

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

2011 JUL 29 PM 1:06

WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Secretary of State TITLE NUMBER: 153

CITE AUTHORITY: ~~§3-3A-3(b)~~ §5-2-3(a)

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

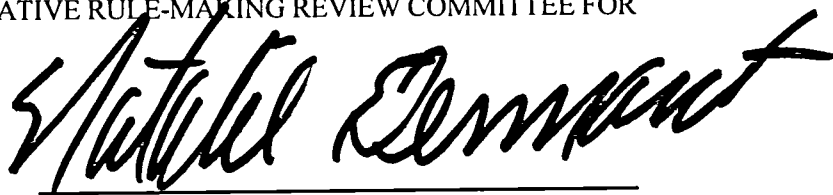
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ⁴² _____

TITLE OF RULE BEING PROPOSED: Rules for General Management and Preservation of State Records

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature



Natalie E. Tennant

Secretary of State
State of West Virginia

Office of the Secretary of State
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, West Virginia 25305

Telephone: (304) 558-6000
Toll Free: 1-866-SOS-VOTE
Fax: (304) 558-0900
www.wvsos.com

MEMO

July 29, 2011

No comments were received during the public comment period for 153 Code of State Rules 42.

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 29, 2011

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Secretary of State
1900 Kanawha Blvd, East, Suite 157-K
Charleston, WV 25305

Attn: Jackie Harris, Policy Director

LEGISLATIVE RULE TITLE: Rules for General Management and Preservation of State
Records

1. Authorizing statute(s) citation WV Code Sec 3-3A-3(b)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

July 8, 2011

b. What other notice, including advertising, did you give of the hearing?
NA

c. Date of Public Hearing(s) *or* Public Comment Period ended:

July 29, 2011 10 AM

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____

No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 29, 2011

- f. Name, title, address and **phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Jackie Harris, Policy Director
West Virginia Secretary of State
1900 Kanawha Blvd., East Suite 157-K
Charleston, WV 25305
(304) 558-6000
(304) 558-0900 Fax
JHarris@wvsos.com

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Same as (f)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

NA

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached

Summary of §153-42-1, the rule is setting up the records management system for the Secretary of State Office. The rule lays out definitions, retention and disposition of documents held by each division of the office. The rule lays out review procedure and guidance for ensuring document protection and availability.

APPENDIX B
FISCAL NOTE FOR PROPOSED RULES

Rule Title: 153 CSR 42

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: Secretary of State

Address: 1900 Kanawha Blvd., East
Building 1, Suite 157-K
Charleston WV 25035

Phone Number: 304-558-6000 Email: wvsos@wvsos.com

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure
will have on costs and revenues of state government.

The Secretary of State's Office currently has approximately 8,000 boxes in document storage. The cost to store these boxes equates to approximately \$28,800 annually, or \$2,400 monthly (\$0.30 per box per month). The proposed document retention policy would initially eliminate approximately 4,000 boxes from storage which will immediately reduce the fiscal impact to the office and state by half. We do not anticipate a material fluctuation in the number of boxes stored going forward. Therefore, the proposed retention schedule will eliminate approximately \$14,400 from the Secretary of State's document storage expenditures.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of
Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	28,800.00	14,400.00	14,400.00
Personal Services			
Current Expenses	28,800.00	14,400.00	14,400.00
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	28,800.00	14,400.00	14,400.00

Rules for general management and preservation of State Records

Rule Title: _____

Rule Title: _____

153 CSR 42

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

The first year impact would be \$14,400 total in cost savings to the agency. The overall long-range effect would still be \$14,400 in total savings. Our office does see a major increase or decrease in overall savings after the first year.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

N/A

Date: 6/30/2011

Signature of Agency Head or Authorized Representative

Stefan E. Jensen

153 CSR 42

2011 JUL 29 PM 1:06

TITLE 153
RULE
SECRETARY OF STATE

WEST VIRGINIA
SECRETARY OF STATE

SERIES 42
RULES FOR GENERAL MANAGEMENT AND
PRESERVATION OF STATE RECORDS

§153-42-1. General

1.1. Scope. -- This Legislative Rule sets forth general Standards and Procedures for the effective and uniform management and preservation of public records created and filed with the West Virginia Secretary of State.

1.2. Authority. -- W. Va. Code §5-2-3

1.3. Filing Date.

1.4. Effective Date.

1.5. Purpose. -- The purpose of this rule is to establish general standards and procedures for a uniform records management and preservation program, retention schedule and electronic records keeping systems.

§153-42-2. Definitions

2.1 "Active Record" is a record that is currently used to fill the need for which it was originally created or acquired.

2.2. "Archival quality" means a quality of reproduction providing permanent, durable, and nondestructive storage or copying medium for records consistent with established standards specified by state and national agencies and organizations responsible for establishing such standards, such as the Association for Information and Image Management, the American National Standards Institute, the National Bureau of Standards, the National Archives and Records Administration, and others as applicable to the project submitted for funding.

2.3. "Archival record" means all non-current records of continuing and enduring value useful to the citizens of the state and necessary to the administrative functions of state agencies in the conduct of services and activities mandated by law. In appraisal of public records deemed archival, the terms "administrative," "fiscal," "historical," and "legal" shall be defined as:

2.3.a. "Administrative value" means the records have continuing utility in the operation of the Office of the Secretary of State.

2.3.b. "Fiscal value" means the records are needed to document and verify financial authorizations, obligations and transactions.

2.3.c. "Historical value" means the records contain information, regardless of age, which provides significant understanding of some aspect of the government and promotes the development of an informed and enlightened citizenry.

2.3.d. "Legal value" means the records document the actions taken in the protection and proving of legal or civil rights and obligations of individuals and agencies.

2.4. "Preservation" means maintaining archival records in their original form by stabilizing them chemically or strengthening them physically to ensure their survival as long as possible in their original form. It also means the reformatting of written, printed, electronic or visual archival originals to extend the existence (life) of the information and to provide access to secondary vendors.

2.4a. Preservation includes, but is not limited to, mediums on which the information is recorded may be, but is not limited to, paper, film, magnetic, optical or solid state devices which can store electronic signals, tapes, Mylar, linen, silk or vellum. The general types of records may be, but are not limited to, books, papers, letters, documents, printouts, photographs, films, tapes, microfiche, microfilm, photostats, sound recordings, maps, drawings, and any representations held in electronic form.

2.5. "Public record" means recorded information, documents of a transaction or activity by The Office of the Secretary of State. Regardless of physical form or characteristic, the recorded information is a public record if it is produced, collected, received, retrieved, or retained in pursuance of law or in connection with the transaction of public business.

2.6. "Records Management" means the efficient and effective management and control of the creation, maintenance, use, storage, and disposal of records, files and forms.

2.7. "Archives" means a repository specifically designed for the preservation, storage, access, retrieval, and display of archival records; the organization operating an archives.

2.8. "Converting Electronic Records" means transferring electronic records by export or import from one software environment to another without loss of content or structure of the records.

2.9. "Copying Electronic Records" means transferring records from an existing storage medium to an alternate storage medium, maintaining the format specifications without any loss

of content or structure.

2.10. "Electronic record" means any record maintained in a database by the Secretary of State which becomes available for access electronically, and which may include those portions of the complete record as are public and are considered appropriate to be include in the viewable database, as determined by the Secretary of State.

2.11. "Electronic Imaging System" is a computer-based system which stores digitally encoded records or documents, originally created in this form or a conversion of electronic data, original paper or microform records, to provide retrieval and access to imaged records on demand. Electronic Imaging Systems serve as an alternate format to paper or microform systems, which may provide for multiple and faster access to information.

2.12. "Inactive Record" means a record not in current use, having fulfilled its original purpose but retained for other administrative, fiscal, legal or historical value.

2.13. "Non-record" is a convenience, courtesy, information, or display copy - a duplicate copy which is disposed of after this use.

2.14. "Transitory Records" Records that have little or no documentary or evidential value and that need not to be set aside for future use; have short term administrative, legal or fiscal value and should be disposed of once that administrative, legal or fiscal use has expired; or are only useful for a short period of time, perhaps to ensure that a task is completed or to help prepare a final product.

2.15. "Disposition" means records changing custody, location, or ceasing to exist. Records at the end of their retention period may be transferred to the State Archives or be shredded, recycled or fully destroyed by another method, depending on the disposition given for those records.

2.16. "Retention Schedule" is the schedule of instructions for records maintained for when the document is no longer active or current and provides retention period for all record series of an office and authority for final disposition. The schedule describes the contents of each record series and defines: 1) the length of time each series is to be maintained in a prescribed format, such as paper or electronic; 2) the location where the records are to be stored and; 3) the final disposition of the records.

2.16a. "Division Schedule" means the documents created by each division of the Secretary of State's Office to determine the period of retention, as approved by each division chair.

§153-42- 3. Retention Schedule

3.1. As authorized by the code, a retention schedule is created and available for public

inspection in the Secretary of State's Office. The Schedule will be developed in coordination with the Department of Administration and the Division of Culture and History, Archives and History.

3.2. Disposition of documents are subject to:

3.2a. Deference to the Division of Culture and History of documents before disposal.

3.2b. All known investigations or court cases involving the listed records must be resolved before the records can be destroyed. Knowledge of subpoenas, investigations, or litigation that reasonably may involve the listed records suspends any disposal or reformatting processes until all issues are resolved.

3.2c. All known audits and audit discrepancies regarding the listed records must be settled before the records can be destroyed.

3.2d. Interest of other agencies or state institutions. Documents may be transferred with consent of the Secretary of the Department of Administrations and Director of Archives.

3.3. Divisions responsibility to maintain updated disposition schedules.

3.3a. Each schedule will be produced in accordance with proper records management principles and statutes as defined by relevant organizations and legislative bodies.

3.3b. Each schedule shall be reviewed and re-authorized 10 years from initial adoption or any subsequent re-authorizations.