

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 128

BY SENATOR PALUMBO

[Introduced January 9, 2019; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §3-10-5, §3-10-6, §3-10-7, and §3-10-8 of the Code of West
 2 Virginia, 1931, as amended, all relating to requiring vacancies in the House of Delegates,
 3 State Senate, circuit court clerk, county commission, county clerk, prosecuting attorney,
 4 sheriff, assessor, or county surveyor be filled by a person affiliated with the same party as
 5 the person vacating the office was affiliated at the time of his or her last election to the
 6 office or if not elected at the time of his or her appointment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. FILLING VACANCIES.

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

1 (a) Any vacancy in the office of state senator or member of the House of Delegates shall
 2 be filled by appointment by the Governor, from a list of three legally qualified persons submitted
 3 by the party executive committee of the same political party with which the person ~~holding~~
 4 vacating the office ~~immediately preceding the vacancy~~ was affiliated at the time ~~the vacancy~~
 5 ~~occurred~~ at the time of his or her election to the vacated office: *Provided*, That if he or she was
 6 not elected to the office, then the list shall be submitted by the same executive committee
 7 authorized to submit the list resulting in his or her appointment. The list of qualified persons to fill
 8 the vacancy shall be submitted to the Governor within 15 days after the vacancy occurs and the
 9 Governor shall duly make his or her appointment to fill the vacancy from the list of legally qualified
 10 persons within five days after the list is received. If the list is not submitted to the Governor within
 11 the 15-day period, the Governor shall appoint within five days thereafter a legally qualified person
 12 of the same political party with which the person ~~holding the office immediately preceding the~~
 13 ~~vacancy was affiliated at the time the vacancy occurred~~ vacating the office was affiliated at the
 14 time of his or her last election to the vacated office: *Provided*, That if he or she was not elected to
 15 the office, then the Governor shall appoint a person from the same political party as the executive
 16 committee authorized to submit the list resulting in his or her appointment.

17 (b) In the case of a member of the House of Delegates, the list shall be submitted by the

18 party executive committee of the delegate district in which the vacating member resided at the
19 time of his or her election or appointment. The appointment to fill a vacancy in the House of
20 Delegates is for the unexpired term.

21 (c) In the case of a state senator, the list shall be submitted by the party executive
22 committee of the state senatorial district in which the vacating senator resided at the time of his
23 or her election or appointment. The appointment to fill a vacancy in the state Senate is for the
24 unexpired term, unless §3-10-1 of this code requires a subsequent election to fill the remainder
25 of the term, which shall follow the procedure set forth in said section.

§3-10-6. Vacancy in office of circuit court clerk.

1 (a) When a vacancy occurs in the office of clerk of the circuit court, the circuit court by a
2 majority vote of the judges shall fill the same within thirty days of the vacancy by appointment of
3 a person of the same political party as the officeholder vacating the office was affiliated with at
4 the time of his or her last election to the vacated office for the period required by §3-10-1 of this
5 code: Provided, That if he or she was not elected to the office, then the circuit court shall fill the
6 position with a person of the same political party as the officeholder vacating the office was
7 affiliated with at the time of his or her appointment.

8 (b) Notwithstanding any code provision to the contrary, the chief judge may appoint a
9 temporary successor to the office of clerk of the circuit court until the requirements of this section
10 have been met. The temporary successor may serve no more than thirty days from the date of
11 the vacancy.

12 (c) If an election is necessary, the circuit court, or the chief judge thereof in vacation, is
13 responsible for the proper proclamation, by order and notice required by §3-10-1 of this code.

14 (d) §3-10-1 of this code shall be followed with respect to any election needed to fill a
15 vacancy, except that if the vacancy occurs after the primary cutoff date but not later than the
16 general cutoff date, candidates to fill the vacancy shall be nominated by the county executive
17 committee in the manner provided in section nineteen, article five of this chapter, as in the case

18 of filling vacancies in nominations, and the names of the persons, so nominated and certified to
19 the clerk of the county commission of the county, shall be placed upon the ballot to be voted at
20 the next general election.

§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 appointment by the county commission. The appointee must be a person of the same
3 political party with which the person ~~holding the office immediately preceding the vacancy was~~
4 ~~affiliated at the time the vacancy occurred~~ vacating the office was affiliated with at the time of his
5 or her last election to the vacated office for the period stated by ~~section one of this article §3-10-~~
6 1 of this code: *Provided*, That if he or she was not elected to the office, then the person appointed
7 shall be of the same political party as the officeholder vacating the office was affiliated with at the
8 time of his or her appointment: *Provided, however*, That at the time of appointment, the appointee
9 must have been a member of that political party for at least 60 days prior to the occurrence of the
10 vacancy.

11 (b) If a quorum of the county commission fails to make an appointment within 30 days, the
12 county executive committee of the ~~same~~ political party ~~with which the person holding the office~~
13 ~~preceding the vacancy was affiliated at the time the vacancy occurred~~ required by subsection (a)
14 of this section, shall submit a list of three legally qualified persons to fill the vacancy. Within 15
15 days from the date on which the list is received, the county commission shall appoint a candidate
16 from the list to fill the vacancy. If the county commission fails to make the appointment within the
17 specified time, then the county commissioner with the longest tenure shall eliminate one name
18 from the submitted list, followed by the county commissioner with the second-longest tenure then
19 eliminating one name from the submitted list. The name remaining after those two names have
20 been eliminated shall be deemed to be appointed by the county commission to fill the vacancy.

21 (c) If the number of vacancies in a county commission deprives that body of a quorum,
22 the Governor shall make an appointment to fill any vacancy in the county commission necessary

23 to create a quorum, from a list of three legally qualified persons submitted by the party executive
24 committee of the ~~same~~ political party ~~with which the person holding the office immediately~~
25 ~~preceding the vacancy was affiliated at the time the vacancy occurred~~ required by subsection (a)
26 of this section. The Governor shall make any appointments necessary, beginning with the
27 vacancy first created, to create a quorum in accordance with the same procedures applicable to
28 county commissions under ~~§3-10-7(a) of this code~~ subsection (a) of this section. Once a quorum
29 of the county commission is reestablished by gubernatorial appointment, the authority to fill the
30 remaining vacancies shall be filled in the manner prescribed in ~~§3-10-7(a) of this code~~ subsection
31 (a) of this section.

32 (d) An appointment made pursuant to this section is for the period of time provided in §3-
33 10-1 of this code.

34 (e) Notwithstanding any code provision to the contrary, a county commission may appoint
35 a temporary successor to the office of clerk of the county commission until the requirements of
36 this section have been met. The temporary successor may serve no more than 30 days from the
37 date of the vacancy.

38 (f) If an election is necessary under §3-10-1 of this code, the county commission, or the
39 president thereof in vacation, shall be responsible for the proper proclamation, by order, and
40 notice required by §3-10-1 of this code.

41 (g) §3-10-1 of this code shall be followed with respect to any election needed to fill a
42 vacancy, except that if the vacancy occurs after the primary cutoff date but not later than the
43 general cutoff date, candidates to fill the vacancy shall be nominated by the county executive
44 committee in the manner provided in §3-5-19 of this code, as in the case of filling vacancies in
45 nominations, and the names of the persons, so nominated and certified to the clerk of the county
46 commission of the county, shall be placed upon the ballot to be voted at the next general election.

47 (h) If the election for an unexpired term is held at the same time as the election for a full
48 term for county commissioner, the full term shall be counted first and the unexpired term shall be

49 counted second. If the candidate with the highest number of votes for the unexpired term resides
50 in the same magisterial district as the candidate with the highest number of votes for the full term,
51 the candidate for the full term shall be seated. The candidate with the next highest number of
52 votes for the unexpired term residing in a different magisterial district shall be seated for the
53 unexpired term.

§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 was affiliated with at
4 the time his or her last election to the vacated office: *Provided*, That if he or she was not elected
5 to the office, then the county commission shall fill the office by appointment of a person of the
6 same political party as the officeholder vacating the office was affiliated with at the time of his or
7 her appointment. The appointed person shall hold the office for the period stated by section one
8 of this article.

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

13 (c) If an election is necessary under §3-10-1 of this code, the county commission, or the
14 president thereof in vacation, shall be responsible for the proper proclamation, by order, and
15 notice required by §3-10-1 of this code.

16 (d) §3-10-1 of this code shall be followed with respect to any election needed to fill a
17 vacancy, except that if the vacancy occurs after the primary cutoff date but not later than the
18 general cutoff date, candidates to fill the vacancy shall be nominated by the county executive
19 committee in the manner provided in §3-5-19 of this code, as in the case of filling vacancies in
20 nominations, and the names of the persons, so nominated and certified to the clerk of the county

21 commission of the county, shall be placed upon the ballot to be voted at the next general election.

NOTE: The purpose of this bill is to require that vacancies in certain elected offices are filled by a person of the same political party with which the previous officeholder was affiliated at the time of the preceding election or appointment.

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