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WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENROLLED

Committee Substitute

for

Senate Bill 255

SENATOR BLAIR, *original sponsor*

[Passed April 7, 2017; in effect 90 days from passage]

AN ACT to amend and reenact [§3-10-3](#), [§3-10-5](#) and [§3-10-7](#) of the Code of West Virginia, 1931, as amended, all relating generally to vacancies in elected office; requiring vacancies in offices of Secretary of State, Auditor, Treasurer, Attorney General, Commissioner of Agriculture, or other office created or made elective to be filled by voters of entire state, to be filled by Governor from list of three qualified persons submitted by 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; requiring Governor to fill vacancies in those offices with person of same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred; providing that Governor fill vacancies created in state Legislature from list of three qualified persons submitted by 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; requiring vacancies in offices of county commissioner or clerk of the county commission to be filled by county commission with 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; providing process for vacancy on county commission to be filled if county commission fails to fill the vacancy; providing Governor fill vacancies on county commission when no quorum on county commission from list of three qualified persons submitted by 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; making appointments subject to provisions of section one of article; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That [§3-10-3](#), [§3-10-5](#) and [§3-10-7](#) of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. FILLING VACANCIES.

[§3-10-3](#). Vacancies in offices of state officials, United States senators, 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 section one of this article. 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 fifteen 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 fifteen-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) 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 subsection (d) of this section. If an election is required under subsection (d) of this section, the Governor, circuit court or the chief judge thereof in vacation, is responsible for the proper proclamation by order and notice required by section one of this article.

(c) Any vacancy in the office of magistrate is appointed according to the provisions of section six, article one, chapter fifty 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 subsection (d) of this section.

(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 eighty-fourth day before a general election, and the affected term of office ends on the

thirty-first day of December 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 eighty-four 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 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 subsection (d) of this section, 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 seventy-seven days before the general election.

[§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 fifteen 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 fifteen-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 section one of this article 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 of the county by 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 any such person appointed must have been a member of that political party for at least sixty days prior to the occurrence of the vacancy.

(b) If a quorum of the county commission fails to appoint within thirty days, then the county 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 shall submit a list of three legally qualified persons to fill the vacancy. Upon receipt, the county commission shall make the appointment to fill the vacancy from the submitted list within fifteen days after the list is received. 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 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 deprive that body of a quorum, the Governor shall 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 by subsection (a) of this section. 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 said section.

(d) An appointment made pursuant to this section is for the period stated by section one of this article.

(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 thirty days from the date of the vacancy.

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

(g) Section one of this article 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 section nineteen, article five of this chapter, 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.