After recording the specified information, the
treasurer shall have the canceled bonds and coupons
destroyed either by burning or shredding, in the presence
of an employee of the treasurer and an employee of the
legislative auditor, each of whom shall certify that he saw
the canceled bonds and coupons destroyed. Such
certificates shall be made a part of the permanent record.
Canceled bonds or coupons shall not be destroyed until
after one year from the date of payment.

Method II — The treasurer may contract with any
bank or trust company acting as paying agent or copaying
agent for a bond issue of the state for the destruction of
bonds and interest coupons which have been canceled by
the paying agent. The contract shall require that the
paying agent give the treasurer a written certificate
containing the same information required by Method I. Such certificate shall include a sworn statement that the described bonds or coupons have been destroyed. The certificate shall be made a part of the treasurer's permanent record.

Each contract shall also require that the paying agent be responsible for proper payment and disposition of all bonds and coupons, and for any duplicate payments to unauthorized persons and nonpayment to authorized persons occurring as a result of destruction of bonds or coupons under this section. In addition, the treasurer may require the paying agent to submit an indemnity bond, in an amount to be determined by the treasurer, to assure performance of the duties specified in this section. Canceled bonds or coupons may not be destroyed until one year from the date of payment.

For purposes of this section, the term "bonds" shall include interim certificates.

§57-1-7c. Use of microfilm or microcards to reproduce and preserve records; destruction or transfer of originals to archivist.

The clerk of any court of record of the state may, with the approval of the court for which he or she is clerk, cause any or all records, papers, plats, or other documents kept by him or her to be reproduced on photographic microfilm or microcards and may, with the approval of the court for which he or she is clerk, record, keep and preserve any and all records, papers, plats, or other documents required by the laws of this state to be recorded or kept by said clerk or court exclusively upon photographic microfilm or microcards instead of in well-bound books or instead of by any other method heretofore prescribed by law.

Such photographic microfilm and microcards shall be of durable material and possess good, archival qualities. The device used to reproduce such records on such film and cards shall be one which accurately reproduces the original thereof in all details.
deemed to be an original record for all purposes, including introduction into evidence in all courts or administrative agencies. A transcript, exemplification, or photographic reproduction thereof shall, when properly authenticated by the clerk of such court, be deemed for all purposes to be a transcript, exemplification, or certified copy of the original.

Such photographic microfilm and microcards shall be put in convenient, accessible fireproof files and adequate provision shall be made for preserving, examining and using the same.

Any such records, papers, plats, or other documents not held for others by said clerk or court or required by law to be delivered to some other person, court, corporation or agency, may with the approval of the court keeping such records, papers, plats, or other documents be destroyed; but before any such records, papers, plats or other documents are authorized to be destroyed the court keeping them or the clerk thereof shall obtain the advice and counsel of the state historian or archivist, or his designated representatives, as to the desirability of placing the said records, papers, plats, or other documents in the department of archives and history. However, prior to destroying or otherwise disposing of the same, the court or clerk thereof shall give written notice of the intention to do so to the director of the section of archives and history of the division of culture and history. Upon the written request of the director, given to the court or clerk thereof within ten days of receipt of said notice, the court or clerk thereof shall retain the original record for a period of thirty days. In the event the director fails to retrieve the original document from the court or clerk thereof within the thirty day period, the court or clerk thereof may destroy or otherwise dispose of the original without further notice to the director.

§57-1-7d. Records provided on computer or optical disc.

Notwithstanding any other provision of this code to the contrary, where any provision of this code requires that a copy of any record of any branch of the government of this state be provided or delivered, the
custodian of said record is authorized to comply with the
requirement by providing or delivering a true copy in the
form of a computer or optical disc which is not subject to
alteration, is formatted to write once read many, and is
attested by the custodian thereof to be a true, accurate and
complete copy of the record required to be provided or
delivered.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]
Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

[Signatures]
Clerk of the Senate

[Signatures]
Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 25th day of March, 1996.

[Signature]
Governor