

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2011



ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 2853**

(By Mr. Speaker, Mr. Thompson, and Delegate Armstead)



Passed February 2, 2011

In Effect From Passage

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

H. B. 2853

(BY MR. SPEAKER, MR. THOMPSON, AND DELEGATE ARMSTEAD)
[BY REQUEST OF THE EXECUTIVE]

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

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. FILLING VACANCIES.

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

- 1 (a) In case of the death, conviction on impeachment,
- 2 failure to qualify, resignation or other disability of the
- 3 Governor, the President of the Senate shall act as Governor
- 4 until the vacancy is filled or the disability removed; and if the

5 President of the Senate, for any of the above-named causes,
6 shall be or become incapable of performing the duties of
7 Governor, the same shall devolve upon the Speaker of the
8 House of Delegates; and in all other cases where there is no
9 one to act as Governor, one shall be chosen by the joint vote
10 of the Legislature. Whenever a vacancy shall occur in the
11 office of Governor before the first three years of the term
12 shall have expired, a new election for Governor shall take
13 place to fill the vacancy. The new election shall consist of a
14 special primary election and a special general election, and
15 shall occur at such time as will permit the person elected as
16 Governor in the new election to assume office within one
17 year of the date the vacancy occurred: *Provided*, That the
18 special general election provided in this section may not
19 apply to section eight, article one of this chapter. Within
20 thirty days from the date the vacancy occurs, the person
21 acting as Governor pursuant to the state constitution shall
22 issue a proclamation fixing the time for a new statewide
23 election to fill the vacancy in the office of Governor, which
24 shall be published prior to such election as a Class II-0 legal
25 advertisement in compliance with the provisions of article
26 three, chapter fifty-nine of this code, and the publication area
27 for such publication shall be each county of the state. The
28 proclamation issued by the person acting as Governor
29 pursuant to the state constitution shall provide for a special
30 primary election to nominate candidates for the special
31 general election. The special primary election shall take
32 place no less than ninety days after the proclamation and no
33 later than one hundred forty days from the date that the
34 vacancy in the office occurs. The proclamation issued by the
35 person acting as Governor pursuant to the state constitution
36 shall also provide for a special general election to take place
37 no sooner than ninety days after the special primary election
38 and no later than two hundred eighty days from the date that
39 the vacancy in the office occurs.

40 (b) The compensation of election officers, cost of printing
41 ballots and all other reasonable and necessary expenses in
42 holding and making the return of the new election provided
43 in this section to fill a vacancy in the office of Governor are
44 obligations of the state incurred by the ballot commissioners,
45 clerks of the county commissions and county commissions of
46 the various counties as agents of the state. All expenses of
47 the new election are to be audited by the Secretary of State.
48 The Secretary of State shall prepare and transmit to the
49 county commissions forms on which the county commissions
50 shall certify all expenses of the new election provided in this
51 section to the Secretary of State. If satisfied that the expenses
52 as certified by the county commissions are reasonable and
53 were necessarily incurred, the Secretary of State shall
54 requisition the necessary warrants from the Auditor of the
55 state to be drawn on the State Treasurer and shall mail the
56 warrants directly to the vendors of the new election services,
57 supplies and facilities.

58 (c) Notwithstanding the provisions of subsection (a) of
59 this section to the contrary, for purposes of filling the
60 vacancy that occurred in the office of Governor on November
61 15, 2010, a new election shall occur as follows:

62 (1) Upon the effective date of this subsection, the person
63 acting as Governor pursuant to the state constitution shall
64 immediately issue a proclamation calling for a special
65 primary and general election as provided for in this
66 subsection. For purposes of this subsection, the new elections
67 so provided in the proclamation mean the special primary and
68 general elections as set forth in this subsection.

69 (2) The special primary election shall be held on May 14,
70 2011 and the special general election shall be held on
71 October 4, 2011.

72 (3) The proclamation for the special primary election and
73 special general election shall be published prior to the special
74 primary election and special general election, respectively, as
75 a Class II-0 legal advertisement in accordance with article
76 three, chapter fifty-nine of this code and the publication area
77 for the publication is each county of the state. The notice
78 shall be filed with the Secretary of State who shall cause the
79 document to be published within each county in accordance
80 with this section.

81 (4) The provisions of this chapter apply to the special
82 primary election and special general election to the extent
83 that those provisions are consistent with the provisions of this
84 section. Statutory time deadlines for the purpose of the new
85 election provided in this subsection are modified as follows:

86 (A) A notarized declaration of candidacy and filing fee
87 shall be filed and received in hand by the Secretary of State
88 by 5:00 p.m. on the fifth calendar day following the
89 proclamation of the special primary election. The declaration
90 of candidacy may be filed in person, by United States mail,
91 electronic means or any other means authorized by the
92 Secretary of State;

93 (B) The Secretary of State may issue emergency
94 administrative orders to undertake other ministerial actions
95 that are otherwise authorized pursuant to this code when
96 necessary to assure the preservation of the voting rights of the
97 citizens of this state and avoid fraudulent voting and election
98 activities and otherwise assure the orderly and efficient
99 conduct of the new election provided in this subsection:
100 *Provided*, That emergency administrative orders may not
101 contravene the provisions of this section;

102 (C) For petition in lieu of payment of filing fees, a
103 candidate seeking nomination for the vacancy in the office of
104 Governor may utilize the process set forth in section eight-a,

105 article five of this chapter: *Provided*, That the minimum
106 number of signatures required is one thousand five hundred;

107 (D) Drawing for special primary election ballot position
108 will take place at the Secretary of State's office twenty-four
109 hours after the end of the filing period. For each major
110 political party on the ballot, a single drawing by lot shall
111 determine the candidate ballot position for ballots statewide.
112 This drawing shall be witnessed by four clerks of the county
113 commission chosen by the West Virginia Association of
114 County Clerks, with no more than two clerks representing a
115 single political party. Ballot position for the special general
116 election shall be determined pursuant to subdivision (3),
117 subsection (c), section two, article six of this chapter;

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

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

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

131 (H) Regularly scheduled locations of polling places may
132 not be changed, except for situations as provided in sections
133 seven-e and seven-f, article one of this chapter: *Provided*,
134 That if multiple precincts voted in one polling location for the
135 November 2, 2010, regularly scheduled general election,
136 these precincts may be consolidated into a single precinct.

137 Locations for consolidated precincts shall provide Internet
138 access, insofar as possible, for the sole purpose of utilizing
139 the Statewide Voter Registration System (SVRS) as an
140 electronic poll book. However, constitutionally mandated
141 redistricting may not take effect until the special primary
142 election and special general election provided in this
143 subsection are complete; and

144 (I) Citizens having no party organization or affiliation
145 may nominate candidates as provided by sections twenty-
146 three and twenty-four of article five of this chapter: *Provided,*
147 *That* the number of signatures required to be submitted shall
148 be equal to not less than one-quarter of one percent of the
149 entire vote cast at the last preceding general election for
150 governor. Notwithstanding the provisions of sections twenty
151 three and twenty four of article five of this chapter, the
152 signatures, notarized declaration of candidacy, and filing fee
153 must be submitted no later than seven calendar days
154 following the special primary election provided in this
155 subsection.

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

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

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

We, the undersigned, hereby certify that the foregoing bill is correctly enrolled.

*Chairman, House Select Committee
on Enrolled Bills*

*Chairman, Senate Committee
on Enrolled Bills*

Originating in the House.

In effect from passage.

Clerk of the House of Delegates

Clerk of the Senate

The within _____ this the _____
day of _____, 2011.

Governor