

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**Introduced**

## **Senate Bill 670**

BY SENATORS CARMICHAEL AND FERNS

[Introduced February 22, 2016;

Referred to the Committee on the Judiciary]



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

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

1 That §3-10-1, §3-10-3 and §3-10-4 of the Code of West Virginia, 1931, as amended, be  
2 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  
2 according to the processes set forth in this article. As used in this article, unless otherwise  
3 indicated by the context:

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

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

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

13 (1) If the vacancy occurs after the primary cutoff date, then that appointee shall hold the  
14 office until the end of the term of office: *Provided*, That if the vacancy for any county office or  
15 United States Senate occurs during the window after the primary cutoff date, but before the

16 general cutoff date, the process contained in sections four, six, seven and eight of this article,  
17 depending on the specific office vacated, shall be followed; or

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

22 (c) If an election is required to fill the vacancy by subsection (b) of this section and the  
23 other provisions of this article, the election shall proceed depending on when the vacancy occurs  
24 and in which office it occurs. Elections to fill vacancies shall be held at the same places, and  
25 superintended, conducted and returned, and the result ascertained, certified and declared, in the  
26 same manner, and by the same officers, as in general elections, unless otherwise stated in this  
27 article.

28 (1) For a vacancy in the Office of Governor, the times for the special elections contained  
29 in section two of this article shall control. The proclamation entered pursuant to section two of this  
30 article by the person acting as Governor shall include the dates for the special candidate filing  
31 period, if necessary, and shall follow the requirements set forth in this section. All aspects of this  
32 section, where not in conflict with section two of this article, shall also be followed. If a regularly  
33 scheduled primary or general election fits within the times for the special elections contained in  
34 section two of this article, the special elections shall be conducted in conjunction with the regularly  
35 scheduled election or elections. If a special election is required by section two of this article and  
36 it cannot be held in conjunction with the regular election dates, then the compensation of election  
37 officers shall be reimbursed pursuant to section nine of this article.

38 (2) For a vacancy in the offices of United States House of Representatives or United States  
39 Senate, the times for the special election, if necessary, contained in section four of this article  
40 shall control. All aspects of this section, where not in conflict with section four of this article, shall  
41 also be followed.

42           ~~(A) With regard to United States House of Representatives~~ these offices, the proclamation  
43 entered pursuant to section four of this article by the Governor shall include the dates for the  
44 special candidate filing period, if necessary, and shall follow the requirements set forth in this  
45 section. If a regularly scheduled primary or general election fits within the times for the special  
46 elections contained in section four of this article, the special elections shall be conducted in  
47 conjunction with the regularly scheduled election or elections. If a special election is required by  
48 section two of this article and it cannot be held in conjunction with the regular election dates, then  
49 the compensation of election officers shall be reimbursed pursuant to section nine of this article.

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

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

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

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

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

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

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

86 (3) Ballot position for a general election required by this article shall be determined  
87 pursuant to subdivision (3), subsection (c), section two, article six of this chapter. If a general  
88 election required by this article occurs in conjunction with a regularly scheduled primary election,  
89 the general election shall be listed along with the nonpartisan portion of each ballot in the order  
90 of offices provided for regular ballots in this chapter.

91 (e) When an election is required to fill a vacancy, the date of the election and offices to be  
92 elected, as well as any other information required in the proclamation, shall be published prior to  
93 such election as a Class I-0 legal advertisement in compliance with the provisions of article three,

94 chapter fifty-nine of this code and the publication area for such publication shall be each county  
95 of the state that is eligible to vote in the election for those offices.

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

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

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

1 (a) Any vacancy occurring in the offices of Secretary of State, Auditor, Treasurer, Attorney  
2 General, Commissioner of Agriculture, or in any office created or made elective to be filled by the  
3 voters of the entire state, except for the office of United States Senator, is filled by the Governor  
4 of the state by appointment and subsequent election to fill the remainder of the term, if required  
5 by section one of this article.

6 (b) Any vacancy occurring in the offices of Justice of the Supreme Court of Appeals, judge  
7 of a circuit court or judge of a family court is filled by the Governor of the state by appointment  
8 and subsequent election to fill the remainder of the term, as required by subsection (d) of this  
9 section. If an election is required under subsection (d) of this section, the Governor, circuit court  
10 or the chief judge thereof in vacation is responsible for the proper proclamation by order and  
11 notice required by section one of this article.

12 (c) Any vacancy in the office of magistrate is appointed according to the provisions of  
13 section six, article one, chapter fifty of this code and subsequent election to fill the remainder of  
14 the term, as required by subsection (d) of this section.

15 (d) (1) When the vacancy in Justice of the Supreme Court of Appeals, judge of the circuit  
16 court, judge of a family court or magistrate occurs after the eighty-fourth day before a general  
17 election, and the affected term of office ends on the thirty-first day of December following the next  
18 election, the person appointed to fill the vacancy shall continue in office until the completion of  
19 the term.

20 (2) When the vacancy occurs before the close of the candidate filing period for the primary  
21 election, the vacancy shall be filled by election in the nonpartisan judicial election held  
22 concurrently with the primary election, and the appointment shall continue until a successor is  
23 elected and certified.

24 (3) When the vacancy occurs after the close of candidate filing for the primary election  
25 and not later than eighty-four days before the general election, the vacancy shall be filled by  
26 election in a nonpartisan judicial election held concurrently with the general election, and the  
27 appointment shall continue until a successor is elected and certified.

28 (e) When an election to fill a vacancy is required to be held at the general election  
29 according to the provisions of subsection (d) of this section, a special candidate filing period shall  
30 be established. Candidates seeking election to any unexpired term for Justice of the Supreme  
31 Court of Appeals, judge of a circuit court, judge of the family court or magistrate shall file a  
32 certificate of announcement and pay the filing fee no earlier than the first Monday in August and  
33 no later than seventy-seven days before the general election.

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

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



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

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

13 (b) (1) If there is a vacancy in the representation from this state in the Senate of the United  
14 States Congress, ~~the vacancy shall be filled by the Governor of the state by appointment and the~~  
15 Governor shall, within five days after the fact comes to his or her knowledge, issue a proclamation  
16 setting dates for a special primary election that is not less than ninety nor more than one hundred  
17 twenty days from the date of the vacancy, and a special general election that is not less than  
18 ninety nor more than one hundred twenty days from the date of the special primary election.  
19 Provided, That no such proclamation may be made nor may a special election be held if the  
20 vacancy occurs after the eighty-fourth day prior to the regularly scheduled general election for a  
21 new full term of the office. The election shall follow the requirements of section one of this article  
22 that are not in conflict with this section.

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

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

31 (2) Notwithstanding the foregoing, the Governor of the state shall, by appointment, fill any  
32 vacancy occurring in the office of United States Senator. Such appointee shall hold the office until,

- 33 at the special election held pursuant to subdivision (1) of this subsection, a successor is elected  
34 and 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 a heading or the present law, and underscoring indicates new language that would be added.

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#### JUDICIARY COMMITTEE AMENDMENTS

On page seven, section four, line twenty, by striking out the word “general” and inserting in lieu thereof the word “primary”;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Senate Bill 670**—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 the Governor to call a special election in the event of a vacancy in the office of United States Senator except in certain circumstances; directing Governor to include special candidate filing period dates if necessary; directing election for United States Senate vacancy to be held in conjunction with regularly scheduled election or elections if possible; providing that compensation of elections officials be reimbursed if elections cannot be held in conjunction with regularly scheduled elections; prohibiting proclamation declaring election if vacancy occurs more than eighty-four days prior to the regularly scheduled general election for a new full term of office for that United States Senate seat; requiring elections held to fill United States Senate vacancy follow general election requirements not in conflict with special provisions governing special election; requiring the Governor to fill a vacancy in the United States Senate by appointment; and allowing the appointee to serve until a successor is elected and certified to fill the unexpired term.