WEST VIRGINIA LEGISLATURE  
EIGHTY-FIRST LEGISLATURE  
REGULAR SESSION, 2013  

ENROLLED  
COMMITTEE SUBSTITUTE  
FOR  
Senate Bill No. 527  
(Senators Palumbo, Cann and McCabe,  
ORIGINAL SPONSORS)  

[Passed April 13, 2013; in effect ninety days from passage.]
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COMMITTEE SUBSTITUTE
FOR
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(SENATORS PALUMBO, CANN AND MCCABE, original sponsors)

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AN ACT to repeal §3-10-4a of the Code of West Virginia, 1931, as amended; to amend and reenact §3-10-1, §3-10-2, §3-10-3, §3-10-3a, §3-10-4, §3-10-5, §3-10-6, §3-10-7 and §3-10-8 of said code; and to amend said code by adding thereto a new section, designated §3-10-9, all relating to filling vacancies of certain elected offices; defining terms; setting procedures for appointing persons to fill certain vacancies; requiring certain appointments within a certain period of time; listing time periods and certain offices where elections must be held to fill certain vacancies; setting special requirements for filling vacancies in certain offices; setting procedures for certain special elections; setting requirements for special filing periods where necessary; requiring certain notice be given regarding elections to fill vacancies; providing for payment of costs if a new election is necessary; allowing nomination of certain persons without party affiliation; allowing emergency orders by the Secretary of State in certain circumstances; removing and repealing certain language relating to previous elections; clarifying method used to fill vacancies in the Office of Governor; permitting meeting of the Judicial Vacancy Advisory
Commission upon certain formal announcements of retirement or resignation; adjusting method to fill vacancies in certain statewide, legislative and judicial offices such that the timing for all are consistent; adjusting method to fill vacancies in United States Congress; requiring most elections to fill vacancies be held in conjunction with regularly scheduled elections; clarifying method used to fill vacancies in certain county offices; permitting vacancies in certain county offices to be filled by temporary replacements for no more than thirty days; and updating language regarding filling vacancies in certain elected offices.

Be it enacted by the Legislature of West Virginia:

That §3-10-4a of the Code of West Virginia, 1931, as amended, be repealed; that §3-10-1, §3-10-2, §3-10-3, §3-10-3a, §3-10-4, §3-10-5, §3-10-6, §3-10-7 and §3-10-8 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §3-10-9, all to read as follows:

ARTICLE 10. FILLING VACANCIES.

§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
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 of
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.

§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.

(b) 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 statewide election to fill the vacancy in the Office of Governor. The special primary election to fill a vacancy in the Office of Governor 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.

(c) The election shall follow the requirements of section one of this article that are not in conflict with this section.

§3-10-3. Vacancies in offices of state officials, United States Senators and judges.
Any vacancy occurring in the offices of Secretary of State, Auditor, Treasurer, Attorney General, Commissioner of Agriculture, Justice of the Supreme Court of Appeals or in any office created or made elective to be filled by the voters of the entire state, judge of a circuit court or judge of a family court is filled by the Governor of the state by appointment and subsequent election to fill the remainder of the term, if required by section one of this article.

§3-10-3a. Judicial Vacancy Advisory Commission.

(a) The Judicial Vacancy Advisory Commission shall assist the Governor in filling judicial vacancies. The commission shall meet and submit a list of no more than five nor less than two best qualified persons to the Governor within ninety days of the occurrence of a vacancy, or the formal announcement of the justice or judge by letter to the Governor of an upcoming resignation or retirement that will result in the occurrence of a vacancy, in the office of Justice of the Supreme Court of Appeals, judge of a circuit court or judge of a family court. The Governor shall make the appointment to fill the vacancy, as required by this article, within thirty days following the receipt of the list of qualified candidates or within thirty days following the vacancy, whichever occurs later.

(b) The commission shall consist of eight appointed members. Four public members shall be appointed by the Governor for six-year terms, except for the initial appointments which shall be staggered in accordance with subsection (c) of this section. Four attorney members shall be appointed by the Governor for six-year terms, except as provided in subsection (c) of this section, from a list of nominees provided by the Board of Governors of the West Virginia State Bar. The Board of Governors of the West Virginia State Bar shall nominate no more than twenty nor
less than ten best qualified attorneys for appointment to the
commission whenever there is a vacancy in the membership
of the commission reserved for attorney members. The
commission shall choose one of its appointed members to
serve as chair for a three-year term. No more than four
appointed members of the commission shall belong to the
same political party. No more than three appointed members
of the commission shall be residents of the same
congressional district. All members of the commission shall
be citizens of this state. Public members of the commission
may not be licensed to practice law in West Virginia or any
other jurisdiction.

(c) Of the initial appointments made to the commission,
two public members and two attorney members shall be
appointed for a term ending two years after the effective date
of this section, one public member and one attorney member
shall be appointed for a term ending four years after the
effective date of this section, and one public member and one
attorney member shall be appointed for a term ending six
years after the effective date of this section.

(d) The Governor, or his or her designee, the President of
the West Virginia State Bar and the Dean of the West
Virginia University College of Law shall serve as ex officio
members of the commission.

(e) Members of the commission shall serve without
compensation, except that commission members are entitled
to reimbursement of travel and other necessary expenses
actually incurred while engaged in official commission
activities in accordance with the guidelines of the Travel
Management Office of the Department of Administration, or
its successor entity. The Governor's Office shall cooperate
with the commission to ensure that all resources necessary to
carrying out the official duties of the commission are provided, including staff assistance, equipment and materials.

(f) The commission shall adopt written policies that formalize and standardize all operating procedures and ethical practices of its members including, but not limited to, procedures for training commission members, publishing notice of judicial vacancies, recruiting qualified individuals for consideration by the commission, receiving applications from qualified individuals, notifying the public of judicial vacancies, notifying state or local groups and organizations of judicial vacancies and soliciting public comment on judicial vacancies. The written policies of the commission are not subject to the provisions of chapter twenty-nine-a of this code, but shall be filed with the Secretary of State.

(g) A majority of the commission plus one shall constitute a quorum to do business.

(h) All organizational meetings of the commission shall be open to the public and subject to the requirements of article nine-a, chapter six of this code. An "organizational meeting" means an initial meeting to discuss the commission's procedures and requirements for a judicial vacancy. The commission shall hold at least one organizational meeting upon the occurrence of a judicial vacancy. All other meetings of the commission are exempt from article nine-a, chapter six of this code.

(i) The commission shall make available to the public copies of any applications and any letters of recommendation written on behalf of any applicants. All other documents or materials created or received by the commission shall be confidential and exempt from the provisions of chapter twenty-nine-b of this code, except for the list of best-qualified persons or accompanying memoranda submitted to
the Governor in accordance with the provisions of subsection (j) of this section, which shall be available for public inspection, and the written policies required to be filed with the Secretary of State in accordance with subsection (f) of this section.

(j) The commission shall submit its list of best qualified persons to the Governor in alphabetical order. A memorandum may accompany the list of best-qualified persons and state facts concerning each of the persons listed. The commission shall make copies of any list of best-qualified persons and accompanying memoranda it submits to the Governor available for public inspection.

§3-10-4. Vacancies in representation in United States Congress.

(a) (1) If there is a vacancy in the representation from this state in the House of Representatives in the Congress of the United States, the Governor shall, within five days after the fact comes to his or her knowledge, issue a proclamation setting dates for a special general election that is not less than eighty-four nor more than one hundred twenty days from the date of the vacancy and requiring nomination of candidates as provided in subdivision (2) of this subsection: Provided, That no such proclamation may be made nor may a special election be held if the vacancy occurs after the eighty-fourth day prior to the regularly scheduled general election for a new full term of the office. The election shall follow the requirements of section one of this article that are not in conflict with this section.

(2) The party executive committees for the congressional district for which there is a vacancy shall each, within thirty days of the governors proclamation, nominate a candidate to stand at the general election required by subdivision (1) of this subsection.
(b) If there is a vacancy in the representation from this
state in the Senate of the United States Congress, the vacancy
shall be filled by the Governor of the state by appointment
and:

(1) If the vacancy occurs on or before the primary cutoff
date, then an election shall be held pursuant to section one of
this article; or

(2) If the vacancy occurs after the primary cutoff date, but
on or before the general cutoff date, then the Governor shall
issue a proclamation providing for: (A) A special filing
period; (B) a special primary election to be held in
conjunction with the upcoming general election; and (C) a
special general election to be held not less than eighty-four
nor more than one hundred twenty days following the date of
the special primary election. Each election shall follow the
requirements of section one of this article that are not in
conflict with this section.

§3-10-5. Vacancies in State Legislature.

(a) Any vacancy in the office of State Senator or member
of the House of Delegates shall be filled by appointment by
the Governor, from a list of three legally qualified persons
submitted by the party executive committee of the party with
which the person holding the office immediately preceding
the vacancy was affiliated. The list of qualified persons to fill
the vacancy shall be submitted to the Governor within fifteen
days after the vacancy occurs and the Governor shall duly
make his or her appointment to fill the vacancy from the list
of legally qualified persons within five days after the list is
received. If the list is not submitted to the Governor within
the fifteen day period, the Governor shall appoint within five
days thereafter a legally qualified person of the same political
party as the person vacating the office.
(b) In the case of a member of the House of Delegates, the list shall be submitted by the party executive committee of the delegate district in which the vacating member resided at the time of his or her election or appointment. The appointment to fill a vacancy in the House of Delegates is for the unexpired term.

(c) In the case of a State Senator, the list shall be submitted by the party executive committee of the state senatorial district in which the vacating senator resided at the time of his or her election or appointment. The appointment to fill a vacancy in the State Senate is for the unexpired term, unless section one of this article requires a subsequent election to fill the remainder of the term, which shall follow the procedure set forth in section one of this article.

§3-10-6. Vacancy in office of circuit court clerk.

(a) When a vacancy occurs in the office of clerk of the circuit court, the circuit court by a majority vote of the judges shall fill the same within thirty days of the vacancy by appointment of a person of the same political party as the officeholder vacating the office for the period required by section one of this article.

(b) Notwithstanding any code provision to the contrary, the chief judge may appoint a temporary successor to the office of clerk of the circuit court until the requirements of this section have been met. The temporary successor may serve no more than thirty days from the date of the vacancy.

(c) If an election is necessary, the circuit court, or the chief judge thereof in vacation, is responsible for the proper proclamation, by order and notice required by section one of this article.
(d) Section one of this article shall be followed with respect to any election needed to fill a vacancy, except that if the vacancy occurs after the primary cutoff date but not later than the general cutoff date, candidates to fill the vacancy shall be nominated by the county executive committee in the manner provided in section nineteen, article five of this chapter, as in the case of filling vacancies in nominations, and the names of the persons, so nominated and certified to the clerk of the county commission of the county, shall be placed upon the ballot to be voted at the next general election.

§3-10-7. Vacancies in offices of county commissioner and clerk of county commission.

(a) Any vacancy in the office of county commissioner or clerk of county commission shall be filled by the county commission of the county, unless the number of vacancies in a county commission deprive that body of a quorum, in which case the Governor of the state shall fill any vacancy in the county commission necessary to create a quorum thereof. Persons appointed shall be of the same political party as the officeholder vacating the office for the period stated by section one of this article. If a quorum of the county commission cannot agree upon a person to fill a vacancy in the office of county commissioner within thirty days of the date the vacancy first occurred, the county executive committee of the vacating county commissioner's political party shall select and name a person to fill the vacancy from the membership of the vacating county commissioner's political party. The clerk shall be appointed within thirty days of the vacancy.

(b) Notwithstanding any code provision to the contrary, a county commission may appoint a temporary successor to the office of clerk of the county commission until the requirements of this section have been met. The temporary
successor may serve no more than thirty days from the date of the vacancy.

(c) If an election is necessary under section one of this article, the county commission, or the president thereof in vacation, shall be responsible for the proper proclamation, by order, and notice required by section one of this article.

(d) Section one of this article shall be followed with respect to any election needed to fill a vacancy, except that if the vacancy occurs after the primary cutoff date but not later than the general cutoff date, candidates to fill the vacancy shall be nominated by the county executive committee in the manner provided in section nineteen, article five of this chapter, as in the case of filling vacancies in nominations, and the names of the persons, so nominated and certified to the clerk of the county commission of the county, shall be placed upon the ballot to be voted at the next general election.

(e) If the election for an unexpired term is held at the same time as the election for a full term for county commissioner, the full term shall be counted first and the unexpired term shall be counted second. If the candidate with the highest number of votes for the unexpired term resides in the same magisterial district as the candidate with the highest number of votes for the full term, the candidate for the full term shall be seated. The candidate with the next highest number of votes for the unexpired term residing in a different magisterial district shall be seated for the unexpired term.

§3-10-8. Vacancies in offices of prosecuting attorney, sheriff, assessor and surveyor.

(a) Any vacancy occurring in the office of prosecuting attorney, sheriff, assessor or county surveyor shall be filled
by the county commission within thirty days of the vacancy
by appointment of a person of the same political party as the
officeholder vacating the office. The appointed person shall
hold the office for the period stated by section one of this
article.

(b) Notwithstanding any code provision to the contrary,
a county commission may appoint a temporary successor to
the office of prosecuting attorney, sheriff, assessor or county
surveyor until the requirements of this section have been met.
The temporary successor may serve no more than thirty days
from the date of the vacancy.

(c) If an election is necessary under section one of this
article, the county commission, or the president thereof in
vacation, shall be responsible for the proper proclamation, by
order, and notice required by section one of this article.

(d) Section one of this article shall be followed with
respect to any election needed to fill a vacancy, except that if
the vacancy occurs after the primary cutoff date but not later
than the general cutoff date, candidates to fill the vacancy
shall be nominated by the county executive committee in the
manner provided in section nineteen, article five of this
chapter, as in the case of filling vacancies in nominations, and
the names of the persons, so nominated and certified to the
clerk of the county commission of the county, shall be placed
upon the ballot to be voted at the next general election.

§3-10-9. Costs of special elections paid by state.

If an election as required by sections two or four of this
article cannot be held in conjunction with the regular election
dates, then the cost of printing ballots and all other reasonable
and necessary expenses in holding and making the return of
the new election to fill a vacancy are obligations of the state
6 incurred by the ballot commissioners, clerks of the county
7 commissions and county commissions of the various counties
8 as agents of the state. All expenses of the new election are to
9 be audited by the Secretary of State. The Secretary of State
10 shall prepare and transmit to the county commissions forms
11 on which the county commissions shall certify all expenses
12 of the new election to the Secretary of State. If satisfied that
13 the expenses as certified by the county commissions are
14 reasonable and were necessarily incurred, the Secretary of
15 State shall requisition the necessary warrants from the
16 Auditor of the state to be drawn on the State Treasurer and
17 shall mail the warrants directly to the vendors of the new
18 election services, supplies and facilities.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Member, Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 3rd Day of May, 2013.

Governor
PRESENTED TO THE GOVERNOR

MAY - 1 2013

Time 1:55 pm