

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 5373**

By Delegates Campbell, Howell, W. Clark, Lucas,  
Dean, Westfall, Ward, Kirby, Maynor, Foggin, and  
Heckert

[Originating in the Committee on the Judiciary;

Reported on February 23, 2024]



1 A BILL to amend and reenact §3-10-3; §3-10-4; §3-10-5; and §3-10-8 of the Code of West Virginia,  
2 1931, as amended, all relating to prohibiting the appointment of an individual to fill a vacant  
3 office if that person has not been a member of that party for one year and requiring  
4 appointments be made from the political party with which the individual vacating the office  
5 was affiliated with at the time of his or her election.

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

**ARTICLE 10. FILLING VACANCIES.**

**§3-10-3. Vacancies in offices of state officials, justices, judges, and magistrates.**

1 (a) Any vacancy occurring in the offices of Secretary of State, Auditor, Treasurer, Attorney  
2 General, Commissioner of Agriculture, or in any office created or made elective to be filled by the  
3 voters of the entire state, is filled by the Governor of the state by appointment and subsequent  
4 election to fill the remainder of the term, if required by §3-10-1 of this code. The Governor shall  
5 make the appointment from a list of three legally qualified persons submitted by the party  
6 executive committee of the same political party with which the person holding the office  
7 immediately preceding the vacancy was affiliated at the time ~~the vacancy occurred~~ of the previous  
8 election for that office. The list of qualified persons to fill the vacancy shall be submitted to the  
9 Governor within 15 days after the vacancy occurs, and the Governor shall duly make his or her  
10 appointment to fill the vacancy from the list of legally qualified persons within five days after the list  
11 is received. If the list is not submitted to the Governor within the 15-day period, the Governor shall  
12 appoint, within five days thereafter, a legally qualified person of the same political party with which  
13 the person holding the office immediately preceding the vacancy was affiliated at the time the  
14 vacancy occurred: Provided, That any such person appointed by the Governor must have been  
15 affiliated with that political party for at least one year: Provided, however, That the provisions of  
16 this subsection do not apply to §3-10-3(b), §3-10-3(c), §3-10-3(d), and §3-10-3(e) of this code.

17 (b) Any vacancy occurring in the offices of Justice of the Supreme Court of Appeals, judge  
18 of the Intermediate Court of Appeals, judge of a circuit court, or judge of a family court is filled by

19 the Governor of the state by appointment and, if the unexpired term be for a period of more than  
20 three years, by a subsequent election to fill the remainder of the term, as required by §3-10-3(d) of  
21 this code. If an election is required under §3-10-3(d) of this code, the Governor, circuit court, or the  
22 chief judge thereof in vacation, is responsible for the proper proclamation by order and notice  
23 required by §3-10-1 of this code. The amendments to this subsection enacted during the regular  
24 session of the Legislature in the year 2022 shall be applicable to any vacancy existing at the date  
25 of passage of such amendments.

26 (c) Any vacancy in the office of magistrate is appointed according to the provisions of §50-  
27 1-6 of this code, and, if the unexpired term be for a period of more than two years, by a subsequent  
28 election to fill the remainder of the term, as required by §3-10-3(d) of this code.

29 (d) (1) When the vacancy in the office of Justice of the Supreme Court of Appeals, judge of  
30 the Intermediate Court of Appeals, judge of the circuit court, judge of a family court, or magistrate  
31 occurs after the 84th day before a general election, and the affected term of office ends on  
32 December 31 following the succeeding general election two years later, the person appointed to fill  
33 the vacancy shall continue in office until the completion of the term.

34 (2) When the vacancy occurs before the close of the candidate filing period for the primary  
35 election, and if the unexpired term be for a period of greater than three years, the vacancy shall be  
36 filled by election in the nonpartisan judicial election held concurrently with the primary election and  
37 the appointment shall continue until a successor is elected and certified.

38 (3) When the vacancy occurs after the close of candidate filing for the primary election and  
39 not later than 84 days before the general election, and if the unexpired term be for a period of  
40 greater than three years, the vacancy shall be filled by election in a nonpartisan judicial election  
41 held concurrently with the general election, and the appointment shall continue until a successor is  
42 elected and certified.

43 (e) When an election to fill a vacancy is required to be held at the general election,  
44 according to the provisions of §3-10-3(d) of this code, a special candidate filing period shall be

45 established. Candidates seeking election to any unexpired term for Justice of the Supreme Court  
46 of Appeals, judge of the Intermediate Court of Appeals, judge of a circuit court, judge of the family  
47 court, or magistrate shall file a certificate of announcement and pay the filing fee no earlier than the  
48 first Monday in August and no later than 77 days before the general election.

**§3-10-4. Vacancies in representation in United States Congress.**

1 (a) (1) If there is a vacancy in the representation from this state in the House of  
2 Representatives in the Congress of the United States, the Governor shall, within five days after the  
3 fact comes to his or her knowledge, issue a proclamation setting dates for a special general  
4 election that is not less than 84 nor more than 120 days from the date of the vacancy and requiring  
5 nomination of candidates as provided in §3-10-4(a)(2) of this code: *Provided*, That no such  
6 proclamation may be made nor may a special election be held if the vacancy occurs after the 84th  
7 day prior to the regularly scheduled general election for a new full term of the office. The election  
8 shall follow the requirements of §3-10-1 of this code that are not in conflict with this section.

9 (2) The party executive committees for the congressional district for which there is a  
10 vacancy shall each, within 30 days of the Governor's proclamation, nominate a candidate to stand  
11 at the general election required by §3-10-4(a)(1) of this code.

12 (b) If there is a vacancy in the representation from this state in the Senate of the United  
13 States Congress, the vacancy shall be filled by the Governor of the state by appointment. The  
14 Governor shall make the appointment from a list of three legally qualified persons submitted by the  
15 party executive committee of the same political party with which the person holding the office  
16 immediately preceding the vacancy was affiliated at the time ~~the vacancy occurred~~ of the previous  
17 election for that office. The list of qualified persons to fill the vacancy shall be submitted to the  
18 Governor within 15 days after the vacancy occurs, and the Governor shall duly make his or her  
19 appointment to fill the vacancy from the list of legally qualified persons within five days after the list  
20 is received. If the list is not submitted to the Governor within the 15-day period, the Governor shall  
21 appoint, within five days thereafter, a legally qualified person of the same political party with which

22 the person holding the office immediately preceding the vacancy was affiliated at the time the  
23 vacancy occurred: Provided, That any such person appointed by the Governor must have been  
24 affiliated with that political party for at least one year.

25 Furthermore,

26 (1) If the vacancy occurs on or before the primary cutoff date, then an election shall be held  
27 pursuant to §3-10-1 of this code; or

28 (2) If the vacancy occurs after the primary cutoff date, but on or before the general cutoff  
29 date, then the Governor shall issue a proclamation providing for: (A) A special filing period; (B) a  
30 special primary election to be held in conjunction with the upcoming general election; and (C) a  
31 special general election to be held not less than 84 nor more than 120 days following the date of  
32 the special primary election. Each election shall follow the requirements of §3-10-1 of this code  
33 that are not in conflict with this section.

**§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 be  
2 filled by appointment by the Governor, from a list of three legally qualified persons submitted by the  
3 party executive committee of the same political party with which the person holding the office  
4 immediately preceding the vacancy was affiliated at the time ~~the vacancy occurred~~ of the previous  
5 election for that office. The list of qualified persons to fill the vacancy shall be submitted to the  
6 Governor within 15 days after the vacancy occurs and the Governor shall duly make his or her  
7 appointment to fill the vacancy from the list of legally qualified persons within five days after the list  
8 is received. If the list is not submitted to the Governor within the 15-day period, the Governor shall  
9 appoint within five days thereafter a legally qualified person of the same political party with which  
10 the person holding the office immediately preceding the vacancy was affiliated at the time the  
11 vacancy occurred: Provided, That any such person appointed by the Governor must have been  
12 affiliated with that political party for at least one year.

13 (b) In the case of a member of the House of Delegates, if the member was elected to a  
14 multi-county delegate district the list shall be submitted by the party executive committee of the  
15 delegate district in which the vacating member resided at the time of his or her election or  
16 appointment. If the member was elected to a delegate district situated entirely within a single  
17 county, the list shall be submitted by the county executive committee in which the vacating  
18 member resided at the time of his or her election or appointment. The appointment to fill a vacancy  
19 in the House of Delegates is for the unexpired term.

20 (c) In the case of a state senator, if the member was elected to a multi-county senatorial  
21 district the list shall be submitted by the party executive committee of the state senatorial district in  
22 which the vacating senator resided at the time of his or her election or appointment. If the member  
23 was elected to a senatorial district situated entirely within a single county, the list shall be  
24 submitted by the county executive committee in which the vacating member resided at the time of  
25 his or her election or appointment. The appointment to fill a vacancy in the state Senate is for the  
26 unexpired term, unless §3-10-1 of this code requires a subsequent election to fill the remainder of  
27 the term, which shall follow the procedure set forth in said section.

**§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~~ with which the person  
4 holding the office immediately preceding the vacancy was affiliated at the time of the previous  
5 election for the office. The appointed person shall have been a registered voter affiliated with that  
6 political party for at least one year. The appointed person shall hold the office for the period stated  
7 by section one of this article.

8 (b) Notwithstanding any code provision to the contrary, a county commission may appoint  
9 a temporary successor to the office of prosecuting attorney, sheriff, assessor or county surveyor

10 until the requirements of this section have been met. The temporary successor may serve no more  
11 than thirty days from the date of the vacancy.

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

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