WEST VIRGINIA LEGISLATURE
Regular Session, 2002

ENROLLED

SENATE BILL NO. 472

(By Senator Bowman, et al.)

PASSED February 20, 2002

In Effect ninety days from Passage
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; and to further amend said article by adding thereto a new section, designated section fifteen-a, all relating to continuing the records management and preservation 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; and that said article be further amended by adding thereto a new section, designated section fifteen-a, all 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.

1 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 any unit of each 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. Such 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 a rule or rules proposed for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code as proposed by the records management and preservation board established herein.

(b) In the event any such governing body or the chief elected official of a unit of a county government entity decides to destroy or otherwise dispose of a county record, the governing body or such chief elected official 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. 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) A preservation duplicate of a county government entity record may be stored in any format, approved by the board as hereinafter established, where the image of the original record is preserved in a form, including CD-ROM and optical image storage media, in which the image thereof is incapable
of erasure or alteration and from which a reproduction of the
stored record may be retrieved which truly and accurately
depicts the image of the original county government record.

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 as herein created in accordance
with the provisions of chapter twenty-nine-a of this code.
The board as herein established 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.

Upon creation of a preservation duplicate which stores an
original county government entity record in an approved
format in which the image thereof is incapable of erasure or
alteration and from which a reproduction of the stored record
may be retrieved which 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 section seven-c, article one, chapter fifty-seven of this code.

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

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

(2) The governor shall appoint six 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 not more than three members may be appointed
from the same congressional district. Of the six members
appointed by the governor: (i) Three appointments shall be
county elected officials, one of whom shall be a clerk of the
county commission, one of whom shall be a circuit court clerk
and one of whom shall be a county commissioner, to be
selected from a list of nine names, including the names of
three clerks of county commissions and three circuit court
clerks submitted to the governor by the West Virginia
association of counties and the names of three county com-
missons submitted to the governor jointly by the West
Virginia association of counties and the West Virginia county
commissioners association; (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
state bar with experience in real estate and mineral title
examination, to be selected from a list of three names submit-
ted by the state bar; and (iv) one appointment shall be a
representative of a local historical or genealogical society;

The members of the board shall serve without compensa-
tion but shall be reimbursed for all reasonable and necessary
expenses actually incurred in the performance of their duties
as members of the board. 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.

The staff of the board shall consist of the director of the
archives and history section of the division of culture and
history and such staff as he or she may designate to assist him
or her.

On or before the first day of July, two thousand one, the
board shall propose rules for legislative approval in accor-
dance with the provisions of article three, chapter twenty-
nine-a of this code to establish a system of records manage-
ment 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 of the West Virginia supreme court of appeals. The proposed rule or rules shall include provisions for establishing a program of grants to county governments for making records management and preservation uniform throughout the state. The board is not authorized to propose or promulgate emergency rules under the provisions of this section.

(h) On or before the first day of April, two thousand two, the board, in cooperation with the administrator and state executive agencies under the general authority of the governor, shall conduct a study of the records management and preservation needs of state executive agencies. Should the board determine a need for a uniform records management and preservation system for such agencies, it shall recommend that the administrator propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to provide for the implementation of a uniform records management and preservation system for state executive agencies.

(i) In addition to the fees charged by the clerk of the county commission under the provisions of section ten, article one, chapter fifty-nine of this code, the clerk shall charge and collect an additional one-dollar fee for every document containing less than ten pages filed for recording and an additional one-dollar fee for each additional ten pages of such document filed for recording. At the end of each month, the clerk of the county commission shall deposit into the special public records and preservation account as herein established in the state treasury all fees collected: Provided, That the clerk may retain not more than ten percent of such 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 such clerk under the provisions of this section.
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 article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code: Provided, That for the fiscal year ending the thirtieth day of June, two thousand one, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature.

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 fifty percent of such 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.

§5A-8-15a. Continuation of board.

The records management and preservation board shall continue to exist until the first day of July, two thousand three, pursuant to the provisions of article ten, chapter four of this code, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.
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.

In 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 is approved this the

Day of March, 2002.

Governor