

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2508

BY DELEGATES GEARHEART, MANDT, FERRELL, PAYNTER,

BARNHART, ELLINGTON, CRISS, AND HOUSEHOLDER

[Introduced February 15, 2021; Referred to the

Committee on the Judiciary]

1 A BILL to amend and reenact §5-1-22 of the Code of West Virginia, 1931, as amended, relating
2 to requiring that any person appointed to fill a vacancy in an appointed state office possess
3 the qualifications required by law for that vacant position.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. THE GOVERNOR.

§5-1-22. Vacancies in offices filled by appointment of Governor; Senate action; bond requirements; filling vacancies in other appointive offices.

1 (a) In case of a vacancy, during the recess of the Senate, in any office, which vacancy the
2 Governor is authorized to fill by and with the advice and consent of the Senate, the Governor
3 shall, by appointment within 90 days, fill such vacancy until the next meeting of the Senate, when
4 the Governor shall submit to the Senate a nomination to fill such vacancy and, upon confirmation
5 of such nomination by the Senate, by a vote of a majority of all the members elected to the Senate,
6 taken by yeas and nays, the person so nominated and confirmed shall hold said office during the
7 remainder of the term for which his or her predecessor in office was appointed, and until his or
8 her successor shall be appointed and qualified. No person whose nomination for office has been
9 rejected by the Senate shall again be nominated for the same office during the session in which
10 his or her nomination was so rejected, unless at the request of the Senate, nor shall the person
11 be appointed to the same office during the recess of the Senate. No appointee who resigns from
12 any such office prior to confirmation, or whose name has not been submitted for confirmation
13 while the Senate is in session, shall be eligible, during the recess of the Senate, to hold any office
14 the nomination for which must be confirmed by the Senate.

15 (b) Any person appointed to temporarily fill a vacancy shall possess the qualifications
16 required by law for that vacant position, and may only remain in the vacated position for a
17 maximum of 90 days. This applies to any appointments made by boards and commissions, whose
18 members are appointed by the Governor, or any executive level head or division.

19 (c) If an employee of a state agency is temporarily appointed to fill a vacancy, the

20 employee may fill such vacancy without resigning from the position he or she ordinarily holds:

21 *Provided*, that the employee's compensation shall be the greater of:

22 (1) The employee's regular salary in his or her usual position; or

23 (2) The salary for the office the employee temporarily fills.

24 (d) If a vacancy is temporarily filled by a person not otherwise employed by any agency of
25 the State of West Virginia, then that person shall be compensated at a rate no greater than that
26 of the salary for the office that person temporarily fills.

27 (e) The bond, if any, required by law to be given by any officer so temporarily appointed
28 by the Governor, shall be in such penalty as is required by law of the incumbent of such office.

29 (f) Any vacancy in any other office filled by appointment, or in any office hereafter created
30 to be filled by appointment, shall be filled by the same person, court or body authorized to make
31 appointment to such office for the full term thereof.

NOTE: The purpose of this bill is to require. that any person appointed to fill a vacancy in an appointed state office possess the qualifications required by law for that vacant position.

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