

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Committee Substitute

for

House Bill 3004

BY DELEGATES HILL, MARTIN, ARVON, HOWELL,
KESSINGER, STATLER, SHOTT, MCGEEHAN AND ESPINOSA

[Introduced March 14, 2017; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §3-10-3, §3-10-5 and §3-10-7 of the Code of West Virginia, 1931,
2 as amended, relating to filling vacancies in offices of state officials, Justices, judges, and
3 magistrates; and requiring vacancy in the partisan offices of that section to be filled with
4 individual of the same political party with which the individual vacating the office was
5 affiliated at the time the vacancy occurred; setting requirements for party executive
6 committees to submit qualified names for vacancies in said offices; providing for
7 circumstances where party executive committees do not so act; requiring vacancies
8 created in state Legislature to be filled by the Governor with a person from the same
9 political party with which the person holding the office immediately preceding the vacancy
10 was affiliated at the time the vacancy occurred; requiring vacancies in offices of county
11 commissioner or clerk of the county commission to be filled with person of the same
12 political party with which the person holding the office immediately preceding the vacancy
13 was affiliated at the time the vacancy occurred; providing process for vacancy on county
14 commission or clerk of the county commission to be filled by the county commission itself;
15 providing process for vacancy on county commission to be filled if county commission fails
16 to fill the vacancy by itself; requiring the Governor fill vacancies on county commission
17 when no quorum on county commission with a person from the same political party with
18 which the person holding the office immediately preceding the vacancy was affiliated at
19 the time the vacancy occurred; setting requirements for party executive committees to
20 submit qualified names for county commission vacancies that must be filled by the
21 Governor; ensuring county commission appointments are subject to time periods set forth
22 in section one of the article; 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, ~~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. The Governor
5 shall 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 fifteen days after
9 the vacancy occurs and the Governor shall duly make his or her appointment to fill the vacancy
10 from 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 fifteen-day period, the Governor shall appoint within five
12 days thereafter a legally qualified person of the same political party with which the person holding
13 the office immediately preceding the vacancy was affiliated at the time the vacancy occurred.

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

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

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 eighty-fourth day before

27 a general election, and the affected term of office ends on the thirty-first day of December following
28 the succeeding general election two years later, the person appointed to fill the vacancy shall
29 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 eighty-four days before the general election and, if the unexpired term be for a
36 period of greater than two years, the vacancy shall be filled by election in a nonpartisan judicial
37 election held concurrently with the general election and the appointment shall continue until a
38 successor 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 subsection (d) of this section, a special candidate filing period shall
41 be established. Candidates seeking election to any unexpired term for Justice of the Supreme
42 Court of Appeals, judge of a circuit court, judge of the family court or magistrate shall file a
43 certificate of announcement and pay the filing fee no earlier than the first Monday in August and
44 no later than seventy-seven days before the general election.

§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 fifteen days after
6 the vacancy occurs and the Governor shall duly make his or her appointment to fill the vacancy
7 from 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 fifteen-day period, the Governor shall appoint within five
9 days thereafter a legally qualified person of the same political party as ~~the person vacating the~~
10 office with which the person holding the office immediately preceding the vacancy was affiliated
11 at the time the vacancy occurred.

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

16 (c) In the case of a state senator, the list shall be submitted by the party executive
17 committee of the state senatorial district in which the vacating senator resided at the time of his
18 or her election or appointment. The appointment to fill a vacancy in the state Senate is for the
19 unexpired term, unless section one of this article requires a subsequent election to fill the
20 remainder 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 ~~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~~
5 ~~shall be of the same political party as the officeholder vacating the office for the period stated by~~
6 ~~section one of this article. If a quorum of the county commission cannot agree upon a person to~~
7 ~~fill a 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 by a person of the same political party with
12 which the person holding the office immediately preceding the vacancy was affiliated at the time

13 the vacancy occurred: *Provided*, that any such person appointed must have been a member of
14 that political party for at least sixty days prior to the occurrence of the vacancy.

15 (b) If a quorum of the county commission fails to appoint within thirty days, then the county
16 executive committee of the same political party with which the person holding the office
17 immediately preceding the vacancy was affiliated at the time the vacancy occurred shall submit a
18 list of three legally qualified persons to fill the vacancy. Upon receipt, the county commission shall
19 make the appointment to fill the vacancy from the submitted list within fifteen days after the list is
20 received. If the county commission fails to make the appointment within the specified time, then
21 the county commissioner with the longest tenure shall eliminate one name from the submitted list,
22 followed by the county commissioner with the second-longest tenure then eliminating one name
23 from the submitted list. The name remaining after those names have been eliminated shall be
24 deemed to be appointed by the county commission to fill the vacancy.

25 (c) If the number of vacancies in a county commission deprive that body of a quorum, the
26 Governor shall fill any vacancy in the county commission necessary to create a quorum, from a
27 list of three legally qualified persons submitted by the party executive committee of the same
28 political party with which the person holding the office immediately preceding the vacancy was
29 affiliated at the time the vacancy occurred. The Governor shall make any appointments
30 necessary, beginning with the vacancy first created, to create a quorum in accordance with the
31 same procedures applicable to county commissions by subsection (a) of this section. Once a
32 quorum of the county commission is reestablished by gubernatorial appointment, the authority to
33 fill the remaining vacancies shall be filled in the manner prescribed in said section.

34 (d) An appointment made pursuant to this section is for the period stated by section one
35 of this article.

36 ~~(b)~~ (e) Notwithstanding any code provision to the contrary, a county commission may
37 appoint a temporary successor to the office of clerk of the county commission until the

38 requirements of this section have been met. The temporary successor may serve no more than
39 thirty days from the date of the vacancy.

40 ~~(e)~~ (f) If an election is necessary under section one of this article, the county commission,
41 or the president thereof in vacation, shall be responsible for the proper proclamation, by order,
42 and notice required by section one of this article.

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

50 ~~(e)~~ (h) If the election for an unexpired term is held at the same time as the election for a
51 full term for county commissioner, the full term shall be counted first and the unexpired term shall
52 be counted second. If the candidate with the highest number of votes for the unexpired term
53 resides in the same magisterial district as the candidate with the highest number of votes for the
54 full term, the candidate for the full term shall be seated. The candidate with the next highest
55 number of votes for the unexpired term residing in a different magisterial district shall be seated
56 for the unexpired term.

NOTE: The purpose of this bill is to require vacancies in offices of state officials 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. The bill additionally provides similar language relating to legislators and county commissioners and revamps the procedure for selecting persons to fill vacancies on a county commission.

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