

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

### **Originating**

## **House Bill 3303**

BY DELEGATES D. KELLY, BOGGS, CAPITO, FAST,

WESTFALL AND L. PACK

[Introduced March 23, 2021; originating in the

Committee on the Judiciary]



1 A BILL to amend and reenact §3-5-11 of the Code of West Virginia, 1931, as amended, and to  
2 amend and reenact §3-5-19 of said Code; all relating to clarifying the process of filling  
3 vacancies on ballots; and, providing that no appointment to an unfilled vacancy may be  
4 made after a primary election, save in the case of the subsequent death, withdrawal,  
5 incapacity, or disqualification of a candidate.

*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, then the candidate's  
6 withdrawal is final and his or her name shall not be certified as a candidate nor printed on any  
7 ballot. If a candidate files a notarized statement of withdrawal after the deadlines set forth in  
8 subsection (b) of this section, the candidate shall not be withdrawn, and the candidate's name  
9 shall remain on the 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,  
26 the executive committee of the party for the political division within which such candidate was to  
27 be 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. Certification of the appointment by the executive committee  
29 or its chair, the candidate's certificate of announcement and the filing fee must be received by the  
30 appropriate filing officer as follows: For an appointment by an executive committee, no later than  
31 the second Friday following the close of filing, for an appointment by its chair, no later than the  
32 third Tuesday following the close of filing. A candidate appointed to fill a vacancy on the ballot  
33 under this subsection shall have his or her name printed on the primary ballot for that party. No  
34 vacancy shall be filled after the date of the primary election, except as provided in §3-5-19 of this  
35 Code.

**§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 announcement is  
17 regularly filed for that office.

18 (3) If a vacancy in nomination 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: Provided, That in no case shall any such vacancy be filled after the date of the primary  
24 election.

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

35 receipt of the authorization a nominee may be appointed by the executive committee and certified  
36 to the proper filing officer no later than seventy-eight days before the 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 timely filing of a notarized statement of  
42 withdrawal, according to section eleven of this article, of a candidate whose name would  
43 otherwise appear on the general election ballot, a replacement on the general election ballot may  
44 be appointed by the executive committee and certified to the proper filing officer no later than  
45 seventy-eight days before the general election.

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

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

59 (c) When a vacancy occurs in the board of education after the close of candidate filing for  
60 the primary election but not later than eighty-four days before the general election, a special

61 candidate filing period shall be established. Candidates seeking election to any unexpired term  
62 for board of education shall file a certificate of announcement and pay the filing fee to the clerk of  
63 the county commission no earlier than the first Monday in August and no later than seventy-seven  
64 days before the general election.