

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 2008**

BY DELEGATES COWLES, KUMP, HOUSEHOLDER,  
ELLINGTON, HILL, WILSON, BUTLER, STEELE, JENNINGS  
AND CRISS

[Introduced January 8, 2020; Referred  
to the Committee on the Judiciary.]



1 A BILL to amend and reenact §3-1-16 and §3-10-3 of the Code of West Virginia, 1931, as  
2 amended, relating to nonpartisan election of justices of the Supreme Court of Appeals;  
3 providing that when no candidate receives at least forty percent of the total votes cast in  
4 a division for that office, that a runoff election for that seat is to be held concurrent with the  
5 general election, which shall include only those two candidates receiving the highest and  
6 second highest number of votes cast in that election held concurrently with the primary  
7 election; providing that when no candidate for a certain vacancy on the Supreme Court of  
8 Appeals has received at least forty percent of the total votes cast in an election for that  
9 division held concurrently with the general election, a runoff election for that seat which  
10 shall include only those two candidates receiving the highest and second highest number  
11 of votes cast in that election is to occur within 90 days; and, providing that, in such  
12 circumstance, the state shall reimburse the counties for the cost of such election.

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

**ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

**§3-1-16. Election of state officers.**

1 (a) At the general election to be held in 1968, and every fourth year thereafter, there shall  
2 be elected a Governor, Secretary of State, Treasurer, Auditor, Attorney General and  
3 Commissioner of Agriculture. At the general election in 1968, and every second year thereafter,  
4 there shall be elected a member of the State Senate for each senatorial district, and a member  
5 or members of the House of Delegates of the state from each county or each delegate district.

6 (b) At the time of the primary election to be held in the year 2016, and every 12 year  
7 thereafter, there shall be elected one justice of the Supreme Court of Appeals, and at the time of  
8 the primary election to be held in 2020, and every 12 year thereafter, two justices of the Supreme  
9 Court of Appeals and at the time of the primary election to be held in 2024, and every 12 year  
10 thereafter, two justices of the Supreme Court of Appeals. Effective with the primary election held

11 in the year 2016, the election of justices of the Supreme Court of Appeals shall be on a  
12 nonpartisan basis and by division as set forth more fully in article five of this chapter.

13 (c) Beginning with the nonpartisan judicial election held in 2020, and in every year  
14 thereafter, if no candidate in a division for justice of the Supreme Court of Appeals receives more  
15 than 40 percent of the votes cast in the election for that office held concurrently with the primary  
16 election, a runoff election for that division shall be conducted concurrently with the general  
17 election. The ballot for the runoff election shall include a provision for selection only between  
18 those two candidates who received the highest and second highest number of ballots cast in that  
19 applicable division for justice of the Supreme Court of Appeals in the election for that office held  
20 concurrently with the primary election.

## **ARTICLE 10. FILLING VACANCIES.**

### **§3-10-3. Vacancies in offices of state officials, justices, 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 §3-10-1 of this code. The Governor shall  
5 make the appointment from a list of three legally qualified persons submitted by the party  
6 executive committee of the same political party with which the person holding the office  
7 immediately preceding the vacancy was affiliated at the time the vacancy occurred. The list of  
8 qualified persons to fill the vacancy shall be submitted to the Governor within 15 days after the  
9 vacancy occurs, and the Governor shall duly make his or her appointment to fill the vacancy from  
10 the list of legally qualified persons within five days after the list is received. If the list is not  
11 submitted to the Governor within the 15-day period, the Governor shall appoint, within five days  
12 thereafter, a legally qualified person of the same political party with which the person holding the  
13 office immediately preceding the vacancy was affiliated at the time the vacancy occurred:

14 Provided, That the provisions of this subsection do not apply to §3-10-3(b), §3-10-3(c), §3-10-  
15 3(d), and §3-10-3(e) of this code.

16 (b) Any vacancy occurring in the offices of Justice of the Supreme Court of Appeals, judge  
17 of a circuit court, or judge of a family court is filled by the Governor of the state by appointment  
18 and, if the unexpired term be for a period of more than two years, by a subsequent election to fill  
19 the remainder of the term, as required by §3-10-3(d) of this code. If an election is required under  
20 §3-10-3(d) of this code, the Governor, circuit court, or the chief judge thereof in vacation, is  
21 responsible for the proper proclamation by order and notice required by §3-10-1 of this code.

22 (c) Any vacancy in the office of magistrate is appointed according to the provisions of  
23 §50-1-6 of this code, and, if the unexpired term be for a period of more than two years, by a  
24 subsequent election to fill the remainder of the term, as required by §3-10-3(d) of this code.

25 (d) (1) When the vacancy in the office of Justice of the Supreme Court of Appeals, judge  
26 of the circuit court, judge of a family court, or magistrate occurs after the 84th day before a general  
27 election, and the affected term of office ends on December 31 following the succeeding general  
28 election two years later, the person appointed to fill the vacancy shall continue in office until the  
29 completion of the term.

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

34 (3) When the vacancy occurs after the close of candidate filing for the primary election  
35 and not later than 84 days before the general election, and if the unexpired term be for a period  
36 of greater than two years, the vacancy shall be filled by election in a nonpartisan judicial election  
37 held concurrently with the general election, and the appointment shall continue until a successor  
38 is elected and certified: Provided, That if the vacancy in the office of Justice of the Supreme Court  
39 of Appeals occurs after the close of candidate filing for the primary election and not later than 84

40 days before the general election, and if, in the election for the vacancy in that division conducted  
41 concurrently with the general election, no candidate receives more than 40 percent of the votes  
42 cast, then a runoff election for that division shall be conducted between those two candidates who  
43 received the highest and second highest number of ballots, and the Secretary of State shall cause  
44 such election to be held within 90 days of the general election date. Any costs incurred by the  
45 counties for such runoff election shall be reimbursed by the State of West Virginia.

46 (e) When an election to fill a vacancy is required to be held at the general election,  
47 according to the provisions of §3-10-3(d) of this code, a special candidate filing period shall be  
48 established. Candidates seeking election to any unexpired term for Justice of the Supreme Court  
49 of Appeals, judge of a circuit court, judge of the family court, or magistrate shall file a certificate  
50 of announcement and pay the filing fee no earlier than the first Monday in August and no later  
51 than 77 days before the general election.

NOTE: The purpose of this bill is to provide that when no candidate receives at least 40% of votes cast in the nonpartisan election in a division for Justice of the Supreme Court of Appeals; a runoff election is to be held concurrent with the general election.

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