

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 548

(By Senators Blair, Karnes and Leonhardt)

[Originating in the Committee on
the Judiciary;
reported February 26, 2015.]

A BILL to amend and reenact §3-10-1, §3-10-3 and §3-10-4 of the Code of West Virginia, 1931, as amended, all relating to filling of vacancies in elected offices; requiring Governor to call a special election in the event of a vacancy in the office of United States Senator except in certain instances; providing for nominees to be appointed by state executive parties; requiring the Governor to fill a vacancy in United States Senator by appointment; and allowing the appointee to serve until a successor is elected and certified to fill the unexpired term.

Be it enacted by the Legislature of West Virginia:

That §3-10-1, §3-10-3 and §3-10-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. FILLING VACANCIES.

§3-10-1. Elections to fill vacancies.

1 (a) When a vacancy occurs in an elected office of the state or county, it shall be filled

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1 according to the processes set forth in this article. As used in this article, unless otherwise indicated
2 by the context:

3 (1) "General cutoff date" means the eighty-fourth day before the general election that
4 immediately precedes the general election where the office would be on the ballot for election if
5 there were not a vacancy; and

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

8 (b) When this article requires an appointment to fill a vacancy in an elected office, the
9 appointment shall be made within thirty days of the vacancy, unless this code specifically states a
10 different time period for the specific office. The term that the appointee holds the office shall depend
11 on when the vacancy occurs, as follows:

12 (1) If the vacancy occurs after the primary cutoff date, then that appointee shall hold the
13 office until the end of the term of office: *Provided*, That if the vacancy for any county office or
14 United States Senate occurs during the window after the primary cutoff date, but before the general
15 cutoff date, the process contained in sections four, six, seven and eight of this article, depending on
16 the specific office vacated, shall be followed; or

17 (2) If the vacancy occurs on or before the primary cutoff date, then the office shall be filled
18 at the following regular primary and subsequent general election pursuant to this article and the
19 appointee shall hold the office until a qualified replacement is elected and certified at that general
20 election. The elected replacement shall hold the office until the end of the original term of office.

21 (c) If an election is required to fill the vacancy by subsection (b) of this section and the other

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1 provisions of this article, the election shall proceed depending on when the vacancy occurs and in
2 which office it occurs. Elections to fill vacancies shall be held at the same places, and
3 superintended, conducted and returned, and the result ascertained, certified and declared, in the same
4 manner, and by the same officers, as in general elections, unless otherwise stated in this article.

5 (1) For a vacancy in the Office of Governor, the times for the special elections contained in
6 section two of this article shall control. The proclamation entered pursuant to section two of this
7 article by the person acting as Governor shall include the dates for the special candidate filing period,
8 if necessary, and shall follow the requirements set forth in this section. All aspects of this section,
9 where not in conflict with section two of this article, shall also be followed. If a regularly scheduled
10 primary or general election fits within the times for the special elections contained in section two of
11 this article, the special elections shall be conducted in conjunction with the regularly scheduled
12 election or elections. If a special election is required by section two of this article and it cannot be
13 held in conjunction with the regular election dates, then the compensation of election officers shall
14 be reimbursed pursuant to section nine of this article.

15 (2) For a vacancy in the offices of United States House of Representatives or United States
16 Senate, the times for the special election, if necessary, contained in section four of this article shall
17 control. All aspects of this section, where not in conflict with section four of this article, shall also
18 be followed. ~~(A) With regard to United States House of Representatives~~ these offices, the
19 proclamation entered pursuant to section four of this article by the Governor shall include the dates
20 for the special candidate filing period, if necessary, and shall follow the requirements set forth in this
21 section. If a regularly scheduled primary or general election fits within the times for the special

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1 elections contained in section four of this article, the special elections shall be conducted in
2 conjunction with the regularly scheduled election or elections. If a special election is required by
3 section two of this article and it cannot be held in conjunction with the regular election dates, then
4 the compensation of election officers shall be reimbursed pursuant to section nine of this article.

5 ~~(B) With regard to United States Senate, if a special general election following the regular
6 general election is required by section four of this article, and it cannot be held in conjunction with
7 the regular election dates, then the compensation of election officers shall be reimbursed pursuant
8 to section nine of this article.~~

9 (3) For all other offices, the Governor, or other person granted authority by this article, shall
10 issue a proclamation stating that the office will appear on the next regular primary election and
11 subsequent general election, in order to fill the vacancy: *Provided*, That if the vacancy for any county
12 office occurs during the window after the primary cutoff date, but before the general cutoff date, the
13 process contained in sections six, seven and eight of this article shall be followed. If the candidate
14 filing period for the next regular primary election has closed or has less than one week remaining,
15 the proclamation shall provide for a special primary candidate filing period. If there are less than
16 eighty-four days between the vacancy and the next regular primary election, then the proclamation
17 shall state that the office will appear on the subsequent regular primary election and corresponding
18 general election following the next regular primary election.

19 (d) (1) If a special candidate filing period is necessary, it shall begin no sooner than the day
20 after the proclamation and shall close no earlier than close of business on the fourteenth day
21 following the proclamation. A notarized declaration of candidacy and filing fee provided by section

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

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

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

14 (B) For county elections, drawing for the primary election ballot position will take place at
15 the county clerk's office twenty-four hours after the end of the filing period. For each major political
16 party on the ballot, a single drawing by lot shall determine the candidate ballot position for ballots
17 statewide. This drawing shall be witnessed by the chairperson of the county democratic and
18 republican executive committees or their designee, and the president of the county commission or
19 his or her designee.

20 (3) Ballot position for a general election required by this article shall be determined pursuant
21 to subdivision (3), subsection (c), section two, article six of this chapter. If a general election

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1 required by this article occurs in conjunction with a regularly scheduled primary election, the general
2 election shall be listed along with the nonpartisan portion of each ballot in the order of offices
3 provided for regular ballots in this chapter.

4 (e) When an election is required to fill a vacancy, the date of the election and offices to be
5 elected, as well as any other information required in the proclamation, shall be published prior to
6 such election as a Class I-0 legal advertisement in compliance with the provisions of article three,
7 chapter fifty-nine of this code and the publication area for such publication shall be each county of
8 the state that is eligible to vote in the election for those offices.

9 (f) If an election is required by this article, citizens having no party organization or affiliation
10 may nominate candidates as provided by sections twenty-three and twenty-four, article five of this
11 chapter: *Provided*, That when an election is required by the provisions of this article to be held at
12 some time other than with a regularly scheduled election, all certificates nominating candidates shall
13 be filed with the appropriate official no later than ninety days before the election.

14 (g) The persons elected, having first duly qualified, shall enter upon the duties of their
15 respective offices. The elected replacement shall hold the office until the end of the original term
16 of office.

17 **§3-10-3. Vacancies in offices of state officials and judges.**

18 Any vacancy occurring in the offices of Secretary of State, Auditor, Treasurer, Attorney
19 General, Commissioner of Agriculture, Justice of the Supreme Court of Appeals or in any office
20 created or made elective to be filled by the voters of the entire state, except for the office of United
21 States Senator, judge of a circuit court or judge of a family court, is filled by the Governor of the

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1 state by appointment and subsequent election to fill the remainder of the term, if required by section
2 one of this article.

3 **§3-10-4. Vacancies in representation in United States Congress.**

4 (a) (1) If there is a vacancy in the representation from this state in the House of
5 Representatives in the Congress of the United States, the Governor shall, within five days after the
6 fact comes to his or her knowledge, issue a proclamation setting dates for a special general election
7 that is not less than eighty-four nor more than one hundred twenty days from the date of the vacancy
8 and requiring nomination of candidates as provided in subdivision (2) of this subsection: *Provided,*
9 That no such proclamation may be made nor may a special election be held if the vacancy occurs
10 after the eighty-fourth day prior to the regularly scheduled general election for a new full term of the
11 office. The election shall follow the requirements of section one of this article that are not in conflict
12 with this section.

13 (2) The party executive committees for the congressional district for which there is a vacancy,
14 shall each, within thirty days of the Governor's proclamation, nominate a candidate to stand at the
15 general election required by subdivision (1) of this subsection.

16 (b) (1) If there is a vacancy in the representation from this state in the Senate of the United
17 States Congress, the vacancy shall be filled by the Governor of the state by appointment and: the
18 Governor shall, within five days after the fact comes to his or her knowledge, issue a proclamation
19 setting dates for a special general election that is not less than eighty-four nor more than one hundred
20 twenty days from the date of the vacancy and requiring nomination of candidates as provided in
21 subdivision (2) of this subsection: *Provided,* That no such proclamation may be made nor may a

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1 special election be held if the vacancy occurs after the eighty-fourth day prior to the regularly
2 scheduled general election for a new full term of the office. The election shall follow the
3 requirements of section one of this article that are not in conflict with this section.

4 ~~(1) If the vacancy occurs on or before the primary cutoff date, then an election shall be held~~
5 ~~pursuant to section one of this article; or~~

6 ~~(2) If the vacancy occurs after the primary cutoff date, but on or before the general cutoff~~
7 ~~date, then the Governor shall issue a proclamation providing for: (A) A special filing period; (B) a~~
8 ~~special primary election to be held in conjunction with the upcoming general election; and (C) a~~
9 ~~special general election to be held not less than eighty-four nor more than one hundred twenty days~~
10 ~~following the date of the special primary election. Each election shall follow the requirements of~~
11 ~~section one of this article that are not in conflict with this section.~~

12 (2) The state party executive committees shall, within thirty days of the Governor's
13 proclamation, nominate a candidate to stand at the general election required by subdivision (1) of
14 this subsection.

15 (3) Notwithstanding the foregoing, the Governor of the state shall, by appointment, fill any
16 vacancy occurring in the office of United States Senator. Such appointee shall hold the office until,
17 at the special election held pursuant to subdivision (1) of this subsection, a successor is elected and
18 certified to fill the unexpired term.

(NOTE: The purpose of this bill is to alter the manner in which vacancies in representation for the United States Senate are filled.

Strike-throughs indicate language that would be stricken from the present law, and

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underscoring indicates new language that would be added.)