

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 2853**

5 (By Delegates By Mr. Speaker, (Mr. Thompson) and Delegate
6 Armstead)

7
8 [Passed February 2, 2011; in effect from passage.]
9

10 AN ACT to amend and reenact §3-10-2 of the Code of West Virginia,
11 1931, as amended, relating to filling a vacancy in the office
12 of Governor; revising contingencies creating a vacancy in the
13 office of Governor to comport with the West Virginia
14 Constitution; providing for election of Governor if vacancy
15 occurs within first three years of term; providing one time
16 new special elections to fill an existing vacancy in the
17 office of Governor; providing requirements for special
18 elections; providing that provisions relating to special
19 general election do not affect political party creation;
20 prescribing time frames for when new election must take place;
21 providing for the person acting as Governor to issue
22 proclamations relating to new elections; requiring the state
23 to pay costs incurred in connection with any special
24 elections; requiring the person acting as Governor to issue a

1 proclamation setting a special primary election; requiring the
2 proclamations issued by the person acting as Governor to be
3 published; providing that the provisions of the law relating
4 to elections shall apply to the special general election and
5 special primary election unless inconsistent; modifying
6 certain statutory time periods relating to declaration of
7 candidacy; modifying procedures relating to payment of filing
8 fees and drawing of ballot positions; clarifying the
9 eligibility of certain minors to vote in special primary
10 election; modifying statutory provisions relating to minimum
11 number of ballots to be printed; providing that polling places
12 shall not be changed except for certain situations; providing
13 that constitutionally required redistricting to have no effect
14 until after new special election in 2011 is complete;
15 modifying procedures for persons without party affiliations to
16 nominate candidates; authorizing the Secretary of State to
17 issue administrative orders and to establish procedures and
18 deadlines; providing the provisions applying to the new
19 special elections expire; authorizing Saturday early voting in
20 the special primary election; and requiring Secretary of State
21 to report to Joint Committee on Government and Finance.

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

23 That §3-10-2 of the Code of West Virginia, 1931, as amended,
24 be amended and reenacted to read as follows:

1 **ARTICLE 10. FILLING VACANCIES.**

2 **§3-10-2. Vacancy in office of Governor.**

3 (a) In case of the death, conviction on impeachment, failure
4 to qualify, resignation or other disability of the Governor, the
5 President of the Senate shall act as Governor until the vacancy is
6 filled or the disability removed; and if the President of the
7 Senate, for any of the above-named causes, shall be or become
8 incapable of performing the duties of Governor, the same shall
9 devolve upon the Speaker of the House of Delegates; and in all
10 other cases where there is no one to act as Governor, one shall be
11 chosen by the joint vote of the Legislature. Whenever a vacancy
12 shall occur in the office of Governor before the first three years
13 of the term shall have expired, a new election for Governor shall
14 take place to fill the vacancy. The new election shall consist of
15 a special primary election and a special general election, and
16 shall occur at such time as will permit the person elected as
17 Governor in the new election to assume office within one year of
18 the date the vacancy occurred: *Provided*, That the special general
19 election provided in this section may not apply to section eight,
20 article one of this chapter. Within thirty days from the date the
21 vacancy occurs, the person acting as Governor pursuant to the state
22 constitution shall issue a proclamation fixing the time for a new
23 statewide election to fill the vacancy in the office of Governor,
24 which shall be published prior to such election as a Class II-O

1 legal advertisement in compliance with the provisions of article
2 three, chapter fifty-nine of this code, and the publication area
3 for such publication shall be each county of the state. The
4 proclamation issued by the person acting as Governor pursuant to
5 the state constitution shall provide for a special primary election
6 to nominate candidates for the special general election. The
7 special primary election shall take place no less than ninety days
8 after the proclamation and no later than one hundred forty days
9 from the date that the vacancy in the office occurs. The
10 proclamation issued by the person acting as Governor pursuant to
11 the state constitution shall also provide for a special general
12 election to take place no sooner than ninety days after the special
13 primary election and no later than two hundred eighty days from the
14 date that the vacancy in the office occurs.

15 (b) The compensation of election officers, cost of printing
16 ballots and all other reasonable and necessary expenses in holding
17 and making the return of the new election provided in this section
18 to fill a vacancy in the office of Governor are obligations of the
19 state incurred by the ballot commissioners, clerks of the county
20 commissions and county commissions of the various counties as
21 agents of the state. All expenses of the new election are to be
22 audited by the Secretary of State. The Secretary of State shall
23 prepare and transmit to the county commissions forms on which the
24 county commissions shall certify all expenses of the new election

1 provided in this section to the Secretary of State. If satisfied
2 that the expenses as certified by the county commissions are
3 reasonable and were necessarily incurred, the Secretary of State
4 shall requisition the necessary warrants from the Auditor of the
5 state to be drawn on the State Treasurer and shall mail the
6 warrants directly to the vendors of the new election services,
7 supplies and facilities.

8 (c) Notwithstanding the provisions of subsection (a) of this
9 section to the contrary, for purposes of filling the vacancy that
10 occurred in the office of Governor on November 15, 2010, a new
11 election shall occur as follows:

12 (1) Upon the effective date of this subsection, the person
13 acting as Governor pursuant to the state constitution shall
14 immediately issue a proclamation calling for a special primary and
15 general election as provided for in this subsection. For purposes
16 of this subsection, the new elections so provided in the
17 proclamation mean the special primary and general elections as set
18 forth in this subsection.

19 (2) The special primary election shall be held on May 14, 2011
20 and the special general election shall be held on October 4, 2011.

21 (3) The proclamation for the special primary election and
22 special general election shall be published prior to the special
23 primary election and special general elections, respectively, as a
24 Class II-0 legal advertisement in accordance with article three,

1 chapter fifty-nine of this code and the publication area for the
2 publication is each county of the state. The notice shall be filed
3 with the Secretary of State who shall cause the document to be
4 published within each county in accordance with this section.

5 (4) The provisions of this chapter apply to the special
6 primary election and special general election to the extent that
7 those provisions are consistent with the provisions of this
8 section. Statutory time deadlines for the purpose of the new
9 election provided in this subsection are modified as follows:

10 (A) A notarized declaration of candidacy and filing fee shall
11 be filed and received in hand by the Secretary of State by 5:00
12 p.m. on the fifth calendar day following the proclamation of the
13 special primary election. The declaration of candidacy may be filed
14 in person, by United States mail, electronic means or any other
15 means authorized by the Secretary of State;

16 (B) The Secretary of State may issue emergency administrative
17 orders to undertake other ministerial actions that are otherwise
18 authorized pursuant to this code when necessary to assure the
19 preservation of the voting rights of the citizens of this state and
20 avoid fraudulent voting and election activities and otherwise
21 assure the orderly and efficient conduct of the new election
22 provided in this subsection: *Provided,* That emergency
23 administrative orders may not contravene the provisions of this
24 section;

1 (C) For petition in lieu of payment of filing fees, a
2 candidate seeking nomination for the vacancy in the office of
3 Governor may utilize the process set forth in section eight-a,
4 article five of this chapter: *Provided*, That the minimum number of
5 signatures required is one thousand five hundred;

6 (D) Drawing for special primary election ballot position will
7 take place at the Secretary of State's office twenty-four hours
8 after the end of the filing period. For each major political party
9 on the ballot, a single drawing by lot shall determine the
10 candidate ballot position for ballots statewide. This drawing shall
11 be witnessed by four clerks of the county commission chosen by the
12 West Virginia Association of County Clerks, with no more than two
13 clerks representing a single political party. Ballot position for
14 the special general election shall be determined pursuant to
15 subdivision (3), subsection (c), section two, article six of this
16 chapter;

17 (E) A registered voter who has not reached eighteen years of
18 age may vote in the May 14, 2011 special primary election:
19 *Provided*, That the voter will attain eighteen years of age at the
20 time of the special general election provided in this subsection;

21 (F) When paper or optical scan ballots are the primary voting
22 method used at any county, the total number of regular official
23 ballots printed shall equal at a minimum fifty percent of the
24 number of registered voters eligible to vote that ballot;

1 (G) When paper ballots are used in conjunction with a direct
2 recording electronic voting system, the total number of regular
3 official ballots printed shall equal at a minimum thirty percent of
4 the registered voters eligible to vote that ballot;

5 (H) Regularly scheduled locations of polling places may not be
6 changed, except for situations as provided in sections seven-e and
7 seven-f, article one of this chapter: *Provided, That* if multiple
8 precincts voted in one polling location for the November 2, 2010,
9 regularly scheduled general election, these precincts may be
10 consolidated into a single precinct. Locations for consolidated
11 precincts shall provide Internet access, insofar as possible, for
12 the sole purpose of utilizing the statewide Voter Registration
13 System (SVRS) as an electronic poll book. However, constitutionally
14 mandated redistricting may not take effect until the special
15 primary election and special general election provided in this
16 subsection are complete; and

17 (I) Citizens having no party organization or affiliation may
18 nominate candidates as provided by sections twenty-three and
19 twenty-four of article five of this chapter: *Provided, That* the
20 number of signatures required to be submitted shall be equal to not
21 less than one-quarter of one percent of the entire vote cast at the
22 last preceding general election for governor. Notwithstanding the
23 provisions of sections twenty three and twenty four of article five
24 of this chapter, the signatures, notarized declaration of

1 candidacy, and filing fee must be submitted no later than seven
2 calendar days following the special primary election provided in
3 this subsection.

4 (J) For the special primary election to be held pursuant to
5 this subsection, early voting will also be conducted from 9 a.m. to
6 5 p.m. on the Saturday immediately prior to the end of early
7 voting.

8 (5) The provisions of this subsection shall expire upon the
9 election and qualification of the Governor following the October 4,
10 2011 special general election.

11 (d) The Secretary of State shall by January 10, 2012 report to
12 the Joint Committee on Government and Finance findings regarding of
13 the operation of the new election undertaken pursuant to subsection
14 (c) of this section. This report shall provide analysis of the
15 direct and indirect costs to the state associated with the conduct
16 of the new election.