WEST VIRGINIA LEGISLATURE
2018 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 3004

BY DELEGATES HILL, MARTIN, HOWELL, KESSINGER, STATLER,
SHOTT, McGEEHAN AND ESPINOSA

[Passed March 1, 2018; in effect ninety days from passage.]
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AN ACT to amend and reenact §3-10-3, §3-10-4, §3-10-5, and §3-10-7 of the Code of West Virginia, 1931, as amended, all relating generally to filling vacancies in certain offices; providing that the Governor shall appoint a person to fill a vacancy in an elected state office, choosing from a list of candidates required to be submitted by the executive committee of the political party with which the individual vacating the office was affiliated at the time the vacancy occurred; establishing a deadline for a party executive committee to submit names of qualified persons for vacancies in elected state offices; providing that appointments to elected state offices be made within a time certain; providing that the Governor shall appoint a person, of the same political party with which the individual vacating the office was affiliated at the time the vacancy occurred, to fill a vacancy in an elected state office when a party executive committee fails to submit names of qualified persons; providing that the Governor shall appoint a person, from a list of qualified persons required to be submitted by the executive committee of the political party with which the individual vacating the office was affiliated at the time the vacancy occurred, to fill a vacancy in the office of United States Senator; establishing a deadline for an executive committee to submit names of qualified persons for vacancies in the office of United States Senator; providing that appointment to fill vacancies in office of United States Senator be made within a time certain; providing for Governor to appoint a person, of the same political party with which the individual vacating the office was affiliated at the time the vacancy occurred, to fill a vacancy in United States Senate when the party executive committee fails to submit qualified names of qualified persons; providing for the Governor to appoint a person, of the same political party with which the person holding the office immediately preceding the vacancy was affiliated, to fill a vacancy in the state Legislature; providing for a county commission to select a person to fill a vacancy in the office of county commissioner or county clerk, who, for at least sixty days prior to the time a vacancy occurred, was affiliated with the same political party with which the individual vacating the
office was affiliated at the time the vacancy occurred; providing a process by which the two most senior county commissioners may select a person, from a list of candidates required to be submitted by the executive committee of the political party with which the individual vacating the office was affiliated at the time the vacancy occurred, to fill a vacancy in the county commission when the commission fails to make a selection; providing for the Governor to appoint a person, from a list of candidates required to be submitted by the executive committee of the political party with which the individual vacating the office was affiliated at the time the vacancy occurred, to fill a vacancy in office of county commissioner if vacancies in the commission prevent a quorum; establishing a deadline for an executive committee to submit names of qualified persons for vacancies in a county commission; clarifying that appointments to county commissions to fill vacancies are for time periods specified by statute; and making technical corrections.

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.

(a) Any vacancy occurring in the offices of Secretary of State, Auditor, Treasurer, Attorney General, Commissioner of Agriculture, or in any office created or made elective to be filled by the voters of the entire state, is filled by the Governor of the state by appointment and subsequent election to fill the remainder of the term, if required by §3-10-1 of this code. The Governor shall make the appointment from a list of three legally qualified persons submitted by the party executive committee of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred. The list of qualified persons to fill the vacancy shall be submitted to the Governor within 15 days after the vacancy occurs, and the Governor shall duly make his or her appointment to fill the vacancy from the list of legally qualified persons within five days after the list is received. If the list is not submitted to the Governor within the 15-day period, the Governor shall appoint, within five days
thereafter, a legally qualified person of the same political party with which the person holding the
office immediately preceding the vacancy was affiliated at the time the vacancy occurred:
Provided, That the provisions of 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.
(b) Any vacancy occurring in the offices of Justice of the Supreme Court of Appeals, judge
of a circuit court, or judge of a family court is filled by the Governor of the state by appointment
and, if the unexpired term be for a period of more than two years, by a subsequent election to fill
the remainder of the term, as required by §3-10-3(d) of this code. If an election is required under
§3-10-3(d) of this code, the Governor, circuit court, or the chief judge thereof in vacation, is
responsible for the proper proclamation by order and notice required by §3-10-1 of this code.
(c) Any vacancy in the office of magistrate is appointed according to the provisions of
§50-1-6 of this code, and, if the unexpired term be for a period of more than two years, by a
subsequent election to fill the remainder of the term, as required by §3-10-3(d) of this code.
(d) (1) When the vacancy in the office of Justice of the Supreme Court of Appeals, judge
of the circuit court, judge of a family court, or magistrate occurs after the 84th day before a general
election, and the affected term of office ends on December 31 following the succeeding general
election two years later, the person appointed to fill the vacancy shall continue in office until the
completion of the term.
(2) When the vacancy occurs before the close of the candidate filing period for the primary
election, and if the unexpired term be for a period of greater than two years, the vacancy shall be
filled by election in the nonpartisan judicial election held concurrently with the primary election
and the appointment shall continue until a successor is elected and certified.
(3) When the vacancy occurs after the close of candidate filing for the primary election
and not later than 84 days before the general election, and if the unexpired term be for a period
of greater than two years, the vacancy shall be filled by election in a nonpartisan judicial election
Enr. CS for HB 3004

held concurrently with the general election, and the appointment shall continue until a successor is elected and certified.

(e) When an election to fill a vacancy is required to be held at the general election, according to the provisions of §3-10-3(d) of this code, a special candidate filing period shall be established. Candidates seeking election to any unexpired term for Justice of the Supreme Court of Appeals, judge of a circuit court, judge of the family court, or magistrate shall file a certificate of announcement and pay the filing fee no earlier than 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.

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

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

(b) If there is a vacancy in the representation from this state in the Senate of the United States Congress, the vacancy shall be filled by the Governor of the state by appointment. The Governor shall make the appointment from a list of three legally qualified persons submitted by the party executive committee of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred. The list of qualified persons to fill the vacancy shall be submitted to the Governor within 15 days after the
Enr. CS for HB 3004

vacancy occurs, and the Governor shall duly make his or her appointment to fill the vacancy from
the list of legally qualified persons within five days after the list is received. If the list is not
submitted to the Governor within the 15-day period, the Governor shall appoint, within five days
thereafter, a legally qualified person of the same political party with which the person holding the
office immediately preceding the vacancy was affiliated at the time the vacancy occurred.

Furthermore,

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

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

§3-10-5. Vacancies in state Legislature.

(a) Any vacancy in the office of state senator or member of the House of Delegates shall
be filled by appointment by the Governor, from a list of three legally qualified persons submitted
by the party executive committee of the same political party with which the person holding the
office immediately preceding the vacancy was affiliated at the time the vacancy occurred. The list
of qualified persons to fill the vacancy shall be submitted to the Governor within 15 days after the
vacancy occurs and the Governor shall duly make his or her appointment to fill the vacancy from
the list of legally qualified persons within five days after the list is received. If the list is not
submitted to the Governor within the 15-day period, the Governor shall appoint within five days
thereafter a legally qualified person of the same political party with which the person holding the
office immediately preceding the vacancy was affiliated at the time the vacancy occurred.
(b) In the case of a member of the House of Delegates, the list shall be submitted by the
party executive committee of the delegate district in which the vacating member resided at the
time of his or her election or appointment. The appointment to fill a vacancy in the House of
Delegates is for the unexpired term.

(c) In the case of a state senator, the list shall be submitted by the party executive
committee of the state senatorial district in which the vacating senator resided at the time of his
or her election or appointment. The appointment to fill a vacancy in the state Senate is for the
unexpired term, unless §3-10-1 of this code requires a subsequent election to fill the remainder
of the term, which shall follow the procedure set forth in said section.

§3-10-7. Vacancies in offices of county commissioner and clerk of county commission.

(a) Any vacancy in the office of county commissioner or clerk of county commission shall
be filled by appointment by the county commission. The appointee must be a person of the same
political party with which the person holding the office immediately preceding the vacancy was
affiliated at the time the vacancy occurred: Provided, That at the time of appointment, the
appointee must have been a member of that political party for at least 60 days prior to the
occurrence of the vacancy.

(b) If a quorum of the county commission fails to make an appointment within 30 days, the
county executive committee of the same political party with which the person holding the office
preceding the vacancy was affiliated at the time the vacancy occurred, shall submit a list of three
legally qualified persons to fill the vacancy. Within 15 days from the date on which the list is
received, the county commission shall appoint a candidate from the list to fill the vacancy. If the
county commission fails to make the appointment within the specified time, then the county
commissioner with the longest tenure shall eliminate one name from the submitted list, followed
by the county commissioner with the second-longest tenure then eliminating one name from the
submitted list. The name remaining after those two names have been eliminated shall be deemed
to be appointed by the county commission to fill the vacancy.
(c) If the number of vacancies in a county commission deprives that body of a quorum, the Governor shall make an appointment to fill any vacancy in the county commission necessary to create a quorum, from a list of three legally qualified persons submitted by the party executive committee of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred. The Governor shall make any appointments necessary, beginning with the vacancy first created, to create a quorum in accordance with the same procedures applicable to county commissions under §3-10-7(a) of this code. Once a quorum of the county commission is reestablished by gubernatorial appointment, the authority to fill the remaining vacancies shall be filled in the manner prescribed in §3-10-7(a) of this code.

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

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

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

(g) §3-10-1 of this code shall be followed with respect to any election needed to fill a vacancy, except that if the vacancy occurs after the primary cutoff date but not later than the general cutoff date, candidates to fill the vacancy shall be nominated by the county executive committee in the manner provided in §3-5-19 of this code, as in the case of filling vacancies in nominations, and the names of the persons, so nominated and certified to the clerk of the county commission of the county, shall be placed upon the ballot to be voted at the next general election.
(h) If the election for an unexpired term is held at the same time as the election for a full term for county commissioner, the full term shall be counted first and the unexpired term shall be counted second. If the candidate with the highest number of votes for the unexpired term resides in the same magisterial district as the candidate with the highest number of votes for the full term, the candidate for the full term shall be seated. The candidate with the next highest number of votes for the unexpired term residing in a different magisterial district shall be seated for the unexpired term.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman, House Committee

[Signature]
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

[Signature]
Clerk of the House of Delegates

[Signature]
Clerk of the Senate

[Signature]
Speaker of the House of Delegates

[Signature]
President of the Senate

The within ........................................ this the ........................................ day of ................................................................., 2018.

[Signature]
Governor