

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2529

By Delegates Zatezalo, Barnhart, Cooper, Howell,
Anderson, Smith, Linville, Willis, Criss, Butler, and
Chiarelli

[Introduced January 13, 2023; 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 to
2 when vacancies in the office of magistrate shall be filled by election or appointment;
3 clarifying that when a vacancy in the office of magistrate creates an unexpired term of more
4 than three years the vacancy shall be filled by election; and clarifying that when a vacancy
5 in the office of magistrate creates an unexpired term of less than three years the vacancy
6 shall be filled by appointment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. FILLING VACANCIES.

§3-10-3. Vacancies in office 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
14 occurred: *Provided*, That the provisions of this subsection do not apply to §3-10-3(b), §3-10-3(c),
15 §3-10-3(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 three years, by a subsequent election to fill the remainder of the term, as required by §3-10-3(d) of
20 this code. If an election is required under §3-10-3(d) of this code, the Governor, circuit court, or the
21 chief judge thereof in vacation, is responsible for the proper proclamation by order and notice
22 required by §3-10-1 of this code. The amendments to this subsection enacted during the regular
23 session of the Legislature in the year 2022 shall be applicable to any vacancy existing at the date
24 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~~ three years, by a
27 subsequent 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 of
29 the Intermediate Court of Appeals, judge of the circuit court, judge of a family court, or magistrate
30 occurs after the 84th day before a general election, and the affected term of office ends on
31 December 31 following the succeeding general election two years later, the person appointed to fill
32 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 three years, the vacancy shall be
35 filled by election in the nonpartisan judicial election held concurrently with the primary election and
36 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 and
38 not later than 84 days before the general election, and if the unexpired term be for a period of
39 greater than three years, the vacancy shall be filled by election in a nonpartisan judicial election
40 held concurrently with the general election, and the appointment shall continue until a successor is
41 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 the
47 first Monday in August and no later than 77 days before the general election.

NOTE: The purpose of this bill is to clarify the amendments made to this section by HB 4785 (2022), which changed the timeframe in subsection (d) for filling vacancies in all judicial offices from two to three years.

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