

COMMITTEE SUBSTITUTE

FOR

## **Senate Bill No. 354**

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

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[Originating in the Committee on the Judiciary;  
reported February 23, 2012.]

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

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

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

**ARTICLE 10. FILLING VACANCIES.**

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

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

19       (b) Notice of the election shall be given by order of the  
20 county commission and published as prescribed in section

21 six of this article. Nomination of candidates to fill the office  
22 for an unexpired term in the office of county commissioner  
23 or clerk of the county commission shall be made in the  
24 manner prescribed for making nominations to fill a vacancy  
25 in the office of the clerk of the circuit court.

26 (c) In the event that the election for an unexpired term is  
27 held at the same time as the election for a full term for  
28 county commissioner, the full term shall be counted first and  
29 the unexpired term shall be counted second. If the candidate  
30 with the highest number of votes for the unexpired term  
31 resides in the same magisterial district as the candidate with  
32 the highest number of votes for the full term, the candidate  
33 for the full term shall be seated. The candidate with the next  
34 highest number of votes for the unexpired term residing in a  
35 different magisterial district shall be seated for the unex-  
36 pired term.

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

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

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

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