

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 600**

BY SENATORS PALUMBO, WILLIAMS, WALTERS,  
WOELFEL, SNYDER, TAKUBO, MILLER, STOLLINGS,  
KESSLER AND PLYMALE

[Introduced February 15, 2016;

Referred to the Committee on the Judiciary; and then to  
the Committee on Rules.]

1 A BILL to amend and reenact §3-10-5, §3-10-6, §3-10-7 and §3-10-8 of the Code of West Virginia,  
2 1931, as amended, all relating to requiring vacancies in the House of Delegates, State  
3 Senate, circuit court clerk, county commission, county clerk, prosecuting attorney, sheriff,  
4 assessor or county surveyor be filled by a person affiliated with the same party as the  
5 person vacating the office was affiliated at the time of his or her last election to the office  
6 or if not elected at the time of his or her appointment.

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

1 That §3-10-5, §3-10-6, §3-10-7 and §3-10-8 of the Code of West Virginia, 1931, as  
2 amended, be amended and reenacted, all to read as follows:

#### **ARTICLE 10. FILLING VACANCIES.**

##### **§3-10-5. Vacancies in State Legislature.**

1 (a) Any vacancy in the office of State Senator or member of the House of Delegates shall  
2 be filled by appointment by the Governor, from a list of three legally qualified persons submitted  
3 by the party executive committee of the party with which the person ~~holding~~ vacating the office  
4 ~~immediately preceding the vacancy~~ was affiliated at the time of his or her election to the vacated  
5 office: *Provided*, That if he or she was not elected to the office, then the list shall be submitted by  
6 the same executive committee authorized to submit the list resulting in his or her appointment.  
7 The list of qualified persons to fill the vacancy shall be submitted to the Governor within fifteen  
8 days after the vacancy occurs and the Governor shall duly make his or her appointment to fill the  
9 vacancy from the list of legally qualified persons within five days after the list is received. If the list  
10 is not submitted to the Governor within the fifteen-day period, the Governor shall appoint within  
11 five days thereafter a legally qualified person of the same political party as the person vacating  
12 the office was affiliated at the time of his or her last election to the vacated office: *Provided*, That  
13 if he or she was not elected to the office, then the Governor shall appoint a person from the same  
14 political party as the executive committee authorized to submit the list resulting in his or her  
15 appointment.

16 (b) In the case of a member of the House of Delegates, the list shall be submitted by the  
17 party executive committee of the delegate district in which the vacating member resided at the  
18 time of his or her election or appointment. The appointment to fill a vacancy in the House of  
19 Delegates is for the unexpired term.

20 (c) In the case of a State Senator, the list shall be submitted by the party executive  
21 committee of the state senatorial district in which the vacating senator resided at the time of his  
22 or her election or appointment. The appointment to fill a vacancy in the state Senate is for the  
23 unexpired term, unless section one of this article requires a subsequent election to fill the  
24 remainder of the term, which shall follow the procedure set forth in section one of this article.

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

1 (a) When a vacancy occurs in the office of clerk of the circuit court, the circuit court by a  
2 majority vote of the judges shall fill the same within thirty days of the vacancy by appointment of  
3 a person of the same political party as the officeholder vacating the office was affiliated with at  
4 the time of his or her last election to the vacated office for the period required by section one of  
5 this article: Provided, That if he or she was not elected to the office, then circuit court shall fill the  
6 position with a person of the same political party as the officeholder vacating the office was  
7 affiliated with at the time of his or her appointment.

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

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

14 (d) Section one of this article shall be followed with respect to any election needed to fill a  
15 vacancy, except that if the vacancy occurs after the primary cutoff date but not later than the  
16 general cutoff date, candidates to fill the vacancy shall be nominated by the county executive

17 committee in the manner provided in section nineteen, article five of this chapter, as in the case  
18 of filling vacancies in nominations, and the names of the persons, so nominated and certified to  
19 the clerk of the county commission of the county, shall be placed upon the ballot to be voted at  
20 the next general election.

**§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 the county commission of the county, unless the number of vacancies in a county  
3 commission deprive that body of a quorum, in which case the Governor of the state shall fill any  
4 vacancy in the county commission necessary to create a quorum thereof. Persons appointed shall  
5 be of the same political party as the officeholder vacating the office was affiliated with at the time  
6 of his or her last election to the vacated office for the period stated by section one of this article:  
7 Provided, That if he or she was not elected to the office, then the person appointed shall be of the  
8 same political party as the officeholder vacating the office was affiliated with at the time of his or  
9 her appointment. If a quorum of the county commission cannot agree upon a person to fill a  
10 vacancy in the office of county commissioner within thirty days of the date the vacancy first  
11 occurred, the county executive committee of the vacating county commissioner's political party at  
12 the time of his or her last election to the vacated office shall select and name a person to fill the  
13 vacancy from the membership of the vacating county commissioner's political party at the time of  
14 his or her last election to the vacated office: Provided, That if he or she was not elected to the  
15 office, then the list shall be submitted by the same executive committee authorized to submit the  
16 list resulting in his or her appointment. The clerk shall be appointed within thirty days of the  
17 vacancy.

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

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

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

32 (e) If the election for an unexpired term is held at the same time as the election for a full  
33 term for county commissioner, the full term shall be counted first and the unexpired term shall be  
34 counted second. If the candidate with the highest number of votes for the unexpired term resides  
35 in the same magisterial district as the candidate with the highest number of votes for the full term,  
36 the candidate for the full term shall be seated. The candidate with the next highest number of  
37 votes for the unexpired term residing in a different magisterial district shall be seated for the  
38 unexpired term.

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

1 (a) Any vacancy occurring in the office of prosecuting attorney, sheriff, assessor or county  
2 surveyor shall be filled by the county commission within thirty days of the vacancy by appointment  
3 of a person of the same political party as the officeholder vacating the office was affiliated with at  
4 the time his or her last election to the vacated office: *Provided, That if he or she was not elected*  
5 to the office, then county commission shall fill the office by appointment of a person of the same  
6 political party as the officeholder vacating the office was affiliated with at the time of his or her  
7 appointment. The appointed person shall hold the office for the period stated by section one of  
8 this article.

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

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

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

NOTE: The purpose of this bill is to require vacancies in certain elected offices are filled by a person of the same political party the previous officeholder was affiliated with at the time of the preceding 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.