

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 257

By Senators Oliverio and Woelfel

[Introduced January 17, 2023; referred
to the Committee on Government Organization; and
then to the Committee on the Judiciary]

1 A BILL to amend and reenact §3-1-17 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §3-4A-11a of said code; to amend and reenact §3-5-13 and §3-5-13a of said
3 code; and to amend and reenact §3-10-6, §3-10-7, and §3-10-8 of said code, all relating to
4 providing for the nonpartisan election for the offices of county sheriff, prosecuting attorney,
5 assessor, clerk of the circuit court, clerk of the county commission, and surveyor of lands
6 concurrently with primary elections; providing for the arrangement, form, and contents of
7 ballots; and providing for procedures for the filling of vacancies.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-17. Election of circuit judges; county and district officers; magistrates.

1 (a) There shall be elected, at the time of the primary election to be held in 2016, and every
2 eighth year thereafter, one judge of the circuit court of every judicial circuit entitled to one judge,
3 and one judge for each numbered division of the judicial circuit in those judicial circuits entitled to
4 two or more circuit judges; and at the time of the primary election to be held in 2016, and in every
5 fourth year thereafter, the number of magistrates prescribed by law for the county. Beginning with
6 the election held in the year 2016, an election for the purpose of electing judges of the circuit court,
7 or an election for the purpose of electing magistrates, shall be upon a nonpartisan ballot printed for
8 the purpose.

9 (b) There shall be elected, at the general election to be held in 1992, and every fourth year
10 thereafter, a sheriff, prosecuting attorney surveyor of lands, and the number of assessors
11 prescribed by law for the county; and at the general election to be held in 1990, and every second
12 year thereafter, a commissioner of the county commission for each county. and at the general
13 election to be held in 1992, and every sixth year thereafter, a clerk of the county commission and a
14 clerk of the circuit court for each county.

15 (c) Effective with the primary election of 2016, all elections for judge of the circuit courts in
16 the respective circuits and magistrates in each county will be elected on a nonpartisan basis and

17 by division as set forth more fully in in §3-5-1 et seq. of this code.

18 (d) Effective with the primary election of 2024 and every fourth year thereafter, all elections
19 for sheriff, prosecuting attorney, surveyor of lands and the number of assessors prescribed in each
20 county will be elected on a nonpartisan basis as set forth more fully in §3-5-1 et seq. of this code.

21 (e) Effective with the primary election of 2028 and every sixth year thereafter, all elections
22 for clerk of the county commission and clerk of the circuit court in each county will be elected on a
23 nonpartisan basis as set forth more fully in §3-5-1 et seq. of this code.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.

1 (a) The board of ballot commissioners in counties using ballots upon which votes may be
2 recorded by means of marking with electronically sensible ink or pencil and which marks are
3 tabulated electronically shall cause the ballots to be printed or displayed upon the screens of the
4 electronic voting system for use in elections.

5 (b) (1) For the primary election, the heading of the ballot, the type faces, the names and
6 arrangement of offices and the printing of names and arrangement of candidates within each office
7 are to conform as nearly as possible to §3-5-13 and §3-5-13a of this code.

8 (2) For the general election, the heading of the ballot, the type faces, the names and
9 arrangement of offices and the printing of names and the arrangement of candidates within each
10 office are to conform as nearly as possible to §3-6-2 of this code.

11 (3) Effective with the primary election held in 2016 and thereafter, the following nonpartisan
12 elections are to be separated from the partisan ballot and separately headed in display type with a
13 title clearly identifying the purpose of the election and constituting a separate ballot wherever a
14 separate ballot is required under this chapter:

15 (A) Nonpartisan elections for judicial offices, by division, of:

16 (i) Justice of the Supreme Court of Appeals;

17 (ii) Judge of the Intermediate Court of Appeals;

18 (iii) Judge of the circuit court;

19 (iv) Family court judge; and

20 (v) Magistrate;

21 (B) Nonpartisan elections for Board of Education; and

22 (C) Any question to be voted upon.

23 (4) Effective with the primary election held in 2024 and thereafter, nonpartisan elections for
24 sheriff, prosecuting attorney, assessor, clerk of the county commission, clerk of the circuit court
25 and surveyor of lands in each county are to be separated from the partisan ballot and separately
26 headed in display type with a title clearly identifying the purpose of the election and constituting a
27 separate ballot.

28 ~~(4)~~ (5) Beginning in the primary election to be held in the year 2020 and in each election
29 thereafter, the nonpartisan judicial elections described in subparagraphs (i) through (iv),
30 paragraph (A), subdivision (3), of this subsection shall appear immediately after the state ticket
31 and shall immediately precede the county ticket, in the same manner prescribed in §3-5-13a of this
32 code.

33 ~~(5)~~ (6) Both the face and the reverse side of the ballot may contain the names of
34 candidates only if means to ensure the secrecy of the ballot are provided and lines for the
35 signatures of the poll clerks on the ballot are printed on a portion of the ballot which is deposited in
36 the ballot box and upon which marks do not interfere with the proper tabulation of the votes.

37 The arrangement of candidates within each office is to be determined in the same manner
38 as for other electronic voting systems, as prescribed in this chapter. On the general election ballot
39 for all offices, and on the primary election ballot only for those offices to be filled by election, except
40 delegate to national convention, lines for entering write-in votes are to be provided below the
41 names of candidates for each office, and the number of lines provided for any office shall equal the
42 number of persons to be elected, or three, whichever is fewer. The words "WRITE-IN, IF ANY" are

43 to be printed, where applicable, directly under each line for write-ins. The lines are to be opposite a
44 position to mark the vote.

45 (c) Except for electronic voting systems that utilize screens upon which votes may be
46 recorded by means of a stylus or by means of touch, the primary election ballots are to be printed
47 in the color of ink specified by the Secretary of State for the various political parties, and the
48 general election ballot is to be printed in black ink. For electronic voting systems that utilize
49 screens upon which votes may be recorded by means of a stylus or by means of touch, the primary
50 ballots and the general election ballot are to be printed in black ink. All ballots are to be printed,
51 where applicable, on white paper suitable for automatic tabulation and are to contain a perforated
52 stub at the top or bottom of the ballot, which is to be numbered sequentially in the same manner as
53 provided in §3-5-13 of this code, or are to be displayed on the screens of the electronic voting
54 system upon which votes are recorded by means of a stylus or touch. The number of ballots
55 printed and the packaging of ballots for the precincts are to conform to the requirements for paper
56 ballots provided in this chapter.

57 (d) In addition to the official ballots, the ballot commissioners shall provide all other
58 materials and equipment necessary to the proper conduct of the election.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-13. Form and contents of ballots.

1 The following provisions apply to the form and contents of election ballots:

2 (1) The face of every primary election ballot shall conform as nearly as practicable to that
3 used at the general election.

4 (2) The heading of every ballot is to be printed in display type. The heading is to contain a
5 ballot title, the name of the county, the state, the words "Primary Election" and the month, day and
6 year of the election. The ballot title of the political party ballots is to contain the words "Official
7 Ballot of the (Name) Party" and the official symbol of the political party may be included in the
8 heading.

9 (A) The ballot title of any separate paper ballot or portion of any electronic or voting
10 machine ballot for all judicial officers shall commence with the words "Nonpartisan Ballot of
11 Election of Judicial Officers" and each such office shall be listed in the following order:

12 (i) The ballot title of any separate paper ballot or portion of any electronic or voting machine
13 ballot for all justices of the Supreme Court of Appeals shall contain the words "Nonpartisan Ballot
14 of Election of Justice(s) of the Supreme Court of Appeals of West Virginia". The names of the
15 candidates for the Supreme Court of Appeals shall be printed by division without references to
16 political party affiliation or registration.

17 (ii) The ballot title of any separate paper ballot or portion of any electronic or voting
18 machine ballot for all judges of the Intermediate Court of Appeals shall contain the words
19 "Nonpartisan Ballot of Election of Judge(s) of the Intermediate Court of Appeals". The names of
20 the candidates for the Intermediate Court of Appeals shall be printed by division without
21 references to political party affiliation or registration.

22 (iii) The ballot title of any separate paper ballot or portion of any electronic or voting
23 machine ballot for all circuit court judges in the respective circuits shall contain the words
24 "Nonpartisan Ballot of Election of Circuit Court Judge(s)". The names of the candidates for the
25 respective circuit court judge office shall be printed by division without references to political party
26 affiliation or registration.

27 (iv) The ballot title of any separate paper ballot or portion of any electronic or voting
28 machine ballot for all family court judges in the respective circuits shall contain the words
29 "Nonpartisan Ballot of Election of Family Court Judge(s)". The names of the candidates for the
30 respective family court judge office shall be printed by division without references to political party
31 affiliation or registration.

32 (v) The ballot title of any separate paper ballot or portion of any electronic or voting
33 machine ballot for all magistrates in the respective circuits shall contain the words "Nonpartisan
34 Ballot of Election of Magistrate(s)". The names of the candidates for the respective magistrate

35 office shall be printed by division without references to political party affiliation or registration.

36 (B) The ballot title of any separate paper ballot or portion of any electronic or voting
37 machine ballot for the Board of Education is to contain the words "Nonpartisan Ballot of Election of
38 Members of the _____ County Board of Education". The districts for which fewer than
39 two candidates may be elected and the number of available seats are to be specified and the
40 names of the candidates are to be printed without reference to political party affiliation and without
41 designation as to a particular term of office.

42 (C) (i) The ballot title of any separate paper ballot or portion of any electronic or voting
43 machine ballot:

44 (I) For the office of sheriff is to contain the words "Nonpartisan Ballot of Election of Sheriff;

45 (II) For the office of prosecuting attorney is to contain the words "Nonpartisan Ballot of
46 Election of Prosecuting Attorney;

47 (III) For the office of assessor is to contain the words "Nonpartisan Ballot of Election of
48 Assessor;

49 (IV) For the office of clerk of the circuit court is to contain the words "Nonpartisan Ballot of
50 Election of Clerk of the Circuit Court";

51 (V) For the office of clerk of the county commission is to contain the words "Nonpartisan
52 Ballot of Election of Clerk of the County Commission" and.

53 (VI) For the office of surveyor of lands is to contain the words "Nonpartisan Ballot of
54 Election of Surveyor of Lands;

55 (ii) The names of the candidates are to be printed without reference to political party
56 affiliation or registration.

57 ~~(C)~~ (D) Any other ballot or portion of a ballot on a question is to have a heading which
58 clearly states the purpose of the election according to the statutory requirements for that question.

59 (3) (A) For paper ballots, the heading of the ballot is to be separated from the rest of the
60 ballot by heavy lines and the offices shall be arranged in columns with the following headings, from

61 left to right across the ballot: "National Ticket", "State Ticket", "Nonpartisan Judicial Ballot",
62 "County Ticket", "Nonpartisan Ballot" in a nonpresidential election year, "District Ticket" or, in a
63 presidential election year, "National Convention". The columns are to be separated by heavy lines.
64 Within the columns, the offices are to be arranged in the order prescribed in §3-5-13a of this code.

65 (B) For voting machines, electronic voting devices and any ballot tabulated by electronic
66 means, the offices are to appear in the same sequence as prescribed in §3-5-13a of this code and
67 under the same headings as prescribed in paragraph (A) of this subdivision. The number of pages,
68 columns or rows, where applicable, may be modified to meet the limitations of ballot size and
69 composition requirements subject to approval by the Secretary of State.

70 (C) The title of each office is to be separated from preceding offices or candidates by a line
71 and is to be printed in bold type no smaller than eight point. Below the office is to be printed the
72 number of the district, if any, the number of the division, if any, and the words "Vote for _____"
73 with the number to be nominated or elected or "Vote For Not More Than _____" in
74 multicandidate elections. For offices in which there are limitations relating to the number of
75 candidates which may be nominated, elected or appointed to or hold office at one time from a
76 political subdivision within the district or county in which they are elected, there is to be a clear
77 explanation of the limitation, as prescribed by the Secretary of State, printed in bold type
78 immediately preceding the names of the candidates for those offices on the ballot in every voting
79 system. For counties in which the number of county commissioners exceeds three and the total
80 number of members of the county commission is equal to the number of magisterial districts within
81 the county, the office of county commission is to be listed separately for each district to be filled
82 with the name of the magisterial district and the words "Vote for One" printed below the name of
83 the office: *Provided*, That the office title and applicable instructions may span the width of the ballot
84 so as it is centered among the respective columns.

85 (D) The location for indicating the voter's choices on the ballot is to be clearly shown. For
86 paper ballots, other than those tabulated electronically, the official primary ballot is to contain a

87 square formed in dark lines at the left of each name on the ballot, arranged in a perpendicular
88 column of squares before each column of names.

89 (4) (A) The name of every candidate certified by the Secretary of State or the board of
90 ballot commissioners is to be printed in capital letters in no smaller than eight point type on the
91 ballot for the appropriate precincts. Subject to the rules promulgated by the Secretary of State, the
92 name of each candidate is to appear in the form set out by the candidate on the certificate of
93 announcement, but in no case may the name misrepresent the identity of the candidate nor may
94 the name include any title, position, rank, degree, or nickname implying or inferring any status as a
95 member of a class or group or affiliation with any system of belief.

96 (B) The city of residence of every candidate, the state of residence of every candidate
97 residing outside the state, the county of residence of every candidate for an office on the ballot in
98 more than one county and the magisterial district of residence of every candidate for an office
99 subject to magisterial district limitations are to be printed in lower case letters beneath the names
100 of the candidates.

101 (C) The arrangement of names within each office must be determined as prescribed in §3-
102 5-13a of this code.

103 (D) If the number of candidates for an office exceeds the space available on a column or
104 ballot page and requires that candidates for a single office be separated, to the extent possible, the
105 number of candidates for the office on separate columns or pages are to be nearly equal and clear
106 instructions given the voter that the candidates for the office are continued on the following column
107 or page.

108 (5) When an insufficient number of candidates has filed for a party to make the number of
109 nominations allowed for the office or for the voters to elect sufficient members to the Board of
110 Education or to executive committees, the vacant positions on the ballot shall be filled with the
111 words "No Candidate Filed": *Provided*, That in paper ballot systems which allow for write-ins to be
112 made directly on the ballot, a blank line shall be placed in any vacant position in the office of Board

113 of Education or for election to any party executive committee. A line shall separate each candidate
114 from every other candidate for the same office. Notwithstanding any other provision of this code, if
115 there are multiple vacant positions on a ballot for one office, the multiple vacant positions which
116 would otherwise be filled with the words "No Candidate Filed" may be replaced with a brief detailed
117 description, approved by the Secretary of State, indicating that there are no candidates listed for
118 the vacant positions.

119 (6) In presidential election years, the words "For election in accordance with the plan
120 adopted by the party and filed with the Secretary of State" is to be printed following the names of all
121 candidates for delegate to national convention.

122 (7) All paper ballots are to be printed in black ink on paper sufficiently thick so that the
123 printing or marking cannot be discernible from the back: *Provided*, That no paper ballot voted
124 pursuant to the provisions of 42 U.S.C. §1973, *et seq.*, the Uniformed and Overseas Citizens
125 Absentee Voting Act of 1986, or federal write-in absentee ballot may be rejected due to paper type,
126 envelope type, or notarization requirement. Ballot cards and paper for printing ballots using
127 electronically sensible ink are to meet minimum requirements of the tabulating systems and are to
128 conform in size and weight to ensure ease in tabulation.

129 (8) Ballots are to contain perforated tabs at the top of the ballots and are to be printed with
130 unique sequential numbers from one to the highest number representing the total number of
131 ballots printed. On paper ballots, the ballot is to be bordered by a solid line at least one-sixteenth of
132 an inch wide and the ballot is to be trimmed to within one-half inch of that border.

133 (9) On the back of every official ballot or ballot card the words "Official Ballot" with the name
134 of the county and the date of the election are to be printed. Beneath the date of the election there
135 are to be two blank lines followed by the words "Poll Clerks".

136 (10) The face of sample paper ballots and sample ballot labels are to be like other official
137 ballots or ballot labels except that the word "sample" is to be prominently printed across the front of
138 the ballot in a manner that ensures the names of candidates are not obscured and the word

139 "sample" may be printed in red ink. No printing may be placed on the back of the sample.

140 The arrangement of candidates within each office is to be determined in the same manner
141 as for other electronic voting systems, as prescribed in this chapter. On the general election ballot
142 for all offices, and on the primary election ballot only for those offices to be filled by election, except
143 delegate to national convention, lines for entering write-in votes are to be provided below the
144 names of candidates for each office, and the number of lines provided for any office shall equal the
145 number of persons to be elected, or three, whichever is fewer. The words "WRITE-IN, IF ANY" are
146 to be printed, where applicable, directly under each line for write-ins. The lines are to be opposite a
147 position to mark the vote.

148 (c) Except for electronic voting systems that utilize screens upon which votes may be
149 recorded by means of a stylus or by means of touch, the primary election ballots are to be printed
150 in the color of ink specified by the Secretary of State for the various political parties, and the
151 general election ballot is to be printed in black ink. For electronic voting systems that utilize
152 screens upon which votes may be recorded by means of a stylus or by means of touch, the primary
153 ballots and the general election ballot are to be printed in black ink. All ballots are to be printed,
154 where applicable, on white paper suitable for automatic tabulation and are to contain a perforated
155 stub at the top or bottom of the ballot, which is to be numbered sequentially in the same manner as
156 provided in §3-5-13 of this code, or are to be displayed on the screens of the electronic voting
157 system upon which votes are recorded by means of a stylus or touch. The number of ballots
158 printed and the packaging of ballots for the precincts are to conform to the requirements for paper
159 ballots provided in this chapter.

160 (d) In addition to the official ballots, the ballot commissioners shall provide all other
161 materials and equipment necessary to the proper conduct of the election.

§3-5-13a. Order of offices and candidates on the ballot; uniform drawing date.

1 (a) The order of offices for state and county elections on all ballots within the state shall be
2 as prescribed herein. When the office does not appear on the ballot in an election, then it shall be

3 omitted from the sequence. When an unexpired term for an office appears on the ballot along with
4 a full term, the unexpired term shall appear immediately below the full term.

5 NATIONAL TICKET: President (and Vice President in the general election), United States
6 Senator, member of the United States House of Representatives.

7 STATE TICKET: Governor, Secretary of State, Auditor, Treasurer, Commissioner of
8 Agriculture, Attorney General, State Senator, member of the House of Delegates, any other
9 multicounty office, state executive committee.

10 NONPARTISAN JUDICIAL BALLOT: Justice of the Supreme Court of Appeals, judge of
11 the circuit court, family judge, magistrate.

12 COUNTY TICKET: ~~Clerk of the circuit court, county~~ County commissioner, ~~clerk of the~~
13 ~~county commission, prosecuting attorney, sheriff, assessor, surveyor~~ congressional district
14 executive committee, senatorial district executive committee in multicounty districts, delegate
15 district executive committee in multicounty districts.

16 NONPARTISAN BALLOT: Nonpartisan elections for prosecuting attorney, sheriff,
17 assessor, clerk of the circuit court, clerk of the county commission, surveyor, board of education,
18 conservation district supervisor, any question to be voted upon.

19 DISTRICT TICKET: County executive committee.

20 NATIONAL CONVENTION: Delegate to the national convention -- congressional district,
21 delegate to the national convention -- at-large.

22 (b) Except for office divisions in which no more than one person has filed a certificate of
23 announcement, the arrangement of names for all offices shall be determined by lot according to
24 the following provisions:

25 (1) On the fourth Tuesday following the close of the candidate filing, beginning at 9:00 a.m.,
26 a drawing by lot shall be conducted in the office of the clerk of the county commission in each
27 county. Notice of the drawing shall be given on the form for the certificate of announcement and no
28 further notice shall be required. The clerk of the county commission shall superintend and conduct

29 the drawing and the method of conducting the drawing shall be prescribed by the Secretary of
30 State.

31 (2) Except as provided herein, the position of each candidate within each office division
32 shall be determined by the position drawn for that candidate individually: *Provided*, That if fewer
33 candidates file for an office division than the total number to be nominated or elected, the vacant
34 positions shall appear following the names of all candidates for the office.

35 (3) Candidates for delegate to national convention who have filed a commitment to a
36 candidate for president shall be listed alphabetically within the group of candidates committed to
37 the same candidate for president and uncommitted candidates shall be listed alphabetically in an
38 uncommitted category. The position of each group of committed candidates and uncommitted
39 candidates shall be determined by lot by drawing the names of the presidential candidates and for
40 an uncommitted category.

41 (4) A candidate or the candidate's representative may attend the drawings.

ARTICLE 10. FILLING VACANCIES.

§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 30 days of the vacancy by appointment of a
3 person ~~of the same political party as the officeholder vacating the office~~ for the period required by
4 §3-10-1 of this code.

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

9 (c) (1) When the vacancy in the office of clerk of the circuit court occurs after the 84th day
10 before a general election, and the affected term of office ends on December 31 following the
11 succeeding general election two years later, the person appointed to fill the vacancy shall continue

12 in office until the completion of the term.

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

17 (3) When the vacancy occurs after the close of candidate filing for the primary election and
 18 not later than 84 days before the general election, and if the unexpired term be for a period of
 19 greater than three years, the vacancy shall be filled by election in a nonpartisan county election
 20 held concurrently with the general election, and the appointment shall continue until a successor is
 21 elected and certified.

22 (4) When an election to fill a vacancy pursuant to the provisions of this subsection is
 23 required to be held at the general election, a special candidate filing period shall be established.
 24 Candidates seeking election to any unexpired term for clerk of the county commission shall file a
 25 certificate of announcement and pay the filing fee no earlier than the first Monday in August and no
 26 later than 77 days before the general election.

27 ~~(e)~~ (d) If an election is necessary, the circuit court, or the chief judge thereof in vacation, is
 28 responsible for the proper proclamation, by order and notice required by section one of this article.

29 ~~(d)~~ (e) Section one of this article shall be followed with respect to any election needed to fill
 30 a vacancy, except that if the vacancy occurs after the primary cutoff date but not later than the
 31 general cutoff date, candidates to fill the vacancy shall be nominated by the county executive
 32 committee in the manner provided in section nineteen, article five of this chapter, as in the case of
 33 filling vacancies in nominations, and the names of the persons, so nominated and certified to the
 34 clerk of the county commission of the county, shall be placed upon the ballot to be voted at the next
 35 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 to the office of county
3 commissioner must be a person of the same political party with which the person holding the office
4 immediately preceding the vacancy was affiliated at the time the vacancy occurred: *Provided*, That
5 at the time of appointment, the appointee must have been a member of that political party for at
6 least 60 days prior to the occurrence of the vacancy.

7 (b) (1) If a quorum of the county commission fails to make an appointment for a vacancy in
8 the office of county commission within 30 days, the county executive committee of the same
9 political party with which the person holding the office preceding the vacancy was affiliated at the
10 time the vacancy occurred, shall submit a list of three legally qualified persons to fill the vacancy.
11 Within 15 days from the date on which the list is received, the county commission shall appoint a
12 candidate from the list to fill the vacancy. If the county commission fails to make the appointment
13 within the specified time, then the county commissioner with the longest tenure shall eliminate one
14 name from the submitted list, followed by the county commissioner with the second-longest tenure
15 then eliminating one name from the submitted list. The name remaining after those two names
16 have been eliminated shall be deemed to be appointed by the county commission to fill the
17 vacancy.

18 (2) If a quorum of the county commission fails to make an appointment for a vacancy in the
19 office of clerk of county commission within 30 days, the president of the county commission shall
20 make the appointment.

21 (c) If the number of vacancies in a county commission deprives that body of a quorum, the
22 Governor shall make an appointment to fill any vacancy in the county commission necessary to
23 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. The Governor shall make
26 any appointments necessary, beginning with the vacancy first created, to create a quorum in
27 accordance with the same procedures applicable to county commissions under §3-10-7(a) of this

28 code. Once a quorum of the county commission is reestablished by gubernatorial appointment,
29 the authority to fill the remaining vacancies shall be filled in the manner prescribed in §3-10-7(a) of
30 this code.

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

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

37 (f) (1) When the vacancy in the office of clerk of the county commission occurs after the
38 84th day before a general election, and the affected term of office ends on December 31 following
39 the succeeding general election two years later, the person appointed to fill the vacancy shall
40 continue in office until the completion of the term.

41 (2) When the vacancy occurs before the close of the candidate filing period for the primary
42 election, and if the unexpired term be for a period of greater than three years, the vacancy shall be
43 filled by election in a nonpartisan county election held concurrently with the primary election and
44 the appointment shall continue until a successor is elected and certified.

45 (3) When the vacancy occurs after the close of candidate filing for the primary election and
46 not later than 84 days before the general election, and if the unexpired term be for a period of
47 greater than three years, the vacancy shall be filled by election in a nonpartisan county election
48 held concurrently with the general election, and the appointment shall continue until a successor is
49 elected and certified.

50 (4) When an election to fill a vacancy pursuant to the provisions of this subsection is
51 required to be held at the general election, a special candidate filing period shall be established.
52 Candidates seeking election to any unexpired term for clerk of the county commission shall file a
53 certificate of announcement and pay the filing fee no earlier than the first Monday in August and no

54 later than 77 days before the general election.

55 ~~(f)~~ ~~(g)~~ If an election for a vacancy in the office of county commissioner is necessary under
 56 §3-10-1 of this code, or for a vacancy in the office of clerk of county commission is necessary
 57 pursuant to subsection (f) of this section, the county commission, or the president thereof in
 58 vacation, shall be responsible for the proper proclamation, by order, and notice required by
 59 §3-10-1 of this code.

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

67 ~~(h)~~ ~~(i)~~ If the election for an unexpired term for a vacancy for the office of county commission
 68 is held at the same time as the election for a full term for county commissioner, the full term shall be
 69 counted first and the unexpired term shall be counted second. If the candidate with the highest
 70 number of votes for the unexpired term resides in the same magisterial district as the candidate
 71 with the highest number of votes for the full term, the candidate for the full term shall be seated.
 72 The candidate with the next highest number of votes for the unexpired term residing in a different
 73 magisterial district shall be seated for the 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 30 days of the vacancy by appointment of
 3 a person of the same political party as the officeholder vacating the office. The appointed person
 4 shall hold the office for the period stated by section one of this article.

5 (1) Any vacancy occurring in the office of prosecuting attorney, sheriff assessor, or

6 surveyor of lands shall, within 30 days of the vacancy, be filled by appointment of a person by the
7 county commission. The appointed person shall hold the office for the period stated by §3-10-1 of
8 this code.

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 more
12 than 30 days from the date of the vacancy.

13 (c) (1) When the vacancy in the office of prosecuting attorney, sheriff, assessor, or surveyor
14 of lands occurs after the 84th day before a general election, and the affected term of office ends on
15 December 31 following the succeeding general election two years later, the person appointed to fill
16 the vacancy shall continue in office until the completion of the term.

17 (2) When the vacancy occurs before the close of the candidate filing period for the primary
18 election, and if the unexpired term be for a period of greater than three years, the vacancy shall be
19 filled by election in a nonpartisan county election held concurrently with the primary election and
20 the appointment shall continue until a successor is elected and certified.

21 (3) When the vacancy occurs after the close of candidate filing for the primary election and
22 not later than 84 days before the general election, and if the unexpired term be for a period of
23 greater than three years, the vacancy shall be filled by election in a nonpartisan county election
24 held concurrently with the general election, and the appointment shall continue until a successor is
25 elected and certified.

26 (4) When an election to fill a vacancy pursuant to the provisions of this subsection is
27 required to be held at the general election, a special candidate filing period shall be established.
28 Candidates seeking election to any unexpired term shall file a certificate of announcement and pay
29 the filing fee no earlier than the first Monday in August and no later than 77 days before the general
30 election.

31 ~~(e) (d)~~ If an election is necessary under ~~section one of this article~~ subsection (c) of this

32 section, the county commission, or the president thereof in vacation, shall be responsible for the
33 proper proclamation, by order, and notice required by section one of this article.

34 ~~(d) Section one of this article shall be followed with respect to any election needed to fill a~~
35 ~~vacancy, except that if the vacancy occurs after the primary cutoff date but not later than the~~
36 ~~general cutoff date, candidates to fill the vacancy shall be nominated by the county executive~~
37 ~~committee in the manner provided in §3-5-19 of this code, as in the case of filling vacancies in~~
38 ~~nominations, and the names of the persons, so nominated and certified to the clerk of the county~~
39 ~~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 provide for the nonpartisan elections for the offices of county sheriff, prosecuting attorney, assessor, clerk of the circuit court, clerk of the county commission, and surveyor to be held concurrently with primary elections. The bill also provides for the arrangement, form and contents of ballots; and provides for procedures for the filling of vacancies.

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