WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 257

By Senators Oliverio and Woelfel

[Introduced January 17, 2023; referred  
to the Committee on Government Organization; and then to the Committee on the Judiciary]

A BILL to amend and reenact §3-1-17 of the Code of West Virginia, 1931, as amended; to amend and reenact §3-4A-11a of said code; to amend and reenact §3-5-13 and §3-5-13a of said code; and to amend and reenact §3-10-6, §3-10-7, and §3-10-8 of said code, all relating to providing for the nonpartisan election for the offices of county sheriff, prosecuting attorney, assessor, clerk of the circuit court, clerk of the county commission, and surveyor of lands concurrently with primary elections; providing for the arrangement, form, and contents of ballots; and providing for procedures for the filling of vacancies.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

**§3-1-17. Election of circuit judges; county and district officers; magistrates**.

(a) There shall be elected, at the time of the primary election to be held in 2016, and every eighth year thereafter, one judge of the circuit court of every judicial circuit entitled to one judge, and one judge for each numbered division of the judicial circuit in those judicial circuits entitled to two or more circuit judges; and at the time of the primary election to be held in 2016, and in every fourth year thereafter, the number of magistrates prescribed by law for the county. Beginning with the election held in the year 2016, an election for the purpose of electing judges of the circuit court, or an election for the purpose of electing magistrates, shall be upon a nonpartisan ballot printed for the purpose.

(b) There shall be elected, at the general election to be held in 1992, and every fourth year thereafter, a sheriff, prosecuting attorney surveyor of lands, and the number of assessors prescribed by law for the county; and at the general election to be held in 1990, and every second year thereafter, a commissioner of the county commission for each county. and at the general election to be held in 1992, and every sixth year thereafter, a clerk of the county commission and a clerk of the circuit court for each county.

(c) Effective with the primary election of 2016, all elections for judge of the circuit courts in the respective circuits and magistrates in each county will be elected on a nonpartisan basis and by division as set forth more fully in in §3-5-1 et seq. of this code.

(d) Effective with the primary election of 2024 and every fourth year thereafter, all elections for sheriff, prosecuting attorney, surveyor of lands and the number of assessors prescribed in each county will be elected on a nonpartisan basis as set forth more fully in §3-5-1 *et seq*. of this code.

(e) Effective with the primary election of 2028 and every sixth year thereafter, all elections for clerk of the county commission and clerk of the circuit court in each county will be elected on a nonpartisan basis as set forth more fully in §3-5-1 *et seq*. of this code.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

**§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.**

(a) The board of ballot commissioners in counties using ballots upon which votes may be recorded by means of marking with electronically sensible ink or pencil and which marks are tabulated electronically shall cause the ballots to be printed or displayed upon the screens of the electronic voting system for use in elections.

(b) (1) For the primary election, the heading of the ballot, the type faces, the names and arrangement of offices and the printing of names and arrangement of candidates within each office are to conform as nearly as possible to §3-5-13 and §3-5-13a of this code.

(2) For the general election, the heading of the ballot, the type faces, the names and arrangement of offices and the printing of names and the arrangement of candidates within each office are to conform as nearly as possible to §3-6-2 of this code.

(3) Effective with the primary election held in 2016 and thereafter, the following nonpartisan elections are to be separated from the partisan ballot and separately headed in display type with a title clearly identifying the purpose of the election and constituting a separate ballot wherever a separate ballot is required under this chapter:

(A) Nonpartisan elections for judicial offices, by division, of:

(i) Justice of the Supreme Court of Appeals;

(ii) Judge of the Intermediate Court of Appeals;

(iii) Judge of the circuit court;

(iv) Family court judge; and

(v) Magistrate;

(B) Nonpartisan elections for Board of Education; and

(C) Any question to be voted upon.

(4) Effective with the primary election held in 2024 and thereafter, nonpartisan elections for sheriff, prosecuting attorney, assessor, clerk of the county commission, clerk of the circuit court and surveyor of lands in each county are to be separated from the partisan ballot and separately headed in display type with a title clearly identifying the purpose of the election and constituting a separate ballot.

~~(4)~~ (5) Beginning in the primary election to be held in the year 2020 and in each election thereafter, the nonpartisan judicial elections described in subparagraphs (i) through (iv), paragraph (A), subdivision (3), of this subsection shall appear immediately after the state ticket and shall immediately precede the county ticket, in the same manner prescribed in §3-5-13a of this code.

~~(5)~~ (6) Both the face and the reverse side of the ballot may contain the names of candidates only if means to ensure the secrecy of the ballot are provided and lines for the signatures of the poll clerks on the ballot are printed on a portion of the ballot which is deposited in the ballot box and upon which marks do not interfere with the proper tabulation of the votes.

The arrangement of candidates within each office is to be determined in the same manner as for other electronic voting systems, as prescribed in this chapter. On the general election ballot for all offices, and on the primary election ballot only for those offices to be filled by election, except delegate to national convention, lines for entering write-in votes are to be provided below the names of candidates for each office, and the number of lines provided for any office shall equal the number of persons to be elected, or three, whichever is fewer. The words "WRITE-IN, IF ANY" are to be printed, where applicable, directly under each line for write-ins. The lines are to be opposite a position to mark the vote.

(c) Except for electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary election ballots are to be printed in the color of ink specified by the Secretary of State for the various political parties, and the general election ballot is to be printed in black ink. For electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary ballots and the general election ballot are to be printed in black ink. All ballots are to be printed, where applicable, on white paper suitable for automatic tabulation and are to contain a perforated stub at the top or bottom of the ballot, which is to be numbered sequentially in the same manner as provided in §3-5-13 of this code, or are to be displayed on the screens of the electronic voting system upon which votes are recorded by means of a stylus or touch. The number of ballots printed and the packaging of ballots for the precincts are to conform to the requirements for paper ballots provided in this chapter.

(d) In addition to the official ballots, the ballot commissioners shall provide all other materials and equipment necessary to the proper conduct of the election.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

**§3-5-13. Form and contents of ballots.**

The following provisions apply to the form and contents of election ballots:

(1) The face of every primary election ballot shall conform as nearly as practicable to that used at the general election.

(2) The heading of every ballot is to be printed in display type. The heading is to contain a ballot title, the name of the county, the state, the words "Primary Election" and the month, day and year of the election. The ballot title of the political party ballots is to contain the words "Official Ballot of the (Name) Party" and the official symbol of the political party may be included in the heading.

(A) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all judicial officers shall commence with the words "Nonpartisan Ballot of Election of Judicial Officers" and each such office shall be listed in the following order:

(i) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all justices of the Supreme Court of Appeals shall contain the words "Nonpartisan Ballot of Election of Justice(s) of the Supreme Court of Appeals of West Virginia". The names of the candidates for the Supreme Court of Appeals shall be printed by division without references to political party affiliation or registration.

(ii) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all judges of the Intermediate Court of Appeals shall contain the words "Nonpartisan Ballot of Election of Judge(s) of the Intermediate Court of Appeals". The names of the candidates for the Intermediate Court of Appeals shall be printed by division without references to political party affiliation or registration.

(iii) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all circuit court judges in the respective circuits shall contain the words "Nonpartisan Ballot of Election of Circuit Court Judge(s)". The names of the candidates for the respective circuit court judge office shall be printed by division without references to political party affiliation or registration.

(iv) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all family court judges in the respective circuits shall contain the words "Nonpartisan Ballot of Election of Family Court Judge(s)". The names of the candidates for the respective family court judge office shall be printed by division without references to political party affiliation or registration.

(v) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all magistrates in the respective circuits shall contain the words "Nonpartisan Ballot of Election of Magistrate(s)". The names of the candidates for the respective magistrate office shall be printed by division without references to political party affiliation or registration.

(B) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for the Board of Education is to contain the words "Nonpartisan Ballot of Election of Members of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_ County Board of Education". The districts for which fewer than two candidates may be elected and the number of available seats are to be specified and the names of the candidates are to be printed without reference to political party affiliation and without designation as to a particular term of office.

(C) (i) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot:

(I) For the office of sheriff is to contain the words "Nonpartisan Ballot of Election of Sheriff;

(II) For the office of prosecuting attorney is to contain the words "Nonpartisan Ballot of Election of Prosecuting Attorney;

(III) For the office of assessor is to contain the words "Nonpartisan Ballot of Election of Assessor;

(IV) For the office of clerk of the circuit court is to contain the words "Nonpartisan Ballot of Election of Clerk of the Circuit Court";

(V) For the office of clerk of the county commission is to contain the words "Nonpartisan Ballot of Election of Clerk of the County Commission" and.

(VI) For the office of surveyor of lands is to contain the words "Nonpartisan Ballot of Election of Surveyor of Lands;

(ii) The names of the candidates are to be printed without reference to political party affiliation or registration.

~~(C)~~ (D) Any other ballot or portion of a ballot on a question is to have a heading which clearly states the purpose of the election according to the statutory requirements for that question.

(3) (A) For paper ballots, the heading of the ballot is to be separated from the rest of the ballot by heavy lines and the offices shall be arranged in columns with the following headings, from left to right across the ballot: "National Ticket", "State Ticket", "Nonpartisan Judicial Ballot", "County Ticket", "Nonpartisan Ballot" in a nonpresidential election year, "District Ticket" or, in a

presidential election year, "National Convention". The columns are to be separated by heavy lines. Within the columns, the offices are to be arranged in the order prescribed in §3-5-13a of this code.

(B) For voting machines, electronic voting devices and any ballot tabulated by electronic means, the offices are to appear in the same sequence as prescribed in §3-5-13a of this code and under the same headings as prescribed in paragraph (A) of this subdivision. The number of pages, columns or rows, where applicable, may be modified to meet the limitations of ballot size and composition requirements subject to approval by the Secretary of State.

(C) The title of each office is to be separated from preceding offices or candidates by a line and is to be printed in bold type no smaller than eight point. Below the office is to be printed the number of the district, if any, the number of the division, if any, and the words "Vote for \_\_\_\_\_\_\_\_" with the number to be nominated or elected or "Vote For Not More Than \_\_\_\_\_\_\_\_" in multicandidate elections. For offices in which there are limitations relating to the number of candidates which may be nominated, elected or appointed to or hold office at one time from a political subdivision within the district or county in which they are elected, there is to be a clear explanation of the limitation, as prescribed by the Secretary of State, printed in bold type immediately preceding the names of the candidates for those offices on the ballot in every voting system. For counties in which the number of county commissioners exceeds three and the total number of members of the county commission is equal to the number of magisterial districts within the county, the office of county commission is to be listed separately for each district to be filled with the name of the magisterial district and the words "Vote for One" printed below the name of the office: *Provided*, That the office title and applicable instructions may span the width of the ballot so as it is centered among the respective columns.

(D) The location for indicating the voter’s choices on the ballot is to be clearly shown. For paper ballots, other than those tabulated electronically, the official primary ballot is to contain a square formed in dark lines at the left of each name on the ballot, arranged in a perpendicular column of squares before each column of names.

(4) (A) The name of every candidate certified by the Secretary of State or the board of ballot commissioners is to be printed in capital letters in no smaller than eight point type on the ballot for the appropriate precincts. Subject to the rules promulgated by the Secretary of State, the name of each candidate is to appear in the form set out by the candidate on the certificate of announcement, but in no case may the name misrepresent the identity of the candidate nor may the name include any title, position, rank, degree, or nickname implying or inferring any status as a member of a class or group or affiliation with any system of belief.

(B) The city of residence of every candidate, the state of residence of every candidate residing outside the state, the county of residence of every candidate for an office on the ballot in more than one county and the magisterial district of residence of every candidate for an office subject to magisterial district limitations are to be printed in lower case letters beneath the names of the candidates.

(C) The arrangement of names within each office must be determined as prescribed in §3-5-13a of this code.

(D) If the number of candidates for an office exceeds the space available on a column or ballot page and requires that candidates for a single office be separated, to the extent possible, the number of candidates for the office on separate columns or pages are to be nearly equal and clear instructions given the voter that the candidates for the office are continued on the following column or page.

(5) When an insufficient number of candidates has filed for a party to make the number of nominations allowed for the office or for the voters to elect sufficient members to the Board of Education or to executive committees, the vacant positions on the ballot shall be filled with the words "No Candidate Filed": *Provided*, That in paper ballot systems which allow for write-ins to be made directly on the ballot, a blank line shall be placed in any vacant position in the office of Board of Education or for election to any party executive committee. A line shall separate each candidate from every other candidate for the same office. Notwithstanding any other provision of this code, if there are multiple vacant positions on a ballot for one office, the multiple vacant positions which would otherwise be filled with the words "No Candidate Filed" may be replaced with a brief detailed description, approved by the Secretary of State, indicating that there are no candidates listed for the vacant positions.

(6) In presidential election years, the words "For election in accordance with the plan adopted by the party and filed with the Secretary of State" is to be printed following the names of all candidates for delegate to national convention.

(7) All paper ballots are to be printed in black ink on paper sufficiently thick so that the printing or marking cannot be discernible from the back: *Provided*, That no paper ballot voted pursuant to the provisions of 42 U.S.C. §1973, *et seq*., the Uniformed and Overseas Citizens Absentee Voting Act of 1986, or federal write-in absentee ballot may be rejected due to paper type, envelope type, or notarization requirement. Ballot cards and paper for printing ballots using electronically sensible ink are to meet minimum requirements of the tabulating systems and are to conform in size and weight to ensure ease in tabulation.

(8) Ballots are to contain perforated tabs at the top of the ballots and are to be printed with unique sequential numbers from one to the highest number representing the total number of ballots printed. On paper ballots, the ballot is to be bordered by a solid line at least one-sixteenth of an inch wide and the ballot is to be trimmed to within one-half inch of that border.

(9) On the back of every official ballot or ballot card the words "Official Ballot" with the name of the county and the date of the election are to be printed. Beneath the date of the election there are to be two blank lines followed by the words "Poll Clerks".

(10) The face of sample paper ballots and sample ballot labels are to be like other official ballots or ballot labels except that the word "sample" is to be prominently printed across the front of the ballot in a manner that ensures the names of candidates are not obscured and the word "sample" may be printed in red ink. No printing may be placed on the back of the sample.

The arrangement of candidates within each office is to be determined in the same manner as for other electronic voting systems, as prescribed in this chapter. On the general election ballot for all offices, and on the primary election ballot only for those offices to be filled by election, except delegate to national convention, lines for entering write-in votes are to be provided below the names of candidates for each office, and the number of lines provided for any office shall equal the number of persons to be elected, or three, whichever is fewer. The words "WRITE-IN, IF ANY" are to be printed, where applicable, directly under each line for write-ins. The lines are to be opposite a position to mark the vote.

(c) Except for electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary election ballots are to be printed in the color of ink specified by the Secretary of State for the various political parties, and the general election ballot is to be printed in black ink. For electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary ballots and the general election ballot are to be printed in black ink. All ballots are to be printed, where applicable, on white paper suitable for automatic tabulation and are to contain a perforated stub at the top or bottom of the ballot, which is to be numbered sequentially in the same manner as provided in §3-5-13 of this code, or are to be displayed on the screens of the electronic voting system upon which votes are recorded by means of a stylus or touch. The number of ballots printed and the packaging of ballots for the precincts are to conform to the requirements for paper ballots provided in this chapter.

(d) In addition to the official ballots, the ballot commissioners shall provide all other materials and equipment necessary to the proper conduct of the election.

§3-5-13a. Order of offices and candidates on the ballot; uniform drawing date.

(a) The order of offices for state and county elections on all ballots within the state shall be as prescribed herein. When the office does not appear on the ballot in an election, then it shall be omitted from the sequence. When an unexpired term for an office appears on the ballot along with a full term, the unexpired term shall appear immediately below the full term.

NATIONAL TICKET: President (and Vice President in the general election), United States Senator, member of the United States House of Representatives.

STATE TICKET: Governor, Secretary of State, Auditor, Treasurer, Commissioner of Agriculture, Attorney General, State Senator, member of the House of Delegates, any other multicounty office, state executive committee.

NONPARTISAN JUDICIAL BALLOT: Justice of the Supreme Court of Appeals, judge of the circuit court, family judge, magistrate.

COUNTY TICKET: ~~Clerk of the circuit court, county~~ County commissioner, ~~clerk of the county commission, prosecuting attorney, sheriff, assessor, surveyor~~ congressional district executive committee, senatorial district executive committee in multicounty districts, delegate district executive committee in multicounty districts.

NONPARTISAN BALLOT: Nonpartisan elections for prosecuting attorney, sheriff, assessor, clerk of the circuit court, clerk of the county commission, surveyor, board of education, conservation district supervisor, any question to be voted upon.

DISTRICT TICKET: County executive committee.

NATIONAL CONVENTION: Delegate to the national convention -- congressional district, delegate to the national convention -- at-large.

(b) Except for office divisions in which no more than one person has filed a certificate of announcement, the arrangement of names for all offices shall be determined by lot according to the following provisions:

(1) On the fourth Tuesday following the close of the candidate filing, beginning at 9:00 a.m., a drawing by lot shall be conducted in the office of the clerk of the county commission in each county. Notice of the drawing shall be given on the form for the certificate of announcement and no further notice shall be required. The clerk of the county commission shall superintend and conduct the drawing and the method of conducting the drawing shall be prescribed by the Secretary of State.

(2) Except as provided herein, the position of each candidate within each office division shall be determined by the position drawn for that candidate individually: *Provided,* That if fewer candidates file for an office division than the total number to be nominated or elected, the vacant positions shall appear following the names of all candidates for the office.

(3) Candidates for delegate to national convention who have filed a commitment to a candidate for president shall be listed alphabetically within the group of candidates committed to the same candidate for president and uncommitted candidates shall be listed alphabetically in an uncommitted category. The position of each group of committed candidates and uncommitted candidates shall be determined by lot by drawing the names of the presidential candidates and for an uncommitted category.

(4) A candidate or the candidate's representative may attend the drawings.

ARTICLE 10. FILLING VACANCIES.

§3-10-6. Vacancy in office of circuit court clerk.

(a) When a vacancy occurs in the office of clerk of the circuit court, the circuit court by a majority vote of the judges shall fill the same within 30 days of the vacancy by appointment of a person ~~of the same political party as the officeholder vacating the office~~ for the period required by §3-10-1 of this code.

(b) Notwithstanding any code provision to the contrary, the chief judge may appoint a temporary successor to the office of clerk of the circuit court until the requirements of this section have been met. The temporary successor may serve no more than thirty days from the date of the vacancy.

(c) (1) When the vacancy in the office of clerk of the circuit court 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 county election held concurrently with the general election, and the appointment shall continue until a successor is elected and certified.

(4) When an election to fill a vacancy pursuant to the provisions of this subsection is required to be held at the general election, a special candidate filing period shall be established. Candidates seeking election to any unexpired term for clerk of the county commission 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.

~~(c)~~ (d) If an election is necessary, the circuit court, or the chief judge thereof in vacation, is responsible for the proper proclamation, by order and notice required by section one of this article.

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

**§3-10-7. Vacancies in offices of county commissioner and clerk of county commission.**

(a) Any vacancy in the office of county commissioner or clerk of county commission shall be filled by appointment by the county commission. The appointee to the office of county commissioner must be a 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 at the time of appointment, the appointee must have been a member of that political party for at least 60 days prior to the occurrence of the vacancy.

(b) (1) If a quorum of the county commission fails to make an appointment for a vacancy in the office of county commission within 30 days, the county executive committee of the same political party with which the person holding the office preceding the vacancy was affiliated at the time the vacancy occurred, shall submit a list of three legally qualified persons to fill the vacancy. Within 15 days from the date on which the list is received, the county commission shall appoint a candidate from the list to fill the vacancy. If the county commission fails to make the appointment within the specified time, then the county commissioner with the longest tenure shall eliminate one name from the submitted list, followed by the county commissioner with the second‑longest tenure then eliminating one name from the submitted list. The name remaining after those two names have been eliminated shall be deemed to be appointed by the county commission to fill the vacancy.

(2) If a quorum of the county commission fails to make an appointment for a vacancy in the office of clerk of county commission within 30 days, the president of the county commission shall make the appointment.

(c) If the number of vacancies in a county commission deprives that body of a quorum, the Governor shall make an appointment to fill any vacancy in the county commission necessary to create a quorum, 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 Governor shall make any appointments necessary, beginning with the vacancy first created, to create a quorum in accordance with the same procedures applicable to county commissions under §3-10-7(a) of this code. Once a quorum of the county commission is reestablished by gubernatorial appointment, the authority to fill the remaining vacancies shall be filled in the manner prescribed in §3-10-7(a) of this code.

(d) An appointment of a county commissioner made pursuant to this section is for the period of time provided in §3‑10‑1 of this code.

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

(f) (1) When the vacancy in the office of clerk of the county commission 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 a nonpartisan county 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 county election held concurrently with the general election, and the appointment shall continue until a successor is elected and certified.

(4) When an election to fill a vacancy pursuant to the provisions of this subsection is required to be held at the general election, a special candidate filing period shall be established. Candidates seeking election to any unexpired term for clerk of the county commission 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)~~ (g) If an election for a vacancy in the office of county commissioner is necessary under §3‑10‑1 of this code, or for a vacancy in the office of clerk of county commission is necessary pursuant to subsection (f) of this section, the county commission, or the president thereof in vacation, shall be responsible for the proper proclamation, by order, and notice required by §3‑10‑1 of this code.

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

~~(h)~~ (i) If the election for an unexpired term for a vacancy for the office of county commission is held at the same time as the election for a full term for county commissioner, the full term shall be counted first and the unexpired term shall be counted second. If the candidate with the highest number of votes for the unexpired term resides in the same magisterial district as the candidate with the highest number of votes for the full term, the candidate for the full term shall be seated. The candidate with the next highest number of votes for the unexpired term residing in a different magisterial district shall be seated for the unexpired term.

**§3-10-8. Vacancies in offices of prosecuting attorney, sheriff, assessor and surveyor.**

(a) Any vacancy occurring in the office of prosecuting attorney, sheriff, assessor or county surveyor shall be filled by the county commission within 30 days of the vacancy by appointment of a person of the same political party as the officeholder vacating the office. The appointed person shall hold the office for the period stated by section one of this article.

(1) Any vacancy occurring in the office of prosecuting attorney, sheriff assessor, or surveyor of lands shall, within 30 days of the vacancy, be filled by appointment of a person by the county commission. The appointed person shall hold the office for the period stated by §3-10-1 of this code.

(b) Notwithstanding any code provision to the contrary, a county commission may appoint a temporary successor to the office of prosecuting attorney, sheriff, assessor or county surveyor until the requirements of this section have been met. The temporary successor may serve no more than 30 days from the date of the vacancy.

(c) (1) When the vacancy in the office of prosecuting attorney, sheriff, assessor, or surveyor of lands 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 a nonpartisan county 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 county election held concurrently with the general election, and the appointment shall continue until a successor is elected and certified.

(4) When an election to fill a vacancy pursuant to the provisions of this subsection is required to be held at the general election, a special candidate filing period shall be established. Candidates seeking election to any unexpired term 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.

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

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

NOTE: The purpose of this bill is to provide for the nonpartisan elections for the offices of county sheriff, prosecuting attorney, assessor, clerk of the circuit court, clerk of the county commission, and surveyor to be held concurrently with primary elections. The bill also provides for the arrangement, form and contents of ballots; and provides for procedures for the filling of vacancies.

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