

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

Form #3

Do Not Mark In This Box

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2009 JUL 29 PM 1:08

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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

AGENCY: Records Management and Preservation Board TITLE NUMBER: 100

CITE AUTHORITY: 5A-8-15 Records Management and Preservation Act

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: Series 3

TITLE OF RULE BEING PROPOSED: County Records Disaster Response and Recovery Fund

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

**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 31, 2009

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Records Management and Preservation Board  
Division of Culture and History  
Culture Center, Building 9  
1900 Kanawha Blvd., East  
Charleston, WV 25305  
304-558-0220

LEGISLATIVE RULE TITLE: County Records Disaster Response and Recovery Fund

1. Authorizing statute(s) citation 5A-8-15

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
June 29, 2009

b. What other notice, including advertising, did you give of the hearing?  
Distribution to Members of Records Management and Preservation and West Virginia Association of Counties.

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
July 29, 2009

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 31, 2009

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

Randall Reid-Smith, Commissioner  
Records Management and Preservation Board  
Division of Culture and History  
Culture Center, Building 9  
1900 Kanawha, Blvd., East  
Charleston, WV 25305  
304-558-0220

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- 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)

Joe Geiger, Director  
West Virginia State Archives  
Culture Center, Building 9  
1900 Kanawha, Blvd., East  
Charleston, WV 25305  
304-558-0230  
joe.geiger@wvculture.org

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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.

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b. Date of hearing or comment period:

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

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d. Attach findings and determinations and reasons:

Attached 

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## **Brief Description**

### **West Virginia Records Management and Preservation Board County Records Disaster Response and Recovery Fund**

#### Purpose:

The RMPB disaster response and recovery fund is established to assist county government offices in the event of a natural or other disaster such as: fire, flood, earthquake, wind, snow, storm, chemical or oil spill or other water or air contamination, infestation or other public calamity as declared by the governor or state or national emergency responders, requiring emergency action in a county courthouse and/or county building used in the operation of county government and its storage of county public records.

The Disaster Response and Recovery Fund may cover removal and transportation costs of the county public records; temporary storage; recovery costs such as freeze-drying, deodorizing, and reformatting (i.e., microfilming, scanning) county government records; temporary staff for above purposes; shelving and archival storage boxes, or other related expenses approved by the RMPB.

#### Application Process:

Requests for funding may be made to the Director of Archives and History by initial telephone contact from an elected office holder whose records are damaged and threatened with loss. A verbal description of what records are affected and extent of damage or loss and immediate proposed action to resolve or correct are to be provided. A written letter, photographs and proposed plan of action will be submitted within three days or contact made to request an extension. The director will verify needs and communicate the information to the RMPB members for consideration.

#### Reimbursement Process:

The maximum reimbursable amount per county, per occurrence is \$150,000. Funds are to be restored upon insurance reimbursement (less deductible if required) with a brief report on how funds were utilized in saving county records involved. In the event insurance does not provide reimbursement, the county may not be required to reimburse the RMPB.

## **Statement of Circumstance**

### **Records Management and Preservation Board County Records Disaster Response and Recovery Fund**

In recent memory several county courthouses have been negatively impacted by disasters, most notably fire and floods. To help counties to respond immediately to the crisis at hand, the Records Management and Preservation Board is requesting that a fund be created to assist county governments in the event of a natural or other disaster such as: fire, flood, earthquake, wind, snow, storm, chemical or oil spill, or other water or air contamination, infestation or other public calamity as declared by the governor or state or national emergency responders, requiring emergency reaction in a county courthouse and /or other building used in the operation of county government and its storage of county public records.

The maximum amount per county per occurrence would be \$150,000. The fund would be reimbursable (less deductible) if covered by insurance, or in the event that insurance does not provide reimbursement, the county may not be required to reimburse the RMPB.

Funding for the County Records Disaster Response and Recovery Fund will come from county recording fees currently collected by the Records Management and Preservation Board. No new funding will be required to establish the fund.

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: County Records Disaster Response and Recovery Fund  
Title 100 Series 3 - County Records Disaster Response and Recovery Fund

Type of Rule:  Legislative  Interpretive  Procedural

Agency: Records Management and Preservation Board

Address: Division of Culture and History  
Culture Center  
1900 Kanawha Blvd., East - Building 9  
Charleston, WV 25305

Phone Number: 304-558-0230 Email: joe.geiger@wvculture.org

**Fiscal Note Summary**

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

Funding for the Records Management and Preservation Board is derived from County Clerk recording fees. In addition to the fees charged by clerks of a county commission, one (1) dollar is charged for every document less than ten (10) pages, and an additional one (1) dollar fee is charged for documents over ten pages. These fees are deposited for use by the Records Management and Preservation Board for their grant program and other uses. Funding for the County Records Disaster Response and Recovery Fund would come from this source. Money would only be awarded from the County Records Disaster Response and Recovery Fund in the event a county courthouse or county records-holding facility was adversely impacted by a natural or other disaster.

**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.

<b>FISCAL YEAR</b>			
<b>Effect of Proposal</b>	<b>Current Increase/Decrease (use "-")</b>	<b>Next Increase/Decrease (use "-")</b>	<b>Fiscal Year (Upon Full Implementation)</b>
<b>1. Estimated Total Cost</b>	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
<b>2. Estimated Total Revenues</b>	0.00	0.00	0.00

Rule Title: \_\_\_\_\_

Rule Title:

County Records Disaster Response and Recovery Fund

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

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

Funding would only be awarded from this fund in the event a county courthouse or records-holding facility was impacted by a natural or other disaster.

**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.

The Records Management and Preservation Board's County Records Disaster Response and Recovery Fund would provide funding to county officials when they were adversely impacted by a natural or other disaster. The fund would also provide funding for records management when a county was ready to reopen a county courthouse and/or records-holding facility. The fund would not be used on an annual basis, but only in the case of an emergency. A county would be limited to a maximum award of \$150,000 per occurrence. The fund would also require reimbursement in the event that a county was reimbursed by their insurance company.

Date:

6/29/09

Signature of Agency Head or Authorized Representative

[Handwritten Signature]

TITLE 100  
LEGISLATIVE RULE  
RECORDS MANAGEMENT AND PRESERVATION BOARD

FILED

2009 JUL 29 PM 1:08

SERIES 3  
COUNTY RECORDS DISASTER RESPONSE AND RECOVERY FUND

OFFICE OF THE CLERK OF COURTS  
SECRETARY OF STATE

§100-3-1. General

1.1 Scope. – This Legislative Rule sets forth general guidelines for the County Records Disaster Response and Recovery Fund administered by the Archives and History Section of the Division of Culture and History for the Records Management and Preservation Board.

1.2 Authority. – West Virginia Code §§5A-8-15

1.3 Filing Date.—

1.4 Effective Date. –

§100-3-2 Definitions.

2.1 “Board” means the Records Management and Preservation Board.

2.2 “Director” means the Director of the Archives and History Section of the Division of Culture and History.

2.2 “Disaster” means fire, flood, earthquake, wind, snow, storm, chemical or oil spill, or other water or air contamination, infestation or other public calamity as declared by the governor or state or national emergency responders.

2.3 “Fund” means the County Records Disaster Response and Recovery Fund.

2.4 “Preservation” means maintaining 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 access to it.

2.4 “Public Record” means recorded information that documents a transaction or activity by a county official or office. Regardless of physical form or characteristic, the recorded information is a public record if it is produced, collected, received or retained in pursuance of law or in connection with the transaction of public business.

2.5 “Records Management and Preservation Board” is the body of eleven (11) members established in Code to establish a system for records management and preservation for county government records.

§100-3-3. County Records Disaster Response and Recovery Fund.

3.1. The Records Management and Preservation Board (Board) is aware of the serious need for a fund to assist counties in West Virginia adversely affected by natural or other disasters. The County Records Disaster Response and Recovery Fund (Fund) would provide funding for the preservation, administration, protection, restoration, storage, and return to use of county public records.

3.2. Requests from the Fund may be made to the Director of the Archives and History Section of the Division of Culture and History (Director) by an elected county office holder whose records are damaged and threatened with loss by:

- 3.2.a. an initial telephone contact providing a verbal description of what records are affected, the extent of damage or loss, and the proposed action;
- 3.2.b. a written letter, photographs and proposed plan of action will submitted to the Director within three (3) days of the initial contact, or a request can be made for an extension.

3.3. The director will verify the needs and communicate the information to the Board for their consideration. The Director will notify the office holder following the Board decision on the request.

3.4. Successful applicants must:

- 3.4.a. expend funds in accordance with state purchasing laws and rules;
- 3.4.b. meet standard financial management systems and general accounting standards for audit of government entities and organizations;
- 3.4.c. agree to participate in on-site visits; and
- 3.4.d. provide a report detailing project accomplishments, successes and failures, products, etc., and financial reports within ninety (90) days of the completion of the project to the Board care of the Director of Archives and History, 1900 Kanawha Boulevard, East, Charleston, WV 25305-0300.

3.5. Any applicant failing to receive an award may appeal this action by submitting a written request for reconsideration, addressed to the Director at Archives and History, 1900 Kanawha Boulevard, East, Charleston, WV 25305-0300, stating specific reasons as to why the Board's original decision should be overturned, within fifteen (15) days of receipt of notification of the denial of the request. Within fifteen (15) days of the request for reconsideration, the Board will issue its final administrative determination on the request. The Director will notify the appellant of the Board's decision in writing.

3.6. The County Records Disaster Response and Recovery Fund (Fund) may cover costs directly associated with county records including removal, transportation costs, temporary storage, recovery costs, freeze-drying, deodorizing, reformatting, shelving, archival storage boxes, temporary staff, document restoration, or other related expenses approved by the Board.

3.7. The maximum award from the Fund will be \$150,000 per county per occurrence. In the event that a county is reimbursed by insurance for expenditures paid for by the Fund, the fund would be reimbursed, less the deductible. If a county is not reimbursed by insurance the county may not be required to reimburse the Fund.

Comments Received

Written and Oral Comments

Amendments made to the proposed rule as a result of comments or information received

Reason for the Amendments