

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

House Bill 3303

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

WESTFALL AND PACK

[Passed February 25, 2022; in effect from passage.]

1 AN ACT 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; authorizing the county executive committee or chair of an intra-
4 county delegate or senatorial district to fill vacancy on primary election ballot; prohibiting
5 Secretary of State from refusing certification of candidates appointed to an intra-county
6 delegate or senatorial district by the county executive committee for that district by certain
7 deadline for placement on 2022 primary election ballot; authorizing the county executive
8 committee or chair of an intra-county delegate senatorial district to fill vacancy on general
9 election ballot; providing that no appointment to an unfilled vacancy may be made after a
10 primary election, save in the case of the subsequent death, withdrawal, incapacity, or
11 disqualification of a candidate; and making amendments retrospective to January 30,
12 2022.

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, 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8 subsection (b) of this section, the candidate shall not be withdrawn and the candidate's name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: *Provided*, That for a delegate district or senatorial district
29 situated entirely within a single county, the county executive committee, or its chairperson if the
30 committee fails to act, may fill the vacancy and certify the candidate named to the appropriate
31 filing officer. Certification of the appointment by the executive committee or its chair, the
32 candidate's certificate of announcement, and the filing fee must be received by the appropriate
33 filing officer as follows: For an appointment by an executive committee, no later than the second
34 Friday following the close of filing, for an appointment by its chair, no later than the third Tuesday
35 following the close of filing: *Provided, however*, That any candidate appointed to an intra-county
36 delegate or senatorial district by a county executive committee for that district pursuant to the

37 process and by the deadline provided in this subsection shall not be refused certification for
38 placement on the 2022 primary election ballot for that reason. A candidate appointed to fill a
39 vacancy on the ballot under this subsection shall have his or her name printed on the primary
40 ballot for that party. No vacancy shall be filled after the date of the primary election, except as
41 provided in §3-5-19 of this code.

42 (e) The amendments to this section enacted by the Legislature during the 2022 Regular
43 Session shall be retrospective to January 30, 2022.

§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 §3-1-9 of this code but fails
7 to make an appointment or fails to certify the appointment of the candidate to the proper filing
8 officer within the time required, the chairperson of the executive committee may make the
9 appointment not later than two days following the deadline for the executive committee: *Provided*
10 *however*, That for a delegate district or senatorial district situated entirely within a single county,
11 the county executive committee, or its chairperson if the committee fails to act, may fill the vacancy
12 and certify the candidate named to the appropriate filing officer.

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

18 The proper filing officer is the officer with whom the original certificate of announcement is
19 regularly filed for that office.

20 (3) If a vacancy in nomination will be caused by the failure of a candidate to file for an
21 office, or by withdrawal of a candidate no later than the third Tuesday following the close of
22 candidate filing pursuant to the provisions of section eleven of this article, a nominee may be
23 appointed by the executive committee and certified to the proper filing officer no later than 30
24 days after the last day to file a certificate of announcement pursuant to section seven of this
25 article: *Provided*, That in no case shall any such vacancy be filled after the date of the primary
26 election.

27 (4) If a vacancy in nomination is caused by the disqualification of a candidate and the
28 vacancy occurs not later than 84 days before the general election, a nominee may be appointed
29 by the executive committee and certified to the proper filing officer not later than 78 days before
30 the general election. A candidate may be determined disqualified if a written request is made by
31 an individual with information to show a candidate's ineligibility to the State Election Commission
32 no later than 84 days before the general election explaining grounds why a candidate is not
33 eligible to be placed on the general election ballot or not eligible to hold the office, if elected. The
34 State Election Commission shall review the reasons for the request. If the commission finds the
35 circumstances warrant the disqualification of the candidate, the commission shall authorize
36 appointment by the executive committee to fill the vacancy. Upon receipt of the authorization, a
37 nominee may be appointed by the executive committee and certified to the proper filing officer no
38 later than 78 days before the general election.

39 (5) If a vacancy in nomination is caused by the incapacity of the candidate and if the
40 vacancy occurs not later than 84 days before the general election, a nominee may be appointed
41 by the executive committee and certified to the proper filing officer no later than 78 days before
42 the general election.

43 (6) If a vacancy in nomination is caused by the timely filing of a notarized statement of
44 withdrawal, according to section eleven of this article, of a candidate whose name would
45 otherwise appear on the general election ballot, a replacement on the general election ballot may
46 be appointed by the executive committee and certified to the proper filing officer no later than 78
47 days before the general election.

48 (7) If a vacancy in nomination is caused by the death of the candidate occurring no later
49 than 25 days before the general election, a nominee may be appointed by the executive
50 committee and certified to the proper filing officer no later than 21 days following the date of death
51 or no later than 22 days before the general election, whichever date occurs first.

52 (b) Except as otherwise provided in §3-10-1 *et seq.* of this code, if any vacancy occurs in
53 a partisan office or position other than political party executive committee, which creates an
54 unexpired term for a position which would not otherwise appear on the ballot in the general
55 election, and the vacancy occurs after the close of candidate filing for the primary election but not
56 later than 84 days before the general election, a nominee of each political party may be appointed
57 by the executive committee and certified to the proper filing officer no later than 78 days before
58 the general election. Appointments shall be filed in the same manner as provided in subsection
59 (a) of this section, except that the filing fee shall be paid before the appointment is complete.

60 (c) When a vacancy occurs in the board of education after the close of candidate filing for
61 the primary election but not later than 84 days before the general election, a special candidate
62 filing period shall be established. Candidates seeking election to any unexpired term for board of
63 education shall file a certificate of announcement and pay the filing fee to the clerk of the county
64 commission no earlier than the first Monday in August and no later than 77 days before the
65 general election.

66 (d) The amendments to this section enacted by the Legislature during the 2022 Regular
67 Session shall be retrospective to January 30, 2022.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2022.

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Governor