

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 3004**

BY DELEGATES HILL, MARTIN, ARVON, HOWELL,  
KESSINGER, STATLER, FOSTER, N., SHOTT, O'NEAL,  
MCGEEHAN AND ESPINOSA

[Introduced March 14, 2017; 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 filling vacancies in offices of state officials, United States Senators, Justices, judges,  
 3 and magistrates; and requiring vacancy to be filled with individual of the same political  
 4 party with which the individual vacating the office was affiliated at the time of his or her  
 5 election to the vacated office.

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

1 That §3-10-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted  
 2 to read as follows:

**ARTICLE 10. FILLING VACANCIES.**

**§3-10-3. Vacancies in offices of state officials, United States Senators, 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 section one of this article.

5 (b) Any vacancy occurring in the offices of Justice of the Supreme Court of Appeals, judge  
 6 of a circuit court or judge of a family court is filled by the Governor of the state by appointment  
 7 and, if the unexpired term be for a period of more than two years, by a subsequent election to fill  
 8 the remainder of the term, as required by subsection (d) of this section. If an election is required  
 9 under subsection (d) of this section, the Governor, circuit court or the chief judge thereof in  
 10 vacation, is responsible for the proper proclamation by order and notice required by section one  
 11 of this article.

12 (c) Any vacancy in the office of magistrate is appointed according to the provisions of  
 13 section six, article one, chapter fifty of this code, and, if the unexpired term be for a period of more  
 14 than two years, by a subsequent election to fill the remainder of the term, as required by  
 15 subsection (d) of this section.

16 (d) (1) When the vacancy in the office of Justice of the Supreme Court of Appeals, judge  
17 of the circuit court, judge of a family court or magistrate occurs after the eighty-fourth day before  
18 a general election, and the affected term of office ends on the thirty-first day of December following  
19 the succeeding general election two years later, the person appointed to fill the vacancy shall  
20 continue in office until the completion of the term.

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

25 (3) When the vacancy occurs after the close of candidate filing for the primary election  
26 and not later than eighty-four days before the general election, and, if the unexpired term be for  
27 a period of greater than two years, the vacancy shall be filled by election in a nonpartisan judicial  
28 election held concurrently with the general election, and the appointment shall continue until a  
29 successor is elected and certified.

30 (e) When an election to fill a vacancy is required to be held at the general election  
31 according to the provisions of subsection (d) of this section, a special candidate filing period shall  
32 be established. Candidates seeking election to any unexpired term for Justice of the Supreme  
33 Court of Appeals, judge of a circuit court, judge of the family court or magistrate shall file a  
34 certificate of announcement and pay the filing fee no earlier than the first Monday in August and  
35 no later than seventy-seven days before the general election.

36 (f) (1) A vacancy filled under this section shall be filled by a qualified individual of the same  
37 political party with which the individual vacating the office was affiliated at the time of his or her  
38 election to the vacated office.

39 (2) If the individual vacating the office was not elected to the office, the vacancy filled under  
40 this section shall be filled by a qualified individual of the same political party with which the last  
41 individual who was elected to the office was affiliated at the time of his or her election to the

42 vacated office.

NOTE: The purpose of this bill is to require vacancies in offices of state officials, United States Senators, Justices, judges, and magistrates to be filled with an individual of the same political party with which the individual vacating the office was affiliated at the time of his or her election to the vacated office.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.