

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 255

BY SENATOR BLAIR

[Introduced February 10, 2017; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §3-10-7 and §3-10-8 of the Code of West Virginia, 1931, as
2 amended, all relating to vacancies on county commissions and in offices of prosecuting
3 attorney, sheriff, assessor and surveyor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. FILLING VACANCIES.

§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 ~~the county commission of the county, unless the number of vacancies in a county~~
3 ~~commission deprive that body of a quorum, in which case the Governor of the state shall fill any~~
4 ~~vacancy in the county commission necessary to create a quorum thereof. Persons appointed shall~~
5 ~~be of the same political party as the officeholder vacating the office for the period stated by section~~
6 ~~one of this article. If a quorum of the county commission cannot agree upon a person to fill a~~
7 ~~vacancy in the office of county commissioner within thirty days of the date the vacancy first~~
8 ~~occurred, the county executive committee of the vacating county commissioner's political party~~
9 ~~shall select and name a person to fill the vacancy from the membership of the vacating county~~
10 ~~commissioner's political party. The clerk shall be appointed within thirty days of the vacancy~~
11 appointment by the county commission of the county, from a list of three legally qualified persons
12 submitted by the party executive committee of the party with which the person holding the office
13 immediately preceding the vacancy was affiliated. The list of qualified persons to fill the vacancy
14 shall be submitted to the county commission within fifteen days after the vacancy occurs and the
15 county commission shall make the appointment to fill the vacancy from the list of legally qualified
16 persons within fifteen days after the list is received. If the list is not submitted to the county
17 commission within the fifteen-day period, the county commission shall appoint within fifteen days
18 after that a legally qualified person of the same political party as the person vacating the office.

19 (b) A “qualified person” for the purposes of this section shall satisfy the following
20 qualifications:

21 (1) If the vacated office is a county commissioner, he or she shall not be a resident of the
22 same magisterial district of any other sitting commissioner;

23 (2) He or she shall have been registered as a member of the same political party as the
24 officeholder vacating the office since at least the date of the general election in which county
25 officers were elected which next preceded the vacancy; and

26 (3) All other qualifications set forth by this code.

27 (c) If the number of vacancies in a county commission deprive that body of a quorum, the
28 Governor shall fill any vacancy in the county commission necessary to create a quorum, from a
29 list of three legally qualified persons submitted by the party executive committee of the party with
30 which the person holding the office immediately preceding the vacancy was affiliated. The
31 Governor shall make the appointments in accordance with the same procedures applicable to
32 county commissions by subdivision (a) of this section.

33 (d) If a quorum of the county commission cannot agree upon a person to fill a vacancy in
34 the office of county commissioner or clerk of county commission within fifteen days of receiving
35 the list submitted by the party executive committee, the county executive committee of the
36 vacating county commissioner’s political party shall select and name a qualified person to fill the
37 vacancy.

38 (e) An appointment made pursuant to this section is for the period stated by section one
39 of this article.

40 ~~(b)~~ (f) Notwithstanding any code provision to the contrary, a county commission may
41 appoint a temporary successor to the office of clerk of the county commission until the
42 requirements of this section have been met. The temporary successor may serve no more than
43 thirty days from the date of the vacancy.

44 ~~(e)~~ (g) If an election is necessary under section one of this article, the county commission,

45 or the president thereof in vacation, shall be responsible for the proper proclamation, by order,
 46 and notice required by section one of this article.

47 ~~(d)~~ (h) Section one of this article shall be followed with respect to any election needed to
 48 fill a vacancy, except that if the vacancy occurs after the primary cutoff date but not later than the
 49 general cutoff date, candidates to fill the vacancy shall be nominated by the county executive
 50 committee in the manner provided in section nineteen, article five of this chapter, as in the case
 51 of filling vacancies in nominations, and the names of the persons, so nominated and certified to
 52 the clerk of the county commission of the county, shall be placed upon the ballot to be voted at
 53 the next general election.

54 ~~(e)~~ (i) If the election for an unexpired term is held at the same time as the election for a full
 55 term for county commissioner, the full term shall be counted first and the unexpired term shall be
 56 counted second. If the candidate with the highest number of votes for the unexpired term resides
 57 in the same magisterial district as the candidate with the highest number of votes for the full term,
 58 the candidate for the full term shall be seated. The candidate with the next highest number of
 59 votes for the unexpired term residing in a different magisterial district shall be seated for the
 60 unexpired 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. The appointed~~
 4 ~~person shall hold the office for the period stated by section one of this article~~ from a list of three
 5 legally qualified persons submitted by the party executive committee of the party with which the
 6 person holding the office immediately preceding the vacancy was affiliated. The list of qualified
 7 persons to fill the vacancy shall be submitted to the county commission within fifteen days after
 8 the vacancy occurs and the county commission shall make the appointment to fill the vacancy
 9 from the list of legally qualified persons within fifteen days after the list is received. If the list is not

10 submitted to the county commission within the fifteen-day period, the county commission shall
11 appoint within fifteen days after that a legally qualified person of the same political party as the
12 person vacating the office. The appointed person shall hold the office for the period stated by
13 section one of this article.

14 (b) A qualified person for the purposes of this section shall have been registered as a
15 member of the same political party as the officeholder vacating the office since at least the date
16 of the general election in which county officers were elected which next preceded the vacancy.

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

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

24 ~~(d)~~ (e) Section one of this article shall be followed with respect to any election needed to
25 fill a vacancy, except that if the vacancy occurs after the primary cutoff date but not later than the
26 general cutoff date, candidates to fill the vacancy shall be nominated by the county executive
27 committee in the manner provided in section nineteen, article five of this chapter, as in the case
28 of filling vacancies in nominations, and the names of the persons, so nominated and certified to
29 the clerk of the county commission of the county, shall be placed upon the ballot to be voted at
30 the next general election.

NOTE: The purpose of this bill is to reform the procedures for the appointment of county officials in the event of a vacancy.

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