

H. B. 2853

(By Mr. Speaker, (Mr. Thompson) and Delegate Armstead)
[By Request of the Executive]
[Introduced January 26, 2011; referred to the
Committee on the Judiciary then Finance.]

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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 that new elections to fill a vacancy
15 in the office of Governor shall consist of special primary and
16 special general elections; providing that the new election to
17 fill a vacancy shall occur at a time to allow a newly elected
18 individual to assume office within one year of the date the
19 vacancy occurred; providing that provisions relating to
20 special general election do not affect political party
21 creation; prescribing time frames for when new election must
22 take place, including special primary election to nominate
23 candidates to be voted for at a special general election;
24 providing the time frame for the person acting as Governor to

1 issue proclamations to set the new election; removing
2 provision requiring vacancies to be filled at general
3 elections deemed unconstitutional; requiring person acting as
4 Governor to issue proclamation to fix date for new election,
5 including date for special primary election; removing
6 provisions related to utilizing conventions to nominate
7 candidates; requiring the state to pay costs incurred in
8 connection with a special election to fill a vacancy in the
9 office of Governor; providing mechanism to fill vacancy in the
10 office of Governor that occurred on November 15, 2010 by
11 utilizing special primary election and special general
12 election; requiring the person acting as Governor to issue a
13 proclamation setting a special primary election to be held on
14 June 20, 2011 in addition to the new election proclaimed by
15 the person acting as Governor issued January 21, 2011;
16 providing provisions to apply to special primary and special
17 general election to be held in 2011; requiring the
18 proclamations issued by the person acting as Governor to be
19 published in each county prior to the special primary and
20 special general elections; providing that the provisions of
21 the law relating to elections shall apply to the special
22 general election and special primary election unless
23 inconsistent with section; modifying certain statutory time
24 periods relating to declaration of candidacy; modifying

1 procedures relating to payment of filing fees and drawing of
2 ballot positions; clarifying the eligibility of certain minors
3 to vote in special primary election; modifying statutory
4 provisions relating to minimum number of ballots to be
5 printed; providing that polling places shall not be changed
6 except for emergency situations; providing that
7 constitutionally required redistricting to have no effect
8 until after new election in 2011 is complete; modifying
9 procedures for persons without party affiliations to nominate
10 candidates for the special general election; authorizing the
11 Secretary of State to issue administrative orders and to
12 establish procedures and deadlines necessary to preserve
13 voting rights, avoid fraudulent voting and other election
14 irregularities and assure orderly and efficient administration
15 of the new election; providing for the expiration of the
16 provisions applying to the new election pursuant to the
17 vacancy created on November 15, 2010; and requiring Secretary
18 of State to report to Joint Committee on Government and
19 Finance and establishing guidelines for the report.

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

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

23 **ARTICLE 10. FILLING VACANCIES.**

24 **§3-10-2. Vacancy in office of Governor.**

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

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

19 ~~If the vacancy is to be filled at a general election and shall~~
20 ~~occur before the primary election to nominate candidates to be~~
21 ~~voted for at such general election, candidates to fill the vacancy~~
22 ~~shall be nominated at such primary election in accordance with the~~
23 ~~time requirements and the provisions and procedures prescribed in~~
24 ~~article five of this chapter. When nominations to fill such vacancy~~

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

23 (b) The compensation of election officers, cost of printing
24 ballots and all other reasonable and necessary expenses in holding

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

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

20 (1) In addition to the new election set forth in the
21 proclamation dated January 21, 2011, a special primary election
22 shall also be held. For purposes of this subsection, the new
23 election provided in the proclamation dated January 21, 2011 means
24 the special general election as set forth in this subsection.

1 (2) The person acting as Governor shall issue a proclamation
2 calling for a special primary election to nominate candidates for
3 the special general election. The special primary election shall
4 be held on June 20, 2011.

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

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

18 (A) A notarized declaration of candidacy and filing fee shall
19 be filed and received in hand by the Secretary of State by 5:00
20 p.m. on the tenth calendar day following the proclamation of the
21 special primary election. The declaration of candidacy may be
22 filed in person, by United States mail, electronic means or any
23 other means authorized by the Secretary of State;

24 (B) The Secretary of State may issue emergency administrative

1 orders to undertake other ministerial actions that are otherwise
2 authorized pursuant to this code when necessary to assure the
3 preservation of the voting rights of the citizens of this state and
4 avoid fraudulent voting and election activities and otherwise
5 assure the orderly and efficient conduct of the new election
6 provided in this subsection: *Provided,* That emergency
7 administrative orders may not contravene the provisions of this
8 section;

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

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

22 (E) A registered voter who has not reached eighteen years of
23 age may vote in the June 20, 2011 special primary election:
24 *Provided,* That the voter will attain eighteen years of age at the

1 time of the special general election provided in this subsection;

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

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

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

22 (I) Citizens having no party organization or affiliation may
23 nominate candidates as provided by sections twenty-three and
24 twenty-four of article five of this chapter: *Provided, That the*

1 nomination certificates shall be filed not later than seven
2 calendar days following the special primary election provided in
3 this subsection.

4 (5) The provisions of this subsection shall expire upon the
5 election and qualification of the Governor following the October 4,
6 2011 special general election.

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

NOTE: The purpose of this bill is to provide for a special primary and general election to fill a vacancy in the office of Governor.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.