WEST VIRGINIA LEGISLATURE
SECOND EXTRAORDINARY SESSION, 2010

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ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 201

(By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

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Passed July 19, 2010

In Effect From Passage
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section designated §3-10-4a, relating to filling a vacancy in the office of United States Senator; providing for an election to fill the unexpired term; requiring the election to occur in conjunction with the 2010 general election; providing for a special primary election to nominate party candidates for the 2010 general election; authorizing the Governor to appoint a person to serve as United States Senator until a successor is elected and qualified; providing that the provisions of the law relating to elections shall apply to the special primary election unless inconsistent with section; modifying certain statutory time periods; directing special primary election to be held on August 28, 2010; modifying certain statutory time lines relating to declaration of candidacy and early voting for special elections; modifying procedures relating to payment of filing fees, drawing of ballot positions, selecting and training individuals working as election official;
clarifying the eligibility of certain minors to vote in special primary election; modifying statutory provisions relating to minimum number of ballots to be printed; modifying publications requirements of sample ballots, lists of candidates, and public testing of voting machines; providing applications deadlines for absentee ballots and procedures for changing polling places; 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 special primary election; requiring the state to pay costs incurred in connection with a special election to fill a vacancy in the office of United States Senator; requiring Secretary of State to report to joint committee on government and finance and establishing guidelines for the report; providing for the expiration of the section; and clarifying that the special general election held on November 2, 2010, for the United States Senate vacancy is a separate election from the general election held on the same date.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section designated as §3-10-4a, to read as follows:

ARTICLE 10. FILLING VACANCIES.

§3-10-4a. Special Senate vacancy election.

(a) Notwithstanding the provisions of section three of this article establishing processes for the appointment and election to fill a vacancy in the office of United States Senator, for purposes of filling the vacant seat in the office of
United States Senator existing on July 1, 2010, a special election shall be held to fill the unexpired term concurrent with the general election of November 2, 2010. A special primary election shall be held to nominate party candidates for the November election.

(b) For the special primary election required to be held prior to the November 2, 2010 election by operation of this section upon its enactment during the second extraordinary session of the Legislature, 2010, the Governor shall immediately issue a proclamation calling for a special primary election and general election. The special general election shall be held on November 2, 2010. The following provisions apply to these special elections:

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

(2) The provisions of this chapter shall apply to this special primary election to the extent that those provisions are consistent with the provisions of this section. Statutory time deadlines relating to availability of absentee ballots, certification, canvassing and related election procedures that cannot be met in a timely fashion, for the purpose of this special election, are modified as follows:

(A) The special primary election is to be held August 28, 2010;
(B) A notarized declaration of candidacy and filing fee shall be filed and received in hand by the Secretary of State by 5:00 p.m. on the fourth calendar day following the proclamation of the special primary election. The declaration of candidacy may be filed in person, by United States mail, electronic means or any other means authorized by the Secretary of State;

(C) Early-in-person voting shall be conducted during regular business hours beginning on Friday, August 20, 2010 and continuing through close of business Wednesday, August 25, 2010. In addition, early-in-person voting shall be conducted from 9:00 a.m. to 5:00 p.m. on Saturday, August 21, 2010. No satellite polling locations will be utilized for the August 28, 2010 special primary election;

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

(E) The compensation of election officers, cost of printing ballots and all other reasonable and necessary expenses in holding and making the return of the special election to fill a vacancy in the office of United States Senator are obligations of the state incurred by the ballot commissioners, clerks of the circuit courts, clerks of the county commissions and county commissions of the various counties as agents of the state. All expenses of the special election are to be audited by the Secretary of State. The Secretary of State shall prepare and transmit to the county
commissions forms on which the county commissions shall certify all expenses of these special elections to the Secretary of State. If satisfied that the expenses as certified by the county commissions are reasonable and were necessarily incurred, the Secretary of State shall requisition the necessary warrants from the Auditor of the state to be drawn on the State Treasurer and shall mail the warrants directly to the vendors of the special election services, supplies and facilities;

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

(G) Drawing for ballot position will take place at the Secretary of State’s office 24 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;

(H) The clerks of the county commission shall submit the list of persons who worked in the May 11, 2010 primary election to the county commission for appointment as election officials;

(I) Election officials shall be appointed by Tuesday, August 3, 2010;

(J) The clerks of the county commission shall provide notice to all election officials of the fact of their appointment
by Wednesday, August 4, 2010. Included with the notice shall be a response notice form for the appointed person to return indicating if he or she agrees to serve in the specified capacity in the August 28, 2010 special primary election;

(K) The position of any election official notified of appointment who fails to return the response notice or otherwise confirm to the clerk of the county commission his or her agreement to serve by Tuesday, August 10, 2010 is considered vacant and the clerk of the county commission shall proceed to fill the vacancies;

(L) Election officials shall be trained by Thursday, August 19, 2010: Provided, That election officials who attended training for the May 11, 2010 primary election are exempt from additional training for the August 28, 2010 special primary election;

(M) A registered voter who has not reached eighteen years of age may vote in the August 28, 2010 special primary election: Provided, That the voter will attain eighteen years of age at the time of the special general election;

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

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

(P) For counties in which two or more qualified newspapers publish a daily newspaper, the clerk of the county commission shall publish at least once each sample
official August 28, 2010 primary ballot, on the last day on
which a newspaper is published immediately preceding the
August 28, 2010 special primary election, as a Class I-0 legal
advertisement in the two qualified daily newspapers of
different political parties within the county having the largest
circulation in compliance with the provisions of article three,
chapter fifty-nine of West Virginia Code;

(Q) For counties having no more than one daily
newspaper or having one or more qualified newspapers
which publish weekly, the clerk of the county commission
shall publish each sample official August 28, 2010 primary
ballot, on the last day in which a newspaper is published
immediately preceding the August 28, 2010 special primary
election, as a Class I-0 legal advertisement in the qualified
daily newspaper within the county having the largest
circulation in compliance with the provisions of article three,
chapter fifty-nine of West Virginia Code;

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

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

(T) Before voting machines are used, the clerks of the
county commission shall have the ballots, vote recording
devices, and electronic poll books inspected, and automatic	tabulating equipment tested to ascertain that it will accurately
count the votes cast. A single notice of the place and time of
the inspection and testing shall be published, no less than
three days in advance, as a class I-0 legal advertisement in
compliance with the provisions of article three, chapter
fifty-nine of West Virginia Code. The publication area is the
county involved;
Applications for absentee ballots shall be accepted from the date of proclamation, other than from voters eligible to vote under the provisions of the Uniformed and Overseas Citizens Absentee Voting Act who may apply for an absentee ballot for all elections within a calendar year as early as the first day of January of an election year;

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

(W) Persons having no party affiliation may nominate candidates for the U.S. Senate vacancy under the procedures set forth in sections twenty-three and twenty-four, article five of this chapter: Provided, That the number of signatures required to be submitted shall be equal to not less than one-quarter of one percent of the entire vote cast at the last preceding general election for any statewide congressional or presidential candidate. Notwithstanding the provisions of sections twenty-three and twenty-four of article three of this section, the signatures, notarized declaration of candidacy, and filing fee must be submitted no later than August 23, 2010.

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

(d) Any special election, which is held under the
provisions of this section and occurs concurrently with a
general election, shall be a separate election from the general
election.

(e) Upon the election and qualification of a United States
Senator by the United States Senate following the November
2, 2010 election, the provisions of this section will expire.
The Joint Committee on Enrolled Bills hereby certifies that the
foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within 7-12 13 day of July, 2010
this the 19th day of July, 2010

Governor
PRESENTED TO THE GOVERNOR

JUL 19 2010

Time 9:00 AM