

1 emergency orders by the Secretary of State in certain
 2 circumstances; removing and repealing certain language
 3 relating to previous elections; clarifying method used to fill
 4 vacancies in the Office of Governor; adjusting method to fill
 5 vacancies in certain statewide, legislative and judicial
 6 offices such that the timing for all are consistent; requiring
 7 most elections to fill vacancies be held in conjunction with
 8 regularly scheduled elections; clarifying method used to fill
 9 vacancies in certain county offices; permitting vacancies in
 10 certain county offices to be filled by temporary replacements
 11 for no more than thirty days; and updating language regarding
 12 filling vacancies in elected offices.

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

14 That §3-10-4a of the Code of West Virginia, 1931, as amended,
 15 be repealed; and that §3-10-1, §3-10-2, §3-10-3, §3-10-4, §3-10-5,
 16 §3-10-6, §3-10-7 and §3-10-8 of said code be amended and reenacted,
 17 all to read as follows:

18 **ARTICLE 10. FILLING VACANCIES.**

19 **§3-10-1. Elections to fill vacancies.**

20 (a) When a vacancy occurs in an elected office of the state or
 21 county, it shall be filled according to the processes set forth in
 22 this article. As used in this article, unless otherwise indicated
 23 by the context:

24 (1) "General cutoff date" means the eighty-fourth day before

1 the general election that immediately precedes the general election
2 where the office would be on the ballot for election if there were
3 not a vacancy; and

4 (2) "Primary cutoff date" means the eighty-fourth day before
5 the primary election that immediately precedes the general cutoff
6 date.

7 (b) When a vacancy is filled by an appointment, as required
8 by this article for certain offices, the term that the appointee
9 holds the office shall depend on when the vacancy occurs. If the
10 vacancy occurs after the general cutoff date, then that appointee
11 shall hold the office until the end of the term of office. If the
12 vacancy occurs on or before the general cutoff date, then the
13 office shall be filled at the following general election pursuant
14 to this article and the appointee shall hold the office until a
15 qualified replacement is elected and certified at that general
16 election. The elected replacement shall hold the office until the
17 end of the original term of office.

18 ~~Except as provided in sections three and four of this article,~~
19 ~~elections to fill vacancies shall be conducted to fill any~~
20 ~~unexpired term when more than one year of the term of office~~
21 ~~remains at the time of such election. When less than one year of~~
22 ~~the term of office remains at the time of the election, the person~~
23 ~~appointed to fill the vacancy shall continue in office until the~~
24 ~~completion of the term.~~

1 (c) If an election is needed to fill the vacancy, the election
2 shall proceed depending on when the vacancy occurs and in which
3 office it occurs. Elections to fill vacancies shall be held at the
4 same places, and superintended, conducted and returned, and the
5 result ascertained, certified and declared, in the same manner, and
6 by the same officers, as in general elections, unless otherwise
7 stated in this article.

8 (1) For a vacancy in the office of Governor, the times for the
9 special elections contained in section two of this article shall
10 control. All aspects of this section, where not in conflict with
11 section two of this article shall also be followed. If a regularly
12 scheduled primary or general election fits within the times for the
13 special elections contained in section two of this article, the
14 special elections shall be conducted in conjunction with the
15 regularly scheduled election or elections. The proclamation
16 entered pursuant to section two of this article by the person
17 acting as Governor, shall include the dates for the special
18 candidate filing period, if necessary, and shall follow the
19 requirements set forth in this section.

20 (2) For a vacancy in the office of United States House of
21 Representative, the times for the special election contained in
22 section four of this article shall control. If a regularly
23 scheduled primary or general election fits within the times for the
24 special election contained in section four of this article, the

1 special election shall be conducted in conjunction with the
2 regularly scheduled election. The proclamation entered pursuant to
3 section four of this article by the Governor, shall include the
4 dates for the special candidate filing period, if necessary, and
5 shall follow the requirements set forth in this section.

6 (3) For all other offices:

7 (A) If the vacancy occurs before the primary cutoff date, the
8 Governor, or other person granted authority by this article, shall
9 issue a proclamation stating that the office will appear on the
10 next regular primary and general election, in order to fill the
11 vacancy. If the candidate filing period for the primary has closed
12 or has less than one week remaining, the proclamation shall provide
13 for a special primary candidate filing period.

14 (B) If there are less than eighty-four days between the
15 vacancy and the next regular primary and more than eighty-four days
16 between the vacancy and the next regular general election, then the
17 proclamation shall state that the office will appear on the regular
18 general election in the same manner as required by subdivision (5)
19 of this subsection and the other relevant portions of this article.

20 (C) If there are less than eighty-four days between the
21 vacancy and the next regular general election, then the
22 proclamation shall state that the office will appear on the
23 following regular primary and general elections.

24 (4) If the vacancy occurs during the window after the primary

1 cutoff date, but before the general cutoff date, for any county
2 office, the process in section six of this article shall be
3 followed.

4 (5) If the vacancy occurs during the window after the primary
5 cutoff date, but before the general cutoff date, for any elected
6 office other than those addressed in subdivisions (1), (2) and (4)
7 of this subsection, the Governor shall issue a proclamation stating
8 that the office will appear on the next regular general election,
9 in order to fill the vacancy. The proclamation shall include a
10 special filing period to allow all candidates to file for office
11 listing their preferred political party or no political party.
12 Notwithstanding any provisions of this chapter regarding order of
13 offices on the ballot to the contrary, no primary election will be
14 held and all candidates will appear on the general election ballot
15 with their preferred political party listed and a clear indication
16 that none of the individuals were successful in a primary election
17 and, therefore, any straight-ticket voting would not cast a vote
18 for that office.

19 (d) (1) If a special candidate filing period is necessary, it
20 shall begin no sooner than the day after the proclamation and shall
21 close no earlier than close of business on the fourteenth day
22 following the proclamation. A notarized declaration of candidacy
23 and filing fee provided by section seven, article five of this
24 chapter, shall be filed either in person, by United States mail,

1 electronic means or any other means authorized by the Secretary of
2 State and received by the appropriate office before the close of
3 the filing period. For petition in lieu of payment of filing fees,
4 a candidate seeking nomination for the vacancy may utilize the
5 process set forth in section eight-a, article five of this chapter:
6 Provided, That the minimum number of signatures required is
7 equivalent to one qualified signature per one whole dollar of the
8 filing fee for that office.

9 (2) If a primary election is required by the provisions of
10 this article:

11 (A) For all state-wide, multicounty and legislative elections,
12 drawing for the primary election ballot position will take place at
13 the Secretary of State's office twenty-four hours after the end of
14 the filing period. For each major political party on the ballot, a
15 single drawing by lot shall determine the candidate ballot position
16 for ballots statewide. This drawing shall be witnessed by four
17 clerks of the county commission chosen by the West Virginia
18 Association of County Clerks, with no more than two clerks
19 representing a single political party.

20 (B) For county elections, drawing for the primary election
21 ballot position will take place at the County Clerk's office
22 twenty-four hours after the end of the filing period. For each
23 major political party on the ballot, a single drawing by lot shall
24 determine the candidate ballot position for ballots statewide.

1 This drawing shall be witnessed by the chairperson of the county
2 democratic and republican executive committees or their designee,
3 and the president of the county commission or his or her designee.

4 (3) If a general election without a primary is required by the
5 provisions of this article, drawing for election ballot position
6 will take place at the Secretary of State's office twenty-four
7 hours after the end of the filing period. A single drawing by lot
8 shall determine the candidate ballot position for ballots statewide
9 without any consideration going to the party preference named by
10 each candidate. This drawing shall be witnessed by four clerks of
11 the county commission chosen by the West Virginia Association of
12 County Clerks, with no more than two clerks representing a single
13 political party. If a general election without a primary occurs in
14 conjunction with the regularly scheduled primary election or
15 regularly scheduled general election, the general election without
16 a primary shall be listed along with the nonpartisan portion of
17 each ballot in the order of offices provided for regular ballots in
18 this chapter.

19 (4) Ballot position for a general election required by this
20 article shall be determined pursuant to subdivision (3), subsection
21 (c), section two, article six of this chapter. If a general
22 election required by this article occurs in conjunction with a
23 regularly scheduled primary election, the general election shall be
24 listed along with the nonpartisan portion of each ballot in the

1 order of offices provided for regular ballots in this chapter.

2 (e) When an election is required to fill a vacancy, the date
3 of the election and offices to be elected, as well as any other
4 information required in the proclamation, shall be published prior
5 to such election as a Class I-O legal advertisement in compliance
6 with the provisions of article three, chapter fifty-nine of this
7 code, and the publication area for such publication shall be each
8 county of the state that is eligible to vote in the election for
9 those offices.

10 (f) If an election is required by this article, the Secretary
11 of State may issue emergency administrative orders to undertake
12 other ministerial actions that are otherwise authorized pursuant to
13 this code when necessary to assure the preservation of the voting
14 rights of the citizens of this state and avoid fraudulent voting
15 and election activities and otherwise assure the orderly and
16 efficient conduct of the new election provided in this subsection:
17 Provided, That emergency administrative orders may not contravene
18 the provisions of this article.

19 (g) If an election is required by this article and it cannot
20 be held in conjunction with the regular election dates, then the
21 compensation of election officers, cost of printing ballots and all
22 other reasonable and necessary expenses in holding and making the
23 return of the new election to fill a vacancy are obligations of the
24 state incurred by the ballot commissioners, clerks of the county

1 commissions and county commissions of the various counties as
2 agents of the state. All expenses of the new election are to be
3 audited by the Secretary of State. The Secretary of State shall
4 prepare and transmit to the county commissions forms on which the
5 county commissions shall certify all expenses of the new election
6 to the Secretary of State. If satisfied that the expenses as
7 certified by the county commissions are reasonable and were
8 necessarily incurred, the Secretary of State shall requisition the
9 necessary warrants from the Auditor of the state to be drawn on the
10 State Treasurer and shall mail the warrants directly to the vendors
11 of the new election services, supplies and facilities.

12 (h) Citizens having no party organization or affiliation may
13 nominate candidates as provided by sections twenty-three and
14 twenty-four of article five of this chapter: *Provided*, That if a
15 special general election is required, then the number of signatures
16 required to be submitted shall be one-quarter of the requirement
17 stated in section twenty-three, article five of this chapter; and
18 the signatures, notarized declaration of candidacy, and filing fee
19 must be submitted no later than seven calendar days following the
20 special primary election.

21 (i) The persons elected, having first duly qualified, shall
22 enter upon the duties of their respective offices. The elected
23 replacement shall hold the office until the end of the original

1 term of office.

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.

15 (b) The new election shall consist of a special primary
16 election and a special general election, and shall occur at such
17 time as will permit the person elected as Governor in the new
18 election to assume office within one year of the date the vacancy
19 occurred: *Provided*, That the special general election provided in
20 this section may not apply to section eight, article one of this
21 chapter. Within thirty days from the date the vacancy occurs, the
22 person acting as Governor pursuant to the state Constitution shall
23 issue a proclamation fixing the time for a ~~new~~ statewide election
24 to fill the vacancy in the office of Governor. ~~, which shall be~~

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

16 (c) The election shall follow the requirements of section one
17 of this article that are not in conflict with this section.

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

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

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

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

22 ~~—— (2) The special primary election shall be held on May 14, 2011~~
23 ~~and the special general election shall be held on October 4, 2011.~~

24 ~~—— (3) The proclamation for the special primary election and~~

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

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

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

19 ~~(B) The Secretary of State may issue emergency administrative~~
20 ~~orders to undertake other ministerial actions that are otherwise~~
21 ~~authorized pursuant to this code when necessary to assure the~~
22 ~~preservation of the voting rights of the citizens of this state and~~
23 ~~avoid fraudulent voting and election activities and otherwise assure~~
24 ~~the orderly and efficient conduct of the new election provided in~~

1 ~~this subsection: *Provided, That* emergency administrative orders may~~
2 ~~not contravene the provisions of this section;~~

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

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

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

22 ~~(F) When paper or optical scan ballots are the primary voting~~
23 ~~method used at any county, the total number of regular official~~
24 ~~ballots printed shall equal at a minimum fifty percent of the number~~

1 ~~of registered voters eligible to vote that ballot;~~

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

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

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

1 ~~of this chapter, the signatures, notarized declaration of candidacy,~~
2 ~~and filing fee must be submitted no later than seven calendar days~~
3 ~~following the special primary election provided in 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 voting.~~

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

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

16 **§3-10-3. Vacancies in offices of state officials, United States**
17 **senators and judges.**

18 Any vacancy occurring in the office of Secretary of State,
19 Auditor, Treasurer, Attorney General, Commissioner of Agriculture,
20 United States Senator, ~~judge~~ justice of the Supreme Court of Appeals
21 or in any office created or made elective to be filled by the voters
22 of the entire state, judge of a circuit court or judge of a family
23 court is filled by the Governor of the state by appointment and
24 subsequent election to fill the remainder of the term, if required

1 by section one of this article. ~~If the unexpired term of a judge~~
2 ~~of the Supreme Court of Appeals, a judge of the circuit court or~~
3 ~~judge of a family court is for less than two years or if the~~
4 ~~unexpired term of any other office named in this section is for a~~
5 ~~period of less than two years and six months, the appointment to~~
6 ~~fill the vacancy is for the unexpired term. If the unexpired term~~
7 ~~of any office is for a longer period than above specified, the~~
8 ~~appointment is until a successor to the office has timely filed a~~
9 ~~certificate of candidacy, has been nominated at the primary election~~
10 ~~next following such timely filing and has thereafter been elected~~
11 ~~and qualified to fill the unexpired term. Proclamation of any~~
12 ~~election to fill an unexpired term is made by the Governor of the~~
13 ~~state and, in the case of an office to be filled by the voters of~~
14 ~~the entire state, must be published prior to the election as a Class~~
15 ~~II-0 legal advertisement in compliance with the provisions of~~
16 ~~article three, chapter fifty-nine of this code and the publication~~
17 ~~area for the publication is each county of the state. If the~~
18 ~~election is to fill a vacancy in the office of judge of a circuit~~
19 ~~court or judge of a family court, the proclamation must be published~~
20 ~~prior to the election as a Class II-0 legal advertisement in~~
21 ~~compliance with the provisions of article three, chapter fifty-nine~~
22 ~~of this code and the publication area for such publication is each~~
23 ~~county in the judicial or family court circuit.~~

24 **§3-10-4. Vacancies in representation in Congress.**

1 If there ~~be~~ is a vacancy in the representation from this state
2 in the House of Representatives in the Congress of the United
3 States, the Governor shall, within ten days after the fact comes to
4 his or her knowledge, issue a proclamation ~~give notice thereof by~~
5 ~~proclamation, to be published prior to such election as a Class II-0~~
6 ~~legal advertisement in compliance with the provisions of article~~
7 ~~three, chapter fifty-nine of this code, and the publication area for~~
8 ~~such publication shall be each county in the congressional district.~~
9 ~~In such proclamation he~~ the Governor shall appoint some day, setting
10 a date for a special election that is not less than thirty eighty-
11 four nor more than ~~seventy-five~~ one hundred twenty days from the
12 date ~~thereof, for holding the election to fill such vacancy.~~ of the
13 vacancy: Provided, That no such proclamation may be made nor may
14 a special election be held if the vacancy occurs less than eighty-
15 four days prior to the regularly scheduled general election for a
16 new full term of the office. The proclamation shall include a
17 special filing period to allow all candidates to file for office
18 listing their preferred political party or no political party. No
19 primary election may be held and all candidates shall appear on the
20 general election with their preferred political party listed and a
21 clear indication that none of the individuals were successful in a
22 primary election and, therefore, any straight-ticket voting would
23 not cast a vote for that office. The election shall follow the
24 requirements of section one of this article that are not in conflict

1 ~~with this section. Nominations to fill such vacancy shall be made~~
2 ~~in the manner prescribed for nominating a candidate to fill a~~
3 ~~vacancy in the office of Governor, to be voted for at a special~~
4 ~~election. The congressional district executive committee of a party~~
5 ~~shall perform the duties devolving upon the state executive~~
6 ~~committee in filling a state office.~~

7 **§3-10-5. Vacancies in State Legislature.**

8 (a) Any vacancy in the office of State Senator or member of the
9 House of Delegates shall be filled by appointment by the Governor,
10 from a list of three legally qualified persons submitted by the
11 party executive committee of the party with which the person holding
12 the office immediately preceding the vacancy was affiliated. ~~Such~~
13 The list of qualified persons to fill the vacancy shall be submitted
14 to the Governor within fifteen days after the vacancy occurs and the
15 Governor shall duly make his or her appointment to fill the vacancy
16 from the list of legally qualified person within five days after the
17 list is received. If the list is not submitted to the Governor
18 within the fifteen day period, the Governor shall appoint within
19 five days thereafter a legally qualified person of the same
20 political party as the person vacating the office.

21 (b) In the case of a member of the House of Delegates, the list
22 shall be submitted by the party executive committee of the delegate
23 district in which the vacating member resided at the time of his or
24 her election or appointment. The appointment to fill a vacancy in

1 the House of Delegates is for the unexpired term.

2 (c) In the case of a State Senator, the list shall be submitted
3 by the party executive committee of the state senatorial district
4 in which the vacating senator resided at the time of his or her
5 election or appointment. The appointment to fill a vacancy in the
6 State Senate is for the unexpired term, unless section one of this
7 article requires a subsequent election to fill the remainder of the
8 term, which shall follow the procedure set forth in section one of
9 this article. ~~If the unexpired term in the office of the state~~
10 ~~Senator will be for less than two years and two months, the~~
11 ~~appointment is for the unexpired term. If the unexpired term will~~
12 ~~be for a period equal to or longer than two years and two months,~~
13 ~~the appointment is until the next general election and until the~~
14 ~~election and qualification of a successor to the person appointed,~~
15 ~~at which general election the vacancy shall be filled by election~~
16 ~~for the unexpired term. Notice of an election to fill a vacancy in~~
17 ~~the office of State Senator shall be given by the Governor by~~
18 ~~proclamation and shall be published before the election as a Class~~
19 ~~II-0 legal advertisement in compliance with the provisions of~~
20 ~~article three, chapter fifty-nine of this code, and the publication~~
21 ~~area for the publication shall be each county in the senatorial~~
22 ~~district. Nominations for candidates to fill a vacancy shall be~~
23 ~~made in the manner prescribed for nominating a candidate to fill a~~
24 ~~vacancy in the office of Governor to be voted for at a general~~

1 ~~election. The state senatorial district executive committee of the~~
2 ~~political party shall discharge the duties incident to State Senator~~
3 ~~nominations devolving upon the party state executive committee in~~
4 ~~nominating a candidate for a state office.~~

5 **§3-10-6. Vacancy in office of circuit court clerk.**

6 (a) When a vacancy occurs in the office of clerk of the circuit
7 court, the circuit court by a majority vote of the judges, ~~or the~~
8 ~~chief judge thereof in vacation,~~ shall fill the same within thirty
9 days of the vacancy by appointment of a person of the same political
10 party as the officeholder vacating the office ~~until the next general~~
11 ~~election, or until the completion of the term if the term ends on~~
12 ~~December 31, following the next general election. The person so~~
13 ~~appointed shall hold office until his or her successor is elected~~
14 ~~and qualified. At the general election, a clerk shall be elected~~
15 ~~for the unexpired term if the unexpired term is greater than one~~
16 ~~year~~ for the period required by section one of this article.

17 (b) Notwithstanding any code provision to the contrary, the
18 chief judge may appoint a temporary successor to the office of clerk
19 of the circuit court until the requirements of this section have
20 been met. The temporary successor may serve no more than thirty days
21 from the date of the vacancy.

22 (c) If an election is necessary, the ~~The~~ circuit court, or the
23 chief judge thereof in vacation, ~~shall cause a notice of the~~
24 ~~election to be published prior to the election as a Class II-0 legal~~

1 ~~advertisement in compliance with the provisions of article three,~~
2 ~~chapter fifty-nine of this code. The publication area for the~~
3 ~~publication shall be the county~~ is responsible for the proper
4 proclamation, by order and notice required by section one of this
5 article.

6 (d) Section one of this article shall be followed with respect
7 to any election needed to fill a vacancy, except that if ~~if the~~
8 ~~vacancy occurs no later than the eighty-fourth day before the~~
9 ~~primary election held to nominate candidates to be voted for at the~~
10 ~~general election, at which any vacancy is to be filled, candidates~~
11 ~~to fill the vacancy shall be nominated at the primary election in~~
12 ~~accordance with the time requirements and the provisions and~~
13 ~~procedures prescribed in section eleven, article five of this~~
14 ~~chapter. If the vacancy occurs after the eighty-fourth day before~~
15 ~~the primary~~ cutoff date ~~but not later than the eighty-fourth day~~
16 ~~before the general election, they~~ general cutoff date, candidates
17 to fill the vacancy shall be nominated by the county executive
18 committee in the manner provided in section nineteen, article five
19 of this chapter, as in the case of filling vacancies in nominations,
20 and the names of the persons, so nominated and certified to the
21 clerk of the county commission of the county, shall be placed upon
22 the ballot to be voted at the next general election.

23 **§3-10-7. Vacancies in offices of county commissioner and clerk of**
24 **county commission.**

1 (a) Any vacancy in the office of county commissioner or clerk
2 of county commission shall be filled by the county commission of the
3 county, unless the number of vacancies in a county commission
4 deprive that body of a quorum, in which case the Governor of the
5 state shall fill any vacancy in the county commission necessary to
6 create a quorum thereof. Persons appointed shall be of the same
7 political party as the officeholder vacating the office for the
8 period stated by section one of this article. ~~and shall continue in~~
9 ~~office until the next general election is certified, or until the~~
10 ~~completion of the term if the term ends on December 31, following~~
11 ~~the next general election: *Provided, That in the event* If a quorum~~
12 of the county commission cannot agree upon a person to fill a
13 vacancy in the office of county commissioner within thirty days of
14 the date the vacancy first occurred, the county executive committee
15 of the vacating county commissioner's political party shall select
16 and name a person to fill the vacancy from the membership of the
17 vacating county commissioner's political party.

18 (b) Notwithstanding any code provision to the contrary, a
19 county commission may appoint a temporary successor to the office
20 of clerk of the county commission until the requirements of this
21 section have been met. The temporary successor may serve no more
22 than thirty days from the date of the vacancy.

23 (c) If an election is necessary under section one of this
24 article, the county commission, or the president thereof in

1 vacation, shall be responsible for the proper proclamation, by
2 order, and notice required by section one of this article.

3 ~~Notice of the election shall be given by order of the county~~
4 ~~commission and published as prescribed in section six of this~~
5 ~~article.~~

6 (d) Section one of this article shall be followed with respect
7 to any election needed to fill a vacancy, except that if the vacancy
8 occurs after the primary cutoff date but not later than the general
9 cutoff date, candidates to fill the vacancy shall be nominated by
10 the county executive committee in the manner provided in section
11 nineteen, article five of this chapter, as in the case of filling
12 vacancies in nominations, and the names of the persons, so nominated
13 and certified to the clerk of the county commission of the county,
14 shall be placed upon the ballot to be voted at the next general
15 election. ~~Nomination of candidates to fill the office for an~~
16 ~~unexpired term in the office of county commissioner or clerk of the~~
17 ~~county commission shall be made in the manner prescribed for making~~
18 ~~nominations to fill a vacancy in the office of the clerk of the~~
19 ~~circuit court.~~

20 ~~(e) In the event that~~ If the election for an unexpired term is
21 held at the same time as the election for a full term for county
22 commissioner, the full term shall be counted first and the unexpired
23 term shall be counted second. If the candidate with the highest
24 number of votes for the unexpired term resides in the same

1 magisterial district as the candidate with the highest number of
2 votes for the full term, the candidate for the full term shall be
3 seated. The candidate with the next highest number of votes for the
4 unexpired term residing in a different magisterial district shall
5 be seated for the unexpired term.

6 **§3-10-8. Vacancies in offices of prosecuting attorney, sheriff,
7 assessor and surveyor.**

8 (a) Any vacancy occurring in the office of prosecuting
9 attorney, sheriff, assessor or county surveyor shall be filled by
10 the county commission within thirty days of the vacancy by
11 appointment of a person of the same political party as the
12 officeholder vacating the office. The appointed person shall hold
13 the office ~~until the next general election is certified, or until~~
14 ~~the completion of the term if the term ends on December 31,~~
15 ~~following the next general election~~ for the period stated by section
16 one of this article. ~~Notice of an election to fill a vacancy in any~~
17 ~~of the offices named in this section shall be given by the county~~
18 ~~commission, or by the president thereof in vacation, and published~~
19 ~~or posted in the manner prescribed in section six of this article.~~
20 ~~Nomination of candidates to fill any vacancy shall be made in the~~
21 ~~manner prescribed in section six of this article for nominating~~
22 ~~candidates to fill a vacancy in the office of the clerk of the~~
23 ~~circuit court.~~

24 (b) Notwithstanding any code provision to the contrary, a

1 county commission may appoint a temporary successor to the office
2 of prosecuting attorney, sheriff, assessor or county surveyor until
3 the requirements of this section have been met. The temporary
4 successor may serve no more than thirty days from the date of the
5 vacancy.

6 (c) If an election is necessary under section one of this
7 article, the county commission, or the president thereof in
8 vacation, shall be responsible for the proper proclamation, by
9 order, and notice required by section one of this article.

10 (d) Section one of this article shall be followed with respect
11 to any election needed to fill a vacancy, except that if the vacancy
12 occurs after the primary cutoff date but not later than the general
13 cutoff date, candidates to fill the vacancy shall be nominated by
14 the county executive committee in the manner provided in section
15 nineteen, article five of this chapter, as in the case of filling
16 vacancies in nominations, and the names of the persons, so nominated
17 and certified to the clerk of the county commission of the county,
18 shall be placed upon the ballot to be voted at the next general
19 election.

NOTE: The purpose of this bill is to update the process by which vacancies in elected office are filled. It sets procedures for appointing persons to fill certain vacancies and lists time periods and certain offices where elections must be held to fill certain vacancies. The bill sets special requirements for filling vacancies in certain offices and sets procedures for certain special elections. It creates a method for filling certain vacancies

without a primary election and sets requirements for special filing periods, where necessary. It requires certain notice be given regarding elections to fill vacancies and provides for payment of costs if a new election is necessary. The bill allows nomination of certain persons without party affiliation and allows emergency orders by the Secretary of State in certain circumstances. The bill removes and repeals certain language relating to previous elections, clarifying the method used to fill vacancies in the office of Governor. It adjusts the method to fill vacancies in certain statewide, legislative and judicial offices so that the timing for all are consistent. The bill requires most elections to fill vacancies be held in conjunction with regularly scheduled elections. It clarifies the method used to fill vacancies in certain county offices; permits vacancies in certain county offices to be filled by temporary replacements for no more than thirty days; and updates language regarding filling vacancies in elected offices.

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