

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 631

By Senator Queen

[Introduced February 15, 2023; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §3-1-48 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §3-2-6 and §3-2-18 of said code; to amend and reenact §3-7-3, §3-7-6, and
3 §3-7-7 of said code; and to amend and reenact §3-10-3 of said code, all relating to
4 elections in general and specifically expenditures of federal appropriations from Congress
5 to the Secretary of State for purposes that further the administration of federal elections
6 held in the state, payable from the County Assistance Voting Equipment Fund; clarifying
7 the uniform statewide deadline for electronically submitted voter registration applications;
8 changing the deadline by which county clerks must report voter participation history after
9 an election into the statewide voter registration system; making contested elections
10 procedure update; making procedures for election contests before a special court
11 applicable to contested elections of certain judges; changing jurisdiction of election
12 contests for county, district, and municipal elections to the circuit courts; requiring a
13 recount proceeding to be completed before filing certain election contests; providing
14 certain procedural requirements for election contests before circuit courts; providing for
15 appeals of a decision made by a circuit court in an election contest be made to the
16 Supreme Court of Appeals, and granting rulemaking authority to the Supreme Court of
17 Appeals regarding election contests before circuit courts; providing when vacancies in the
18 office of magistrate shall be filled by election or appointment; clarifying that when a
19 vacancy in the office of magistrate creates an unexpired term of more than three years the
20 vacancy shall be filled by election; and clarifying that when a vacancy in the office of
21 magistrate creates an unexpired term of less than three years the vacancy shall be filled by
22 appointment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

**§3-1-48. Legislative findings; State Election Fund; loans to counties; availability of funds;
repayment of loans; grants to counties for election systems; Secretary of State**

expenditures from County Assistance Voting Equipment Fund.

1 (a) Legislative findings. — The Help America Vote Act of 2002, PL 107-252, 42 U.S.C.
2 §15301, *et seq.*, provides funding so that all states will be able to implement some form of
3 electronic voting system to replace punch card and lever machines by 2006. The new voting
4 systems must meet several requirements including notifying the voter of over votes and permitting
5 each voter to review his or her ballot and correct errors before casting the vote. The limited, finite
6 funding available to the state will not be sufficient to meet current and future needs for equipment
7 and services as equipment needs to be obtained, repaired, or replaced as technology changes. It
8 is the intent of the Legislature to maximize the available funds by establishing a no-interest loan
9 program to assist any county, regardless of its current voting system, in purchasing necessary
10 electronic voting equipment and services. As the loans are repaid funds will continue to be
11 available to meet future needs. It is not the intent of the Legislature to mandate any technology for
12 voting systems to be utilized in this state and this section is intended only to establish terms and
13 conditions for providing loan assistance to counties in accordance with the provisions of this
14 section.

15 (b) State Election Fund. — The special revenue account created in the State Treasury and
16 known as the State Election Fund account is continued. Expenditures from the account shall be
17 used by the Secretary of State for the administration of this chapter in accordance with the
18 provisions of 42 U.S.C. §15301, *et seq.*, the Help America Vote Act of 2002, PL 107-252, in
19 accordance with the provisions of §4-11-1 *et seq.* of this code.

20 (c) Establishment of special revenue account. — There is created in the State Treasury a
21 special revenue revolving fund account known as the County Assistance Voting Equipment Fund
22 which shall be an interest-bearing account. The fund shall consist of an initial transfer not to
23 exceed \$8,500,000 from the State Election Fund established under §3-1-48(b) of this code
24 pursuant to legislative appropriation; any future funds received from the federal government under
25 the Help America Vote Act of 2002, PL 107-252, 42 U.S.C. §15301, *et seq.*, or subsequent acts

26 providing funds to states to obtain, modify, or improve voting equipment and obtain necessary
27 related services including voting systems, technology, and methods for casting and counting
28 votes; any funds appropriated by the Legislature or transferred by any public agency as
29 contemplated or permitted by applicable federal or state law; and any accrued interest or other
30 return on the moneys in the fund. The balance remaining in the fund at the end of each fiscal year
31 shall remain in the fund and not revert to the State General Revenue Fund.

32 (d) Use of funds. — The money in the fund shall be used only in the manner and for the
33 purposes prescribed in this section. Notwithstanding any provision of law to the contrary, funds in
34 the County Assistance Voting Equipment Fund may not be designated or transferred for any
35 purpose other than those set forth in this section.

36 (e) Administration of the fund. — The Secretary of State shall administer the fund with the
37 approval of the State Election Commission.

38 (f) Investment of fund. — The moneys of the fund shall be invested pursuant to §12-6-1 *et*
39 *seq.* of this code and in such a manner that sufficient moneys are available as needed for loans
40 authorized under this section.

41 (g) Loans to counties. — The county assistance voting equipment fund shall be used to
42 make no-interest loans to counties to obtain, modify, or replace voting equipment, software, and
43 necessary related services including voting systems, technology, and methods for casting and
44 counting votes: *Provided*, That any county commission that purchased an electronic voting system
45 prior to November 13, 2004, is eligible to apply for matching funds under this section to upgrade
46 the system: *Provided, however*, That matching funds available for an upgrade shall not exceed the
47 amount available under §3-1-48(g)(1) of this code for the purchase of a new electronic voting
48 system under the Secretary of State's authorized contract. The loans shall be made under the
49 following terms and conditions:

50 (1) The State Election Commission shall, subject to availability of funds, loan no more than
51 50 percent of the cost of the voting equipment or services to any county commission: *Provided*,

52 That a portion or all of the county matching requirement may be waived in limited circumstances
53 as determined by the State Election Commission pursuant to this section.

54 (2) The county commission shall provide sufficient documentation to establish to the
55 satisfaction of the State Election Commission that the county commission has at least 50 percent
56 of the money necessary to obtain the voting equipment, software, or services for which the loan is
57 sought.

58 (3) The county commission shall enter into a contract with the State Election Commission
59 for the repayment of the loan over a period not to exceed five years or the length of the contract to
60 obtain the equipment, software, or services, whichever is less.

61 (4) The county commission shall use the loan for voting equipment and services certified
62 by the State Election Commission pursuant to the provisions of §3-4a-1 *et seq.* of this code and
63 authorized for use by the Secretary of State.

64 (5) A county commission may apply for a loan on a form provided by the Secretary of State.
65 The form shall, in addition to requesting information necessary for processing the application,
66 state the deadline for submitting the application and the eligibility requirements for obtaining a
67 loan.

68 (6) The State Election Commission may waive a portion or all of the matching money
69 required by this subsection for a county commission that can establish that it has exercised due
70 diligence in raising its share of the costs but has been unable to do so. On forms provided by the
71 Secretary of State the county commission shall request a waiver and shall make a full financial
72 disclosure of its assets and liabilities as well as potential for future income when applying for a
73 waiver. The county commission shall demonstrate, to the satisfaction of the State Election
74 Commission, its inability to meet the matching requirements of this subsection and its ability to
75 repay the loan in a timely manner. Notwithstanding the provisions of §3-1-48(g)(3) of this code, the
76 State Election Commission may extend the repayment period on a year-to-year basis for a
77 repayment period not to exceed five additional years.

78 (h) Application. — An application for a loan shall be approved by the State Election
79 Commission if the requirements of this section have been met.

80 (i) Rulemaking. — The Secretary of State shall propose for promulgation in accordance
81 with §29A-3-1 *et seq.* of this code emergency and legislative rules necessary to effectuate the
82 purposes of this section.

83 (j) Availability of loans. — The State Election Commission may not approve a loan under
84 this section until final standards for electronic voting equipment with a voter verified paper ballot
85 have been established by the Secretary of State or the national institute for standards and
86 technology. The State Election Commission may not approve a loan for the purchase, lease,
87 rental, or other similar transaction to obtain electronic voting equipment, software, or necessary
88 related services unless obtained under a contract authorized by the Secretary of State pursuant to
89 rules promulgated under this section.

90 (k) Repayment of loans. — The Secretary of State may, by civil action, mandamus, or other
91 judicial or administrative proceeding, compel performance by a county commission of all the terms
92 and conditions of the loan agreement between the state and that county commission including
93 periodic reduction of any moneys due the county from the state.

94 (l) Notwithstanding the provisions of this section relating to loan procedures, the State
95 Election Commission may, with a recommendation from the HAVA Grant Board, and consistent
96 with the legislative rules of the program, approve a grant to a county for the purchase of election
97 systems, or election system upgrades, payable from the County Assistance Voting Equipment
98 Fund: Provided, That the Secretary of State shall issue emergency rules setting forth the criteria
99 for the issuance of grants to the counties.

100 (m) Notwithstanding the provisions of this section relating to loan or grant procedures, the
101 State Election Commission may, with a recommendation from the HAVA Grant Board, and
102 consistent with the legislative rules of the program, approve expenditures by the Secretary of
103 State, payable from the County Assistance Voting Equipment Fund, upon application, for the

104 purchase of election equipment or security upgrades that further the administration of federal
105 elections held in the state, which expenditures are limited to election equipment, systems,
106 infrastructure, physical and cyber security upgrades, and any other lawful purpose permitted by
107 the appropriation from Congress: *Provided*, The State Election Commission shall issue
108 emergency rules setting forth the criteria for the application and approval of these expenditures by
109 the Secretary of State.

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-6. Time of registration application before an election.

1 (a) Voter registration before an election closes on the 21st day before the election or on the
2 first day thereafter which is not a Saturday, Sunday, or legal holiday.

3 (b) An application for voter registration, transfer of registration, change of name, or change
4 of political party affiliation submitted by an eligible voter by the close of voter registration is
5 effective for any subsequent primary, general, or special election if the following conditions are
6 met:

7 (1) The application contains the information required by §3-2-5(c) of this code. Incomplete
8 applications for registration containing information which are submitted within the required time
9 may be corrected within four business days after the close of registration if the applicant provides
10 the required information; and

11 (2) The application is received by the appropriate clerk of the county commission no later
12 than the hour of the close of registration or is otherwise submitted by the following deadlines:

13 (A) If mailed, the application shall be addressed to the appropriate clerk of the county
14 commission and is postmarked by the postal service no later than the date of the close of
15 registration. If the postmark is missing or illegible, the application is presumed to have been mailed
16 no later than the close of registration if it is received by the appropriate clerk of the county
17 commission no later than the third day following the close of registration;

18 (B) If accepted by a designated agency or motor vehicle licensing office, the application is

19 received by that agency or office no later than the close of registration;

20 (C) If accepted through a registration outreach program, the application is received by the
 21 clerk, deputy clerk, or registrar no later than the close of registration;

22 (D) If accepted through an approved electronic voter registration system, the application is
 23 received by the clerk of the county commission or other entity designated by the Secretary of State
 24 no later than the close of business by 11:59 p.m. on the final day of registration; and

25 (3) The verification notice required by the provisions of §3-2-16 of this code mailed to the
 26 voter at the residence indicated on the application is not returned as undeliverable.

§3-2-18. Registration records; active, inactive, canceled, pending and rejected registration

files; procedure; voting records.

1 (a) For the purposes of this article:

2 (1) "Original voter registration record" means all records submitted or entered in writing or
 3 electronically, where permitted by law, for voter registration purposes, including:

4 (A) Any original application or notice submitted by any person for registration or
 5 reinstatement, change of address, change of name, change of party affiliation, correction of
 6 records, cancellation, confirmation of voter information or other request or notice for voter
 7 registration purposes; and

8 (B) Any original entry made on any voters registration record at the polling place, or made
 9 or received by the clerk of the county commission relating to any voters registration, such as
 10 records of voting, presentation of identification and proof of age, challenge of registration, notice of
 11 death or obituary notice, notice of disqualifying conviction or ruling of mental incompetence or
 12 other original document which may affect the status of any person's voter registration.

13 (2) "Active voter registration records" means the registration records, whether on paper or
 14 in electronic format, containing the names, addresses, birth dates and other required information
 15 for all persons within a county who are registered to vote and whose registration has not been
 16 designated as inactive or canceled pursuant to the provisions of this article.

17 (3) "Inactive voter registration records" means the registration records, whether on paper
18 or in electronic format, containing the names, addresses, birth dates and other required
19 information for all persons designated inactive pursuant to the provisions of §3-2-27 of this code
20 following the return of the prescribed notices as undeliverable at the address provided by the
21 United States Postal Service or entered on the voter registration, or for failure of the contacted
22 voter to return a completed confirmation notice within thirty days of the mailing.

23 (4) "Canceled voter registration records" means the records containing all required
24 information for all persons who have been removed from the active and inactive voter registration
25 records and who are no longer registered to vote within the county.

26 (5) "Pending application records" means the temporary records containing all information
27 submitted on a voter registration application, pending the expiration of the verification period.

28 (6) "Rejected application records" means the records containing all information submitted
29 on a voter registration application which was rejected for reasons as described in this article.

30 (7) "Confirmation pending records" means the records containing all required information
31 for persons who have been identified to be included in the next succeeding mailing of address
32 confirmation notices as set forth by the National Voter Registration Act of 1993 (42 U.S. C.
33 §1973gg *et seq.*).

34 (b) For the purposes of this chapter or of any other provisions of this code relating to
35 elections conducted under the provisions of this chapter, whenever a requirement is based on the
36 number of registered voters, including, but not limited to, the number of ballots to be printed, the
37 limitations on the size of a precinct, or the number of petition signatures required for election
38 purposes, only those registrations included on the active voter registration files shall be counted
39 and voter registrations included on the inactive voter registration files, as defined in this
40 subdivision, ~~shall~~ may not be counted.

41 (c) Active voter registration records, confirmation pending records and inactive voter
42 registration records may be maintained in the same physical location, providing the records are

43 coded, marked or arranged in such a way as to make the status of the registration immediately
 44 obvious. Canceled voter registration records, pending application records and rejected application
 45 records may be maintained in separate physical locations. However, all such records shall be
 46 maintained in the statewide voter registration database, subject to this article.

47 (d) The effective date of any action affecting any voter's registration status shall be entered
 48 on the voter record, including the effective date of registration, change of name, address or party
 49 affiliation or correction of the record, effective date of transfer to inactive status, return to active
 50 status or cancellation. When any registration is designated inactive or is canceled, the reason for
 51 the designation or cancellation and any reference notation necessary to locate the original
 52 documentation related to the change shall be entered on the voter record.

53 (e) Within ~~one hundred twenty~~ 80 days after each primary, general, municipal or special
 54 election, the clerk of the county commission shall enter the voting records into the statewide voter
 55 registration database.

ARTICLE 7. CONTESTED ELECTIONS.

§3-7-3. Contests before special court; procedure; enforcement.

1 (a) Where the election of Secretary of State, Auditor, Treasurer, Attorney General,
 2 Commissioner of Agriculture, or of a judge a justice of the Supreme Court of Appeals, a judge of
 3 the Intermediate Court of Appeals, or a judge of a circuit court, or a judge of a family court is
 4 contested, the case shall be heard and decided by a special court constituted as follows:

5 (1) The contestee shall select one, the contestant another, and the Governor a third
 6 person, who shall preside in said court; and the three, or any two of them, shall meet at a time and
 7 place within the state to be appointed by the Governor, and, being first duly sworn impartially to
 8 decide according to law and the truth upon the petition, returns and evidence to be submitted to
 9 them, shall proceed to hear, and determine the case and certify their decision thereon to the
 10 Governor. They shall be entitled to \$10 a day each, and the same mileage as members of the
 11 Legislature, to be paid out of the treasury of the state, and ~~such~~ the special court is hereby given

12 authority to may employ a stenographer at a reasonable compensation, to be also paid out of the
13 treasury of the state.

14 (2) In all hearings or proceedings before ~~such~~ the special court, the evidence of witnesses
15 and the production of documentary evidence may be required at any designated place of hearing
16 by such the special court, or any member thereof.

17 (3) and ~~In case of~~ If there is disobedience to a subpoena or other process of such the
18 special court, or any member thereof, such the special court, or any member thereof, or either of
19 the parties to ~~such~~ the contest, may invoke the aid of any circuit court in requiring the evidence and
20 testimony of witnesses and the production of papers, books, and documents. And such the circuit
21 court, in case of a refusal to obey the subpoena issued to any person, shall issue an order
22 requiring such that person to appear before ~~such~~ the special court and produce all books and
23 papers, if so ordered, and give evidence touching the matter in question. Any failure to obey such
24 the order of the circuit court may be punished by ~~such~~ the court as a contempt thereof. A written
25 record shall be kept of all testimony and other proceedings before such the special court.

26 (4) Either party to ~~such~~ the contest feeling aggrieved by the final decision of ~~such~~ the
27 special court may present his or her petition in writing to the Supreme Court of Appeals, or a judge
28 thereof in vacation, within 30 days after such the final decision is certified to the Governor, as
29 hereinbefore provided, praying for the suspension, setting aside, or vacation of ~~such~~ the final
30 decision. The applicant shall deliver, or cause to be delivered, a copy of such the petition to the
31 other party to ~~such~~ the contest, or, in case of his or her absence from the state or from his or her
32 usual place of abode, he the applicant shall mail, or cause to be mailed a copy of ~~such~~ the petition
33 addressed to his or her last known post-office address, before presenting the same petition to the
34 court, or the judge. The court, or the judge, shall fix a time for the hearing on the application, but
35 ~~such~~ the hearing shall may not be held sooner than five days, unless by agreement of the parties,
36 after the presentation of ~~such~~ the petition, and notice of the time and place of such the hearing
37 shall be forthwith delivered to the other party to ~~such~~ the contest, or, in case of absence from the

38 state or from his or her usual place of abode, ~~such the~~ notice may be given by mailing, or causing
 39 to be mailed, the same notice, or a copy thereof, addressed to him or her at his or her last known
 40 post-office address. If the court, or the judge, after ~~such the~~ hearing, be is of the opinion that a
 41 suspending order should issue, the court in its, or the judge in his or her, discretion, may suspend
 42 ~~such the~~ final decision and may require bond upon such conditions and in such penalty, and
 43 impose such terms and conditions upon the petitioner, as are just and reasonable; and the court,
 44 or the judge, shall fix a time for the final hearing on the application. The hearing of the matter shall
 45 take precedence over all other matters before the court. For ~~such the~~ final hearing, and before the
 46 day fixed therefor, the special court shall file with the clerk of the Supreme Court of Appeals all
 47 papers, documents, testimony, evidence, and records, or certified copies thereof, which were
 48 before it at the hearing resulting in the final decision from which the petitioner appeals, together
 49 with a copy in writing of its final decision; and, after argument by counsel, the court shall decide the
 50 matter in controversy, both as to the law and the evidence, as may ~~deem~~ determine to it to be just
 51 and right.

52 (b) The Supreme Court of Appeals ~~is hereby given jurisdiction to~~ may enforce the
 53 provisions of this section by writ of prohibition, mandamus, and certiorari, as may be appropriate.

§3-7-6. County and district contests; notices; time.

1 (a) In all cases of contested elections, the county commission circuit court shall be the
 2 judge of the election, qualifications, and returns of their own members and of all county, and
 3 district, and municipal officers. *Provided*, That a member of the county commission whose election
 4 is being contested may not participate in judging the election, qualifications and returns

5 (b) A person intending to contest the election of another to any county, or district, or
 6 municipal office, including a judge of any magistrate court or any office that shall hereafter be
 7 created to be filled by the voters of the county or of any magisterial or other district therein, shall,
 8 within ~~ten~~ seven days after the result of the election is certified, give the contestee notice in writing
 9 of such intention and a list of the votes he or she will dispute, with the objections to each, and of the

10 votes rejected for which he will contend. If the contestant objects to the legality of the election or
 11 the qualification of the person returned as elected, the notice shall set forth the facts on which such
 12 objection is founded. The person whose election is so contested shall, within 10 days after
 13 receiving such notice, deliver to the contestant a like list of the votes he will dispute, with the
 14 objections to each, and of the rejected votes for which he will contend; and, if he has any objection
 15 to the qualification of the contestant, he or she shall specify in writing the facts on which the
 16 objection is founded. Each party shall append to his notice an affidavit that he or she verily
 17 believes the matters and things set forth to be true. If new facts be discovered by either party after
 18 he or she has given notice as aforesaid, he may, within 10 days after such discovery, give an
 19 additional notice to his or her adversary, with the specifications and affidavit prescribed in this
 20 section.

21 The provisions of this section apply to all elections, including municipal elections, except
 22 that the governing body of the municipality is the judge of any contest of a municipal election
 23 initiate a civil action in the circuit court of a county wherein the election or any part thereof was
 24 held.

25 (c) For an election contest challenging specific votes cast, votes rejected, or voters who
 26 participated in the election, a recount proceeding as set forth in §3-6-9 of this code is first required
 27 and shall be complete prior to the filing of an election contest on those grounds.

28 (d) For an election contest challenging an elected candidate's eligibility, the legality of the
 29 election, or fraud, the person intending to contest the election may proceed directly with filing a
 30 civil _____ action.

**§3-7-7. County Circuit court to hear county, and district, and municipal contests;
 procedure; review.**

1 (a) The ~~county~~ circuit court of a county wherein the election or any part thereof was held
 2 shall hear and decide election contests initiated pursuant to the provisions of the preceding section
 3 §3-7-6 of this code. Subpoenas for witnesses for either party shall be issued by the clerk of the

4 ~~county~~ circuit court, and served as in other cases, and the witnesses shall be entitled to the same
5 allowances and privileges, and be subject to the same penalties, as witnesses attending a circuit
6 court in a civil suit. The notice of contest shall be presented to the county court at its first term after
7 the same is delivered to the person whose election is contested, and the same shall be docketed
8 for trial in such court

9 (b) At the trial of ~~such~~ the contest, the circuit court shall hear all such legal and proper
10 evidence that may be brought before it by either party, and may, if ~~deemed~~ considered necessary,
11 require the production of the poll books, certificates, and ballots deposited with its the county clerk
12 or municipal recorder or clerk, and examine the same. The hearing may be continued by the court
13 from time to time, if it be shown that justice and right require it, but not beyond three months from
14 the day of election.

15 (c) A contestant has the burden of proof in an election contest.

16 (d) At the final conclusion of the trial of ~~such~~ the contest, the circuit court shall declare the
17 true result of ~~such~~ the election, and cause the same to be entered on the records of the court.
18 When the result of the election is declared, as aforesaid, a certified copy of the order declaring
19 ~~such~~ the result shall, if required, be delivered by the clerk of the circuit court wherein the contest
20 was held to the person declared elected, if such be the result of the trial, and ~~such~~ the copy shall be
21 received in all courts and places as legal evidence of the result of the election therein declared
22 parties. Either the contestant or contestee ~~shall have the right of~~ may appeal to the circuit court of
23 the county from the final order or decision of the county court in ~~such~~ the proceeding, upon the
24 filing of a bond with good personal security, by the party desiring the appeal, to be approved by the
25 county court, in a sum deemed sufficient by ~~such~~ the court, with condition to the effect that the
26 person proposing to appeal will perform and satisfy any judgment which may be rendered against
27 him by the circuit court on such appeal. But ~~such~~ the such appeal ~~shall~~ may not be granted unless
28 the party desiring the appeal ~~shall make~~ makes application for ~~such~~ the appeal, and file ~~such~~ the
29 bond, within 30 days from the entering of the final order in such proceeding; and the circuit court

30 may at any time require a new bond or increase the penalty thereof when the court deems it
31 necessary. When ~~such~~ the appeal is taken to the circuit court, as hereinbefore provided, it shall be
32 heard and determined upon the original papers, evidence, depositions and records filed before
33 and considered by the county court, and the circuit court shall decide the contest upon the merits.
34 From the decision of the circuit court, an

35 (e) An appeal of the decision of the circuit court shall lie to the Supreme Court of Appeals.
36 as in other cases, but ~~such~~ the appeal shall be heard upon the original papers and copies of all
37 orders made, without requiring the same to be printed

38 (f) The Supreme Court of Appeals, through its rule-making power in §51-1-4 of this code,
39 may promulgate rules and regulations consistent with this article which govern the pleadings,
40 practice, and procedure for the conduct of county, district, and municipal election contests in the
41 courts of this state.

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 expend federal appropriations from Congress to the Secretary of State for purposes that further the administration of federal elections held in the state, payable from the County Assistance Voting Equipment Fund; clarify the uniform statewide deadline for electronically submitted voter registration applications and change the deadline by which county clerks must report voter participation history after an election into the statewide voter registration system from 120 days to 80 days after an election; make procedures for election contests before a special court applicable to contested elections of certain judges; changing jurisdiction of election contests for county, district, and municipal elections to the circuit courts; requiring a recount proceeding to be completed before filing certain election contests; and clarify the amendments made to §3-10-3 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.