

COMMITTEE SUBSTITUTE

FOR

**H. B. 2853**

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(BY DELEGATES BY MR. SPEAKER, MR. THOMPSON, AND  
DELEGATE ARMSTEAD)

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(Originating in the Committee on the Judiciary)  
[January 24, 2011]

A BILL 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; 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 ~~or~~ 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. ~~If the~~  
20 ~~vacancy shall occur more than thirty days next preceding a~~  
21 ~~general election, the vacancy shall be filled at such election~~  
22 ~~and the acting Governor for the time being shall issue a~~  
23 ~~proclamation accordingly; Within thirty days from the date~~  
24 the vacancy occurs, the person acting as Governor pursuant  
25 to the state constitution shall issue a proclamation fixing the  
26 time for a new statewide election to fill the vacancy in the

27 office of Governor, which shall be published prior to such  
28 election as a Class II-O legal advertisement in compliance  
29 with the provisions of article three, chapter fifty-nine of this  
30 code, and the publication area for such publication shall be  
31 each county of the state. ~~But if it shall occur less than thirty~~  
32 ~~days next preceding such general election, and more than one~~  
33 ~~year before the expiration of the term, such acting Governor~~  
34 ~~shall issue a proclamation, fixing a time for a special election~~  
35 ~~to fill such vacancy, which shall be published as hereinbefore~~  
36 ~~provided.~~ The proclamation issued by the person acting as  
37 Governor pursuant to the state constitution shall provide for  
38 a special primary election to nominate candidates for the  
39 special general election. The special primary election shall  
40 take place no less than ninety days after the proclamation and  
41 no later than one hundred forty days from the date that the  
42 vacancy in the office occurs. The proclamation issued by the  
43 person acting as Governor pursuant to the state constitution  
44 shall also provide for a special general election to take place  
45 no sooner than ninety days after the special primary election

46 and no later than two hundred eighty days from the date that  
47 the vacancy in the office occurs.

48 ~~If the vacancy is to be filled at a general election and~~  
49 ~~shall occur before the primary election to nominate~~  
50 ~~candidates to be voted for at such general election, candidates~~  
51 ~~to fill the vacancy shall be nominated at such primary~~  
52 ~~election in accordance with the time requirements and the~~  
53 ~~provisions and procedures prescribed in article five of this~~  
54 ~~chapter. When nominations to fill such vacancy cannot be so~~  
55 ~~accomplished at such primary election, and in all cases~~  
56 ~~wherein the vacancy is to be filled at a special election,~~  
57 ~~candidates to be voted for at such general or special elections~~  
58 ~~shall be nominated by a state convention to be called,~~  
59 ~~convened and held under the resolutions, rules and~~  
60 ~~regulations of the political party executive committees of the~~  
61 ~~state. The laws prescribing the manner of calling, constituting~~  
62 ~~and holding conventions to nominate candidates for~~  
63 ~~presidential electors shall, insofar as applicable, govern~~  
64 ~~conventions to nominate candidates to fill any vacancy in any~~

65 ~~office to be filled by the voters of the state as a whole, except~~  
66 ~~that, in lieu of the magisterial district conventions in the~~  
67 ~~several counties, the county executive committee shall call~~  
68 ~~and convene a county convention at the county seat with~~  
69 ~~delegates thereto apportioned to and representative of the~~  
70 ~~several magisterial districts of the county as provided in~~  
71 ~~section twenty-one of article five of this chapter. The county~~  
72 ~~convention shall proceed to select the county's prescribed~~  
73 ~~number of state convention delegates from the several~~  
74 ~~magisterial districts thereof and the chairman and secretary~~  
75 ~~of the convention shall promptly certify the names and~~  
76 ~~addresses of the persons so selected as delegates to the state~~  
77 ~~convention to the chairman of the state executive committee~~  
78 ~~of the political party.~~

79 (b) The compensation of election officers, cost of  
80 printing ballots and all other reasonable and necessary  
81 expenses in holding and making the return of the new  
82 election provided in this section to fill a vacancy in the office  
83 of Governor are obligations of the state incurred by the ballot

84 commissioners, clerks of the county commissions and county  
85 commissions of the various counties as agents of the state.  
86 All expenses of the new election are to be audited by the  
87 Secretary of State. The Secretary of State shall prepare and  
88 transmit to the county commissions forms on which the  
89 county commissions shall certify all expenses of the new  
90 election provided in this section to the Secretary of State. If  
91 satisfied that the expenses as certified by the county  
92 commissions are reasonable and were necessarily incurred,  
93 the Secretary of State shall requisition the necessary warrants  
94 from the Auditor of the state to be drawn on the State  
95 Treasurer and shall mail the warrants directly to the vendors  
96 of the new election services, supplies and facilities.

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

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

103 immediately issue a proclamation calling for a special  
104 primary and general election as provided for in this  
105 subsection. For purposes of this subsection, the new elections  
106 so provided in the proclamation mean the special primary  
107 and general elections as set forth in this subsection.

108 (2) The special primary election shall be held on May 14,  
109 2011 and the special general election shall be held on  
110 September 13, 2011.

111 (3) The proclamation for the special primary election and  
112 special general election shall be published prior to the special  
113 primary election and special general elections, respectively,  
114 as a Class II-0 legal advertisement in accordance with article  
115 three, chapter fifty-nine of this code and the publication area  
116 for the publication is each county of the state. The notice  
117 shall be filed with the Secretary of State who shall cause the  
118 document to be published within each county in accordance  
119 with this section.

120 (4) The provisions of this chapter apply to the special  
121 primary election and special general election to the extent

122 that those provisions are consistent with the provisions of this  
123 section. Statutory time deadlines for the purpose of the new  
124 election provided in this subsection are modified as follows:

125 (A) A notarized declaration of candidacy and filing fee  
126 shall be filed and received in hand by the Secretary of State  
127 by 5:00 p.m. on the fifth calendar day following the  
128 proclamation of the special primary election. The declaration  
129 of candidacy may be filed in person, by United States mail,  
130 electronic means or any other means authorized by the  
131 Secretary of State;

132 (B) The Secretary of State may issue emergency  
133 administrative orders to undertake other ministerial actions  
134 that are otherwise authorized pursuant to this code when  
135 necessary to assure the preservation of the voting rights of  
136 the citizens of this state and avoid fraudulent voting and  
137 election activities and otherwise assure the orderly and  
138 efficient conduct of the new election provided in this  
139 subsection: *Provided*, That emergency administrative orders  
140 may not contravene the provisions of this section;

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

146 (D) Drawing for special primary election ballot position  
147 will take place at the Secretary of State's office twenty-four  
148 hours after the end of the filing period. For each major  
149 political party on the ballot, a single drawing by lot shall  
150 determine the candidate ballot position for ballots statewide.  
151 This drawing shall be witnessed by four clerks of the county  
152 commission chosen by the West Virginia Association of  
153 County Clerks, with no more than two clerks representing a  
154 single political party. Ballot position for the special general  
155 election shall be determined pursuant to subdivision (3),  
156 subsection (c), section two, article six of this chapter;

157 (E) A registered voter who has not reached eighteen  
158 years of age may vote in the May 14, 2011 special primary  
159 election: *Provided*, That the voter will attain eighteen years

160 of age at the time of the special general election provided in  
161 this subsection;

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

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

172 (H) Regularly scheduled locations of polling places may  
173 not be changed, except for situations as provided in sections  
174 seven-e and seven-f, article one of this chapter: *Provided,*  
175 That if multiple precincts voted in one polling location for  
176 the November 2, 2010, regularly scheduled general election,  
177 these precincts may be consolidated into a single precinct.  
178 Locations for consolidated precincts shall provide Internet

179 access, insofar as possible, for the sole purpose of utilizing  
180 the statewide Voter Registration System (SVRS) as an  
181 electronic poll book. However, constitutionally mandated  
182 redistricting may not take effect until the special primary  
183 election and special general election provided in this  
184 subsection are complete; and

185 (I) Citizens having no party organization or affiliation  
186 may nominate candidates as provided by sections twenty-  
187 three and twenty-four of article five of this chapter:  
188 *Provided*, That the number of signatures required to be  
189 submitted shall be equal to not less than one-quarter of one  
190 percent of the entire vote cast at the last preceding general  
191 election for governor. Notwithstanding the provisions of  
192 sections twenty-three and twenty-four of article five of this  
193 chapter, the signatures, notarized declaration of candidacy,  
194 and filing fee must be submitted no later than seven calendar  
195 days following the special primary election provided in this  
196 subsection.

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

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