

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

Senate Bill 542

BY SENATOR BARRETT

[Originating in the Committee on Government

Organization; reported February 7, 2024]

1 A BILL to amend and reenact §3-10-7 of the Code of West Virginia, 1931, as amended, relating
2 to amending procedure for filling vacancy in offices of county clerk, or county
3 commissioner, or council person for commissions or councils having more than three
4 commissioners or council persons.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. FILLING VACANCIES.

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

1 (a) Any vacancy in the office of county commissioner, or council person, or clerk of county
2 commission, or council shall be filled by appointment by the county commission or council. The
3 appointee for the office of county commissioner or council person must reside in a magisterial
4 district in which no other member of the county commission or council resides. The appointee for
5 either clerk of the county commission, or council, or the office of county commissioner, or council
6 person must be a person 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: *Provided,*
8 That at the time of appointment, the appointee must have been a member of that political party
9 for at least 60 days prior to the occurrence of the vacancy.

10 (b) If a quorum of the county commission or council fails to make an appointment for the
11 clerk of the county commission or council within 30 days, the county executive committee of the
12 same political party with which the person holding the office preceding the vacancy was affiliated
13 at the time the vacancy occurred shall submit a list of three legally qualified persons to fill the
14 vacancy for a county having three elected commissioners, or shall submit a list of five legally
15 qualified persons to fill the vacancy for a county having five elected commissioners or council
16 persons. Within 15 days from the date on which the list is received, the county commission or
17 council shall appoint a candidate from the list to fill the vacancy.

18 (c) If In a county having three elected county commissioners, if the county commission or
19 council fails to make the appointment for the clerk of the county commission or council within the
20 specified time, then the county commissioner or council person with the longest tenure shall
21 eliminate one name from the submitted list, followed by the county commissioner or council
22 person with the second-longest tenure then eliminating one name from the submitted list. The
23 name remaining after those two names have been eliminated shall be deemed to be appointed
24 by the county commission to fill the vacancy.

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

29 (1) First, all county commissioners or council persons affiliated with the same political party
30 as the vacating clerk shall strike a name from the list before those not affiliated with the vacating
31 clerk's party;

32 (2) Second, of the county commissioners or council persons affiliated with the same party,
33 the commissioner or council person with the longest tenure shall strike before those with lesser
34 tenure; and

35 (3) Third, of the county commissioners or council persons with equal tenure, a drawing by
36 lot shall be conducted within the timeframe required to fill the vacancy to determine which of them
37 shall eliminate one name from the submitted list before the other commissioner or council person
38 with equal tenure.

39 (4) After the county commissioners or council persons affiliated with the same political
40 party as the vacating clerk make their strikes, the remaining county commissioners or council
41 persons shall follow the same procedure and order of precedence provided herein. The name
42 remaining after four names have been eliminated shall be deemed to be appointed by the county
43 commission or council.

44 (e) If a quorum of the county commission or council fails to make an appointment for the
45 office of county commissioner or council person within 30 days, the county executive committee
46 of the same political party with which the person holding the office preceding the vacancy was
47 affiliated at the time the vacancy occurred shall submit a list of three legally qualified persons to
48 fill the vacancy for a county having three elected commissioners or council persons, or shall
49 submit a list of five legally qualified persons to fill the vacancy for a county having five elected
50 commissioners or council persons. Within 15 days from the date on which the list is received, the
51 county commission or council shall appoint a candidate from the list to fill the vacancy.

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

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

62 (1) First, all county commissioners or council persons affiliated with the same political party
63 as the vacating member shall strike a name from the list before those not affiliated with the
64 vacating member's party;

65 (2) Second, of the county commissioners or council persons affiliated with the same party,
66 the commissioner or council person with the longest tenure shall strike before those with lesser
67 tenure; and

68 (3) Third, of the county commissioners or council persons with equal tenure, a drawing by
69 lot shall be conducted within the timeframe required to fill the vacancy to determine which of them

70 shall eliminate one name from the submitted list before the other commissioner or council person
71 with equal tenure.

72 (4) After the county commissioners or council persons affiliated with the same political
73 party as the vacating member make their strikes, the remaining county commissioners or council
74 persons shall follow the same procedure and order of precedence provided herein. The name
75 remaining after four names have been eliminated shall be deemed to be appointed by the county
76 commission or council.

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

87 ~~(d)~~ (i) An appointment made pursuant to this section is for the period of time provided in
88 §3-10-1 of this code.

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

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

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

103 ~~(h)~~ (m) If the election for an unexpired term is held at the same time as the election for a
104 full term for county commissioner or council person, the full term shall be counted first and the
105 unexpired term shall be counted second. If the candidate with the highest number of votes for the
106 unexpired term resides in the same magisterial district as the candidate with the highest number
107 of votes for the full term, the candidate for the full term shall be seated. The candidate with the
108 next highest number of votes for the unexpired term residing in a different magisterial district shall
109 be seated for the unexpired term.