

SB 592

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SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2000



## ENROLLED

*Committee Substitute for*

SENATE BILL NO. 592

(By Senators Tomblin, Mr. President, and \*  
Sprouse, By Request of the Executive)



PASSED March 11 2000

In Effect July 1, 2000

# ENROLLED

COMMITTEE SUBSTITUTE

FOR

## Senate Bill No. 592

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND  
SPOUSE, BY REQUEST OF THE EXECUTIVE)

[Passed March 11, 2000; to take effect July 1, 2000.]

AN ACT to amend and reenact section fifteen, article eight, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to records management and preservation of county records; alternate storage of county records; creating a records management and preservation board; setting the qualifications of and providing for the appointment of members; providing for reimbursement of expenses; providing that the director of the division of archives and history section shall be the staff to the board; giving the board rule-making authority; providing for the study of records management needs of state agencies; providing for grants to counties; and providing for the termination of the board.

*Be it enacted by the Legislature of West Virginia:*

That section fifteen, article eight, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, 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 created; qualifications and appointment of members; reimbursement of expenses; staffing; rule-making authority; study of records management needs of state agencies; grants to counties; termination of board.**

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

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

17 (b) In the event any such governing body or the chief  
18 elected official of a unit of a county government entity  
19 decides to destroy or otherwise dispose of a county record,  
20 the governing body or such chief elected official may, prior  
21 to destruction or disposal thereof, offer the record to the  
22 director of the section of archives and history of the

23 division of culture and history for preservation of the  
24 record as a document of historical value. Unless autho-  
25 rized by the supreme court of appeals, the records of  
26 courts of record and magistrate courts are not affected by  
27 the provisions of this section.

28 (c) A preservation duplicate of a county government  
29 entity record may be stored in any format, approved by the  
30 board as hereinafter established, where the image of the  
31 original record is preserved in a form, including CD-ROM  
32 and optical image storage media in which the image  
33 thereof is incapable of erasure or alteration, and from  
34 which a reproduction of the stored record may be retrieved  
35 which truly and accurately depicts the image of the  
36 original county government record.

37 Except for those formats, processes and systems used for  
38 the storage of records on the effective date of this section,  
39 no alternate format for the storage of county government  
40 entity records described in this section is authorized for  
41 the storage of county government entity records unless the  
42 particular format has been approved pursuant to a legisla-  
43 tive rule promulgated by the board as herein created in  
44 accordance with the provisions of chapter twenty-nine-a  
45 of this code. The board as herein established may prohibit  
46 the use of any format, process or system used for the  
47 storage of records upon its determination that the same is  
48 not reasonably adequate to preserve the records from  
49 destruction, alteration or decay.

50 Upon creation of a preservation duplicate which stores  
51 an original county government entity record in an ap-  
52 proved format in which the image thereof is incapable of  
53 erasure or alteration, and from which a reproduction of  
54 the stored record may be retrieved which truly and  
55 accurately depicts the image of the original record, the  
56 county government entity may destroy or otherwise  
57 dispose of the original in accordance with the provisions

58 of section seven-c, article one, chapter fifty-seven of this  
59 code.

60 (d) There is hereby created a records management and  
61 preservation board for county government entities, to be  
62 composed of nine members.

63 (1) Three members shall serve ex officio. One member  
64 shall be the commissioner of the division of culture and  
65 history who shall be the chairman of the board. One  
66 member shall be the administrator of the supreme court of  
67 appeals. One member shall be the administrator of the  
68 governor's office of technology or his or her designee.

69 (2) The governor shall appoint six members of the board  
70 with the advice and consent of the Senate. Not more than  
71 five appointments to the board may be from the same  
72 political party and not more than three members may be  
73 appointed from the same congressional district. Of the six  
74 members appointed by the governor: (i) Three appoint-  
75 ments shall be county elected officials, one of whom shall  
76 be a clerk of the county commission, one of whom shall be  
77 a circuit court clerk and one of whom shall be a county  
78 commissioner, to be selected from a list of nine names,  
79 including the names of three clerks of county commissions  
80 and three circuit court clerks submitted to the governor by  
81 the West Virginia association of counties and the names of  
82 three county commissioners, submitted to the governor  
83 jointly by the West Virginia association of counties and the  
84 West Virginia county commissioners association; (ii) one  
85 appointment shall be a county prosecuting attorney to be  
86 selected from a list of three names submitted by the West  
87 Virginia prosecuting attorneys institute; and, (iii) one  
88 appointment shall be an attorney licensed in West Virginia  
89 and in good standing as a member of the state bar with  
90 experience in real estate and mineral title examination, to  
91 be selected from a list of three names submitted by the

92 state bar; and (iv) one appointment shall be a representa-  
93 tive of a local historical or genealogical society;

94 (e) The members of the board shall serve without com-  
95 pensation but shall be reimbursed for all reasonable and  
96 necessary expenses actually incurred in the performance  
97 of their duties as members of the board. In the event the  
98 expenses are paid, or are to be paid, by a third party, the  
99 member shall not be reimbursed by the state.

100 (f) The staff of the board shall consist of the director of  
101 the archives and history section of the division of culture  
102 and history and such staff as he or she may designate to  
103 assist him or her.

104 (g) On or before the first day of July, two thousand one,  
105 the board shall propose rules for legislative approval in  
106 accordance with the provisions of article three, chapter  
107 twenty-nine-a of this code to establish a system of records  
108 management and preservation for county governments:  
109 *Provided*, That, for the retention and disposition of records  
110 of courts of record and magistrate courts, the implementa-  
111 tion of the rule is subject to action of the West Virginia  
112 supreme court of appeals. The proposed rule or rules shall  
113 include provisions for establishing a program of grants to  
114 county governments for making records management and  
115 preservation uniform throughout the state. The board is  
116 not authorized to propose or promulgate emergency rules  
117 under the provisions of this section.

118 (h) On or before the first day of April, two thousand two,  
119 the board, in cooperation with the administrator and state  
120 executive agencies under the general authority of the  
121 governor, shall conduct a study of the records management  
122 and preservation needs of state executive agencies. Should  
123 the board determine a need for a uniform records manage-  
124 ment and preservation system for such agencies, it shall  
125 recommend that the administrator propose rules for

126 legislative approval in accordance with the provisions of  
127 article three, chapter twenty-nine-a of this code, to  
128 provide for the implementation of a uniform records  
129 management and preservation system for state executive  
130 agencies.

131 (i) In addition to the fees charged by the clerk of the  
132 county commission under the provisions of section ten,  
133 article one, chapter fifty-nine of this code, the clerk shall  
134 charge and collect an additional one dollar fee for every  
135 document containing less than ten pages filed for record-  
136 ing and an additional one dollar fee for each additional ten  
137 pages of such document filed for recording. At the end of  
138 each month, the clerk of the county commission shall  
139 deposit into the special public records and preservation  
140 account as herein established in the state treasury all fees  
141 collected: *Provided*, That the clerk may retain not more  
142 than ten percent of such fees for costs associated with the  
143 collection of the fees. Clerks shall be responsible for  
144 accounting for the collection and deposit in the state  
145 treasury of all fees collected by such clerk under the  
146 provisions of this section.

147 There is hereby created in the state treasury a special  
148 account entitled the "public records and preservation  
149 revenue account". The account shall consist of all fees  
150 collected under the provisions of this section, legislative  
151 appropriations, interest earned from fees, investments,  
152 gifts, grants or contributions received by the board.  
153 Expenditures from the account shall be for the purposes  
154 set forth in this article and are not authorized from  
155 collections but are to be made only in accordance with  
156 appropriation by the Legislature and in accordance with  
157 the provisions of article three, chapter twelve of this code  
158 and upon the fulfillment of the provisions set forth in  
159 article two, chapter five-a of this code: *Provided*, That for  
160 the fiscal year ending the thirtieth day of June, two  
161 thousand one, expenditures are authorized from collec-

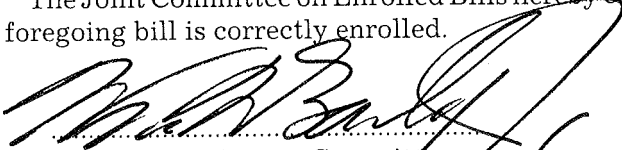
162 tions rather than pursuant to an appropriation by the  
163 Legislature.

164 Subject to the above provision, the board may expend  
165 the funds in the account to implement the provisions of  
166 this article. In expending funds from the account, the  
167 board shall allocate not more than fifty percent of such  
168 funds for grants to counties for records management,  
169 access and preservation purposes. The board shall provide  
170 for applications, set guidelines and establish procedures  
171 for distributing grants to counties including a process for  
172 appealing an adverse decision on a grant application.  
173 Expenditures from the account shall be for the purposes  
174 set forth in this section, including the cost of additional  
175 staff of the division of archives and history.

176 (j) The board shall terminate on the first day of July, two  
177 thousand two, pursuant to the provisions of article ten,  
178 chapter four of this code.



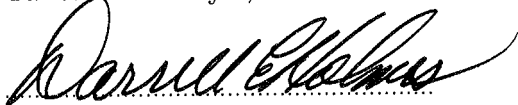
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

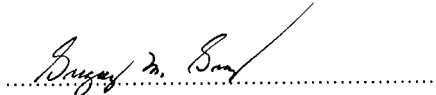
  
.....  
Chairman Senate Committee

  
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Chairman House Committee

Originated in the Senate.

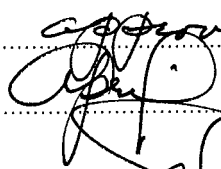
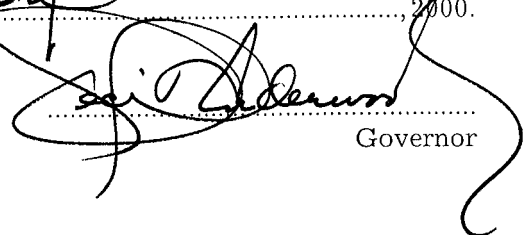
Takes effect July 1, 2000.

  
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Clerk of the Senate

  
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Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within..... *approved* ..... this the *4th*  
 .....  
Day of ..... 2000.  
  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/00

Time 4:12 pm