

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 354**

4 (By Senators Klempa, McCabe, Wells, Palumbo, Foster and Yost)

5 _____
6 [Originating in the Committee on the Judiciary;

7 reported February 23, 2012.]

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9
10 A BILL to amend and reenact §3-10-7 and §3-10-8 of the Code of West
11 Virginia, 1931, as amended, all relating to providing for
12 vacancies in the offices of county commissioner, clerk of the
13 county commission, prosecuting attorney, sheriff, assessor and
14 surveyor; and authorizing the appointment of a temporary
15 successor for no more than thirty days from the date of the
16 vacancy.

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

18 That §3-10-7 and §3-10-8 of the Code of West Virginia, 1931,
19 as amended, be amended and reenacted, all to read as follows:

20 **ARTICLE 10. FILLING VACANCIES.**

21 **§3-10-7. Vacancies in offices of county commissioner and clerk of**
22 **county commission.**

23 (a) Any vacancy in the office of county commissioner or clerk
24 of county commission shall be filled by the county commission of
25 the county, unless the number of vacancies in a county commission

1 deprive that body of a quorum, in which case the Governor of the
2 state shall fill any vacancy in the county commission necessary to
3 create a quorum thereof. Persons appointed shall be of the same
4 political party as the officeholder vacating the office and shall
5 continue in office until the next general election is certified, or
6 until the completion of the term if the term ends on December 31,
7 following the next general election: *Provided*, That in the event
8 a quorum of the county commission cannot agree upon a person to
9 fill a vacancy in the office of county commissioner within thirty
10 days of the date the vacancy first occurred, the county executive
11 committee of the vacating county commissioner's political party
12 shall select and name a person to fill the vacancy from the
13 membership of the vacating county commissioner's political party.

14 (b) Notice of the election shall be given by order of the
15 county commission and published as prescribed in section six of
16 this article. Nomination of candidates to fill the office for an
17 unexpired term in the office of county commissioner or clerk of the
18 county commission shall be made in the manner prescribed for making
19 nominations to fill a vacancy in the office of the clerk of the
20 circuit court.

21 (c) In the event that the election for an unexpired term is
22 held at the same time as the election for a full term for county
23 commissioner, the full term shall be counted first and the
24 unexpired term shall be counted second. If the candidate with the
25 highest number of votes for the unexpired term resides in the same
26 magisterial district as the candidate with the highest number of

1 votes for the full term, the candidate for the full term shall be
2 seated. The candidate with the next highest number of votes for
3 the unexpired term residing in a different magisterial district
4 shall be seated for the unexpired term.

5 (d) A county commission may on its own motion appoint a
6 temporary successor until a permanent appointment has been made,
7 but in no event may the temporary successor serve more than thirty
8 days from the date of the vacancy.

9 **§3-10-8. Vacancies in offices of prosecuting attorney, sheriff,**
10 **assessor and surveyor.**

11 Any vacancy occurring in the office of prosecuting attorney,
12 sheriff, assessor or county surveyor shall be filled by the county
13 commission by appointment of a person of the same political party
14 as the officeholder vacating the office. The appointed person
15 shall hold the office until the next general election is certified,
16 or until the completion of the term if the term ends on December
17 31, following the next general election. Notice of an election to
18 fill a vacancy in any of the offices named in this section shall be
19 given by the county commission, or by the president thereof in
20 vacation, and published or posted in the manner prescribed in
21 section six of this article. Nomination of candidates to fill any
22 vacancy shall be made in the manner prescribed in section six of
23 this article for nominating candidates to fill a vacancy in the
24 office of the clerk of the circuit court. A county commission may
25 on its own motion appoint a temporary successor until a permanent
26 appointment has been made, but in no event may the temporary

1 successor serve more than thirty days from the date of the vacancy.

(NOTE: Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)