

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2792

FISCAL
NOTE

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

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

1 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
 2 of West Virginia, 1931, as amended; and to amend and reenact §3-10-3 of said code, all
 3 relating to providing for a runoff election in certain nonpartisan elections where no
 4 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.

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

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

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

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

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

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

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

20 of this code.

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

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

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

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

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

35 ~~(e)~~ (f) In case of a tie vote for a seat on a county board of education in any primary election,
36 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.

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

7 (b) In each nonpartisan election by division for a justice of the Supreme Court of Appeals,
8 the candidates for election in each numbered division shall be tallied separately, and the board of

9 canvassers shall declare and certify the election of the eligible candidate receiving the highest
10 numbers of votes cast within a numbered division to fill any full terms: Provided, That in the event
11 of a runoff election pursuant to subsection (c) of this section, the board of canvassers may not
12 certify the election results until declaring the results of the runoff election.

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

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

§3-5-6b. Election of circuit judges.

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

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

10 (c) Beginning with the nonpartisan judicial election held in 2024, and in every judicial
11 election thereafter, if no candidate in an election for a circuit court judge receives more than 50
12 percent of the votes, a runoff election shall be conducted concurrently with the next succeeding
13 general election. The ballot for the runoff election shall include a provision for selection only

14 between those two candidates who received the highest and second highest number of ballots
15 cast in the nonpartisan election held concurrently with the primary election.

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

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

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

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

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

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

§3-5-6d. Election of magistrates.

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

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

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

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

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

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

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

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

25 (c) Any vacancy in the office of magistrate is appointed according to the provisions of §50-
26 1-6 of this code, and, if the unexpired term be for a period of more than two years, by a subsequent
27 election to fill the remainder of the term, as required by §3-10-3(d) of this code.

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

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

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

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

48 (f) If no candidate in an election to fill a vacancy pursuant to this section receives more than
49 50 percent of the votes, a runoff election shall be conducted concurrently with the next succeeding
50 election. The ballot for the runoff election shall include a provision for selection only between those

- 51 two candidates who received the highest and second highest number of ballots cast in the
52 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.