

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 5373

By Delegates Campbell, Howell, W. Clark, Lucas,
Dean, Westfall, Ward, Kirby, Maynor, Foggin, and
Heckert

[Originating in the Committee on the Judiciary;

Reported on February 23, 2024]

1 A BILL to amend and reenact §3-10-3; §3-10-4; §3-10-5; and §3-10-8 of the Code of West Virginia,
2 1931, as amended, all relating to prohibiting the appointment of an individual to fill a vacant
3 office if that person has not been a member of that party for one year and requiring
4 appointments be made from the political party with which the individual vacating the office
5 was affiliated with at the time of his or her election.

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~~ of the previous
8 election for that office. The list of qualified persons to fill the vacancy shall be submitted to the
9 Governor within 15 days after the vacancy occurs, and the Governor shall duly make his or her
10 appointment to fill the vacancy from the list of legally qualified persons within five days after the list
11 is received. If the list is not submitted to the Governor within the 15-day period, the Governor shall
12 appoint, within five days thereafter, a legally qualified person of the same political party with which
13 the person holding the office immediately preceding the vacancy was affiliated at the time the
14 vacancy occurred: Provided, That any such person appointed by the Governor must have been
15 affiliated with that political party for at least one year: Provided however, That the provisions of this
16 subsection do not apply to §3-10-3(b), §3-10-3(c), §3-10-3(d), and §3-10-3(e) of this code.

17 (b) Any vacancy occurring in the offices of Justice of the Supreme Court of Appeals, judge
18 of the Intermediate Court of Appeals, judge of a circuit court, or judge of a family court is filled by

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

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

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

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

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

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

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

§3-10-4. Vacancies in representation in United States Congress.

1 (a) (1) If there is a vacancy in the representation from this state in the House of
2 Representatives in the Congress of the United States, the Governor shall, within five days after the
3 fact comes to his or her knowledge, issue a proclamation setting dates for a special general
4 election that is not less than 84 nor more than 120 days from the date of the vacancy and requiring
5 nomination of candidates as provided in §3-10-4(a)(2) of this code: *Provided*, That no such
6 proclamation may be made nor may a special election be held if the vacancy occurs after the 84th
7 day prior to the regularly scheduled general election for a new full term of the office. The election
8 shall follow the requirements of §3-10-1 of this code that are not in conflict with this section.

9 (2) The party executive committees for the congressional district for which there is a
10 vacancy shall each, within 30 days of the Governor's proclamation, nominate a candidate to stand
11 at the general election required by §3-10-4(a)(1) of this code.

12 (b) If there is a vacancy in the representation from this state in the Senate of the United
13 States Congress, the vacancy shall be filled by the Governor of the state by appointment. The
14 Governor shall make the appointment from a list of three legally qualified persons submitted by the
15 party executive committee of the same political party with which the person holding the office
16 immediately preceding the vacancy was affiliated at the time ~~the vacancy occurred~~ of the previous
17 election for that office. The list of qualified persons to fill the vacancy shall be submitted to the
18 Governor within 15 days after the vacancy occurs, and the Governor shall duly make his or her
19 appointment to fill the vacancy from the list of legally qualified persons within five days after the list
20 is received. If the list is not submitted to the Governor within the 15-day period, the Governor shall
21 appoint, within five days thereafter, a legally qualified person of the same political party with which

22 the person holding the office immediately preceding the vacancy was affiliated at the time the
23 vacancy occurred: Provided, That any such person appointed by the Governor must have been
24 affiliated with that political party for at least one year.

25 Furthermore,

26 (1) If the vacancy occurs on or before the primary cutoff date, then an election shall be held
27 pursuant to §3-10-1 of this code; or

28 (2) If the vacancy occurs after the primary cutoff date, but on or before the general cutoff
29 date, then the Governor shall issue a proclamation providing for: (A) A special filing period; (B) a
30 special primary election to be held in conjunction with the upcoming general election; and (C) a
31 special general election to be held not less than 84 nor more than 120 days following the date of
32 the special primary election. Each election shall follow the requirements of §3-10-1 of this code
33 that are not in conflict with this section.

§3-10-5. Vacancies in state Legislature.

1 (a) Any vacancy in the office of state senator or member of the House of Delegates shall be
2 filled by appointment by the Governor, from a list of three legally qualified persons submitted by the
3 party executive committee 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~~ of the previous
5 election for that office. The list of qualified persons to fill the vacancy shall be submitted to the
6 Governor within 15 days after the vacancy occurs and the Governor shall duly make his or her
7 appointment to fill the vacancy from the list of legally qualified persons within five days after the list
8 is received. If the list is not submitted to the Governor within the 15-day period, the Governor shall
9 appoint within five days thereafter a legally qualified person of the same political party with which
10 the person holding the office immediately preceding the vacancy was affiliated at the time the
11 vacancy occurred: Provided, That any such person appointed by the Governor must have been
12 affiliated with that political party for at least one year.

13 (b) In the case of a member of the House of Delegates, if the member was elected to a
14 multi-county delegate district the list shall be submitted by the party executive committee of the
15 delegate district in which the vacating member resided at the time of his or her election or
16 appointment. If the member was elected to a delegate district situated entirely within a single
17 county, the list shall be submitted by the county executive committee in which the vacating
18 member resided at the time of his or her election or appointment. The appointment to fill a vacancy
19 in the House of Delegates is for the unexpired term.

20 (c) In the case of a state senator, if the member was elected to a multi-county senatorial
21 district the list shall be submitted by the party executive committee of the state senatorial district in
22 which the vacating senator resided at the time of his or her election or appointment. If the member
23 was elected to a senatorial district situated entirely within a single county, the list shall be
24 submitted by the county executive committee in which the vacating member resided at the time of
25 his or her election or appointment. The appointment to fill a vacancy in the state Senate is for the
26 unexpired term, unless §3-10-1 of this code requires a subsequent election to fill the remainder of
27 the term, which shall follow the procedure set forth in said section.

§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 thirty 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 section one of this article: Provided, That any person appointed must be affiliated with the political
5 party with which the person vacating the office was affiliated at the time of the previous election for
6 that office and must have been so affiliated for at least one year.

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

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

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

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

17 (c) If the number of vacancies in a county commission deprives that body of a quorum, the
18 Governor shall make an appointment to fill any vacancy in the county commission necessary to
19 create a quorum, from a list of three legally qualified persons submitted by the party executive
20 committee of the same political party with which the person holding the office immediately
21 preceding the vacancy was affiliated at the time the vacancy occurred. The Governor shall make
22 any appointments necessary, beginning with the vacancy first created, to create a quorum in
23 accordance with the same procedures applicable to county commissions under §3-10-7(a) of this
24 code. Once a quorum of the county commission is reestablished by gubernatorial appointment,
25 the authority to fill the remaining vacancies shall be filled in the manner prescribed in §3-10-7(a) of
26 this code.

27 (d) An appointment made pursuant to this section is for the period of time provided in
28 §3-10-1 of this code.

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

33 (f) If an election is necessary under §3-10-1 of this code, the county commission, or the
34 president thereof in vacation, shall be responsible for the proper proclamation, by order, and notice
35 required by §3-10-1 of this code.

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

42 (h) If the election for an unexpired term is held at the same time as the election for a full
43 term for county commissioner, the full term shall be counted first and the unexpired term shall be
44 counted second. If the candidate with the highest number of votes for the unexpired term resides
45 in the same magisterial district as the candidate with the highest number of votes for the full term,
46 the candidate for the full term shall be seated. The candidate with the next highest number of votes
47 for the unexpired term residing in a different magisterial district shall be seated for the unexpired
48 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 thirty days of the vacancy by appointment
3 of a person of the same political party ~~as the officeholder vacating the office~~ with which the person
4 holding the office immediately preceding the vacancy was affiliated at the time of the previous
5 election for the office. The appointed person shall have been a registered voter affiliated with that
6 political party for at least one year. The appointed person shall hold the office for the period stated
7 by section one of this article.

8 (b) Notwithstanding any code provision to the contrary, a county commission may appoint
9 a temporary successor to the office of prosecuting attorney, sheriff, assessor or county surveyor
10 until the requirements of this section have been met. The temporary successor may serve no more
11 than thirty days from the date of the vacancy.

12 (c) If an election is necessary under section one of this article, the county commission, or
13 the president thereof in vacation, shall be responsible for the proper proclamation, by order, and
14 notice required by section one of this article.

15 (d) Section one of this article shall be followed with respect to any election needed to fill a
16 vacancy, except that if the vacancy occurs after the primary cutoff date but not later than the
17 general cutoff date, candidates to fill the vacancy shall be nominated by the county executive
18 committee in the manner provided in section nineteen, article five of this chapter, as in the case of

19 filling vacancies in nominations, and the names of the persons, so nominated and certified to the
20 clerk of the county commission of the county, shall be placed upon the ballot to be voted at the next
21 general election.