

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 2397**

4
5 (By Delegates Manchin and Lawrence)

6 (Originating in the Committee on the Judiciary)

7
8 [March 8, 2013]

9
10 A BILL to amend and reenact §3-10-7 and §3-10-8 of the Code of West
11 Virginia, 1931, as amended, all relating to authorizing a
12 county commission to temporarily fill vacancies in the offices
13 of the clerk of the county commission, prosecuting attorney,
14 sheriff, assessor and county surveyor; restricting persons
15 appointed as temporary successors to serving no more than
16 sixty days as a temporary successor; and permitting a
17 temporary successor to be appointed to fill the unexpired
18 term.

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

20 That §3-10-7 and §3-10-8 of the Code of West Virginia, 1931,
21 as amended, be amended and reenacted, all to read as follows:

22 **ARTICLE 10. FILLING VACANCIES.**

23 **§3-10-7. Vacancies in offices of county commissioner and clerk of**
24 **county commission.**

25 (a) Any vacancy in the office of county commissioner or clerk

1 of county commission shall be filled by the county commission of
2 the county, unless the number of vacancies in a county commission
3 deprive that body of a quorum, in which case the Governor of the
4 state shall fill any vacancy in the county commission necessary to
5 create a quorum thereof. Persons appointed shall be of the same
6 political party as the officeholder vacating the office and shall
7 continue in office until the next general election is certified, or
8 until the completion of the term if the term ends on December 31,
9 following the next general election: *Provided, That ~~in the event~~*
10 if a quorum of the county commission cannot agree upon a person to
11 fill a vacancy in the office of county commissioner within thirty
12 days of the date the vacancy first occurred, the county executive
13 committee of the vacating county commissioner's political party
14 shall select and name a person to fill the vacancy from the
15 membership of the vacating county commissioner's political party.

16 (b) Notice of the election shall be given by order of the
17 county commission and published as prescribed in section six of
18 this article.

19 (c) Nomination of candidates to fill the office for an
20 unexpired term in the office of county commissioner or clerk of the
21 county commission shall be made in the manner prescribed for making
22 nominations to fill a vacancy in the office of the clerk of the
23 circuit court.

24 (d) ~~In the event that~~ If the election for an unexpired term is
25 held at the same time as the election for a full term for county
26 commissioner, the full term shall be counted first and the

1 unexpired term shall be counted second. If the candidate with the
2 highest number of votes for the unexpired term resides in the same
3 magisterial district as the candidate with the highest number of
4 votes for the full term, the candidate for the full term shall be
5 seated. The candidate with the next highest number of votes for
6 the unexpired term residing in a different magisterial district
7 shall be seated for the unexpired term.

8 (e) A county commission may appoint a temporary successor to
9 the office of clerk of the county commission until the requirements
10 of this section have been met. The temporary successor shall be of
11 the same political party as the officeholder vacating the office
12 and may serve no more than sixty days from the date of the vacancy:
13 Provided, That nothing in this subsection shall preclude the county
14 commission from appointing a temporary successor to fill a vacancy
15 in the office of clerk of the county commission pursuant to
16 subsection (a).

17 **§3-10-8. Vacancies in offices of prosecuting attorney, sheriff,**
18 **assessor and surveyor.**

19 (a) Any vacancy occurring in the office of prosecuting
20 attorney, sheriff, assessor or county surveyor shall be filled by
21 the county commission by appointment of a person of the same
22 political party as the officeholder vacating the office. The
23 appointed person shall hold the office until the next general
24 election is certified, or until the completion of the term if the
25 term ends on December 31, following the next general election.
26 Notice of an election to fill a vacancy in any of the offices named

1 in this section shall be given by the county commission, or by the
2 president thereof in vacation, and published or posted in the
3 manner prescribed in section six of this article. Nomination of
4 candidates to fill any vacancy shall be made in the manner
5 prescribed in section six of this article for nominating candidates
6 to fill a vacancy in the office of the clerk of the circuit court.

7 (b) A county commission may appoint a temporary successor in
8 the office of prosecuting attorney, sheriff, assessor or county
9 surveyor until the requirements of this section have been met. The
10 temporary successor shall be of the same political party as the
11 officeholder vacating the office and may serve no more than sixty
12 days from the date of the vacancy: *Provided*, That nothing in this
13 subsection shall preclude the county commission from appointing a
14 temporary successor to fill a vacancy in the offices of prosecuting
15 attorney, sheriff, assessor or county surveyor pursuant to
16 subsection (a).