

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 4785**

BY DELEGATES STEELE, HOUSEHOLDER, CRISS,  
WESTFALL, RILEY, PINSON, KEATON, BURKHAMMER,  
FOSTER AND QUEEN

[Introduced February 15, 2022; referred to the  
Committee on the Judiciary]



1 A BILL to amend and reenact §3-10-3 of the Code of West Virginia, 1931, as amended, relating  
2 to judicial vacancies; providing that a vacancy occurring in the offices of Justice of the  
3 Supreme Court of Appeals, judge of the Intermediate Court of Appeals, judge of a circuit  
4 court, or judge of a family court is filled by the Governor of the state by appointment if the  
5 unexpired term be for a period of not more than three years; and clarifying that the  
6 amendment shall apply to judicial vacancies existing at the date of passage.

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

**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 the Intermediate Court of Appeals, judge of a circuit court, or judge of a family court is filled by

18 the Governor of the state by appointment and, if the unexpired term be for a period of more than  
19 ~~two~~ three years, by a subsequent election to fill the remainder of the term, as required by §3-10-  
20 3(d) of this code. If an election is required under §3-10-3(d) of this code, the Governor, circuit  
21 court, or the chief judge thereof in vacation, is responsible for the proper proclamation by order  
22 and notice required by §3-10-1 of this code. The amendments to this subsection enacted during  
23 the regular session of the Legislature in the year 2022 shall be applicable to any vacancy existing  
24 at the date of passage of such amendments.

25 (c) Any vacancy in the office of magistrate is appointed according to the provisions of §50-  
26 1-6 of this code, and, if the unexpired term be for a period of more than two years, by a subsequent  
27 election to fill the remainder of the term, as required by §3-10-3(d) of this code.

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

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

37 (3) When the vacancy occurs after the close of candidate filing for the primary election  
38 and not later than 84 days before the general election, and if the unexpired term be for a period  
39 of greater than ~~two~~ three years, the vacancy shall be filled by election in a nonpartisan judicial  
40 election held concurrently with the general election, and the appointment shall continue until a  
41 successor is elected and certified.

42 (e) When an election to fill a vacancy is required to be held at the general election,  
43 according to the provisions of §3-10-3(d) of this code, a special candidate filing period shall be

44 established. Candidates seeking election to any unexpired term for Justice of the Supreme Court  
45 of Appeals, judge of the Intermediate Court of Appeals, judge of a circuit court, judge of the family  
46 court, or magistrate shall file a certificate of announcement and pay the filing fee no earlier than  
47 the first Monday in August and no later than 77 days before the general election.

NOTE: The purpose of this bill is to provide that a vacancy occurring in the offices of Justice of the Supreme Court of Appeals, judge of the Intermediate Court of Appeals, judge of a circuit court, or judge of a family court is filled by the Governor of the state by appointment if the unexpired term be for a period of not more than three years; and clarify that the amendment shall apply to judicial vacancies existing at the date of passage

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