

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 261

(By Senators Kessler (Acting President) and Hall,
By Request of the Executive)

[Originating in the Committee on the Judiciary;
reported January 28, 2011.]

A BILL to amend and reenact §3-10-2 of the Code of West Virginia, 1931, as amended, relating to filling a vacancy in the office of Governor; revising contingencies creating a vacancy in the office of Governor to comport with the West Virginia Constitution; providing that new elections to fill a vacancy in the office of Governor shall consist of special primary and special general elections; providing that the new election to fill a vacancy shall occur at a time to allow a newly elected individual to assume office within one year of the date the vacancy occurred; providing that provisions relating to special

general election do not affect political party creation; prescribing time frames for when new election must take place, including special primary election to nominate candidates to be voted for at a special general election; providing the time frame for the person acting as Governor to issue proclamations to set the new election; removing provision requiring vacancies to be filled at general elections deemed unconstitutional; requiring person acting as Governor to issue proclamation to fix date for new election, including date for special primary election; removing provisions related to utilizing conventions to nominate candidates; requiring the state to pay costs incurred in connection with a special election to fill a vacancy in the office of Governor; providing mechanism to fill vacancy in the office of Governor that occurred on November 15, 2010, by utilizing special primary election and special general election; requiring the person acting as Governor to issue a proclamation setting a special primary election to be held on June 20, 2011, in addition to the new election proclaimed by the person acting as Governor issued January 21, 2011; providing provisions to apply to special primary and special general election to be held in 2011; requiring the proclamations issued by the person acting as Governor to be published

in each county prior to the special primary and special general elections; providing that the provisions of the law relating to elections shall apply to the special general election and special primary election unless inconsistent with section; modifying certain statutory time periods relating to declaration of candidacy; modifying procedures relating to payment of filing fees and drawing of ballot positions; clarifying the eligibility of certain minors to vote in special primary election; modifying statutory provisions relating to minimum number of ballots to be printed; providing that polling places shall not be changed except for emergency situations; providing that constitutionally required redistricting to have no effect until after new election in 2011 is complete; modifying procedures for persons without party affiliations to nominate candidates for the special general election; authorizing the Secretary of State to issue administrative orders and to establish procedures and deadlines necessary to preserve voting rights, avoid fraudulent voting and other election irregularities and assure orderly and efficient administration of the new election; authorizing early voting for the special primary; providing for the expiration of the provisions applying to the new election pursuant to the vacancy created on November 15, 2010; and requiring Secre-

tary of State to report to Joint Committee on Government and Finance and establishing guidelines for the report.

Be it enacted by the Legislature of West Virginia:

That §3-10-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. FILLING VACANCIES.

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

1 (a) In case of the death, conviction ~~or~~ on impeachment,
2 failure to qualify, resignation or other disability of the
3 Governor, the President of the Senate shall act as Governor
4 until the vacancy is filled or the disability removed; and if
5 the President of the Senate, for any of the above-named
6 causes, shall be or become incapable of performing the duties
7 of Governor, the same shall devolve upon the Speaker of the
8 House of Delegates; and in all other cases where there is no
9 one to act as Governor, one shall be chosen by the joint vote
10 of the Legislature. Whenever a vacancy shall occur in the
11 office of Governor before the first three years of the term
12 shall have expired, a new election for Governor shall take
13 place to fill the vacancy. The new election shall consist of a
14 special primary election and a special general election, and
15 shall occur at such time as will permit the person elected as

16 Governor in the new election to assume office within one
17 year of the date the vacancy occurred: *Provided, That the*
18 special general election established by this section may not
19 apply to section eight, article one of this chapter. ~~If the~~
20 vacancy shall occur more than thirty days next preceding a
21 general election, the vacancy shall be filled at such election
22 and the acting Governor for the time being shall issue a
23 proclamation accordingly, Within thirty days from the date
24 the vacancy occurs, the person acting as Governor shall issue
25 a proclamation fixing the time for a new election to fill the
26 vacancy in the office of Governor, which shall be published
27 prior to such election as a Class II-O legal advertisement in
28 compliance with the provisions of article three, chapter fifty-
29 nine of this code, and the publication area for such publica-
30 tion shall be each county of the state. ~~But if it shall occur less~~
31 than thirty days next preceding such general election, and
32 more than one year before the expiration of the term, such
33 acting Governor shall issue a proclamation, fixing a time for
34 a special election to fill such vacancy, which shall be
35 published as hereinbefore provided. The proclamation issued
36 by the person acting as Governor shall provide for a special
37 primary election to nominate candidates for the special

38 general election. The special primary election shall take
39 place no less than ninety days after the proclamation and no
40 later than one hundred forty days from the date that the
41 vacancy in the office occurs. The proclamation issued by the
42 person acting as Governor shall also provide for a special
43 general election to take place no sooner than ninety days
44 after the special primary election and no later than two
45 hundred eighty days from the date that the vacancy in the
46 office occurs.

47 ~~If the vacancy is to be filled at a general election and shall~~
48 ~~occur before the primary election to nominate candidates to~~
49 ~~be voted for at such general election, candidates to fill the~~
50 ~~vacancy shall be nominated at such primary election in~~
51 ~~accordance with the time requirements and the provisions~~
52 ~~and procedures prescribed in article five of this chapter.~~
53 ~~When nominations to fill such vacancy cannot be so accom-~~
54 ~~plished at such primary election, and in all cases wherein the~~
55 ~~vacancy is to be filled at a special election, candidates to be~~
56 ~~voted for at such general or special elections shall be nomi-~~
57 ~~nated by a state convention to be called, convened and held~~
58 ~~under the resolutions, rules and regulations of the political~~
59 ~~party executive committees of the state. The laws prescribing~~

60 ~~the manner of calling, constituting and holding conventions~~
61 ~~to nominate candidates for presidential electors shall, insofar~~
62 ~~as applicable, govern conventions to nominate candidates to~~
63 ~~fill any vacancy in any office to be filled by the voters of the~~
64 ~~state as a whole, except that, in lieu of the magisterial~~
65 ~~district conventions in the several counties, the county~~
66 ~~executive committee shall call and convene a county conven-~~
67 ~~tion at the county seat with delegates thereto apportioned to~~
68 ~~and representative of the several magisterial districts of the~~
69 ~~county as provided in section twenty-one of article five of~~
70 ~~this chapter. The county convention shall proceed to select~~
71 ~~the county's prescribed number of state convention delegates~~
72 ~~from the several magisterial districts thereof and the chair-~~
73 ~~man and secretary of the convention shall promptly certify~~
74 ~~the names and addresses of the persons so selected as~~
75 ~~delegates to the state convention to the chairman of the state~~
76 ~~executive committee of the political party.~~

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

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

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

102 (1) In addition to the new election set forth in the procla-
103 mation dated January 21, 2011, a special primary election
104 shall also be held. For purposes of this subsection, the new

105 election provided in the proclamation dated January 21,
106 2011, means the special general election as set forth in this
107 subsection.

108 (2) The person acting as Governor shall issue a proclama-
109 tion calling for a special primary election to nominate
110 candidates for the special general election. The special
111 primary election shall be held on June 20, 2011.

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

121 (4) The provisions of this chapter apply to the special
122 primary election and special general election to the extent
123 that those provisions are consistent with the provisions of
124 this section. Statutory time deadlines for the purpose of the
125 new election provided in this subsection are modified as
126 follows:

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

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

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

148 (D) Drawing for ballot position will take place at the
149 Secretary of State's office twenty-four hours after the end of
150 the filing period. For each major political party on the ballot,
151 a single drawing by lot shall determine the candidate ballot
152 position for ballots statewide. This drawing shall be wit-
153 nessed by four clerks of the county commission chosen by the
154 West Virginia Association of County Clerks, with no more
155 than two clerks representing a single political party;

156 (E) A registered voter who has not reached eighteen years
157 of age may vote in the June 20, 2011 special primary election:
158 Provided, That the voter will attain eighteen years of age at
159 the time of the special general election provided in this
160 subsection;

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

166 (G) When paper ballots are used in conjunction with a
167 direct recording electronic voting system, the total number
168 of regular official ballots printed shall equal at a minimum

169 thirty percent of the registered voters eligible to vote that
170 ballot;

171 (H) Regularly scheduled locations of polling places may not
172 be changed, except for emergency situations as provided in
173 sections seven-e and seven-f, article one of this chapter:
174 Provided, That if multiple precincts voted in one polling
175 location for the August 28, 2010 special primary election,
176 these precincts may be consolidated into a single precinct.
177 Locations for consolidated precincts shall provide Internet
178 access, insofar as possible, for the sole purpose of utilizing
179 the statewide Voter Registration System (SVRS) as an
180 electronic poll book. However, constitutionally mandated
181 redistricting may not take effect until the special primary
182 election and special general election provided in this subsec-
183 tion are complete; and

184 (I) Citizens having no party organization or affiliation may
185 nominate candidates as provided by sections twenty-three
186 and twenty-four of article five of this chapter: *Provided,*
187 That the nomination certificates shall be filed not later than
188 seven calendar days following the special primary election
189 provided in this subsection.

190 (J) For the special primary election to be held pursuant to
191 this subsection, early in-person voting will be conducted
192 during regular business hours beginning on the twentieth
193 day before the special primary and continuing through the
194 fourth day before the special primary. Early voting will also
195 be conducted from 9 a.m. to 5 p.m. on the Saturday immedi-
196 ately prior to the end of early voting.

197 (5) The provisions of this subsection shall expire upon the
198 election and qualification of the Governor following the
199 October 4, 2011 special general election.

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