WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2011

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2853

(By Mr. Speaker, Mr. Thompson, and Delegate Armstead)

Passed February 2, 2011

In Effect From Passage
AN ACT 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 for election of Governor if vacancy occurs within first three years of term; providing one time new special elections to fill an existing vacancy in the office of Governor; providing requirements for special elections; providing that provisions relating to special general election do not affect political party creation; prescribing time frames for when new election must take place; providing for the person acting as Governor to issue proclamations relating to new elections; requiring the state to pay costs incurred in connection
with any special elections; requiring the person acting as Governor to issue a proclamation setting a special primary election; requiring the proclamations issued by the person acting as Governor to be published; providing that the provisions of the law relating to elections shall apply to the special general election and special primary election unless inconsistent; 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 certain situations; providing that constitutionally required redistricting to have no effect until after new special election in 2011 is complete; modifying procedures for persons without party affiliations to nominate candidates; authorizing the Secretary of State to issue administrative orders and to establish procedures and deadlines; providing the provisions applying to the new special elections expire; authorizing Saturday early voting in the special primary election; and requiring Secretary of State to report to Joint Committee on Government and Finance.

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.

(a) In case of the death, conviction on impeachment, failure to qualify, resignation or other disability of the Governor, the President of the Senate shall act as Governor until the vacancy is filled or the disability removed; and if the
President of the Senate, for any of the above-named causes, shall be or become incapable of performing the duties of Governor, the same shall devolve upon the Speaker of the House of Delegates; and in all other cases where there is no one to act as Governor, one shall be chosen by the joint vote of the Legislature. Whenever a vacancy shall occur in the office of Governor before the first three years of the term shall have expired, a new election for Governor shall take place to fill the vacancy. The new election shall consist of a special primary election and a special general election, and shall occur at such time as will permit the person elected as Governor in the new election to assume office within one year of the date the vacancy occurred: Provided, That the special general election provided in this section may not apply to section eight, article one of this chapter. Within thirty days from the date the vacancy occurs, the person acting as Governor pursuant to the state constitution shall issue a proclamation fixing the time for a new statewide election to fill the vacancy in the office of Governor, which shall be published prior to such election as a Class II-0 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. The proclamation issued by the person acting as Governor pursuant to the state constitution shall provide for a special primary election to nominate candidates for the special general election. The special primary election shall take place no less than ninety days after the proclamation and no later than one hundred forty days from the date that the vacancy in the office occurs. The proclamation issued by the person acting as Governor pursuant to the state constitution shall also provide for a special general election to take place no sooner than ninety days after the special primary election and no later than two hundred eighty days from the date that the vacancy in the office occurs.
(b) The compensation of election officers, cost of printing ballots and all other reasonable and necessary expenses in holding and making the return of the new election provided in this section to fill a vacancy in the office of Governor are obligations of the state incurred by the ballot commissioners, clerks of the county commissions and county commissions of the various counties as agents of the state. All expenses of the new 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 the new election provided in this section to the Secretary of State. If satisfied that the expenses certified by the county commissions are reasonable and necessarily incurred, the Secretary of State shall prepare 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 new election services, supplies and facilities.

(c) Notwithstanding the provisions of subsection (a) of this section to the contrary, for purposes of filling the vacancy that occurred in the office of Governor on November 15, 2010, a new election shall occur as follows:

(1) Upon the effective date of this subsection, the person acting as Governor pursuant to the state constitution shall immediately issue a proclamation calling for a special primary and general election as provided for in this subsection. For purposes of this subsection, the new elections so provided in the proclamation mean the special primary and general elections as set forth in this subsection.

(2) The special primary election shall be held on May 14, 2011 and the special general election shall be held on October 4, 2011.
(3) The proclamation for the special primary election and special general election shall be published prior to the special primary election and special general election, respectively, 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 cause the document to be published within each county in accordance with this section.

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

(A) 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 fifth 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;

(B) 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 new election provided in this subsection:

Provided, That emergency administrative orders may not contravene the provisions of this section;

(C) For petition in lieu of payment of filing fees, a candidate seeking nomination for the vacancy in the office of Governor may utilize the process set forth in section eight-a,
Provided, That the minimum number of signatures required is one thousand five hundred;

(D) Drawing for special 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. Ballot position for the special general election shall be determined pursuant to subdivision (3), subsection (c), section two, article six of this chapter;

(E) A registered voter who has not reached eighteen years of age may vote in the May 14, 2011 special primary election: Provided, That the voter will attain eighteen years of age at the time of the special general election provided in this subsection;

(F) When paper or optical scan ballots are the primary voting method used 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;

(G) 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;

(H) Regularly scheduled locations of polling places may not be changed, except for situations as provided in sections seven-e and seven-f, article one of this chapter: Provided, That if multiple precincts voted in one polling location for the November 2, 2010, regularly scheduled general election, these 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. However, constitutionally mandated redistricting may not take effect until the special primary election and special general election provided in this subsection are complete; and

(I) Citizens having no party organization or affiliation may nominate candidates as provided by sections twenty-three and twenty-four of 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 governor. Notwithstanding the provisions of sections twenty three and twenty four of article five of this chapter, the signatures, notarized declaration of candidacy, and filing fee must be submitted no later than seven calendar days following the special primary election provided in this subsection.

(J) For the special primary election to be held pursuant to this subsection, early voting will also be conducted from 9 a.m. to 5 p.m. on the Saturday immediately prior to the end of early voting.

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

(d) The Secretary of State shall by January 10, 2012 report to the Joint Committee on Government and Finance findings regarding the operation of the new election undertaken pursuant to subsection (c) of this section. This report shall provide analysis of the direct and indirect costs to the state associated with the conduct of the new election.
We, the undersigned, hereby certify that the foregoing bill is correctly enrolled.

Chairman, House Select Committee on Enrolled Bills

Chairman, Senate Committee on Enrolled Bills

Originating in the House.

In effect from passage.

Clerk of the House of Delegates

Clerk of the Senate

The within is approved this the ___ day of ____________, 2011.

Governor
PRESENTED TO THE GOVERNOR

Date 2/4/11

Time 1:45 pm