

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 3004

BY DELEGATES HILL, MARTIN, HOWELL, KESSINGER, STATLER,

SHOTT, MCGEEHAN AND ESPINOSA

[Passed March 1, 2018; in effect ninety days from passage.]

1 AN ACT to amend and reenact §3-10-3, §3-10-4, §3-10-5, and §3-10-7 of the Code of West
2 Virginia, 1931, as amended, all relating generally to filling vacancies in certain offices;
3 providing that the Governor shall appoint a person to fill a vacancy in an elected state
4 office, choosing from a list of candidates required to be submitted by the executive
5 committee of the political party with which the individual vacating the office was affiliated
6 at the time the vacancy occurred; establishing a deadline for a party executive committee
7 to submit names of qualified persons for vacancies in elected state offices; providing that
8 appointments to elected state offices be made within a time certain; providing that the
9 Governor shall appoint a person, of the same political party with which the individual
10 vacating the office was affiliated at the time the vacancy occurred, to fill a vacancy in an
11 elected state office when a party executive committee fails to submit names of qualified
12 persons; providing that the Governor shall appoint a person, from a list of qualified persons
13 required to be submitted by the executive committee of the political party with which the
14 individual vacating the office was affiliated at the time the vacancy occurred, to fill a
15 vacancy in the office of United States Senator; establishing a deadline for an executive
16 committee to submit names of qualified persons for vacancies in the office of United States
17 Senator; providing that appointment to fill vacancies in office of United States Senator be
18 made within a time certain; providing for Governor to appoint a person, of the same
19 political party with which the individual vacating the office was affiliated at the time the
20 vacancy occurred, to fill a vacancy in United States Senate when the party executive
21 committee fails to submit qualified names of qualified persons; providing for the Governor
22 to appoint a person, of the same political party with which the person holding the office
23 immediately preceding the vacancy was affiliated, to fill a vacancy in the state Legislature;
24 providing for a county commission to select a person to fill a vacancy in the office of county
25 commissioner or county clerk, who, for at least sixty days prior to the time a vacancy
26 occurred, was affiliated with the same political party with which the individual vacating the

27 office was affiliated at the time the vacancy occurred; providing a process by which the
28 two most senior county commissioners may select a person, from a list of candidates
29 required to be submitted by the executive committee of the political party with which the
30 individual vacating the office was affiliated at the time the vacancy occurred, to fill a
31 vacancy in the county commission when the commission fails to make a selection;
32 providing for the Governor to appoint a person, from a list of candidates required to be
33 submitted by the executive committee of the political party with which the individual
34 vacating the office was affiliated at the time the vacancy occurred, to fill a vacancy in office
35 of county commissioner if vacancies in the commission prevent a quorum; establishing a
36 deadline for an executive committee to submit names of qualified persons for vacancies
37 in a county commission; clarifying that appointments to county commissions to fill
38 vacancies are for time periods specified by statute; and making technical corrections.

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) When the vacancy in the office of Justice of the Supreme Court of Appeals, judge
26 of the circuit court, judge of a family court, or magistrate occurs after the 84th day before a general
27 election, and the affected term of office ends on December 31 following the succeeding general
28 election two years later, the person appointed to fill the vacancy shall continue in office until the
29 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) of this code, a special candidate filing period shall be
41 established. Candidates seeking election to any unexpired term for Justice of the Supreme Court
42 of Appeals, judge of a circuit court, judge of the family court, or magistrate shall file a certificate
43 of announcement and pay the filing fee no earlier than the first Monday in August and no later
44 than 77 days before the general election.

§3-10-4. Vacancies in representation in United States Congress.

1 (a) (1) If there is a vacancy in the representation from this state in the House of
2 Representatives in the Congress of the United States, the Governor shall, within five days after
3 the fact comes to his or her knowledge, issue a proclamation setting dates for a special general
4 election that is not less than 84 nor more than 120 days from the date of the vacancy and requiring
5 nomination of candidates as provided in §3-10-4(a)(2) of this code: *Provided*, That no such
6 proclamation may be made nor may a special election be held if the vacancy occurs after the 84th
7 day prior to the regularly scheduled general election for a new full term of the office. The election
8 shall follow the requirements of §3-10-1 of this code that are not in conflict with this section.

9 (2) The party executive committees for the congressional district for which there is a
10 vacancy shall each, within 30 days of the Governor's proclamation, nominate a candidate to stand
11 at the general election required by §3-10-4(a)(1) of this code.

12 (b) If there is a vacancy in the representation from this state in the Senate of the United
13 States Congress, the vacancy shall be filled by the Governor of the state by appointment. The
14 Governor shall make the appointment from a list of three legally qualified persons submitted by
15 the party executive committee of the same political party with which the person holding the office
16 immediately preceding the vacancy was affiliated at the time the vacancy occurred. The list of
17 qualified persons to fill the vacancy shall be submitted to the Governor within 15 days after the

18 vacancy occurs, and the Governor shall duly make his or her appointment to fill the vacancy from
19 the list of legally qualified persons within five days after the list is received. If the list is not
20 submitted to the Governor within the 15-day period, the Governor shall appoint, within five days
21 thereafter, a legally qualified person of the same political party with which the person holding the
22 office immediately preceding the vacancy was affiliated at the time the vacancy occurred.

23 Furthermore,

24 (1) If the vacancy occurs on or before the primary cutoff date, then an election shall be
25 held pursuant to §3-10-1 of this code; or

26 (2) If the vacancy occurs after the primary cutoff date, but on or before the general cutoff
27 date, then the Governor shall issue a proclamation providing for: (A) A special filing period; (B) a
28 special primary election to be held in conjunction with the upcoming general election; and (C) a
29 special general election to be held not less than 84 nor more than 120 days following the date of
30 the special primary election. Each election shall follow the requirements of §3-10-1 of this code
31 that are not in conflict with this section.

§3-10-5. Vacancies in state Legislature.

1 (a) Any vacancy in the office of state senator or member of the House of Delegates shall
2 be filled by appointment by the Governor, from a list of three legally qualified persons submitted
3 by the party executive committee of the same political party with which the person holding the
4 office immediately preceding the vacancy was affiliated at the time the vacancy occurred. The list
5 of qualified persons to fill the vacancy shall be submitted to the Governor within 15 days after the
6 vacancy occurs and the Governor shall duly make his or her appointment to fill the vacancy from
7 the list of legally qualified persons within five days after the list is received. If the list is not
8 submitted to the Governor within the 15-day period, the Governor shall appoint within five days
9 thereafter a legally qualified person of the same political party with which the person holding the
10 office immediately preceding the vacancy was affiliated at the time the vacancy occurred.

11 (b) In the case of a member of the House of Delegates, the list shall be submitted by the
12 party executive committee of the delegate district in which the vacating member resided at the
13 time of his or her election or appointment. The appointment to fill a vacancy in the House of
14 Delegates is for the unexpired term.

15 (c) In the case of a state senator, the list shall be submitted by the party executive
16 committee of the state senatorial district in which the vacating senator resided at the time of his
17 or her election or appointment. The appointment to fill a vacancy in the state Senate is for the
18 unexpired term, unless §3-10-1 of this code requires a subsequent election to fill the remainder
19 of the term, which shall follow the procedure set forth in said section.

§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 appointment by the county commission. The appointee must be a person of the same
3 political party with which the person holding the office immediately preceding the vacancy was
4 affiliated at the time the vacancy occurred: *Provided*, That at the time of appointment, the
5 appointee must have been a member of that political party for at least 60 days prior to the
6 occurrence of the vacancy.

7 (b) If a quorum of the county commission fails to make an appointment within 30 days, the
8 county executive committee of the same political party with which the person holding the office
9 preceding the vacancy was affiliated at the time the vacancy occurred, shall submit a list of three
10 legally qualified persons to fill the vacancy. Within 15 days from the date on which the list is
11 received, the county commission shall appoint a candidate from the list to fill the vacancy. If the
12 county commission fails to make the appointment within the specified time, then the county
13 commissioner with the longest tenure shall eliminate one name from the submitted list, followed
14 by the county commissioner with the second-longest tenure then eliminating one name from the
15 submitted list. The name remaining after those two names have been eliminated shall be deemed
16 to be appointed by the county commission to fill the vacancy.

17 (c) If the number of vacancies in a county commission deprives that body of a quorum,
18 the Governor shall make an appointment to fill any vacancy in the county commission necessary
19 to create a quorum, from a list of three legally qualified persons submitted by the party executive
20 committee of the same political party with which the person holding the office immediately
21 preceding the vacancy was affiliated at the time the vacancy occurred. The Governor shall make
22 any appointments necessary, beginning with the vacancy first created, to create a quorum in
23 accordance with the same procedures applicable to county commissions under §3-10-7(a) of this
24 code. Once a quorum of the county commission is reestablished by gubernatorial appointment,
25 the authority to fill the remaining vacancies shall be filled in the manner prescribed in §3-10-7(a)
26 of this code.

27 (d) An appointment made pursuant to this section is for the period of time provided in §3-
28 10-1 of this code.

29 (e) Notwithstanding any code provision to the contrary, a county commission may appoint
30 a temporary successor to the office of clerk of the county commission until the requirements of
31 this section have been met. The temporary successor may serve no more than 30 days from the
32 date of the vacancy.

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

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

42 (h) If the election for an unexpired term is held at the same time as the election for a full
43 term for county commissioner, the full term shall be counted first and the unexpired term shall be
44 counted second. If the candidate with the highest number of votes for the unexpired term resides
45 in the same magisterial district as the candidate with the highest number of votes for the full term,
46 the candidate for the full term shall be seated. The candidate with the next highest number of
47 votes for the unexpired term residing in a different magisterial district shall be seated for the
48 unexpired term.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2018.

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Governor