WEST VIRGINIA LEGISLATURE

**FISCAL NOTE**

2023 REGULAR SESSION

Introduced

House Bill 2792

By Delegates Maynor, Kump, Kirby, Brooks, and Willis

[Introduced January 18, 2023; Referred to the Committee on the Judiciary]

A BILL to amend and reenact §3-5-6, §3-5-6a, §3-5-6b, §3-5-6c, §3-5-6d, and §3-5-6e of the Code of West Virginia, 1931, as amended; and to amend and reenact §3-10-3 of said code, all relating to providing for a runoff election in certain nonpartisan elections where no candidate receives more than 50 percent of the votes cast in an election.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-6. Election of county board of education members at primary elections.

(a) An election for the purpose of electing members of the county board of education shall be held on the same date as the primary elections, as provided by law, but upon a nonpartisan ballot printed for the purpose.

(b) No more than two members may be elected or serve from the same magisterial district. The eligibility of candidates to be declared elected for full terms of four years and for unexpired terms of two or more years based on this limitation shall be determined at the time of certification of the election.

(1) Such eligibility shall be based on the magisterial district residence of incumbent members of the board whose terms will continue beyond July 1, following the primary election.

(A) No person is eligible to be declared elected who resides in a district which has two such incumbent members.

(B) No more than one candidate is eligible to be declared elected who resides in a district which has one such incumbent member.

(C) A person with the highest number of votes may be declared elected to an unexpired term notwithstanding the fact that the person's magisterial district has two representatives serving on the board at the time of the election: *Provided,* That the number of representatives from that magisterial district will be less than two as of July 1, following the primary.

(2) The person declared elected to an unexpired term shall assume the duties of a member of the board of Education according to the provisions of section two, article five, chapter eighteen of this code.

(c) In each nonpartisan election for board of education the board of canvassers shall:

(1) Declare and certify the election of the required number of eligible candidates receiving the highest numbers of votes to fill any full terms;

(2) Declare and certify the election of the required number of eligible candidates receiving the next highest numbers of votes, after all full terms are filled, to fill any unexpired terms.

(d) It is the intent of this statute that any person declared to be elected under the preceding provisions of this section shall take office as a duly elected member or members, even though the person may not have received a majority or plurality of all votes cast at such election.

(e) In an election in which there are two or more candidates from a magisterial district from which only one candidate may be elected, if no candidate receives more than 50 percent of the ballots cast in the election for that magisterial district seat, a runoff election for that seat shall be conducted concurrently with the general election. The ballot for the runoff election shall include a provision for selection only between those two candidates who received the highest and second highest number of ballots cast for that seat.

~~(e)~~ (f) In case of a tie vote for a seat on a county board of education in any primary election, the provisions of section twelve, article six of this chapter shall control in breaking the tie.

§3-5-6a. Election of justices of the Supreme Court of Appeals.

(a) An election for the purpose of electing a justice or justices of the Supreme Court of Appeals shall be held on the same date as the primary election, as provided by law, upon a nonpartisan ballot by division printed for this purpose. For election purposes, in each election at which shall be elected more than one justice of the Supreme Court of Appeals, the election shall be by numbered division corresponding to the number of justices being elected. Each justice shall be elected at large from the entire state.

(b) In each nonpartisan election by division for a justice of the Supreme Court of Appeals, the candidates for election in each numbered division shall be tallied separately, and the board of canvassers shall declare and certify the election of the eligible candidate receiving the highest numbers of votes cast within a numbered division to fill any full terms: *Provided,* That in the event of a runoff election pursuant to subsection (c) of this section, the board of canvassers may not certify the election results until declaring the results of the runoff election.

(c) Beginning with the nonpartisan judicial election held in 2024, and in every judicial election thereafter, if no candidate in an election for a justice of the Supreme Court of Appeals receives more than 50 percent of the votes, a runoff election shall be conducted concurrently with the next succeeding general election. The ballot for the runoff election shall include a provision for selection only between those two candidates who received the highest and second highest number of ballots cast in the nonpartisan election held concurrently with the primary election.

~~(c)~~ (d) In case of a tie vote under this section, §3-6-12 of this code controls in breaking the tie vote.

§3-5-6b. Election of circuit judges.

(a) An election for the purpose of electing a circuit court judge or judges shall be held on the same date as the primary election in their respective circuits, as provided by law, upon a nonpartisan ballot by division printed for this purpose.

(b) In each nonpartisan election by division for a circuit court judge, the candidates for election in each numbered division shall be tallied separately, and the board of canvassers shall declare and certify the election of the eligible candidate receiving the highest numbers of votes cast within a numbered division to fill any full terms: *Provided,* That in the event of a runoff election pursuant to subsection (c) of this section, the board of canvassers may not certify the election results until declaring the results of the runoff election.

(c) Beginning with the nonpartisan judicial election held in 2024, and in every judicial election thereafter, if no candidate in an election for a circuit court judge receives more than 50 percent of the votes, a runoff election shall be conducted concurrently with the next succeeding general election. The ballot for the runoff election shall include a provision for selection only between those two candidates who received the highest and second highest number of ballots cast in the nonpartisan election held concurrently with the primary election.

~~(c)~~ (d) In case of a tie vote under this section, §3-6-12 of this code controls in breaking the tie vote.

§3-5-6c. Election of family court judges.

(a) An election for the purpose of electing a family court judge or judges shall be held on the same date as the primary election in their respective circuits, as provided by law, upon a nonpartisan ballot by division printed for this purpose.

(b) In each nonpartisan election by division for a family court judge, the candidates for election in each numbered division shall be tallied separately, and the board of canvassers shall declare and certify the election of the eligible candidate receiving the highest numbers of votes cast within a numbered division to fill any full terms: *Provided,* That in the event of a runoff election pursuant to subsection (c) of this section, the board of canvassers may not certify the election results until declaring the results of the runoff election.

(c) Beginning with the nonpartisan judicial election held in 2024, and in every judicial election thereafter, if no candidate in an election for a family court judge receives more than 50 percent of the votes, a runoff election shall be conducted concurrently with the next succeeding general election. The ballot for the runoff election shall include a provision for selection only between those two candidates who received the highest and second highest number of ballots cast in the nonpartisan election held concurrently with the primary election.

~~(c)~~ (d) In case of a tie vote under this section, §3-6-12 of this code controls in breaking the tie vote.

§3-5-6d. Election of magistrates.

(a) An election for the purpose of electing a magistrate or magistrates by division shall be held on the same date as the primary election in their respective circuits, as provided by law, upon a nonpartisan ballot by division printed for this purpose.

(b) In each nonpartisan election by division for a magistrate, the candidates for election in each numbered division shall be tallied separately, and the board of canvassers shall declare and certify the election of the eligible candidate receiving the highest numbers of votes cast within a numbered division to fill any full terms: *Provided,* That in the event of a runoff election pursuant to subsection (c) of this section, the board of canvassers may not certify the election results until declaring the results of the runoff election.

(c) Beginning with the nonpartisan judicial election held in 2024, and in every judicial election thereafter, if no candidate in an election for a magistrate receives more than 50 percent of the votes, a runoff election shall be conducted concurrently with the next succeeding general election. The ballot for the runoff election shall include a provision for selection only between those two candidates who received the highest and second highest number of ballots cast in the nonpartisan election held concurrently with the primary election.

~~(c)~~ (d) In case of a tie vote under this section, §3-6-12 of this code controls in breaking the tie vote.

§3-5-6e. Election of judges of the Intermediate Court of Appeals.

(a) An election for the purpose of electing a Judge or Judges of the Intermediate Court of Appeals shall be held on the same date as the primary election, as provided by law, upon a nonpartisan ballot by division printed for this purpose.

(b) Beginning with the nonpartisan judicial election held in 2024, and in every judicial election thereafter, if no candidate in an election for a judge of the Intermediate Court of Appeals receives more than 50 percent of the votes, a runoff election shall be conducted concurrently with the next succeeding general election. The ballot for the runoff election shall include a provision for selection only between those two candidates who received the highest and second highest number of ballots cast in the nonpartisan election held concurrently with the primary election.

~~(b)~~ (c) In case of a tie vote under this section, §3-6-12 of this code controls in breaking the tie vote.

ARTICLE 10. FILLING VACANCIES.

§3-10-3. Vacancies in offices of state officials, justices, judges, and magistrates.

(a) Any vacancy occurring in the offices of Secretary of State, Auditor, Treasurer, Attorney General, Commissioner of Agriculture, or in any office created or made elective to be filled by the voters of the entire state, is filled by the Governor of the state by appointment and subsequent election to fill the remainder of the term, if required by §3-10-1 of this code. The Governor shall make the appointment from a list of three legally qualified persons submitted by the party executive committee of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred. The list of qualified persons to fill the vacancy shall be submitted to the Governor within 15 days after the vacancy occurs, and the Governor shall duly make his or her appointment to fill the vacancy from the list of legally qualified persons within five days after the list is received. If the list is not submitted to the Governor within the 15-day period, the Governor shall appoint, within five days thereafter, a legally qualified person of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred: *Provided*, That the provisions of this subsection do not apply to §3-10-3(b), §3-10-3(c), §3-10-3(d), and §3-10-3(e) of this code.

(b) Any vacancy occurring in the offices of Justice of the Supreme Court of Appeals, judge of the Intermediate Court of Appeals, judge of a circuit court, or judge of a family court is filled by the Governor of the state by appointment and, if the unexpired term be for a period of more than three years, by a subsequent election to fill the remainder of the term, as required by §3-10-3(d) of this code. If an election is required under §3-10-3(d) of this code, the Governor, circuit court, or the chief judge thereof in vacation, is responsible for the proper proclamation by order and notice required by §3-10-1 of this code. The amendments to this subsection enacted during the regular session of the Legislature in the year 2022 shall be applicable to any vacancy existing at the date of passage of such amendments.

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

(d) (1) When the vacancy in the office of Justice of the Supreme Court of Appeals, judge of the Intermediate Court of Appeals, judge of the circuit court, judge of a family court, or magistrate occurs after the 84th day before a general election, and the affected term of office ends on December 31 following the succeeding general election two years later, the person appointed to fill the vacancy shall continue in office until the completion of the term.

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

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

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

(f) If no candidate in an election to fill a vacancy pursuant to this section receives more than 50 percent of the votes, a runoff election shall be conducted concurrently with the next succeeding election. The ballot for the runoff election shall include a provision for selection only between those two candidates who received the highest and second highest number of ballots cast in the nonpartisan election held to fill the vacancy.

NOTE: The purpose of this bill is to provide for a runoff election in certain nonpartisan elections where no candidate receives more than 50 percent of the votes cast in an election.

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