

# **WEST VIRGINIA LEGISLATURE**

**2025 REGULAR SESSION**

**ENGROSSED**

**Committee Substitute**

**for**

**House Bill 2702**

By Delegates Akers and Maynor

(By Request of the State Treasurer)

[Originating in the Committee on the Judiciary;

Reported on March 11, 2025]



1 A BILL to amend and reenact §3-10-3, §3-10-4, §3-10-5, §3-10-6, §3-10-7, and §3-10-8 of the  
2 Code of West Virginia, 1931, as amended, and to amend and reenact §50-1-6 of said  
3 Code; all relating to requirements for filling vacancies in certain elected federal, state, and  
4 county offices; prohibiting the appointment of an individual to fill a vacant office if that  
5 person has not been a member of his or her registered political party for at least one year  
6 prior to the occurrence of the vacancy; authorizing the Governor to appoint an acting  
7 official to perform the duties of a constitutional officer until the office is filled by  
8 appointment; relating to filling vacancies in the office of magistrate; providing that  
9 vacancies in the office of magistrate with an unexpired term of more than two years are  
10 filled by subsequent nonpartisan judicial election held concurrently with the primary or  
11 general election, whichever occurs first; excluding vacancies in the office of magistrate  
12 from certain other provisions relating to process for filling vacancies; authorizing  
13 prospective vacancy due to upcoming resignation or retirement of a magistrate to be filled  
14 by circuit judge or chief circuit judge; and requiring generally that partisan office  
15 appointments be made from the political party with which the individual vacating the office  
16 was affiliated at the time of the previous election for that office.

*Be it enacted by the Legislature of West Virginia:*

## **CHAPTER 3. ELECTIONS.**

### **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:~~ of the previous election: *Provided*, That any such person appointed by the  
15 Governor must have been affiliated with that political party for at least one year prior to the  
16 occurrence of the vacancy: *Provided, however*, That the Governor may appoint a temporary acting  
17 official in the event of a vacancy in the offices of Secretary of State, Auditor, Treasurer, Attorney  
18 General, or Commissioner of Agriculture to carry out the duties of said office until such vacancy is  
19 filled by appointment pursuant to this subsection: *Provided further*, That the provisions of this  
20 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.

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

30 (c) Any vacancy in the office of magistrate is appointed according to the provisions of §50-  
31 1-6 of this code, and, if the unexpired term be for a period of more than two years, by a subsequent

32 nonpartisan judicial election held concurrently with the primary or general election, whichever  
33 occurs first, to fill the remainder of the term, ~~as required by §3-10-3(d) of this code.~~

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

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

43 (3) When the vacancy occurs after the close of candidate filing for the primary election and  
44 not later than 84 days before the general election, and if the unexpired term be for a period of  
45 greater than three years, the vacancy shall be filled by election in a nonpartisan judicial election  
46 held concurrently with the general election, and the appointment shall continue until a successor is  
47 elected and certified: Provided, That the provisions of this subsection (d) do not apply to a vacancy  
48 in the office of magistrate.

49 (e) When an election to fill a vacancy is required to be held at the general election,  
50 according to the provisions of §3-10-3(d) of this code, a special candidate filing period shall be  
51 established. Candidates seeking election to any unexpired term for Justice of the Supreme Court  
52 of Appeals, judge of the Intermediate Court of Appeals, judge of a circuit court, judge of the family  
53 court, or magistrate shall file a certificate of announcement and pay the filing fee no earlier than the  
54 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

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

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

(b) If there is a vacancy in the representation from this state in the Senate of the United States Congress, the vacancy shall be filled by the Governor of the state by appointment. The Governor shall make the appointment from a list of three legally qualified persons submitted by the party executive committee of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time ~~the vacancy occurred~~ of the previous election for that office. The list of qualified persons to fill the vacancy shall be submitted to the Governor within 15 days after the vacancy occurs, and the Governor shall duly make his or her appointment to fill the vacancy from the list of legally qualified persons within five days after the list is received. If the list is not submitted to the Governor within the 15-day period, the Governor shall appoint, within five days thereafter, a legally qualified person of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time ~~the vacancy occurred~~ of the previous election for that office: *Provided*, That any such person appointed by the Governor must have been affiliated with that political party for at least one year prior to the occurrence of the vacancy.

Furthermore,

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

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

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

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

(b) In the case of a member of the House of Delegates, if the member was elected to a multi-county delegate district, the list shall be submitted by the party executive committee of the delegate district in which the vacating member resided at the time of his or her election or appointment. If the member was elected to a delegate district situated entirely within a single county, the list shall be submitted by the county executive committee in which the vacating

member resided at the time of his or her election or appointment. The appointment to fill a vacancy in the House of Delegates is for the unexpired term.

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

(d) No person may be appointed to fill a vacancy in the office of state senator or as a member of the House of Delegates who has not for one year preceding the appointment been a resident within the district he or she will represent.

**§3-10-6. Vacancy in office of circuit court clerk.**

(a) When a vacancy occurs in the office of clerk of the circuit court, the circuit court by a majority vote of the judges shall fill the same within thirty days of the vacancy, for the period required by §3-10-1 of this code, by appointment of a person of the same political party as the officeholder vacating the office for the period required by section one of this article with which the person holding the office immediately preceding the vacancy was affiliated at the time of the previous election for that office: *Provided*, That any such person appointed by the circuit court must have been affiliated with that political party for at least one year prior to the occurrence of the vacancy.

(b) Notwithstanding any code provision to the contrary, the chief judge may appoint a temporary successor to the office of clerk of the circuit court until the requirements of this section have been met. The temporary successor may serve no more than 30 days from the date of the vacancy.



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

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

**§3-10-7. Vacancies in offices of county commissioner or councilor and clerk of county commission or council.**

(a) Any vacancy in the office of county commissioner or councilor, or clerk of county commission or council shall be filled by appointment by the county commission or council. The appointee for the office of county commissioner or councilor must reside in a magisterial district in which no other member of the county commission or council resides. The appointee for either clerk of the county commission or council, or the office of county commissioner or councilor, must be a person of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time of the previous election for that office: *Provided*, That at the time of appointment, the appointee must have been a member of that political party for at least one year prior to the occurrence of the vacancy.

(b) If a quorum of the county commission or council fails to make an appointment within 30 days, the county executive committee of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time of the previous election for that office, shall submit a list of three legally qualified persons to fill the vacancy for a county having three elected commissioners, or shall submit a list of five legally qualified persons to fill the vacancy for a county having five elected commissioners or councilors. Within 15 days from the

date on which the list is received, the county commission or council shall appoint a candidate from the list to fill the vacancy.

(1) In a county having three elected county commissioners, if the county commission or council fails to make the appointment within the specified time, then the county commissioner or councilor with the longest tenure shall eliminate one name from the submitted list, followed by the county commissioner or councilor with the second-longest tenure then eliminating one name from the submitted list. The name remaining after those two names have been eliminated shall be deemed to be appointed by the county commission to fill the vacancy.

(2) In a county having five elected county commissioners or councilors, if the county commission or council fails to make the appointment within the specified time, then the county commissioners or councilors shall strike one name from the list, in turn, in the following order of precedence:

(A)(i) First, all county commissioners or councilors affiliated with the same political party from which the vacating commissioner, councilor, or clerk was elected shall strike a name from the list before those not affiliated with the vacating commissioner, councilor, or clerk's party;

(ii) Second, of the county commissioners or councilors affiliated with the same party from which the vacating commissioner, councilor, or clerk was elected, the commissioner or councilor with the longest tenure shall strike before those with lesser tenure; and

(iii) Third, if there be county commissioners or councilors with equal tenure affiliated with the same party from which the vacating commissioner, councilor, or clerk was elected, a drawing by lot shall be conducted within the timeframe required to fill the vacancy to determine which of them shall eliminate one name from the submitted list before the other commissioner or councilor with equal tenure.

(B) After the county commissioners or councilors affiliated with the same party from which the vacating commissioner, councilor, or clerk was elected make their strikes, the remaining county commissioners or councilors shall follow the same procedure in the same order of

precedence provided herein. The name remaining after four names have been eliminated shall be deemed to be appointed by the county commission or council.

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

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

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

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

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

commission or council of the county, shall be placed upon the ballot to be voted at the next general election.

(h) If the election for an unexpired term is held at the same time as the election for a full term for county commissioner or councilor, the full term shall be counted first and the unexpired term shall be counted second. If the candidate with the highest number of votes for the unexpired term resides in the same magisterial district as the candidate with the highest number of votes for the full term, the candidate for the full term shall be seated. The candidate with the next highest number of votes for the unexpired term residing in a different magisterial district shall be seated for the unexpired term.

**§3-10-8. Vacancies in offices of prosecuting attorney, sheriff, assessor, and surveyor.**

(a) Any vacancy occurring in the office of prosecuting attorney, sheriff, assessor, or county surveyor shall be filled by the county commission within 30 days of the vacancy by appointment of a person of the same political party ~~as the officeholder vacating the office~~ with which the person holding the office immediately preceding the vacancy was affiliated at the time of the previous election for the office. The appointee must have been a member of that political party for at least one year prior to the occurrence of the vacancy. The appointed person shall hold the office for the period stated by section one of this article.

(b) Notwithstanding any code provision to the contrary, a county commission may appoint a temporary successor to the office of prosecuting attorney, sheriff, assessor or county surveyor until the requirements of this section have been met. The temporary successor may serve no more than 30 days from the date of the vacancy.

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

(d) Section one of this article shall be followed with respect to any election needed to fill a 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 §3-5-19 of this code, as in the case of filling vacancies in  
19 nominations, and the names of the persons, so nominated and certified to the clerk of the county  
20 commission of the county, shall be placed upon the ballot to be voted at the next general election.

## CHAPTER 50. MAGISTRATE COURTS.

### ARTICLE 1. COURTS AND OFFICERS.

#### §50-1-6. Vacancy in office of magistrate.

1 (a) Subject to the provisions of ~~section one, article ten, chapter three~~ §3-10-1 of this code,  
2 when a vacancy occurs in the office of magistrate, or upon the formal announcement by letter to  
3 the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit  
4 court, of an upcoming resignation or retirement that will result in the occurrence of a vacancy in the  
5 office of magistrate, including resignation of a magistrate-elect following the election of such  
6 magistrate-elect but prior to the magistrate-elect taking office in the term for which he or she has  
7 most recently been elected, such judge or chief judge shall fill the same by appointment.

8 (b) At a nonpartisan judicial election in which a magistrate is elected for an unexpired term,  
9 the circuit judge, or the chief judge thereof if there is more than one judge of the circuit court, shall  
10 cause a notice of such election to be published prior to such election as a Class II-0 legal  
11 advertisement in compliance with the provisions of ~~article three, chapter fifty-nine~~ §59-3-1 *et seq.*  
12 of this code, and the publication area for such publication shall be the county involved.