

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4676

BY DELEGATES MCCUSKEY AND HANSHAW

[Introduced February 23, 2016; Referred
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §3-1-17 of the Code of West Virginia, 1931, as amended; to amend
 2 and reenact §3-4A-11a of said code, as amended; to amend said code by adding thereto
 3 a new section, designated §3-5-6e; to amend and reenact §3-5-7 and §3-5-13 of said
 4 code; to amend and reenact §3-10-3 and §3-10-8 of said code; and to amend said code
 5 by adding thereto a new section, designated §3-10-8a, all relating to the nonpartisan
 6 election of prosecuting attorneys generally, requiring the election of prosecuting attorneys
 7 be on a nonpartisan basis; providing for the timing and frequency of election; providing for
 8 the commencement of terms of office; establishing ballot design and printing; providing
 9 that elections for prosecuting attorneys are to be held on the same date as the primary
 10 election; requiring nonpartisan ballots be used; establishing filing announcement of
 11 candidacies, including the timing, location and information necessary thereto; providing
 12 for the order of appearance of offices on the ballot; establishing ballot content; providing
 13 the procedures for the filling of vacancies in the offices of justices of the Supreme Court
 14 of Appeals, circuit judge, family court judge or magistrate; providing the procedures for the
 15 filling of vacancies in the office of prosecuting attorney and providing occasions for special
 16 elections to be held to fill vacancies.

Be it enacted by the Legislature of West Virginia:

1 That §3-1-17 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted; that §3-4A-11a of said code be amended and reenacted; that said code be amended
 3 by adding thereto a new section, designated §3-5-6e; that §3-5-7 and §3-5-13 of said code be
 4 amended and reenacted; that §3-10-3 and §3-10-8 of said code be amended and reenacted; and
 5 that said code be amended by adding thereto a new section, designated §3-10-8a, all to read as
 6 follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-17. Election of circuit judges; county and district officers; magistrates; prosecuting attorney.

1 (a) There shall be elected, at the time of the primary election to be held in 2016, and every
2 eighth year thereafter, one judge of the circuit court of every judicial circuit entitled to one judge,
3 and one judge for each numbered division of the judicial circuit in those judicial circuits entitled to
4 two or more circuit judges; and at the time of the primary election to be held in 2016, and in every
5 fourth year thereafter, the number of magistrates prescribed by law for the county. Beginning with
6 the election held in the year 2016, an election for the purpose of electing judges of the circuit
7 court, or an election for the purpose of electing magistrates, shall be upon a nonpartisan ballot
8 printed for the purpose.

9 (b) There shall be elected, at the general election to be held in 1992, and every fourth year
10 thereafter, a sheriff, prosecuting attorney, surveyor of lands, and the number of assessors
11 prescribed by law for the county; and at the general election to be held in 1990, and every second
12 year thereafter, a commissioner of the county commission for each county; and at the general
13 election to be held in 1992, and every sixth year thereafter, a clerk of the county commission and
14 a clerk of the circuit court for each county.

15 (c) Effective with the primary election of 2016, all elections for judge of the circuit courts in
16 the respective circuits and magistrates in each county will be elected on a nonpartisan basis and
17 by division as set forth more fully in article five of this chapter.

18 (d) Effective with the primary election of 2020, all elections for prosecuting attorney in each
19 county will be elected on a nonpartisan basis as set forth more fully in article five of this chapter.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.

1 (a) The board of ballot commissioners in counties using ballots upon which votes may be
2 recorded by means of marking with electronically sensible ink or pencil and which marks are

3 tabulated electronically shall cause the ballots to be printed or displayed upon the screens of the
4 electronic voting system for use in elections.

5 (b) (1) For the primary election, the heading of the ballot, the type faces, the names and
6 arrangement of offices and the printing of names and arrangement of candidates within each
7 office are to conform as nearly as possible to sections thirteen and thirteen-a, article five of this
8 chapter.

9 (2) For the general election, the heading of the ballot, the type faces, the names and
10 arrangement of offices and the printing of names and the arrangement of candidates within each
11 office are to conform as nearly as possible to section two, article six of this chapter, except as
12 otherwise provided in this article.

13 (3) Effective with the primary election held in 2016 and thereafter, the following
14 nonpartisan elections are to be separated from the partisan ballot and separately headed in
15 display type with a title clearly identifying the purpose of the election and constituting a separate
16 ballot wherever a separate ballot is required under this chapter:

17 (A) Nonpartisan elections for judicial offices, by division, of:

18 (i) Justice of the Supreme Court of Appeals;

19 (ii) Judge of the circuit court;

20 (iii) Family court judge; and

21 (iv) Magistrate;

22 (B) Nonpartisan elections for board of education; and

23 (C) Any question to be voted upon;

24 (4) Effective with the primary election held in 2020, and thereafter, the following
25 nonpartisan elections are to be separated from the partisan ballot and separately headed in
26 display type with a title clearly identifying the purpose of the election and constituting a separate
27 ballot wherever a separate ballot is required under this chapter:

28 (A) Nonpartisan elections for judicial offices, by division of:

29 (i) Justice of the Supreme Court of Appeals;

30 (ii) Judge of the circuit court;

31 (iii) Family court judge; and

32 (iv) Magistrate;

33 (B) Prosecuting Attorney;

34 (C) Nonpartisan elections for Board of Education; and

35 (D) Any question to be voted upon.

36 ~~(4)~~ (5) Both the face and the reverse side of the ballot may contain the names of
37 candidates only if means to ensure the secrecy of the ballot are provided and lines for the
38 signatures of the poll clerks on the ballot are printed on a portion of the ballot which is deposited
39 in the ballot box and upon which marks do not interfere with the proper tabulation of the votes.

40 ~~(5)~~ (6) The arrangement of candidates within each office is to be determined in the same
41 manner as for other electronic voting systems, as prescribed in this chapter. On the general
42 election ballot for all offices, and on the primary election ballot only for those offices to be filled by
43 election, except delegate to national convention, lines for entering write-in votes are to be
44 provided below the names of candidates for each office, and the number of lines provided for any
45 office shall equal the number of persons to be elected, or three, whichever is fewer. The words
46 "WRITE-IN, IF ANY" are to be printed, where applicable, directly under each line for write-ins. The
47 lines are to be opposite a position to mark the vote.

48 (c) Except for electronic voting systems that utilize screens upon which votes may be
49 recorded by means of a stylus or by means of touch, the primary election ballots are to be printed
50 in the color of ink specified by the Secretary of State for the various political parties, and the
51 general election ballot is to be printed in black ink. For electronic voting systems that utilize
52 screens upon which votes may be recorded by means of a stylus or by means of touch, the

53 primary ballots and the general election ballot are to be printed in black ink. All ballots are to be
54 printed, where applicable, on white paper suitable for automatic tabulation and are to contain a
55 perforated stub at the top or bottom of the ballot, which is to be numbered sequentially in the
56 same manner as provided in section thirteen, article five of this chapter, or are to be displayed on
57 the screens of the electronic voting system upon which votes are recorded by means of a stylus
58 or touch. The number of ballots printed and the packaging of ballots for the precincts are to
59 conform to the requirements for paper ballots provided in this chapter.

60 (d) In addition to the official ballots, the ballot commissioners shall provide all other
61 materials and equipment necessary to the proper conduct of the election.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-6e. Election of prosecuting attorneys.

1 (a) An election for the purpose of electing a prosecuting attorney shall be held on the same
2 date as the primary election, as provided by law, on a nonpartisan ballot.

3 (b) In case of a tie vote under this section, section twelve, article six of this chapter controls
4 in breaking the tie vote.

§3-5-7. Filing announcements of candidacies; requirements; withdrawal of candidates when section applicable.

5 (a) Any person who is eligible and seeks to hold an office or political party position to be
6 filled by election in any primary or general election held under the provisions of this chapter shall
7 file a certificate of announcement declaring his or her candidacy for the nomination or election to
8 the office.

9 (b) The certificate of announcement shall be filed as follows:

10 (1) Candidates for the House of Delegates, the State Senate, circuit judge, family court
11 judge, and any other office or political position to be filled by the voters of more than one county

12 shall file a certificate of announcement with the Secretary of State.

13 (2) Candidates for an office or political position to be filled by the voters of a single county
14 or a subdivision of a county, except for candidates for the House of Delegates, State Senate,
15 circuit judge or family court judge, shall file a certificate of announcement with the clerk of the
16 county commission.

17 (3) Candidates for an office to be filled by the voters of a municipality shall file a certificate
18 of announcement with the recorder or city clerk.

19 (c) The certificate of announcement shall be filed with the proper officer not earlier than
20 the second Monday in January before the primary election day and not later than the last Saturday
21 in January before the primary election day and must be received before midnight, eastern
22 standard time, of that day or, if mailed, shall be postmarked by the United States Postal Service
23 before that hour. This includes the offices of justice of the Supreme Court of Appeals, circuit court
24 judge, family court judge and magistrate, which are to be filled on a nonpartisan and division basis
25 at the primary election. This shall also include the office of prosecuting attorney, which is to be
26 filled on a nonpartisan basis at the primary election.

27 (d) The certificate of announcement shall be on a form prescribed by the Secretary of
28 State on which the candidate shall make a sworn statement before a notary public or other officer
29 authorized to administer oaths, containing the following information:

30 (1) The date of the election in which the candidate seeks to appear on the ballot;

31 (2) The name of the office sought; the district, if any; and the division, if any;

32 (3) The legal name of the candidate and the exact name the candidate desires to appear
33 on the ballot, subject to limitations prescribed in section thirteen, article five of this chapter;

34 (4) The county of residence and a statement that the candidate is a legally qualified voter
35 of that county; and the magisterial district of residence for candidates elected from magisterial
36 districts or under magisterial district limitations;

37 (5) The specific address designating the location at which the candidate resides at the
38 time of filing, including number and street or rural route and box number and city, state and zip
39 code;

40 (6) For partisan elections, the name of the candidate's political party and a statement that
41 the candidate: (A) Is a member of and affiliated with that political party as evidenced by the
42 candidate's current registration as a voter affiliated with that party; and (B) has not been registered
43 as a voter affiliated with any other political party for a period of sixty days before the date of filing
44 the announcement;

45 (7) For candidates for delegate to national convention, the name of the presidential
46 candidate to be listed on the ballot as the preference of the candidate on the first convention
47 ballot; or a statement that the candidate prefers to remain "uncommitted";

48 (8) A statement that the person filing the certificate of announcement is a candidate for
49 the office in good faith;

50 (9) The words "subscribed and sworn to before me this _____ day of _____,
51 20____" and a space for the signature of the officer giving the oath.

52 (e) The Secretary of State or the board of ballot commissioners, as the case may be, may
53 refuse to certify the candidacy or may remove the certification of the candidacy upon receipt of a
54 certified copy of the voter's registration record of the candidate showing that the candidate was
55 registered as a voter in a party other than the one named in the certificate of announcement during
56 the sixty days immediately preceding the filing of the certificate: *Provided*, That unless a signed
57 formal complaint of violation of this section and the certified copy of the voter's registration record
58 of the candidate are filed with the officer receiving that candidate's certificate of announcement
59 no later than ten days following the close of the filing period, the candidate may not be refused
60 certification for this reason.

61 (f) The certificate of announcement shall be subscribed and sworn to by the candidate

62 before some officer qualified to administer oaths, who shall certify the same. Any person who
63 knowingly provides false information on the certificate is guilty of false swearing and shall be
64 punished in accordance with section three, article nine of this chapter.

65 (g) Any candidate for delegate to a national convention may change his or her statement
66 of presidential preference by notifying the Secretary of State by letter received by the Secretary
67 of State no later than the third Tuesday following the close of candidate filing. When the rules of
68 the political party allow each presidential candidate to approve or reject candidates for delegate
69 to convention who may appear on the ballot as committed to that presidential candidate, the
70 presidential candidate or the candidate's committee on his or her behalf may file a list of approved
71 or rejected candidates for delegate and the Secretary of State shall list as "uncommitted" any
72 candidate for delegate who is disapproved by the presidential candidate.

73 (h) A person may not be a candidate for more than one office or office division at any
74 election: *Provided*, That a candidate for an office may also be a candidate for President of the
75 United States, for membership on political party executive committees or for delegate to a political
76 party national convention: *Provided, however*, That an unsuccessful candidate for a nonpartisan
77 office in an election held concurrently with the primary election may be appointed under the
78 provisions of section nineteen of this article to fill a vacancy on the general ballot.

79 (i) A candidate who files a certificate of announcement for more than one office or division
80 and does not withdraw, as provided by section eleven, article five of this chapter, from all but one
81 office prior to the close of the filing period may not be certified by the Secretary of State or placed
82 on the ballot for any office by the board of ballot commissioners.

§3-5-13. Form and contents of ballots.

1 The following provisions apply to the form and contents of election ballots:

2 (1) The face of every primary election ballot shall conform as nearly as practicable to that
3 used at the general election.

4 (2) The heading of every ballot is to be printed in display type. The heading is to contain
5 a ballot title, the name of the county, the state, the words “Primary Election” and the month, day
6 and year of the election. The ballot title of the political party ballots is to contain the words “Official
7 Ballot of the (Name) Party” and the official symbol of the political party may be included in the
8 heading.

9 (A) The ballot title of any separate paper ballot or portion of any electronic or voting
10 machine ballot for all judicial officer shall commence with the words “Nonpartisan Ballot of Election
11 of Judicial Officers” and each such office shall be listed in the following order:

12 (i) The ballot title of any separate paper ballot or portion of any electronic or voting machine
13 ballot for all justices of the Supreme Court of Appeals shall contain the words “Nonpartisan Ballot
14 of Election of Justice(s) of the Supreme Court of Appeals of West Virginia”. The names of the
15 candidates for the Supreme Court of Appeals shall be printed by division without references to
16 political party affiliation or registration.

17 (ii) The ballot title of any separate paper ballot or portion of any electronic or voting
18 machine ballot for all circuit court judges in the respective circuits shall contain the words
19 “Nonpartisan Ballot of Election of Circuit Court Judge(s)”. The names of the candidates for the
20 respective circuit court judge office shall be printed by division without references to political party
21 affiliation or registration.

22 (iii) The ballot title of any separate paper ballot or portion of any electronic or voting
23 machine ballot for all family court judges in the respective circuits shall contain the words
24 “Nonpartisan Ballot of Election of Family Court Judge(s)”. The names of the candidates for the
25 respective family court judge office shall be printed by division without references to political party
26 affiliation or registration.

27 (iv) The ballot title of any separate paper ballot or portion of any electronic or voting
28 machine ballot for all magistrates in the respective circuits shall contain the words “Nonpartisan

29 Ballot of Election of Magistrate(s)". The names of the candidates for the respective magistrate
30 office shall be printed by division without references to political party affiliation or registration.

31 (v) The ballot title of any separate paper ballot or portion of any electronic or voting
32 machine ballot for prosecuting attorney shall contain the words "Nonpartisan Ballot of Election of
33 Prosecuting Attorney". The names of the candidates for prosecuting attorney shall be printed
34 without references to political party affiliation or registration.

35 (B) The ballot title of any separate paper ballot or portion of any electronic or voting
36 machine ballot for the Board of Education is to contain the words "Nonpartisan Ballot of Election
37 of Members of the _____ County Board of Education". The districts for which less than
38 two candidates may be elected and the number of available seats are to be specified and the
39 names of the candidates are to be printed without reference to political party affiliation and without
40 designation as to a particular term of office.

41 (C) Any other ballot or portion of a ballot on a question is to have a heading which clearly
42 states the purpose of the election according to the statutory requirements for that question.

43 (3) (A) For paper ballots, the heading of the ballot is to be separated from the rest of the
44 ballot by heavy lines and the offices shall be arranged in columns with the following headings,
45 from left to right across the ballot: "National Ticket", "State Ticket", "County Ticket" and, in a
46 presidential election year, "National Convention" or, in a nonpresidential election year, "District
47 Ticket". The columns are to be separated by heavy lines. Within the columns, the offices are to
48 be arranged in the order prescribed in section thirteen-a of this article.

49 (B) For voting machines, electronic voting devices and any ballot tabulated by electronic
50 means, the offices are to appear in the same sequence as prescribed in section thirteen-a of this
51 article and under the same headings as prescribed in paragraph (A) of this subdivision. The
52 number of pages, columns or rows, where applicable, may be modified to meet the limitations of
53 ballot size and composition requirements subject to approval by the Secretary of State.

54 (C) The title of each office is to be separated from preceding offices or candidates by a
55 line and is to be printed in bold type no smaller than eight point. Below the office is to be printed
56 the number of the district, if any, the number of the division, if any, and the words "Vote for
57 _____" with the number to be nominated or elected or "Vote For Not More Than _____"
58 in multicandidate elections. For offices in which there are limitations relating to the number of
59 candidates which may be nominated, elected or appointed to or hold office at one time from a
60 political subdivision within the district or county in which they are elected, there is to be a clear
61 explanation of the limitation, as prescribed by the Secretary of State, printed in bold type
62 immediately preceding the names of the candidates for those offices on the ballot in every voting
63 system. For counties in which the number of county commissioners exceeds three and the total
64 number of members of the county commission is equal to the number of magisterial districts within
65 the county, the office of county commission is to be listed separately for each district to be filled
66 with the name of the magisterial district and the words "Vote for One" printed below the name of
67 the office: *Provided*, That the office title and applicable instructions may span the width of the
68 ballot so as it is centered among the respective columns.

69 (D) The location for indicating the voter's choices on the ballot is to be clearly shown. For
70 paper ballots, other than those tabulated electronically, the official primary ballot is to contain a
71 square formed in dark lines at the left of each name on the ballot, arranged in a perpendicular
72 column of squares before each column of names.

73 (4) (A) The name of every candidate certified by the Secretary of State or the board of
74 ballot commissioners is to be printed in capital letters in no smaller than eight point type on the
75 ballot for the appropriate precincts. Subject to the rules promulgated by the Secretary of State,
76 the name of each candidate is to appear in the form set out by the candidate on the certificate of
77 announcement, but in no case may the name misrepresent the identity of the candidate nor may
78 the name include any title, position, rank, degree or nickname implying or inferring any status as

79 a member of a class or group or affiliation with any system of belief.

80 (B) The city of residence of every candidate, the state of residence of every candidate
81 residing outside the state, the county of residence of every candidate for an office on the ballot in
82 more than one county and the magisterial district of residence of every candidate for an office
83 subject to magisterial district limitations are to be printed in lower case letters beneath the names
84 of the candidates.

85 (C) The arrangement of names within each office must be determined as prescribed in
86 section thirteen-a of this article.

87 (D) If the number of candidates for an office exceeds the space available on a column or
88 ballot page and requires that candidates for a single office be separated, to the extent possible,
89 the number of candidates for the office on separate columns or pages are to be nearly equal and
90 clear instructions given the voter that the candidates for the office are continued on the following
91 column or page.

92 (5) When an insufficient number of candidates has filed for a party to make the number of
93 nominations allowed for the office or for the voters to elect sufficient members to the Board of
94 Education or to executive committees, the vacant positions on the ballot shall be filled with the
95 words "No Candidate Filed": *Provided*, That in paper ballot systems which allow for write-ins to
96 be made directly on the ballot, a blank line shall be placed in any vacant position in the office of
97 Board of Education or for election to any party executive committee. A line shall separate each
98 candidate from every other candidate for the same office. Notwithstanding any other provision of
99 this code, if there are multiple vacant positions on a ballot for one office, the multiple vacant
100 positions which would otherwise be filled with the words "No Candidate Filed" may be replaced
101 with a brief detailed description, approved by the Secretary of State, indicating that there are no
102 candidates listed for the vacant positions.

103 (6) In presidential election years, the words "For election in accordance with the plan

104 adopted by the party and filed with the Secretary of State” is to be printed following the names of
105 all candidates for delegate to national convention.

106 (7) All paper ballots are to be printed in black ink on paper sufficiently thick so that the
107 printing or marking cannot be discernible from the back: *Provided*, That no paper ballot voted
108 pursuant to the provisions of 42 U. S. C. §1973, *et seq.*, the Uniformed and Overseas Citizens
109 Absentee Voting Act of 1986, or federal write-in absentee ballot may be rejected due to paper
110 type, envelope type, or notarization requirement. Ballot cards and paper for printing ballots using
111 electronically sensible ink are to meet minimum requirements of the tabulating systems and are
112 to conform in size and weight to ensure ease in tabulation.

113 (8) Ballots are to contain perforated tabs at the top of the ballots and are to be printed with
114 unique sequential numbers from one to the highest number representing the total number of
115 ballots printed. On paper ballots, the ballot is to be bordered by a solid line at least one sixteenth
116 of an inch wide and the ballot is to be trimmed to within one-half inch of that border.

117 (9) On the back of every official ballot or ballot card the words “Official Ballot” with the
118 name of the county and the date of the election are to be printed. Beneath the date of the election
119 there are to be two blank lines followed by the words “Poll Clerks”.

120 (10) The face of sample paper ballots and sample ballot labels are to be like other official
121 ballots or ballot labels except that the word “sample” is to be prominently printed across the front
122 of the ballot in a manner that ensures the names of candidates are not obscured and the word
123 “sample” may be printed in red ink. No printing may be placed on the back of the sample.

ARTICLE 10. FILLING VACANCIES.

§3-10-3. Vacancies in offices of state officials, United States Senators, Justices, and judges, and magistrates.

1 (a) Any vacancy occurring in the offices of Secretary of State, Auditor, Treasurer, Attorney

2 General, Commissioner of Agriculture, or in any office created or made elective to be filled by the
3 voters of the entire state, is filled by the Governor of the state by appointment and subsequent
4 election to fill the remainder of the term, if required by section one of this article.

5 (b) Any vacancy occurring in the offices of Justice of the Supreme Court of Appeals, judge
6 of a circuit court or judge of a family court is filled by the Governor of the state by appointment
7 and subsequent election to fill the remainder of the term, as required by subsection (d) of this
8 section. If an election is required under subsection (d) of this section, the Governor, circuit court
9 or the chief judge thereof in vacation, is responsible for the proper proclamation by order and
10 notice required by section one of this article.

11 (c) Any vacancy in the office of magistrate is appointed according to the provisions of
12 section six, article one, chapter fifty of this code, and subsequent election to fill the remainder of
13 the term, as required by subsection (d) of this section.

14 (d) (1) When the vacancy in the office of Justice of the Supreme Court of Appeals, judge
15 of the circuit court, judge of a family court or magistrate occurs after the eighty-fourth day before
16 a general election, and the affected term of office ends on the thirty-first day of December following
17 the next election, the person appointed to fill the vacancy shall continue in office until the
18 completion of the term.

19 (2) When the vacancy occurs before the close of the candidate filing period for the primary
20 election, the vacancy shall be filled by election in the nonpartisan judicial election held
21 concurrently with the primary election, and the appointment shall continue until a successor is
22 elected and certified.

23 (3) When the vacancy occurs after the close of candidate filing for the primary election
24 and not later than eighty-four days before the general election, the vacancy shall be filled by
25 election in a nonpartisan judicial election held concurrently with the general election, and the
26 appointment shall continue until a successor is elected and certified.

27 (e) When an election to fill a vacancy is required to be held at the general election
28 according to the provisions of subsection (d) of this section, a special candidate filing period shall
29 be established. Candidates seeking election to any unexpired term for Justice of the Supreme
30 Court of Appeals, judge of a circuit court, judge of the family court or magistrate shall file a
31 certificate of announcement and pay the filing fee no earlier than the first Monday in August and
32 no later than seventy-seven days before the general election.

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

1 (a) Any vacancy occurring in the office of ~~prosecuting attorney~~, sheriff, assessor or county
2 surveyor shall be filled by the county commission within thirty days of the vacancy by appointment
3 of a person of the same political party as the officeholder vacating the office. The appointed
4 person shall hold the office for the period stated by section one of this article.

5 (b) Notwithstanding any code provision to the contrary, a county commission may appoint
6 a temporary successor to the office of ~~prosecuting attorney~~, sheriff, assessor or county surveyor
7 until the requirements of this section have been met. The temporary successor may serve no
8 more than thirty days from the date of the vacancy.

9 (c) If an election is necessary under section one of this article, the county commission, or
10 the president thereof in vacation, shall be responsible for the proper proclamation, by order, and
11 notice required by section one of this article.

12 (d) Section one of this article shall be followed with respect to any election needed to fill a
13 vacancy, except that if the vacancy occurs after the primary cutoff date but not later than the
14 general cutoff date, candidates to fill the vacancy shall be nominated by the county executive
15 committee in the manner provided in section nineteen, article five of this chapter, as in the case
16 of filling vacancies in nominations, and the names of the persons, so nominated and certified to
17 the clerk of the county commission of the county, shall be placed upon the ballot to be voted at
18 the next general election.

§3-10-8a. Vacancies in offices of prosecuting attorneys.

1 (a) Any vacancy occurring in the offices of prosecuting attorney shall be filled by the county
2 commission within thirty days of the vacancy by appointment of a qualified person. The appointed
3 person shall hold the office for the period stated by section one of this article.by appointment and
4 subsequent election to fill the remainder of the term, as required by subsection (c) of this section.
5 If an election is required under subsection (b) of this section, the county commission, is
6 responsible for the proper proclamation by order and notice required by section one of this article.

7 (b) (1) When the vacancy in the office of prosecuting attorney occurs after the eighty-
8 fourth day before a general election, and the affected term of office ends on December 31
9 following the next election, the person appointed to fill the vacancy shall continue in office until
10 the completion of the term.

11 (2) When the vacancy occurs before the close of the candidate filing period for the primary
12 election, the vacancy shall be filled by election in the nonpartisan election for prosecuting attorney
13 held concurrently with the primary election, and the appointment shall continue until a successor
14 is elected and certified.

15 (3) When the vacancy occurs after the close of the candidate filing for the primary election
16 and not later than eighty-four days before the general election, the vacancy shall be filled by
17 election in a nonpartisan election for prosecuting attorney held concurrently with the general
18 election, and the appointment shall continue until a successor is elected and certified.

19 (c) When an election to fill a vacancy is required to be held at the general election
20 according to the provisions of subsection (b) of this section, a special candidate filing period shall
21 be established. Candidates seeking election to any unexpired term for prosecuting attorney shall
22 file a certificate of announcement and pay the filing fee no earlier than the first Monday in August
23 and no later than seventy-seven days before the general election.

NOTE: The purpose of this bill is to provide for the nonpartisan election of prosecuting attorneys.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.