

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 542

By Senator Barrett

[Passed March 9, 2024; to take effect January 1,

2025]

1 AN ACT to amend and reenact §3-10-7 of the Code of West Virginia, 1931, as amended, relating
2 to amending procedure for filling vacancy in offices of county clerk, county commissioner,
3 or county councilor; providing guidance for filling such vacancies by appointment;
4 providing procedure to follow in commissions or councils having three commissioners or
5 councilors if the county commission or council fails to make the appointment within the
6 specified time; providing procedure to follow in commissions or councils having more than
7 three commissioners or councilors if the county commission or council fails to make the
8 appointment within the specified time; and, clarifying that political party committee naming
9 persons to fill a vacancy is the party from which the vacating person was elected.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. FILLING VACANCIES.

**§3-10-7. Vacancies in offices of county commissioner or councilor and clerk of county
commission or council.**

1 (a) Any vacancy in the office of county commissioner or councilor, or clerk of county
2 commission or council, shall be filled by appointment by the county commission or council. The
3 appointee for the office of county commissioner or councilor must reside in a magisterial district in
4 which no other member of the county commission or council resides. The appointee for either clerk
5 of the county commission or council, or the office of county commissioner or councilor, must be a
6 person of the same political party with which the person holding the office immediately preceding
7 the vacancy was affiliated at the time of the previous election for that office: *Provided*, That at the
8 time of appointment, the appointee must have been a member of that political party for at least one
9 year prior to the occurrence of the vacancy.

10 (b) If a quorum of the county commission or council fails to make an appointment within 30
11 days, the county executive committee of the same political party with which the person holding the
12 office preceding the vacancy was affiliated at the time of the previous election for that office shall
13 submit a list of three legally qualified persons to fill the vacancy for a county having three elected

14 commissioners, or shall submit a list of five legally qualified persons to fill the vacancy for a county
15 having five elected commissioners or councilors. Within 15 days from the date on which the list is
16 received, the county commission or council shall appoint a candidate from the list to fill the
17 vacancy.

18 (1) In a county having three elected county commissioners, if the county commission or
19 council fails to make the appointment within the specified time, then the county commissioner or
20 councilor with the longest tenure shall eliminate one name from the submitted list, followed by the
21 county commissioner or councilor with the second-longest tenure then eliminating one name from
22 the submitted list. The name remaining after those two names have been eliminated shall be
23 deemed to be appointed by the county commission to fill the vacancy.

24 (2) In a county having five elected county commissioners or councilors, if the county
25 commission or council fails to make the appointment within the specified time, then the county
26 commissioners or councilors shall strike one name from the list, in turn, in the following order of
27 precedence:

28 (A)(i) First, all county commissioners or councilors affiliated with the same political party
29 from which the vacating commissioner, councilor, or clerk was elected shall strike a name from the
30 list before those not affiliated with the vacating commissioner, councilor, or clerk's party;

31 (ii) Second, of the county commissioners or councilors affiliated with the same party from
32 which the vacating commissioner, councilor, or clerk was elected, the commissioner or councilor
33 with the longest tenure shall strike before those with lesser tenure; and

34 (iii) Third, if there be county commissioners or councilors with equal tenure affiliated with
35 the same party from which the vacating commissioner, councilor, or clerk was elected, a drawing
36 by lot shall be conducted within the timeframe required to fill the vacancy to determine which of
37 them shall eliminate one name from the submitted list before the other commissioner or councilor
38 with equal tenure.

39 (B) After the county commissioners or councilors affiliated with the same party from which

40 the vacating commissioner, councilor, or clerk was elected make their strikes, the remaining
41 county commissioners or councilors shall follow the same procedure in the same order of
42 precedence provided herein. The name remaining after four names have been eliminated shall be
43 deemed to be appointed by the county commission or council.

44 (c) If the number of vacancies in a county commission or council deprives that body of a
45 quorum, the Governor shall make an appointment to fill any vacancy in the county commission or
46 council necessary to create a quorum, from a list of three legally qualified persons submitted by
47 the party executive committee of the same political party with which the person holding the office
48 immediately preceding the vacancy was affiliated at the time of the previous election for that office.
49 The Governor shall make any appointments necessary, beginning with the vacancy first created,
50 to create a quorum in accordance with the same procedures applicable to county commissions
51 and councils under §3-10-7(a) of this code. Once a quorum of the county commission or council is
52 reestablished by gubernatorial appointment, the authority to fill the remaining vacancies shall be
53 filled in the manner prescribed in §3-10-7(a) of this code.

54 (d) An appointment made pursuant to this section is for the period of time provided in §3-
55 10-1 of this code.

56 (e) Notwithstanding any code provision to the contrary, a county commission or council
57 may appoint a temporary successor to the office of clerk of the county commission or council until
58 the requirements of this section have been met. The temporary successor may serve no more
59 than 30 days from the date of the vacancy.

60 (f) If an election is necessary under §3-10-1 of this code, the county commission or council,
61 or the president thereof in vacation, shall be responsible for the proper proclamation, by order, and
62 notice required by §3-10-1 of this code.

63 (g) §3-10-1 of this code shall be followed with respect to any election needed to fill a
64 vacancy, except that if the vacancy occurs after the primary cutoff date but not later than the
65 general cutoff date, candidates to fill the vacancy shall be nominated by the county executive

66 committee in the manner provided in §3-5-19 of this code, as in the case of filling vacancies in
67 nominations, and the names of the persons, so nominated and certified to the clerk of the county
68 commission or council of the county, shall be placed upon the ballot to be voted at the next general
69 election.

70 (h) If the election for an unexpired term is held at the same time as the election for a full
71 term for county commissioner or councilor, the full term shall be counted first and the unexpired
72 term shall be counted second. If the candidate with the highest number of votes for the unexpired
73 term resides in the same magisterial district as the candidate with the highest number of votes for
74 the full term, the candidate for the full term shall be seated. The candidate with the next highest
75 number of votes for the unexpired term residing in a different magisterial district shall be seated for
76 the unexpired term.