

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **House Bill 4144**

BY DELEGATE HIGGINBOTHAM, SUMMERS AND HANSHAW

(MR. SPEAKER)

[Introduced January 13, 2020; Referred to the  
Committee on the Judiciary]

1 A BILL to amend and reenact §3-10-7 of the Code of West Virginia, 1931, as amended, relating  
 2 to requiring vacancies in the office of county commissioner be made from a list of three  
 3 legally qualified persons submitted by the appropriate party's county executive committee.

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

**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 appointment by the county commission.

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

8 (2) The appointee for a county commissioner must be made from a list of three legally  
 9 qualified persons submitted by the party's county executive committee of the same political party  
 10 with which the person holding the office immediately preceding the vacancy was affiliated at the  
 11 time the vacancy occurred. The list of qualified persons to fill the vacancy shall be submitted to  
 12 the county commission within 15 days after the vacancy occurs and the county commission shall  
 13 make its appointment to fill the vacancy from the list of legally qualified persons within 30 days  
 14 after the list is received. If the county commission fails to make the appointment within the  
 15 specified time, then the county commissioner with the longest tenure shall eliminate one name  
 16 from the submitted list, followed by the county commissioner with the second-longest tenure then  
 17 eliminating one name from the submitted list. The name remaining after those two names have  
 18 been eliminated is the individual who fills the vacancy.

19 (b) If a quorum of the county commission fails to make an appointment in a vacancy in the  
 20 office of the clerk of county commission within 30 days, the county executive committee of the

21 same political party with which the person holding the office preceding the vacancy was affiliated  
22 at the time the vacancy occurred, shall submit a list of three legally qualified persons to fill the  
23 vacancy. Within 15 days from the date on which the list is received, the county commission shall  
24 appoint a candidate from the list to fill the vacancy. If the county commission fails to make the  
25 appointment within the specified time, then the county commissioner with the longest tenure shall  
26 eliminate one name from the submitted list, followed by the county commissioner with the second-  
27 longest tenure then eliminating one name from the submitted list. The name remaining after those  
28 two names have been eliminated ~~shall be deemed to be appointed by the county commission to~~  
29 fill is the individual who fills the vacancy.

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

40 (d) An appointment made pursuant to this section is for the period of time provided in §3-  
41 10-1 of this code.

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

46 (f) If an election is necessary under §3-10-1 of this code, the county commission, or the

47 president thereof in vacation, shall be responsible for the proper proclamation, by order, and  
48 notice required by §3-10-1 of this code.

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

55 (h) If the election for an unexpired term is held at the same time as the election for a full  
56 term for county commissioner, the full term shall be counted first and the unexpired term shall be  
57 counted second. If the candidate with the highest number of votes for the unexpired term resides  
58 in the same magisterial district as the candidate with the highest number of votes for the full term,  
59 the candidate for the full term shall be seated. The candidate with the next highest number of  
60 votes for the unexpired term residing in a different magisterial district shall be seated for the  
61 unexpired term.

NOTE: The purpose of this bill is to require vacancies in the office of county commissioner be made from a list of three legally qualified persons submitted by the appropriate party's county executive committee.

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