

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5440

By Delegate Dillon

[Introduced February 05, 2024; 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 to
2 changing the manner of filling vacancies in county commissions.

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

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

17 ~~(c) If the number of vacancies in a county commission deprives that body of a quorum, the~~
18 ~~Governor shall make an appointment to fill any vacancy in the county commission necessary to~~
19 ~~create a quorum, from a list of three legally qualified persons submitted by the party executive~~
20 ~~committee of the same political party with which the person holding the office immediately~~
21 ~~preceding the vacancy was affiliated at the time the vacancy occurred. The Governor shall make~~

22 ~~any appointments necessary, beginning with the vacancy first created, to create a quorum in~~
23 ~~accordance with the same procedures applicable to county commissions under §3-10-7(a) of this~~
24 ~~code. Once a quorum of the county commission is reestablished by gubernatorial appointment,~~
25 ~~the authority to fill the remaining vacancies shall be filled in the manner prescribed in §3-10-7(a) of~~
26 ~~this code~~

27 (a) Any vacancy in the office of county commissioner or clerk of county commission shall
28 be filled by special election under the following conditions:

29 (1) The special election shall be organized as follows:

30 (A) The special election shall consist of 30 days for filing;

31 (B) After the 30 days for filing has elapsed, there shall be 60 days for campaigning;

32 (C) The special election shall be conducted at the county courthouse in the county in which
33 the vacancy occurs;

34 (D) Voting shall be available for five consecutive, regular business days and will be
35 conducted during normal business hours; and

36 (E) No special election shall be held if the notice of vacancy is received within 90 days of a
37 primary or general election.

38 (2) The person who is elected as a result of this special election shall complete the
39 remainder of the term of the vacant position.

40 (b) Eligibility shall be predicated on the following:

41 (1) The person must be a member of the same political party as the vacated seat during the
42 last election cycle; and

43 (2) The person must legally reside in the magisterial district.

44 (c) In cases where there is no quorum, the county executive committee may appoint a
45 temporary commissioner to fill the seat until the special election.

46 (d) An appointment made pursuant to this section is for the period of time provided in
47 §3-10-1 of this code.

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

52 (f) If an election is necessary under §3-10-1 of this code, the county commission, or the
53 president thereof in vacation, shall be responsible for the proper proclamation, by order, and notice
54 required by §3-10-1 of this code.

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

61 (h) If the election for an unexpired term is held at the same time as the election for a full
62 term for county commissioner, the full term shall be counted first and the unexpired term shall be
63 counted second. If the candidate with the highest number of votes for the unexpired term resides
64 in the same magisterial district as the candidate with the highest number of votes for the full term,
65 the candidate for the full term shall be seated. The candidate with the next highest number of votes
66 for the unexpired term residing in a different magisterial district shall be seated for the unexpired
67 term.

NOTE: The purpose of this bill is to change the manner of filling vacancies in county commissions.

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