

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2853**

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

6  
7 (Originating in the House Committee on the Judiciary)

8 [January 24, 2011]

9  
10 A BILL 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; and requiring Secretary of State to  
20 report to Joint Committee on Government and Finance.

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

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

24 **ARTICLE 10. FILLING VACANCIES.**

1    **§3-10-2. Vacancy in office of Governor.**

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

1 proclamation fixing the time for a new statewide election to fill  
2 the vacancy in the office of Governor, which shall be published  
3 prior to such election as a Class II-O legal advertisement in  
4 compliance with the provisions of article three, chapter fifty-nine  
5 of this code, and the publication area for such publication shall  
6 be each county of the state. ~~But if it shall occur less than thirty~~  
7 ~~days next preceding such general election, and more than one year~~  
8 ~~before the expiration of the term, such acting Governor shall issue~~  
9 ~~a proclamation, fixing a time for a special election to fill such~~  
10 ~~vacancy, which shall be published as hereinbefore provided. The~~  
11 proclamation issued by the person acting as Governor pursuant to  
12 the state constitution shall provide for a special primary election  
13 to nominate candidates for the special general election. The  
14 special primary election shall take place no less than ninety days  
15 after the proclamation and no later than one hundred forty days  
16 from the date that the vacancy in the office occurs. The  
17 proclamation issued by the person acting as Governor pursuant to  
18 the state constitution shall also provide for a special general  
19 election to take place no sooner than ninety days after the special  
20 primary election and no later than two hundred eighty days from the  
21 date that the vacancy in the office occurs.

22 ~~If the vacancy is to be filled at a general election and shall~~  
23 ~~occur before the primary election to nominate candidates to be~~  
24 ~~voted for at such general election, candidates to fill the vacancy~~

1 ~~shall be nominated at such primary election in accordance with the~~  
2 ~~time requirements and the provisions and procedures prescribed in~~  
3 ~~article five of this chapter. When nominations to fill such vacancy~~  
4 ~~cannot be so accomplished at such primary election, and in all~~  
5 ~~cases wherein the vacancy is to be filled at a special election,~~  
6 ~~candidates to be voted for at such general or special elections~~  
7 ~~shall be nominated by a state convention to be called, convened and~~  
8 ~~held under the resolutions, rules and regulations of the political~~  
9 ~~party executive committees of the state. The laws prescribing the~~  
10 ~~manner of calling, constituting and holding conventions to nominate~~  
11 ~~candidates for presidential electors shall, insofar as applicable,~~  
12 ~~govern conventions to nominate candidates to fill any vacancy in~~  
13 ~~any office to be filled by the voters of the state as a whole,~~  
14 ~~except that, in lieu of the magisterial district conventions in the~~  
15 ~~several counties, the county executive committee shall call and~~  
16 ~~convene a county convention at the county seat with delegates~~  
17 ~~thereto apportioned to and representative of the several~~  
18 ~~magisterial districts of the county as provided in section twenty-~~  
19 ~~one of article five of this chapter. The county convention shall~~  
20 ~~proceed to select the county's prescribed number of state~~  
21 ~~convention delegates from the several magisterial districts thereof~~  
22 ~~and the chairman and secretary of the convention shall promptly~~  
23 ~~certify the names and addresses of the persons so selected as~~  
24 ~~delegates to the state convention to the chairman of the state~~

1 ~~executive committee of the political party.~~

2 (b) The compensation of election officers, cost of printing  
3 ballots and all other reasonable and necessary expenses in holding  
4 and making the return of the new election provided in this section  
5 to fill a vacancy in the office of Governor are obligations of the  
6 state incurred by the ballot commissioners, clerks of the county  
7 commissions and county commissions of the various counties as  
8 agents of the state. All expenses of the new election are to be  
9 audited by the Secretary of State. The Secretary of State shall  
10 prepare and transmit to the county commissions forms on which the  
11 county commissions shall certify all expenses of the new election  
12 provided in this section to the Secretary of State. If satisfied  
13 that the expenses as certified by the county commissions are  
14 reasonable and were necessarily incurred, the Secretary of State  
15 shall requisition the necessary warrants from the Auditor of the  
16 state to be drawn on the State Treasurer and shall mail the  
17 warrants directly to the vendors of the new election services,  
18 supplies and facilities.

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

23 (1) Upon the effective date of this subsection, the person  
24 acting as Governor pursuant to the state constitution shall

1 immediately issue a proclamation calling for a special primary and  
2 general election as provided for in this subsection. For purposes  
3 of this subsection, the new elections so provided in the  
4 proclamation mean the special primary and general elections as set  
5 forth in this subsection.

6 (2) The special primary election shall be held on May 14, 2011  
7 and the special general election shall be held on September 13,  
8 2011.

9 (3) The proclamation for the special primary election and  
10 special general election shall be published prior to the special  
11 primary election and special general elections, respectively, as a  
12 Class II-0 legal advertisement in accordance with article three,  
13 chapter fifty-nine of this code and the publication area for the  
14 publication is each county of the state. The notice shall be filed  
15 with the Secretary of State who shall cause the document to be  
16 published within each county in accordance with this section.

17 (4) The provisions of this chapter apply to the special  
18 primary election and special general election to the extent that  
19 those provisions are consistent with the provisions of this  
20 section. Statutory time deadlines for the purpose of the new  
21 election provided in this subsection are modified as follows:

22 (A) A notarized declaration of candidacy and filing fee shall  
23 be filed and received in hand by the Secretary of State by 5:00  
24 p.m. on the fifth calendar day following the proclamation of the

1 special primary election. The declaration of candidacy may be  
2 filed in person, by United States mail, electronic means or any  
3 other means authorized by the Secretary of State;

4 (B) The Secretary of State may issue emergency administrative  
5 orders to undertake other ministerial actions that are otherwise  
6 authorized pursuant to this code when necessary to assure the  
7 preservation of the voting rights of the citizens of this state and  
8 avoid fraudulent voting and election activities and otherwise  
9 assure the orderly and efficient conduct of the new election  
10 provided in this subsection: Provided, That emergency  
11 administrative orders may not contravene the provisions of this  
12 section;

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

18 (D) Drawing for special primary election ballot position will  
19 take place at the Secretary of State's office twenty-four hours  
20 after the end of the filing period. For each major political party  
21 on the ballot, a single drawing by lot shall determine the  
22 candidate ballot position for ballots statewide. This drawing shall  
23 be witnessed by four clerks of the county commission chosen by the  
24 West Virginia Association of County Clerks, with no more than two



1 clerks representing a single political party. Ballot position for  
2 the special general election shall be determined pursuant to  
3 subdivision (3), subsection (c), section two, article six of this  
4 chapter;

5 (E) A registered voter who has not reached eighteen years of  
6 age may vote in the May 14, 2011 special primary election:

7 Provided, That the voter will attain eighteen years of age at the  
8 time of the special general election provided in this subsection;

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

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

17 (H) Regularly scheduled locations of polling places may not be  
18 changed, except for situations as provided in sections seven-e and  
19 seven-f, article one of this chapter: Provided, That if multiple  
20 precincts voted in one polling location for the November 2, 2010,  
21 regularly scheduled general election, these precincts may be  
22 consolidated into a single precinct. Locations for consolidated  
23 precincts shall provide Internet access, insofar as possible, for  
24 the sole purpose of utilizing the statewide Voter Registration

1 System (SVRS) as an electronic poll book. However, constitutionally  
2 mandated redistricting may not take effect until the special  
3 primary election and special general election provided in this  
4 subsection are complete; and

5 (I) Citizens having no party organization or affiliation may  
6 nominate candidates as provided by sections twenty-three and  
7 twenty-four of article five of this chapter: *Provided, That* the  
8 number of signatures required to be submitted shall be equal to not  
9 less than one-quarter of one percent of the entire vote cast at the  
10 last preceding general election for governor. Notwithstanding the  
11 provisions of sections twenty three and twenty four of article five  
12 of this chapter, the signatures, notarized declaration of  
13 candidacy, and filing fee must be submitted no later than seven  
14 calendar days following the special primary election provided in  
15 this subsection.

16 (5) The provisions of this subsection shall expire upon the  
17 election and qualification of the Governor following the September  
18 13, 2011 special general election.

19 (d) The Secretary of State shall by January 10, 2012 report to  
20 the Joint Committee on Government and Finance findings regarding of  
21 the operation of the new election undertaken pursuant to subsection  
22 (c) of this section. This report shall provide analysis of the  
23 direct and indirect costs to the state associated with the conduct  
24 of the new election.