

WEST VIRGINIA LEGISLATURE
2018 SECOND EXTRAORDINARY SESSION

Introduced
House Bill 201

BY DELEGATE FLUHARTY, BREWER, E. EVANS, FERRO,
HARTMAN, IAQUINTA, LONGSTRETH, LYNCH, R. MILLER,
SPONAUGLE, AND WILLIAMS

[Introduced August 13, 2018; Referred to the
Committee on]

1 A BILL to amend and reenact §3-10-3 of the Code of West Virginia, 1931, as amended, relating
2 to providing for a special election for State Supreme Court Justice when a vacancy has
3 occurred as the result of impeachment; and providing that any member of the legislature
4 is prohibited from running for vacated seat.

Be it enacted by the Legislature of West Virginia:

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. The list of
8 qualified persons to fill the vacancy shall be submitted to the Governor within 15 days after the
9 vacancy occurs, and the Governor shall duly make his or her appointment to fill the vacancy from
10 the list of legally qualified persons within five days after the list is received. If the list is not
11 submitted to the Governor within the 15-day period, the Governor shall appoint, within five days
12 thereafter, a legally qualified person of the same political party with which the person holding the
13 office immediately preceding the vacancy was affiliated at the time the vacancy occurred:
14 Provided, That the provisions of this subsection do not apply to §3-10-3(b), §3-10-3(c), §3-10-
15 3(d), and §3-10-3(e) of this code.

16 (b) Any vacancy occurring in the offices of Justice of the Supreme Court of Appeals, judge
17 of a circuit court, or judge of a family court is filled by the Governor of the state by appointment
18 and, if the unexpired term be for a period of more than two years, by a subsequent election to fill
19 the remainder of the term, as required by §3-10-3(d) of this code. If an election is required under

20 §3-10-3(d) of this code, the Governor, circuit court, or the chief judge thereof in vacation, is
21 responsible for the proper proclamation by order and notice required by §3-10-1 of this code.

22 (c) Any vacancy in the office of magistrate is appointed according to the provisions of §50-
23 1-6 of this code, and, if the unexpired term be for a period of more than two years, by a subsequent
24 election to fill the remainder of the term, as required by §3-10-3(d) of this code.

25 (d) (1) Except as provided for pursuant to §3-10-3 (f), when the vacancy in the office of
26 Justice of the Supreme Court of Appeals, judge of the circuit court, judge of a family court, or
27 magistrate occurs after the 84th day before a general election, and the affected term of office
28 ends on December 31 following the succeeding general election two years later, the person
29 appointed to fill the vacancy shall continue in office until the completion of the term.

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

34 (3) When the vacancy occurs after the close of candidate filing for the primary election
35 and not later than 84 days before the general election, and if the unexpired term be for a period
36 of greater than two years, the vacancy shall be filled by election in a nonpartisan judicial election
37 held concurrently with the general election, and the appointment shall continue until a successor
38 is elected and certified.

39 (e) When an election to fill a vacancy is required to be held at the general election,
40 according to the provisions of §3-10-3(d) or §3-10-3(f) of this code, a special candidate filing
41 period shall be established. Candidates seeking election to any unexpired term for Justice of the
42 Supreme Court of Appeals, judge of a circuit court, judge of the family court, or magistrate shall
43 file a certificate of announcement and pay the filing fee no earlier than the first Monday in August
44 and no later than 77 days before the general election.

45 (f) Notwithstanding any code provisions to the contrary, when a Justice of the Supreme
46 Court of Appeals has been removed from office by impeachment pursuant to Section 9, Article IV
47 of the State Constitution, if the period of the remaining term is longer than two years, a special
48 election shall be initiated by the Governor pursuant to the applicable provisions of §3-10-1 of this
49 code, relating to initiating and conducting a special election. Any special election so conducted
50 shall be held no longer than 120 days from the date of the Justice's removal and shall be paid for
51 pursuant to the provisions of §3-10-9 of this code. To avoid any appearance of impropriety,
52 members of the House of Delegates and State Senate holding office during the impeachment
53 proceeding are ineligible to run for or be appointed to any office wherein the vacancy was created
54 by such impeachment proceeding.

NOTE: The purpose of this bill is to require a special state-wide election for a vacancy in the office of State Supreme Court Justice, when the vacancy has occurred as the result of impeachment.

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