

1 **House Bill No. 2552**

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3 (By Delegates Lane, Anderson, Armstead, Cowles, Duke, Evans,  
4 Kump, Overington, Romine, Sigler and Storch)

5 [Introduced January 19, 2011; referred to the Committee on the  
6 Judiciary then Finance]

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9  
10 A BILL to amend and reenact §3-10-2 of the Code of West Virginia,  
11 1931, as amended; and to amend said code by adding thereto a  
12 new section, designated §3-10-2a, all relating to vacancy in  
13 the office of the Governor; providing for an election to fill  
14 the unexpired term; providing for a new primary election to  
15 nominate party candidates for the new general election;  
16 providing that the provisions of the law relating to elections  
17 shall apply to the new primary election unless inconsistent  
18 with section; modifying certain statutory time periods;  
19 directing new primary election to be held on May 14, 2011, and  
20 a new general election on August 6, 2011; modifying certain  
21 statutory time lines relating to declaration of candidacy and  
22 early voting for new elections; modifying procedures relating  
23 to payment of filing fees, drawing of ballot positions,  
24 selecting and training individuals working as election

1 official; clarifying the eligibility of certain minors to vote  
2 in new primary election; modifying statutory provisions  
3 relating to minimum number of ballots to be printed; modifying  
4 publications requirements of sample ballots, lists of  
5 candidates, and public testing of voting machines; providing  
6 applications deadlines for absentee ballots and procedures for  
7 changing polling places; modifying procedures for persons  
8 without party affiliations to nominate candidates for the new  
9 general election; authorizing the Secretary of State to issue  
10 administrative orders and to establish procedures and  
11 deadlines necessary to preserve voting rights, avoid  
12 fraudulent voting and other election irregularities and assure  
13 orderly and efficient administration of the new primary  
14 election; requiring the state to pay costs incurred in  
15 connection with a new election to fill a vacancy in the office  
16 of Governor; requiring Secretary of State to report to Joint  
17 Committee on Government and Finance and establishing  
18 guidelines for the report; and providing for the expiration of  
19 the section.

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

21 That §3-10-2 of the Code of West Virginia, 1931, as amended,  
22 be amended and reenacted; and that said code be amended by adding  
23 thereto a new section, designated §3-10-2a, all to read as follows:

24 **ARTICLE 10. FILLING VACANCIES**

1 **§3-10-2. Vacancy in office of Governor.**

2 In case of the death, conviction or impeachment, failure to  
3 qualify, resignation or other disability of the Governor, the  
4 President of the Senate shall act as Governor until the vacancy is  
5 filled or the disability removed; and if the President of the  
6 Senate, for any of the above-named causes, shall be or become  
7 incapable of performing the duties of Governor, the same shall  
8 devolve upon the Speaker of the House of Delegates; and in all  
9 other cases where there is no one to act as Governor, one shall be  
10 chosen by the joint vote of the Legislature. Whenever a vacancy  
11 shall occur in the office of Governor before the first three years  
12 of the term shall have expired, a new election for Governor shall  
13 take place to fill the vacancy. The Senate President acting as  
14 Governor shall, within ten days of the occurrence of the vacancy,  
15 give notice thereof by proclamation, to be published prior to such  
16 election as a Class II-0 legal advertisement in compliance with the  
17 provisions of article three, chapter fifty-nine of this code, and  
18 the publication area for such publication shall be each county of  
19 the state. In such proclamation the President of the Senate acting  
20 as Governor shall appoint some day, not less than sixty nor more  
21 than seventy-five days from the date thereof, for holding the new  
22 primary election to nominate candidates to fill such vacancy. In  
23 such proclamation the President of the Senate acting as Governor  
24 shall appoint some day, not less than sixty nor more than ninety

1 days from the new primary election for holding the new election to  
2 fill the vacancy in the office of Governor. Any election, which is  
3 held under the provisions of this section and occurs concurrently  
4 with any primary or general election, shall be a separate and  
5 distinct election from that primary or general election. ~~If the~~  
6 ~~vacancy shall occur more than thirty days next preceding a general~~  
7 ~~election, the vacancy shall be filled at such election and the~~  
8 ~~acting Governor for the time being shall issue a proclamation~~  
9 ~~accordingly, which shall be published prior to such election as a~~  
10 ~~Class II-O legal advertisement in compliance with the provisions of~~  
11 ~~article three, chapter fifty nine of this code, and the publication~~  
12 ~~area for such publication shall be each county of the state. But~~  
13 ~~if it shall occur less than thirty days next preceding such general~~  
14 ~~election, and more than one year before the expiration of the term,~~  
15 ~~such acting Governor shall issue a proclamation, fixing a time for~~  
16 ~~a special election to fill such vacancy, which shall be published~~  
17 ~~as hereinbefore provided.~~

18 ~~If the vacancy is to be filled at a general election and shall~~  
19 ~~occur before the primary election to nominate candidates to be~~  
20 ~~voted for at such general election, candidates to fill the vacancy~~  
21 ~~shall be nominated at such primary election in accordance with the~~  
22 ~~time requirements and the provisions and procedures prescribed in~~  
23 ~~article five of this chapter. When nominations to fill such~~  
24 ~~vacancy cannot be so accomplished at such primary election, and in~~

~~1 all cases wherein the vacancy is to be filled at a special  
2 election, candidates to be voted for at such general or special  
3 elections shall be nominated by a state convention to be called,  
4 convened and held under the resolutions, rules and regulations of  
5 the political party executive committees of the state. The laws  
6 prescribing the manner of calling, constituting and holding  
7 conventions to nominate candidates for presidential electors shall,  
8 insofar as applicable, govern conventions to nominate candidates to  
9 fill any vacancy in any office to be filled by the voters of the  
10 state as a whole, except that, in lieu of the magisterial district  
11 conventions in the several counties, the county executive committee  
12 shall call and convene a county convention at the county seat with  
13 delegates thereto apportioned to and representative of the several  
14 magisterial districts of the county as provided in section  
15 twenty-one of article five of this chapter. The county convention  
16 shall proceed to select the county's prescribed number of state  
17 convention delegates from the several magisterial districts thereof  
18 and the chairman and secretary of the convention shall promptly  
19 certify the names and addresses of the persons so selected as  
20 delegates to the state convention to the chairman of the state  
21 executive committee of the political party.~~

**22 §3-10-2a. New election to fill the vacancy in office of governor  
23 existing on December 1, 2010.**

24 (a) Notwithstanding the provisions of section two of this

1 article establishing processes for the election to fill a vacancy  
2 in the office of Governor, for the purposes of filling the vacant  
3 seat in the office of Governor existing December 1, 2010, a new  
4 general election shall be held to fill the unexpired term on August  
5 6, 2011. A new primary election shall be held on May 14, 2011, to  
6 nominate party candidates for the new general election.

7 (b) Within two days of the effective date of this section the  
8 President of the Senate acting as Governor shall issue a  
9 proclamation calling for a new primary election and new general  
10 election to fill the vacancy in the office of Governor, consistent  
11 with the provisions of this section. The following provisions apply  
12 to these new elections:

13 (1) The proclamation for the new elections shall be published  
14 prior to the new elections as a Class II-0 legal advertisement in  
15 accordance with article three, chapter fifty-nine of this code, and  
16 the publication area for the publication is each county of the  
17 state. The notice shall be filed with the Secretary of State who  
18 shall immediately transmit the document to the clerk of the county  
19 commission of each county. The clerk of the county commission of  
20 each county shall cause the document to be published within the  
21 county in accordance with this section.

22 (2) The provisions of this chapter shall apply to these new  
23 elections to the extent that those provisions are consistent with  
24 the provisions of this section. Statutory time deadlines relating

1 to availability of absentee ballots, certification, canvassing and  
2 related election procedures that cannot be met in a timely fashion,  
3 for the purpose of these new elections, are modified as follows:

4 (A) The new primary election is to be held May 14, 2011, and  
5 the new general election is to be held August 6, 2011;

6 (B) A notarized declaration of candidacy and filing fee shall  
7 be filed and received in hand by the Secretary of State by 5:00  
8 p.m. on the tenth calendar day following the proclamation of the  
9 new primary election. The declaration of candidacy may be filed in  
10 person, by United States mail, electronic means or any other means  
11 authorized by the Secretary of State;

12 (C) Early-in-person voting for the new primary election shall  
13 be conducted during regular business hours beginning on May 2,  
14 2011, and continuing through close of business on May 12, 2011. In  
15 addition, early-in-person voting for the new primary election shall  
16 be conducted from 9:00 a.m. to 5:00 p.m. on Saturday, May 7, 2011.  
17 No satellite polling locations will be utilized for the May 14,  
18 2011, new primary election. Early-in-person voting for the new  
19 general election shall be conducted during regular business hours  
20 beginning on July 25, 2011, and continuing through close of  
21 business on August 4, 2011. In addition, early-in-person voting  
22 for the new general election shall be conducted from 9:00 a.m. to  
23 5:00 p.m. on Saturday, July 30, 2011. No satellite polling  
24 locations will be utilized for the August 6, 2011, new general

1 election.

2 (D) The Secretary of State may issue emergency administrative  
3 orders to undertake other ministerial actions that are otherwise  
4 authorized pursuant to this code when necessary to assure the  
5 preservation of the voting rights of the citizens of this state and  
6 avoid fraudulent voting and election activities and otherwise  
7 assure the orderly and efficient conduct of the election: *Provided,*  
8 That such emergency administrative orders may not contravene the  
9 provisions of this section;

10 (E) The compensation of election officers, cost of printing  
11 ballots and all other reasonable and necessary expenses in holding  
12 and making the return of the new elections to fill a vacancy in the  
13 office of Governor are obligations of the state incurred by the  
14 ballot commissioners, clerks of the circuit courts, clerks of the  
15 county commissions and county commissions of the various counties  
16 as agents of the state. All expenses of the new elections are to  
17 be audited by the Secretary of State. The Secretary of State shall  
18 prepare and transmit to the county commissions forms on which the  
19 county commissions shall certify all expenses of these new  
20 elections to the Secretary of State. If satisfied that the  
21 expenses as certified by the county commissions are reasonable and  
22 were necessarily incurred, the Secretary of State shall requisition  
23 the necessary warrants from the Auditor of the state to be drawn on  
24 the State Treasurer and shall mail the warrants directly to the



1 vendors of the new election services, supplies and facilities;

2 (F) For petition in lieu of payment of filing fees, a  
3 candidate seeking nomination for the vacant seat for Governor may  
4 utilize the process set forth in section eight-a, article five of  
5 this chapter: *Provided*, That the minimum number of signatures  
6 required is one thousand seven hundred and forty;

7 (G) Drawing for ballot position will take place at the  
8 Secretary of State's office 24 hours after the end of the filing  
9 period. For each major political party on the ballot, a single  
10 drawing by lot shall determine the candidate ballot position for  
11 ballots statewide in the May 14, 2011, new primary election. This  
12 drawing shall be witnessed by four clerks of the county commission  
13 chosen by the West Virginia Association of County Clerks, with no  
14 more than two clerks representing a single political party. Ballot  
15 position for the new general election on August 6, 2011, shall be  
16 in accordance with the provisions of section two(c)(3) of article  
17 six, chapter three of this code;

18 (H) The clerks of the county commission shall submit the list  
19 of persons who worked in the November 2, 2010, general election to  
20 the county commission for appointment as election officials;

21 (I) Election officials for both the new primary and new  
22 general elections created by this section shall be appointed by  
23 March 8, 2011;

24 (J) The clerks of the county commission shall provide notice

1 to all election officials of the fact of their appointment by March  
2 15, 2011. Included with the notice shall be a response notice form  
3 for the appointed person to return indicating if he or she agrees  
4 to serve in the specified capacity in the May 14, 2011, new primary  
5 election and the August 6, 2011, new election for Governor;

6 (K) The position of any election official notified of  
7 appointment who fails to return the response notice or otherwise  
8 confirm to the clerk of the county commission his or her agreement  
9 to serve by March 29, 2011, is considered vacant and the clerk of  
10 the county commission shall proceed to fill the vacancies;

11 (L) Election officials shall be trained by April 15, 2011;

12 (M) A registered voter who has not reached eighteen years of  
13 age may vote in the May 14, 2011, new primary election: *Provided,*  
14 That the voter will attain eighteen years of age at the time of the  
15 August 6, 2011, new general election;

16 (N) When paper or optical scan ballots are the primary voting  
17 method used at any county, the total number of regular official  
18 ballots printed shall equal at a minimum fifty percent of the  
19 number of registered voters eligible to vote that ballot;

20 (O) When paper ballots are used in conjunction with a direct  
21 recording electronic voting system, the total number of regular  
22 official ballots printed shall equal at a minimum thirty percent of  
23 the registered voters eligible to vote that ballot;

24 (P) For counties in which two or more qualified newspapers

1 publish a daily newspaper, the clerk of the county commission shall  
2 publish at least once each sample official May 14, 2011, new  
3 primary election ballot, on the last day on which a newspaper is  
4 published immediately preceding the May 14, 2011, new primary  
5 election, as a Class I-0 legal advertisement in the two qualified  
6 daily newspapers of different political parties within the county  
7 having the largest circulation in compliance with the provisions of  
8 article three, chapter fifty-nine of West Virginia Code. The clerk  
9 of the county commission shall publish at least once each sample  
10 official August 6, 2011, new general election ballot, on the last  
11 day on which a newspaper is published immediately preceding the  
12 August 6, 2011, new general election, as a Class I-0 legal  
13 advertisement in the two qualified daily newspapers of different  
14 political parties within the county having the largest circulation  
15 in compliance with the provisions of article three, chapter fifty-  
16 nine of West Virginia Code;

17 (Q) For counties having no more than one daily newspaper or  
18 having one or more qualified newspapers which publish weekly, the  
19 clerk of the county commission shall publish each sample official  
20 May 14, 2011, new primary election ballot, on the last day in which  
21 a newspaper is published immediately preceding the May 14, 2011,  
22 new primary election, as a Class I-0 legal advertisement in the  
23 qualified daily newspaper within the county having the largest  
24 circulation in compliance with the provisions of article three,

1 chapter fifty-nine of West Virginia Code. The clerk of the county  
2 commission shall publish each sample official August 6, 2011, new  
3 general election ballot, on the last day in which a newspaper is  
4 published immediately preceding the August 6, 2011, new general  
5 election, as a Class I-0 legal advertisement in the qualified daily  
6 newspaper within the county having the largest circulation in  
7 compliance with the provisions of article three, chapter fifty-nine  
8 of West Virginia Code;

9 (R) Counties shall not be required to separately publish a  
10 certified list of candidates;

11 (S) If only one notice of a sample ballot is published, it  
12 shall include a statement notifying voters that this is the sole  
13 publication of the sample ballot;

14 (T) Before voting machines are used, the clerks of the county  
15 commission shall have the ballots, vote recording devices, and  
16 electronic poll books inspected, and automatic tabulating equipment  
17 tested to ascertain that it will accurately count the votes cast.  
18 A single notice of the place and time of the inspection and testing  
19 shall be published, no less than three days in advance, as a Class  
20 I-0 legal advertisement in compliance with the provisions of  
21 article three, chapter fifty-nine of West Virginia Code. The  
22 publication area is the county involved;

23 (U) Applications for absentee ballots shall be accepted from  
24 the date of proclamation, other than from voters eligible to vote

1 under the provisions of the Uniformed and Overseas Citizens  
2 Absentee Voting Act who may apply for an absentee ballot for all  
3 elections within a calendar year as early as the first day of  
4 January 2011;

5 (V) Regularly scheduled locations of polling places shall not  
6 be changed, except for emergency situations as provided for in  
7 §3-1-7(e) and (f): Provided, That if multiple precincts voted in  
8 one polling location for the May 11, 2010, regularly scheduled  
9 primary election, such precincts may be consolidated into a single  
10 precinct. Locations for consolidated precincts shall provide  
11 internet access, insofar as possible, for the sole purpose of  
12 utilizing the Statewide Voter Registration System (SVRS) as an  
13 electronic poll book; and

14 (W) Persons having no party affiliation may nominate  
15 candidates to fill the vacancy for the office of Governor under the  
16 procedures set forth in sections twenty-three and twenty-four,  
17 article five of this chapter: Provided, That the number of  
18 signatures required to be submitted shall be equal to not less than  
19 one-quarter of one percent of the entire vote cast at the last  
20 preceding general election for any statewide gubernatorial  
21 candidate. Notwithstanding the provisions of sections twenty-three  
22 and twenty- four of article three of this section, the signatures,  
23 notarized declaration of candidacy, and filing fee must be  
24 submitted no later than April 28, 2011.

1       (c) The Secretary of State, shall by November 1, 2011, report  
2 to the Joint Committee on Government and Finance findings regarding  
3 the operation of the new elections undertaken pursuant to  
4 subsection (b) of this section. This report shall provide analysis  
5 of: direct and indirect costs to the state associated with the  
6 conduct of the election; benefits and disadvantages of conducting  
7 an election on a Saturday; the impact of compressed time periods on  
8 efficient election administration; and whether this election  
9 process impacted early voting and participation by military and  
10 overseas voters.

11       (d) Upon the election and qualification of the Governor by the  
12 West Virginia Secretary of State following the August 6, 2011, new  
13 election, the provisions of this section will expire.

NOTE: The purpose of this bill is to clarify when a new election is required to fill a vacancy in the office of Governor. It authorizes the acting Governor to issue a writ of election to fill any such vacancy as required by law.

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