

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**Introduced**

## **Senate Bill 641**

BY SENATORS CHAPMAN AND TRUMP

[Introduced February 15, 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  
2 to 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  
4 more than three years the vacancy shall be filled by election; and clarifying that when a  
5 vacancy in the office of magistrate creates an unexpired term of less than three years the  
6 vacancy 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)  
20 of this code. If an election is required under §3-10-3(d) of this code, the Governor, circuit court,  
21 or the chief judge thereof in vacation, is responsible for the proper proclamation by order and  
22 notice required by §3-10-1 of this code. The amendments to this subsection enacted during the  
23 regular session of the Legislature in the year 2022 shall be applicable to any vacancy existing at  
24 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~~ 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  
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 three years, the vacancy shall  
35 be filled by election in the nonpartisan judicial election held concurrently with the primary election  
36 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 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  
41 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.