

# WEST VIRGINIA CODE: §3-10-1

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

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

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

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

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

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

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

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

(1) For a vacancy in the Office of Governor, the times for the special elections contained in section two of this article shall control. The proclamation entered pursuant to section two of this article by the person acting as Governor shall include the dates for the special candidate filing period, if necessary, and shall follow the requirements set forth in this section. All aspects of this section, where not in conflict with section two of this article, shall also be

followed. If a regularly scheduled primary or general election fits within the times for the special elections contained in section two of this article, the special elections shall be conducted in conjunction with the regularly scheduled election or elections. If a special election is required by section two of this article and it cannot be held in conjunction with the regular election dates, then the compensation of election officers shall be reimbursed pursuant to section nine of this article.

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

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

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

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

(d) (1) If a special candidate filing period is necessary, it shall begin no sooner than the day after the proclamation and shall close no earlier than close of business on the fourteenth day following the proclamation. A notarized declaration of candidacy and filing fee provided by section seven, article five of this chapter shall be filed either in person, by United States mail, electronic means or any other means authorized by the Secretary of State and received by the appropriate office before the close of the filing period. For petition in lieu of payment

of filing fees, a candidate seeking nomination for the vacancy may utilize the process set forth in section eight-a, article five of this chapter: Provided, That the minimum number of signatures required is equivalent to one qualified signature per one whole dollar of the filing fee for that office.

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

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

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

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

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

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

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