

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2856

By Delegates Holstein, Steele, Keaton, Forsht, Smith,
and Maynor

[Introduced January 20, 2023; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §3-5-11 and §3-5-19 of the Code of West Virginia, 1931, as
2 amended, relating to filling vacancies on the ballot for election to a public office; and
3 prohibiting the filling of a vacancy for a candidate to an elected office after the time is
4 closed for announcing as a candidate caused by failure of any person of a party to file for
5 the elected office.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-11. Withdrawals; filling vacancies in candidacy; publication.

1 (a) A candidate who has filed a certificate of announcement and wishes to withdraw and
2 decline to stand as a candidate for the office shall file a signed and notarized statement of
3 withdrawal on a form provided by the Secretary of State with the same officer with whom the
4 certificate of announcement was filed. If the notarized statement of withdrawal is received by the
5 proper officer by the deadlines set forth in subsection (b) of this section, the candidate's withdrawal
6 is final and his or her name shall not be certified as a candidate nor printed on any ballot. If a
7 candidate files a notarized statement of withdrawal after the deadlines set forth in subsection (b) of
8 this section, the candidate shall not be withdrawn and the candidate's name shall remain on the
9 ballot.

10 (b) Deadlines for withdrawing as a candidate:

11 (1) For primary or special primary elections or nonpartisan elections held in conjunction
12 with a primary election: The notarized statement of withdrawal must be received by the same
13 officer with whom the certificate of announcement was filed by the close of business of that officer
14 not later than the third Tuesday following the close of the candidate filing period.

15 (2) For general or special general elections or nonpartisan elections held in conjunction
16 with a general election: The notarized statement of withdrawal must be received by the same
17 officer with whom the certificate of announcement was filed by the close of business of that officer
18 not later than eighty-four days before the general election.

19 (c) Upon request of the candidate's family, the board of ballot commissioners may remove
20 the name of a candidate who dies before the ballots are printed. If a candidate dies after the
21 ballots are printed but before the election, the clerk of the county commission shall give a written
22 notice which shall be posted with the sample ballot at each precinct with the county to the following
23 effect: "To the voter: (name) of (residence), a candidate for (office) is deceased."

24 (d) If after the time is closed for announcing as a candidate there is a vacancy on the ballot
25 caused by failure of any person of a party to file for each available seat of each available office, the
26 ~~executive committee of the party for the political division within which such candidate was to be~~
27 ~~voted for, or its chair if the committee fails to act, may fill the vacancy and certify the candidate~~
28 ~~named to the appropriate filing officer: *Provided*, That for a delegate district or senatorial district~~
29 ~~situated entirely within a single county, the county executive committee, or its chairperson if the~~
30 ~~committee fails to act, may fill the vacancy and certify the candidate named to the appropriate filing~~
31 ~~officer. Certification of the appointment by the executive committee or its chair, the candidate's~~
32 ~~certificate of announcement, and the filing fee must be received by the appropriate filing officer as~~
33 ~~follows: For an appointment by an executive committee, no later than the second Friday following~~
34 ~~the close of filing, for an appointment by its chair, no later than the third Tuesday following the~~
35 ~~close of filing: *Provided, however*, That any candidate appointed to an intra-county delegate or~~
36 ~~senatorial district by a county executive committee for that district pursuant to the process and by~~
37 ~~the deadline provided in this subsection shall not be refused certification for placement on the~~
38 ~~2022 primary election ballot for that reason. A candidate appointed to fill a vacancy on the ballot~~
39 ~~under this subsection shall have his or her name printed on the primary ballot for that party. No~~
40 ~~vacancy shall be filled after the date of the primary election, except as provided in §3-5-19 of this~~
41 ~~code the vacancy may not be filled.~~

42 (e) The amendments to this section enacted by the Legislature during the 2022 Regular
43 Session shall be retrospective to January 30, 2022.

§3-5-19. Vacancies in nominations; how filled; fees.

1 (a) If any vacancy occurs in the party nomination of candidates for office nominated at the
2 primary election or by appointment under the provisions of section eleven of this article, the
3 vacancies may be filled, subject to the following requirements and limitations:

4 (1) Each appointment made under this section shall be made by the executive committee
5 of the political party for the political division in which the vacancy occurs: *Provided*, That if the
6 executive committee holds a duly called meeting in accordance with §3-1-9 of this code but fails to
7 make an appointment or fails to certify the appointment of the candidate to the proper filing officer
8 within the time required, the chairperson of the executive committee may make the appointment
9 not later than two days following the deadline for the executive committee: *Provided however*, That
10 for a delegate district or senatorial district situated entirely within a single county, the county
11 executive committee, or its chairperson if the committee fails to act, may fill the vacancy and certify
12 the candidate named to the appropriate filing officer.

13 (2) Each appointment made under this section is complete only upon the receipt by the
14 proper filing officer of the certificate of appointment by the executive committee, or its chairperson,
15 as the case may be, the certificate of announcement of the candidate as prescribed in section
16 seven of this article and, except for appointments made under subdivision (4), (5), (6) or (7) of this
17 subsection, the filing fee or waiver of fee as prescribed in section eight or eight-a of this article.
18 The proper filing officer is the officer with whom the original certificate of announcement is
19 regularly filed for that office.

20 (3) If a vacancy in nomination will be caused by the failure of a candidate to file for an office,
21 ~~or~~ the vacancy may not be filled. If a vacancy in nomination will be caused by withdrawal of a
22 candidate no later than the third Tuesday following the close of candidate filing pursuant to the
23 provisions of section eleven of this article, a nominee may be appointed by the executive
24 committee and certified to the proper filing officer no later than 30 days after the last day to file a
25 certificate of announcement pursuant to section seven of this article: *Provided*, That in no case
26 shall any such vacancy be filled after the date of the primary election.

27 (4) If a vacancy in nomination is caused by the disqualification of a candidate and the
28 vacancy occurs not later than 84 days before the general election, a nominee may be appointed by
29 the executive committee and certified to the proper filing officer not later than 78 days before the
30 general election. A candidate may be determined disqualified if a written request is made by an
31 individual with information to show a candidate's ineligibility to the State Election Commission no
32 later than 84 days before the general election explaining grounds why a candidate is not eligible to
33 be placed on the general election ballot or not eligible to hold the office, if elected. The State
34 Election Commission shall review the reasons for the request. If the commission finds the
35 circumstances warrant the disqualification of the candidate, the commission shall authorize
36 appointment by the executive committee to fill the vacancy. Upon receipt of the authorization, a
37 nominee may be appointed by the executive committee and certified to the proper filing officer no
38 later than 78 days before the general election.

39 (5) If a vacancy in nomination is caused by the incapacity of the candidate and if the
40 vacancy occurs not later than 84 days before the general election, a nominee may be appointed by
41 the executive committee and certified to the proper filing officer no later than 78 days before the
42 general election.

43 (6) If a vacancy in nomination is caused by the timely filing of a notarized statement of
44 withdrawal, according to section eleven of this article, of a candidate whose name would otherwise
45 appear on the general election ballot, a replacement on the general election ballot may be
46 appointed by the executive committee and certified to the proper filing officer no later than 78 days
47 before the general election.

48 (7) If a vacancy in nomination is caused by the death of the candidate occurring no later
49 than 25 days before the general election, a nominee may be appointed by the executive
50 committee and certified to the proper filing officer no later than 21 days following the date of death
51 or no later than 22 days before the general election, whichever date occurs first.

52 (b) Except as otherwise provided in §3-10-1 *et seq.* of this code, if any vacancy occurs in a

53 partisan office or position other than political party executive committee, which creates an
54 unexpired term for a position which would not otherwise appear on the ballot in the general
55 election, and the vacancy occurs after the close of candidate filing for the primary election but not
56 later than 84 days before the general election, a nominee of each political party may be appointed
57 by the executive committee and certified to the proper filing officer no later than 78 days before the
58 general election. Appointments shall be filed in the same manner as provided in subsection (a) of
59 this section, except that the filing fee shall be paid before the appointment is complete.

60 (c) When a vacancy occurs in the board of education after the close of candidate filing for
61 the primary election but not later than 84 days before the general election, a special candidate
62 filing period shall be established. Candidates seeking election to any unexpired term for board of
63 education shall file a certificate of announcement and pay the filing fee to the clerk of the county
64 commission no earlier than the first Monday in August and no later than 77 days before the general
65 election.

66 (d) The amendments to this section enacted by the Legislature during the 2022 Regular
67 Session shall be retrospective to January 30, 2022.

NOTE: The purpose of this bill is to prohibit the filling of a vacancy for a candidate to an
elected office after the time is closed for announcing as a candidate caused by failure of any
person of a party to file for the elected office.

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