

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

### **Committee Substitute**

**for**

### **Senate Bill 255**

BY SENATOR BLAIR

[Originating in the Committee on the Judiciary;

reported on March 11, 2017]



1 A BILL to amend and reenact §3-10-3, §3-10-5 and §3-10-7 of the Code of West Virginia, 1931,  
2 as amended, all relating generally to vacancies in elected office; requiring vacancies in  
3 offices of Secretary of State, Auditor, Treasurer, Attorney General, Commissioner of  
4 Agriculture, or other office created or made elective to be filled by voters of entire state, to  
5 be filled by Governor from list of three qualified persons submitted by party executive  
6 committee of the same political party with which the person holding the office immediately  
7 preceding the vacancy was affiliated at the time the vacancy occurred; requiring Governor  
8 to fill vacancies in those offices with person of same political party with which the person  
9 holding the office immediately preceding the vacancy was affiliated at the time the vacancy  
10 occurred; providing that Governor fill vacancies created in state Legislature from list of  
11 three qualified persons submitted by party executive committee of the same political party  
12 with which the person holding the office immediately preceding the vacancy was affiliated  
13 at the time the vacancy occurred; requiring vacancies in offices of county commissioner  
14 or clerk of the county commission to be filled by county commission with person of the  
15 same political party with which the person holding the office immediately preceding the  
16 vacancy was affiliated at the time the vacancy occurred; providing process for vacancy on  
17 county commission to be filled if county commission fails to fill the vacancy; providing  
18 Governor fill vacancies on county commission when no quorum on county commission  
19 from list of three qualified persons submitted by party executive committee of the same  
20 political party with which the person holding the office immediately preceding the vacancy  
21 was affiliated at the time the vacancy occurred; making appointments subject to provisions  
22 of section one of article; and making technical corrections.

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

1 That §3-10-3, §3-10-5 and §3-10-7 of the Code of West Virginia, 1931, as amended, be  
2 amended and reenacted, all to read as follows:

## ARTICLE 10. FILLING VACANCIES.

### §3-10-3. Vacancies in offices of state officials, United States senators, justices, judges and magistrates.

(a) Any vacancy occurring in the offices of Secretary of State, Auditor, Treasurer, Attorney General, Commissioner of Agriculture, or in any office created or made elective to be filled by the voters of the entire state, is filled by the Governor of the state by appointment and subsequent election to fill the remainder of the term, if required by section one of this article. The Governor shall make the appointment from a list of three legally qualified persons submitted by the party executive committee of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred. The list of qualified persons to fill the vacancy shall be submitted to the Governor within fifteen days after the vacancy occurs and the Governor shall duly make his or her appointment to fill the vacancy from the list of legally qualified persons within five days after the list is received. If the list is not submitted to the Governor within the fifteen-day period, the Governor shall appoint within five days thereafter a legally qualified person of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred.

(b) Any vacancy occurring in the offices of Justice of the Supreme Court of Appeals, judge of a circuit court or judge of a family court is filled by the Governor of the state by appointment and, if the unexpired term be for a period of more than two years, by a subsequent election to fill the remainder of the term, as required by subsection (d) of this section. If an election is required under subsection (d) of this section, the Governor, circuit court or the chief judge thereof in vacation, is responsible for the proper proclamation by order and notice required by section one of this article.

(c) Any vacancy in the office of magistrate is appointed according to the provisions of section six, article one, chapter fifty of this code, and, if the unexpired term be for a period of more

than two years, by a subsequent election to fill the remainder of the term, as required by subsection (d) of this section.

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

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

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

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

### **§3-10-5. Vacancies in state Legislature.**

(a) Any vacancy in the office of state senator or member of the House of Delegates shall be filled by appointment by the Governor, from a list of three legally qualified persons submitted by the party executive committee of the same political party with which the person holding the

4 office immediately preceding the vacancy was affiliated at the time the vacancy occurred. The list  
5 of qualified persons to fill the vacancy shall be submitted to the Governor within fifteen days after  
6 the vacancy occurs and the Governor shall duly make his or her appointment to fill the vacancy  
7 from the list of legally qualified persons within five days after the list is received. If the list is not  
8 submitted to the Governor within the fifteen-day period, the Governor shall appoint within five  
9 days thereafter a legally qualified person of the same political party ~~as the person vacating the~~  
10 ~~office~~ with which the person holding the office immediately preceding the vacancy was affiliated  
11 at the time the vacancy occurred.

12 (b) In the case of a member of the House of Delegates, the list shall be submitted by the  
13 party executive committee of the delegate district in which the vacating member resided at the  
14 time of his or her election or appointment. The appointment to fill a vacancy in the House of  
15 Delegates is for the unexpired term.

16 (c) In the case of a state senator, the list shall be submitted by the party executive  
17 committee of the state senatorial district in which the vacating senator resided at the time of his  
18 or her election or appointment. The appointment to fill a vacancy in the state Senate is for the  
19 unexpired term, unless section one of this article requires a subsequent election to fill the  
20 remainder of the term, which shall follow the procedure set forth in said section.

**§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 clerk of county commission shall  
2 be filled by ~~the county commission of the county, unless the number of vacancies in a county~~  
3 ~~commission deprive that body of a quorum, in which case the Governor of the state shall fill any~~  
4 ~~vacancy in the county commission necessary to create a quorum thereof. Persons appointed shall~~  
5 ~~be of the same political party as the officeholder vacating the office for the period stated by section~~  
6 ~~one of this article. If a quorum of the county commission cannot agree upon a person to fill a~~  
7 ~~vacancy in the office of county commissioner within thirty days of the date the vacancy first~~  
8 ~~occurred, the county executive committee of the vacating county commissioner's political party~~

9 ~~shall select and name a person to fill the vacancy from the membership of the vacating county~~  
10 ~~commissioner's political party. The clerk shall be appointed within thirty days of the vacancy~~  
11 ~~appointment by the county commission of the county by a person of the same political party with~~  
12 ~~which the person holding the office immediately preceding the vacancy was affiliated at the time~~  
13 ~~the vacancy occurred.~~

14 (b) If a quorum of the county commission fails to appoint within thirty days, then the county  
15 executive committee of the same political party with which the person holding the office  
16 immediately preceding the vacancy was affiliated at the time the vacancy occurred shall submit a  
17 list of three legally qualified persons to fill the vacancy. Upon receipt, the county commission shall  
18 make the appointment to fill the vacancy from the submitted list within fifteen days after the list is  
19 received. If the county commission fails to make the appointment within the specified time, then  
20 the county commissioner with the longest tenure shall eliminate one name from the submitted list,  
21 followed by the county commissioner with the second-longest tenure then eliminating one name  
22 from the submitted list. The name remaining after those names have been eliminated shall be  
23 deemed to be appointed by the county commission to fill the vacancy.

24 (c) If the number of vacancies in a county commission deprive that body of a quorum, the  
25 Governor shall fill any vacancy in the county commission necessary to create a quorum, from a  
26 list of three legally qualified persons submitted by the party executive committee of the same  
27 political party with which the person holding the office immediately preceding the vacancy was  
28 affiliated at the time the vacancy occurred. The Governor shall make any appointments  
29 necessary, beginning with the vacancy first created, to create a quorum in accordance with the  
30 same procedures applicable to county commissions by subsection (a) of this section. Once a  
31 quorum of the county commission is reestablished by gubernatorial appointment, the authority to  
32 fill the remaining vacancies shall be filled in the manner prescribed in said section.

33 (d) An appointment made pursuant to this section is for the period stated by section one  
34 of this article.

35       ~~(b)~~ (e) Notwithstanding any code provision to the contrary, a county commission may  
36       appoint a temporary successor to the office of clerk of the county commission until the  
37       requirements of this section have been met. The temporary successor may serve no more than  
38       thirty days from the date of the vacancy.

39       ~~(e)~~ (f) If an election is necessary under section one of this article, the county commission,  
40       or the president thereof in vacation, shall be responsible for the proper proclamation, by order,  
41       and notice required by section one of this article.

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

49       ~~(e)~~ (h) If the election for an unexpired term is held at the same time as the election for a  
50       full term for county commissioner, the full term shall be counted first and the unexpired term shall  
51       be counted second. If the candidate with the highest number of votes for the unexpired term  
52       resides in the same magisterial district as the candidate with the highest number of votes for the  
53       full term, the candidate for the full term shall be seated. The candidate with the next highest  
54       number of votes for the unexpired term residing in a different magisterial district shall be seated  
55       for the unexpired term.

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