

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **Senate Bill 572**

BY SENATORS SYPOLT AND GAUNCH

[Introduced March 10, 2017; Referred  
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §3-5-6e; to amend and reenact §3-10-1 and §3-10-8 of said code; and to  
 3 amend said code by adding thereto a new section, designated §3-10-8a, all relating to  
 4 providing for the nonpartisan election of county surveyors; specifying the manner of  
 5 appointment of a successor when an elected country surveyor vacates office; and  
 6 prescribing when elections must be held to elect a new surveyor.

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

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

**ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.**

**§3-5-6e. Election of county surveyors.**

1 (a) An election for the purpose of electing a county surveyor shall be held on the same  
 2 date as the primary election in the county, as provided by law, upon a nonpartisan ballot printed  
 3 for this purpose.

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

**ARTICLE 10. FILLING VACANCIES.**

**§3-10-1. Elections to fill vacancies.**

1 (a) When a vacancy occurs in an elected office of the state or county, it shall be filled  
 2 according to the processes set forth in this article. As used in this article, unless otherwise  
 3 indicated by the context:

4 (1) "General cutoff date" means the eighty-fourth day before the general election that  
 5 immediately precedes the general election where the office would be on the ballot for election if

6 there were not a vacancy; and

7 (2) "Primary cutoff date" means the eighty-fourth day before the primary election that  
8 immediately precedes the general cutoff date.

9 (b) When this article requires an appointment to fill a vacancy in an elected office, the  
10 appointment shall be made within thirty days of the vacancy, unless this code specifically states  
11 a different time period for the specific office. The term that the appointee holds the office shall  
12 depend on when the vacancy occurs, as follows:

13 (1) If the vacancy occurs after the primary cutoff date, then that appointee shall hold the  
14 office until the end of the term of office: *Provided*, That if the vacancy for any county office or  
15 United States Senate occurs during the window after the primary cutoff date, but before the  
16 general cutoff date, the process contained in sections four, six, seven, ~~and~~ eight and eight-a of  
17 this article, depending on the specific office vacated, shall be followed; or

18 (2) If the vacancy occurs on or before the primary cutoff date, then the office shall be filled  
19 at the following regular primary and subsequent general election pursuant to this article and the  
20 appointee shall hold the office until a qualified replacement is elected and certified at that general  
21 election. The elected replacement shall hold the office until the end of the original term of office.

22 (c) If an election is required to fill the vacancy by subsection (b) of this section and the  
23 other provisions of this article, the election shall proceed depending on when the vacancy occurs  
24 and in which office it occurs. Elections to fill vacancies shall be held at the same places, and  
25 superintended, conducted and returned, and the result ascertained, certified and declared, in the  
26 same manner, and by the same officers, as in general elections, unless otherwise stated in this  
27 article.

28 (1) For a vacancy in the Office of Governor, the times for the special elections contained  
29 in section two of this article shall control. The proclamation entered pursuant to section two of this  
30 article by the person acting as Governor shall include the dates for the special candidate filing  
31 period, if necessary, and shall follow the requirements set forth in this section. All aspects of this

32 section, where not in conflict with section two of this article, shall also be followed. If a regularly  
33 scheduled primary or general election fits within the times for the special elections contained in  
34 section two of this article, the special elections shall be conducted in conjunction with the regularly  
35 scheduled election or elections. If a special election is required by section two of this article and  
36 it cannot be held in conjunction with the regular election dates, then the compensation of election  
37 officers shall be reimbursed pursuant to section nine of this article.

38 (2) For a vacancy in the offices of United States House of Representatives or United States  
39 Senate, the times for the special election, if necessary, contained in section four of this article  
40 shall control. All aspects of this section, where not in conflict with section four of this article, shall  
41 also be followed.

42 (A) With regard to United States House of Representatives, the proclamation entered  
43 pursuant to section four of this article by the Governor shall include the dates for the special  
44 candidate filing period, if necessary, and shall follow the requirements set forth in this section. If  
45 a regularly scheduled primary or general election fits within the times for the special elections  
46 contained in section four of this article, the special elections shall be conducted in conjunction  
47 with the regularly scheduled election or elections. If a special election is required by section two  
48 of this article and it cannot be held in conjunction with the regular election dates, then the  
49 compensation of election officers shall be reimbursed pursuant to section nine of this article.

50 (B) With regard to United States Senate, if a special general election following the regular  
51 general election is required by section four of this article, and it cannot be held in conjunction with  
52 the regular election dates, then the compensation of election officers shall be reimbursed pursuant  
53 to section nine of this article.

54 (3) For all other offices, the Governor, or other person granted authority by this article,  
55 shall issue a proclamation stating that the office will appear on the next regular primary election  
56 and subsequent general election, in order to fill the vacancy: *Provided*, That if the vacancy for any  
57 county office occurs during the window after the primary cutoff date, but before the general cutoff

58 date, the process contained in sections six, seven and eight of this article shall be followed. If the  
59 candidate filing period for the next regular primary election has closed or has less than one week  
60 remaining, the proclamation shall provide for a special primary candidate filing period. If there are  
61 less than eighty-four days between the vacancy and the next regular primary election, then the  
62 proclamation shall state that the office will appear on the subsequent regular primary election and  
63 corresponding general election following the next regular primary election.

64 (d) (1) If a special candidate filing period is necessary, it shall begin no sooner than the  
65 day after the proclamation and shall close no earlier than close of business on the fourteenth day  
66 following the proclamation. A notarized declaration of candidacy and filing fee provided by section  
67 seven, article five of this chapter shall be filed either in person, by United States mail, electronic  
68 means or any other means authorized by the Secretary of State and received by the appropriate  
69 office before the close of the filing period. For petition in lieu of payment of filing fees, a candidate  
70 seeking nomination for the vacancy may utilize the process set forth in section eight-a, article five  
71 of this chapter: *Provided*, That the minimum number of signatures required is equivalent to one  
72 qualified signature per one whole dollar of the filing fee for that office.

73 (2) If a primary election is required by the provisions of this article:

74 (A) For all statewide, multicounty and legislative elections, drawing for the primary election  
75 ballot position will take place at the Secretary of State's office twenty-four hours after the end of  
76 the filing period. For each major political party on the ballot, a single drawing by lot shall determine  
77 the candidate ballot position for ballots statewide. This drawing shall be witnessed by four clerks  
78 of the county commission chosen by the West Virginia Association of County Clerks, with no more  
79 than two clerks representing a single political party.

80 (B) For county elections, drawing for the primary election ballot position will take place at  
81 the county clerk's office twenty-four hours after the end of the filing period. For each major political  
82 party on the ballot, a single drawing by lot shall determine the candidate ballot position for ballots  
83 statewide. This drawing shall be witnessed by the chairperson of the county democratic and

84 republican executive committees or their designee, and the president of the county commission  
85 or his or her designee.

86 (3) Ballot position for a general election required by this article shall be determined  
87 pursuant to subdivision (3), subsection (c), section two, article six of this chapter. If a general  
88 election required by this article occurs in conjunction with a regularly scheduled primary election,  
89 the general election shall be listed along with the nonpartisan portion of each ballot in the order  
90 of offices provided for regular ballots in this chapter.

91 (e) When an election is required to fill a vacancy, the date of the election and offices to be  
92 elected, as well as any other information required in the proclamation, shall be published prior to  
93 such election as a Class I-O legal advertisement in compliance with the provisions of article three,  
94 chapter fifty-nine of this code, and the publication area for such publication shall be each county  
95 of the state that is eligible to vote in the election for those offices.

96 (f) If an election is required by this article, citizens having no party organization or affiliation  
97 may nominate candidates as provided by sections twenty-three and twenty-four, article five of this  
98 chapter: *Provided*, That when an election is required by the provisions of this article to be held at  
99 some time other than with a regularly scheduled election, all certificates nominating candidates  
100 shall be filed with the appropriate official no later than ninety days before the election.

101 (g) The persons elected, having first duly qualified, shall enter upon the duties of their  
102 respective offices. The elected replacement shall hold the office until the end of the original term  
103 of office.

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

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

108 (b) Notwithstanding any code provision to the contrary, a county commission may appoint

109 a temporary successor to the office of prosecuting attorney, sheriff, or ~~assessor or county~~  
110 ~~surveyor~~ until the requirements of this section have been met. The temporary successor may  
111 serve no more than thirty days from the date of the vacancy.

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

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

**§3-10-8a. Vacancies in office of county surveyor.**

1 (a) Any vacancy occurring in the office of county surveyor shall be filled by the county  
2 commission within thirty days of the vacancy. The appointed person shall hold the office for the  
3 period stated by section one of this article.

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

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

11 (d) (1) When the vacancy in the office of county surveyor occurs after the eighty-fourth  
12 day before a general election, and the affected term of office ends on December 31 following the

13 succeeding general election two years later, the person appointed to fill the vacancy shall continue  
14 in office until the completion of the term.

15 (2) When the vacancy occurs before the close of the candidate filing period for the primary  
16 election, and, if the unexpired term be for a period of greater than two years, the vacancy shall be  
17 filled by election in the nonpartisan judicial election held concurrently with the primary election,  
18 and the appointment shall continue until a successor is elected and certified.

19 (3) When the vacancy occurs after the close of candidate filing for the primary election  
20 and not later than eighty-four days before the general election, and, if the unexpired term be for  
21 a period of greater than two years, the vacancy shall be filled by election in a nonpartisan judicial  
22 election held concurrently with the general election, and the appointment shall continue until a  
23 successor is elected and certified. For purposes of this election, a special candidate filing period  
24 shall be established. Candidates seeking election to any unexpired term for county surveyor shall  
25 file a certificate of announcement and pay the filing fee no earlier than the first Monday in August  
26 and no later than seventy-seven days before the general election.

NOTE: The purpose of this bill is to require that elections for county surveyors be conducted on a nonpartisan basis and it makes provisions for the appointment and election of a new county surveyor if the office is vacated.

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