

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Enrolled

Committee Substitute

for

Committee Substitute

for

Senate Bill 586

BY SENATOR GARCIA

[Passed April 12, 2025; in effect from passage]

1 AN ACT to amend and reenact §3-10-3, §3-10-4, §3-10-5, §3-10-6, §3-10-7, §3-10-8, §8-5-10,
2 and §50-1-6 of the Code of West Virginia, 1931, as amended, relating to requirements for
3 filling vacancies in certain elected federal, state, county, and municipal offices; prohibiting
4 the appointment of an individual to fill a vacant office if that person has not been a member
5 of his or her registered political party for at least one year prior to the occurrence of the
6 vacancy; providing that process to select candidates to fill state Senate and House of
7 Delegates seats be governed by the party senatorial district executive committee or party
8 delegate district executive committee, or in the case of a single-county senatorial or
9 delegate district, by the county executive party, as applicable for the respective political
10 party; authorizing the Governor to appoint an acting official to perform the duties of a
11 constitutional officer until that office is filled by appointment; filling vacancies in the office
12 of magistrate; providing that vacancies in the office of magistrate with an unexpired term
13 of more than two years are filled by subsequent nonpartisan judicial election held
14 concurrently with the primary or general election, whichever occurs first; excluding
15 vacancies in the office of magistrate from certain other provisions relating to process for
16 filling vacancies; authorizing prospective vacancy due to upcoming resignation or
17 retirement of a magistrate to be filled by circuit judge or chief circuit judge; and requiring
18 generally that partisan office appointments be made from the political party with which the
19 individual vacating the office was affiliated at the time of the previous election for that
20 office.

Be it enacted by the Legislature of West Virginia:

CHAPTER 3. ELECTIONS.

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 of the previous election for that office.
8 The list of qualified persons to fill the vacancy shall be submitted to the Governor within 15 days
9 after the vacancy occurs, and the Governor shall duly make his or her appointment to fill the
10 vacancy from the list of legally qualified persons within five days after the list is received. If the list
11 is not submitted to the Governor within the 15-day period, the Governor shall appoint, within five
12 days thereafter, a legally qualified person of the same political party with which the person holding
13 the office immediately preceding the vacancy was affiliated at the time of the previous election:
14 *Provided*, That any such person appointed by the Governor must have been affiliated with that
15 political party for at least one year prior to the occurrence of the vacancy: *Provided, however*,
16 That the Governor may appoint a temporary acting official in the event of a vacancy in the offices
17 of Secretary of State, Auditor, Treasurer, Attorney General, or Commissioner of Agriculture to
18 carry out the duties of said office until such vacancy is filled by appointment pursuant to this
19 subsection: *Provided further*, That the provisions of this subsection do not apply to §3-10-3(b),
20 §3-10-3(c), §3-10-3(d), and §3-10-3(e) of this code.

21 (b) Any vacancy occurring in the offices of Justice of the Supreme Court of Appeals, judge
22 of the Intermediate Court of Appeals, judge of a circuit court, or judge of a family court is filled by
23 the Governor of the state by appointment and, if the unexpired term be for a period of more than
24 three years, by a subsequent election to fill the remainder of the term, as required by §3-10-3(d)
25 of this code. If an election is required under §3-10-3(d) of this code, the Governor, circuit court,
26 or the chief judge thereof in vacation, is responsible for the proper proclamation by order and
27 notice required by §3-10-1 of this code. The amendments to this subsection enacted during the

28 regular session of the Legislature in the year 2022 shall be applicable to any vacancy existing at
29 the date of passage of such amendments.

30 (c) Any vacancy in the office of magistrate is appointed according to the provisions of §50-
31 1-6 of this code, and, if the unexpired term be for a period of more than two years, by a subsequent
32 nonpartisan judicial election held concurrently with the primary or general election, whichever
33 occurs first, to fill the remainder of the term.

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

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

43 (3) When the vacancy occurs after the close of candidate filing for the primary election
44 and not later than 84 days before the general election, and if the unexpired term be for a period
45 of greater than three years, the vacancy shall be filled by election in a nonpartisan judicial election
46 held concurrently with the general election, and the appointment shall continue until a successor
47 is elected and certified: *Provided*, That the provisions of this subsection (d) do not apply to a
48 vacancy in the office of magistrate.

49 (e) When an election to fill a vacancy is required to be held at the general election,
50 according to the provisions of §3-10-3(d) of this code, a special candidate filing period shall be
51 established. Candidates seeking election to any unexpired term for Justice of the Supreme Court
52 of Appeals, judge of the Intermediate Court of Appeals, judge of a circuit court, judge of the family

53 court, or magistrate shall file a certificate of announcement and pay the filing fee no earlier than
54 the 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
3 the 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
15 the 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 of the previous election for that office.
17 The list of qualified persons to fill the vacancy shall be submitted to the Governor within 15 days
18 after the vacancy occurs, and the Governor shall duly make his or her appointment to fill the
19 vacancy from the list of legally qualified persons within five days after the list is received. If the list
20 is not submitted to the Governor within the 15-day period, the Governor shall appoint, within five
21 days thereafter, a legally qualified person of the same political party with which the person holding
22 the office immediately preceding the vacancy was affiliated at the time of the previous election for

23 that office: *Provided*, That any such person appointed by the Governor must have been affiliated
24 with that political party for at least one year prior to the occurrence of the vacancy.

25 Furthermore,

26 (1) If the vacancy occurs on or before the primary cutoff date, then an election shall be
27 held 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
2 be filled by appointment by the Governor, from a list of three legally qualified persons submitted
3 by the party senatorial district executive committee or party delegate district executive committee,
4 or, in the case of a single-county senatorial or delegate district, the county executive party, as
5 applicable, of the same political party with which the person holding the office immediately
6 preceding the vacancy was affiliated at the time of the previous election for that office. The list of
7 qualified persons to fill the vacancy shall be submitted to the Governor within 15 days after the
8 vacancy occurs and the Governor shall duly make his or her appointment to fill the vacancy from
9 the list of legally qualified persons within five days after the list is received. If the list is not
10 submitted to the Governor within the 15-day period, the Governor shall appoint within five days
11 thereafter a legally qualified person of the same political party with which the person holding the
12 office immediately preceding the vacancy was affiliated at the time of the previous election for
13 that office: *Provided*, That any such person appointed by the Governor must have been affiliated
14 with that political party for at least one year prior to the occurrence of the vacancy.

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

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

30 (d) No person may be appointed to fill a vacancy in the office of state senator or as a
31 member of the House of Delegates who has not for one year preceding the appointment been a
32 resident within the district he or she will represent. Notwithstanding any provision of this code to
33 the contrary, the process to compose and submit the list, which is required to be submitted by the
34 political party under which the person holding the office immediately preceding the vacancy was
35 elected, shall be governed by the rules of the state executive committee of that political party.

§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, for the period
3 required by §3-10-1 of this code, by appointment of a person of the same political party with which
4 the person holding the office immediately preceding the vacancy was affiliated at the time of the

5 previous election for that office: *Provided*, That any such person appointed by the circuit court
6 must have been affiliated with that political party for at least one year prior to the occurrence of
7 the vacancy.

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 30 days from the date of the
11 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 §3-5-19 of this code, as in the case of filling vacancies in
18 nominations, and the names of the persons, so nominated and certified to the clerk of the county
19 commission of the county, shall be placed upon the ballot to be voted at the next general election.

**§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
4 in which no other member of the county commission or council resides. The appointee for either
5 clerk of the county commission or council, or the office of county commissioner or councilor, must
6 be a person of the same political party with which the person holding the office immediately
7 preceding the vacancy was affiliated at the time of the previous election for that office: *Provided*,
8 That at the time of appointment, the appointee must have been a member of that political party
9 for at least one 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
11 30 days, the county executive committee of the same political party with which the person holding
12 the office immediately preceding the vacancy was affiliated at the time of the previous election for
13 that office, shall submit a list of three legally qualified persons to fill the vacancy for a county
14 having three elected commissioners, or shall submit a list of five legally qualified persons to fill
15 the vacancy for a county having five elected commissioners or councilors. Within 15 days from
16 the date on which the list is received, the county commission or council shall appoint a candidate
17 from the list to fill the 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
30 the 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
43 be 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
52 is reestablished by gubernatorial appointment, the authority to fill the remaining vacancies shall
53 be 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
55 §3-10-1 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,
62 and 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
76 for the 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 30 days of the vacancy by appointment
3 of a person of the same political party with which the person holding the office immediately
4 preceding the vacancy was affiliated at the time of the previous election for the office. The
5 appointee must have been a member of that political party for at least one year prior to the
6 occurrence of the vacancy. The appointed person shall hold the office for the period stated by
7 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
11 more than 30 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 §3-5-19 of this code, as in the case of filling vacancies in
19 nominations, and the names of the persons, so nominated and certified to the clerk of the county
20 commission of the county, shall be placed upon the ballot to be voted at the next general election.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 5. ELECTION, APPOINTMENT, QUALIFICATION AND COMPENSATION OF OFFICERS; GENERAL PROVISIONS RELATING TO OFFICERS AND EMPLOYEES; ELECTIONS AND PETITIONS GENERALLY; CONFLICT OF INTEREST.

§8-5-10. Vacancies in elective offices; how filled.

1 Unless otherwise provided by charter provision or ordinance, when a vacancy shall occur
2 from any cause in any municipal elective office, the vacancy, until the next succeeding regular
3 municipal election and until the qualification of an elected successor, shall be filled by appointment
4 by the governing body from among the residents of the municipality eligible under this article, with
5 a legally qualified person of the same political party with which the person holding the office
6 immediately preceding the vacancy was affiliated at the time of the previous election: *Provided,*

7 That any such person appointed must have been affiliated with that political party for at least one
8 year prior to the occurrence of the vacancy.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 1. COURTS AND OFFICERS.

§50-1-6. Vacancy in office of magistrate.

1 (a) Subject to the provisions of §3-10-1 of this code, when a vacancy occurs in the office
2 of magistrate, or upon the formal announcement by letter to the judge of the circuit court, or the
3 chief judge thereof if there is more than one judge of the circuit court, of an upcoming resignation
4 or retirement that will result in the occurrence of a vacancy in the office of magistrate, including
5 resignation of a magistrate-elect following the election of such magistrate-elect but prior to the
6 magistrate-elect taking office in the term for which he or she has most recently been elected, such
7 judge or chief judge shall fill the same by appointment.

8 (b) At a nonpartisan judicial election in which a magistrate is elected for an unexpired term,
9 the circuit judge, or the chief judge thereof if there is more than one judge of the circuit court, shall
10 cause a notice of such election to be published prior to such election as a Class II-0 legal
11 advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the
12 publication area for such publication shall be the county involved.

The Clerk of the Senate and the Clerk of the House of Delegates hereby certify that the foregoing bill is correctly enrolled.

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Clerk of the Senate

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Clerk of the House of Delegates

Originated in the Senate.

In effect from passage.

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President of the Senate

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Speaker of the House of Delegates

The within is this the.....
Day of, 2025.

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Governor