

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 32**

BY SENATORS PALUMBO, BEACH AND MILLER

[Introduced January 13, 2016;

Referred to the Committee on the Judiciary.]



1 A BIL to amend and reenact §3-5-11, §3-5-18 and §3-5-19 of the Code of West Virginia, 1931, as  
2 amended, all relating to withdrawal of candidates for office and filling vacancies; requiring  
3 Secretary of State to create notarized statement of withdrawal form; setting certain  
4 deadlines for filing of notarized statement of withdrawal form in order to have one's name  
5 removed from ballot; setting deadline for when Secretary of State shall certify names of  
6 general election candidates to counties; prohibiting certification of name of candidate who  
7 filed a timely notarized statement of withdrawal; clarifying process for determining  
8 candidate is disqualified; removing State Election Commission from process of voluntary  
9 withdrawal of candidates; authorizing executive committee to replace candidate who files  
10 a timely notarized statement of withdrawal and whose name would have otherwise  
11 appeared on the general election ballot; and setting and adjusting certain deadlines.

*Be it enacted by the Legislature of West Virginia:*

1 That §3-5-11, §3-5-18 and §3-5-19 of the Code of West Virginia, 1931, as amended, be  
2 amended and reenacted, all to read as follows:

**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 statement of withdrawal is received not later than~~  
5 ~~the third Tuesday following the close of candidate filing, the name of a candidate who files that~~  
6 ~~statement of withdrawal may not be printed on the ballot. No candidate who files a statement of~~  
7 ~~withdrawal after that time may have his or her name removed from the ballot. If the notarized~~  
8 ~~statement of withdrawal is received by the proper officer by the deadlines set forth in subsection~~  
9 ~~(b) of this section then the candidate's withdrawal is final and his or her name shall not be certified~~  
10 ~~as a candidate nor printed on any ballot. If a candidate files a notarized statement of withdrawal~~

11 after the deadlines set forth in subsection (b) of this section, the candidate shall not be withdrawn  
12 and the candidate's name shall remain on the ballot.

13 (b) Deadlines for withdrawing as a candidate:

14 (1) For primary or special primary elections: The notarized statement of withdraw must be  
15 received by the same officer with whom the certificate of announcement was filed by the close of  
16 business of that officer not later than the third Tuesday following the close of the candidate filing  
17 period.

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

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

26 ~~(c)~~ (d) If after the time is closed for announcing as a candidate there is a vacancy on the  
27 ballot caused by failure of any person of a party to file for each available seat of each available  
28 office, the executive committee of the party for the political division within which such candidate  
29 was to be voted for, or its chair if the committee fails to act, may fill the vacancy and certify the  
30 candidate named to the appropriate filing officer. Certification of the appointment by the executive  
31 committee or its chair, the candidate's certificate of announcement and the filing fee must be  
32 received by the appropriate filing officer as follows: For an appointment by an executive  
33 committee, no later than the second Friday following the close of filing, for an appointment by its  
34 chair, no later than the third Tuesday following the close of filing. A candidate appointed to fill a  
35 vacancy on the ballot under this subsection shall have his or her name printed on the primary  
36 ballot for that party.

**§3-5-18. Disposition of certificates of results.**

1           (a) The certificates of the board of canvassers made pursuant to the preceding section  
2 shall be by them disposed of as follows: One of the certificates showing the votes received by  
3 each candidate of each party for each office to be filled by the voters of a political division greater  
4 than a county, including members of the state Executive Committee, shall be filed with the  
5 Secretary of State, and preserved in his or her office, and a copy thereof filed in the office of the  
6 clerk of the county commission of the county of such board, to be preserved by the clerk, and  
7 which shall be open to public inspection; one certificate showing the votes received by each  
8 candidate of each party for each office to be filled by the voters of the county or magisterial district  
9 within such county, including members of the county executive committee, shall be filed with the  
10 clerk of the county commission, and preserved in his or her office. If requested, the board of  
11 canvassers shall furnish to the county chairman of each political party a certificate showing the  
12 number of votes received by each of the candidates of such party in the county or any magisterial  
13 district therein.

14           (b) The Secretary of State shall certify by the seventy-first day next preceding the date of  
15 the general election, under the seal of the state, to the clerk of the county commission of each  
16 county in which a candidate is to be voted for, the name of the candidate of each political party  
17 receiving the highest number of votes in the political division in which he or she is a candidate,  
18 and who is entitled to have his or her name placed on the official ballot in the general election as  
19 the nominee of the party for such office. However, the certification shall include any candidates  
20 entitled to have their name placed on the official ballot in the general election as the nominee of  
21 the party following the filling of vacancies made pursuant to section nineteen of this article or other  
22 relevant state law. The Secretary of State shall also certify in the same manner the names of all  
23 candidates nominated by political parties or by groups of citizens, not constituting a political party,  
24 in any manner provided for making such nominations in this chapter.

25           (c) The Secretary of State may not include in the certification any person who has filed a  
26 notarized statement of withdrawal according to section eleven of this article.

**§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 section nine, article one of  
7 this chapter but fails to make an appointment or fails to certify the appointment of the candidate  
8 to the proper filing officer within the time required, the chairperson of the executive committee  
9 may make the appointment not later than two days following the deadline for the executive  
10 committee.

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

18           (3) If a vacancy in nomination ~~is~~ will be caused by the failure of a candidate to file for an  
19 office, or by withdrawal of a candidate no later than the third Tuesday following the close of  
20 candidate filing pursuant to the provisions of section eleven of this article, a nominee may be  
21 appointed by the executive committee and certified to the proper filing officer no later than thirty  
22 days after the last day to file a certificate of announcement pursuant to section seven of this  
23 article.

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

37           (5) If a vacancy in nomination is caused by the incapacity of the candidate and if the  
38 vacancy occurs not later than eighty-four days before the general election, a nominee may be  
39 appointed by the executive committee and certified to the proper filing officer no later than  
40 seventy-eight days before the general election.

41           (6) If a vacancy in nomination is caused by the ~~withdrawal of the candidate no later than~~  
42 ~~eighty-four days before the general election due to extenuating personal circumstances which will~~  
43 ~~prevent the candidate from serving in the office if elected and if the candidate or the chairperson~~  
44 ~~of the executive committee for the political division applies in writing to the State Election~~  
45 ~~Commission no later than eighty-four days before the general election for permission to remove~~  
46 ~~the candidate's name from the general election ballot, the State Election Commission shall review~~  
47 ~~the reasons for the request. If the commission finds the circumstances warrant the withdrawal of~~  
48 ~~the candidate, the commission shall authorize appointment by the executive committee to fill the~~

49 ~~vacancy. Upon receipt of the authorization, a nominee~~ timely filing of a notarized statement of  
50 withdrawal, according to section eleven of this article, of a candidate whose name would  
51 otherwise appear on the general election ballot, a replacement on the general election ballot may  
52 be appointed by the executive committee and certified to the proper filing officer no later than  
53 seventy-eight days before the general election.

54 (7) If a vacancy in nomination is caused by the death of the candidate occurring no later  
55 than twenty-five days before the general election, a nominee may be appointed by the executive  
56 committee and certified to the proper filing officer no later than twenty-one days following the date  
57 of death or no later than twenty-two days before the general election, whichever date occurs first.

58 (b) Except as otherwise provided in article ten of this chapter, if any vacancy occurs in a  
59 partisan office or position other than political party executive committee, which creates an  
60 unexpired term for a position which would not otherwise appear on the ballot in the general  
61 election, and the vacancy occurs after the close of candidate filing for the primary election but not  
62 later than eighty-four days before the general election, a nominee of each political party may be  
63 appointed by the executive committee and certified to the proper filing officer no later than  
64 seventy-eight days before the general election. Appointments shall be filed in the same manner  
65 as provided in subsection (a) of this section, except that the filing fee shall be paid before the  
66 appointment is complete.

67 (c) When a vacancy occurs in the board of education after the close of candidate filing for  
68 the primary election but not later than eighty-four days before the general election, a special  
69 candidate filing period shall be established. Candidates seeking election to any unexpired term  
70 for board of education shall file a certificate of announcement and pay the filing fee to the clerk of  
71 the county commission no earlier than the first Monday in August and no later than seventy-seven  
72 days before the general election.

NOTE: The purpose of this bill is to require the Secretary of State to create a notarized statement of withdrawal form. The bill sets certain deadlines for the filing of a notarized statement of withdrawal form in order to have one's name removed from the ballot. The bill sets a deadline for when the Secretary of State shall certify the names of the general election candidates to the counties. The bill prohibits the certification of the name of a candidate who filed a timely notarized statement of withdrawal. The bill clarifies the process for determining a candidate is disqualified. The bill removes the State Election Commission from the process of voluntary withdrawal of candidates. The bill authorizes an executive committee to replace a candidate who files a timely notarized statement of withdrawal and whose name would have otherwise appeared on the general election ballot. The bill sets and adjusts certain deadlines.

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

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JUDICIARY COMMITTEE AMENDMENT

On page two, section eleven, line fourteen, by striking out the word "withdraw" and inserting in lieu thereof the word "withdrawal".