

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 261**

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

6 _____
7 [Originating in the Committee on the Judiciary;
8 reported January 28, 2011.]
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12 A BILL to amend and reenact §3-10-2 of the Code of West Virginia,
13 1931, as amended, relating to filling a vacancy in the office
14 of Governor; revising contingencies creating a vacancy in the
15 office of Governor to comport with the West Virginia
16 Constitution; providing that new elections to fill a vacancy
17 in the office of Governor shall consist of special primary and
18 special general elections; providing that the new election to
19 fill a vacancy shall occur at a time to allow a newly elected
20 individual to assume office within one year of the date the
21 vacancy occurred; providing that provisions relating to
22 special general election do not affect political party
23 creation; prescribing time frames for when new election must
24 take place, including special primary election to nominate
25 candidates to be voted for at a special general election;
26 providing the time frame for the person acting as Governor to

1 issue proclamations to set the new election; removing
2 provision requiring vacancies to be filled at general
3 elections deemed unconstitutional; requiring person acting as
4 Governor to issue proclamation to fix date for new election,
5 including date for special primary election; removing
6 provisions related to utilizing conventions to nominate
7 candidates; requiring the state to pay costs incurred in
8 connection with a special election to fill a vacancy in the
9 office of Governor; providing mechanism to fill vacancy in the
10 office of Governor that occurred on November 15, 2010, by
11 utilizing special primary election and special general
12 election; requiring the person acting as Governor to issue a
13 proclamation setting a special primary election to be held on
14 June 20, 2011, in addition to the new election proclaimed by
15 the person acting as Governor issued January 21, 2011;
16 providing provisions to apply to special primary and special
17 general election to be held in 2011; requiring the
18 proclamations issued by the person acting as Governor to be
19 published in each county prior to the special primary and
20 special general elections; providing that the provisions of
21 the law relating to elections shall apply to the special
22 general election and special primary election unless
23 inconsistent with section; modifying certain statutory time
24 periods relating to declaration of candidacy; modifying
25 procedures relating to payment of filing fees and drawing of
26 ballot positions; clarifying the eligibility of certain minors

1 to vote in special primary election; modifying statutory
2 provisions relating to minimum number of ballots to be
3 printed; providing that polling places shall not be changed
4 except for emergency situations; providing that
5 constitutionally required redistricting to have no effect
6 until after new election in 2011 is complete; modifying
7 procedures for persons without party affiliations to nominate
8 candidates for the special general election; authorizing the
9 Secretary of State to issue administrative orders and to
10 establish procedures and deadlines necessary to preserve
11 voting rights, avoid fraudulent voting and other election
12 irregularities and assure orderly and efficient administration
13 of the new election; authorizing early voting for the special
14 primary; providing for the expiration of the provisions
15 applying to the new election pursuant to the vacancy created
16 on November 15, 2010; and requiring Secretary of State to
17 report to Joint Committee on Government and Finance and
18 establishing guidelines for the report.

19 *Be it enacted by the Legislature of West Virginia:*

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

22 **ARTICLE 10. FILLING VACANCIES.**

23 **§3-10-2. Vacancy in office of Governor.**

24 (a) In case of the death, conviction ~~or~~ on impeachment,
25 failure to qualify, resignation or other disability of the
26 Governor, the President of the Senate shall act as Governor until

1 the vacancy is filled or the disability removed; and if the
2 President of the Senate, for any of the above-named causes, shall
3 be or become incapable of performing the duties of Governor, the
4 same shall devolve upon the Speaker of the House of Delegates; and
5 in all other cases where there is no one to act as Governor, one
6 shall be chosen by the joint vote of the Legislature. Whenever a
7 vacancy shall occur in the office of Governor before the first
8 three years of the term shall have expired, a new election for
9 Governor shall take place to fill the vacancy. The new election
10 shall consist of a special primary election and a special general
11 election, and shall occur at such time as will permit the person
12 elected as Governor in the new election to assume office within one
13 year of the date the vacancy occurred: *Provided*, That the special
14 general election established by this section may not apply to
15 section eight, article one of this chapter. ~~If the vacancy shall~~
16 ~~occur more than thirty days next preceding a general election, the~~
17 ~~vacancy shall be filled at such election and the acting Governor~~
18 ~~for the time being shall issue a proclamation accordingly, Within~~
19 ~~thirty days from the date the vacancy occurs, the person acting as~~
20 ~~Governor shall issue a proclamation fixing the time for a new~~
21 ~~election to fill the vacancy in the office of Governor, which shall~~
22 be published prior to such election as a Class II-0 legal
23 advertisement in compliance with the provisions of article three,
24 chapter fifty-nine of this code, and the publication area for such
25 publication shall be each county of the state. ~~But if it shall~~
26 ~~occur less than thirty days next preceding such general election,~~

1 ~~and more than one year before the expiration of the term, such~~
2 ~~acting Governor shall issue a proclamation, fixing a time for a~~
3 ~~special election to fill such vacancy, which shall be published as~~
4 ~~hereinbefore provided. The proclamation issued by the person acting~~
5 ~~as Governor shall provide for a special primary election to~~
6 ~~nominate candidates for the special general election. The special~~
7 ~~primary election shall take place no less than ninety days after~~
8 ~~the proclamation and no later than one hundred forty days from the~~
9 ~~date that the vacancy in the office occurs. The proclamation~~
10 ~~issued by the person acting as Governor shall also provide for a~~
11 ~~special general election to take place no sooner than ninety days~~
12 ~~after the special primary election and no later than two hundred~~
13 ~~eighty days from the date that the vacancy in the office occurs.~~

14 ~~If the vacancy is to be filled at a general election and shall~~
15 ~~occur before the primary election to nominate candidates to be~~
16 ~~voted for at such general election, candidates to fill the vacancy~~
17 ~~shall be nominated at such primary election in accordance with the~~
18 ~~time requirements and the provisions and procedures prescribed in~~
19 ~~article five of this chapter. When nominations to fill such vacancy~~
20 ~~cannot be so accomplished at such primary election, and in all~~
21 ~~cases wherein the vacancy is to be filled at a special election,~~
22 ~~candidates to be voted for at such general or special elections~~
23 ~~shall be nominated by a state convention to be called, convened and~~
24 ~~held under the resolutions, rules and regulations of the political~~
25 ~~party executive committees of the state. The laws prescribing the~~
26 ~~manner of calling, constituting and holding conventions to nominate~~

~~1 candidates for presidential electors shall, insofar as applicable,
2 govern conventions to nominate candidates to fill any vacancy in
3 any office to be filled by the voters of the state as a whole,
4 except that, in lieu of the magisterial district conventions in the
5 several counties, the county executive committee shall call and
6 convene a county convention at the county seat with delegates
7 thereto apportioned to and representative of the several
8 magisterial districts of the county as provided in section twenty-
9 one of article five of this chapter. The county convention shall
10 proceed to select the county's prescribed number of state
11 convention delegates from the several magisterial districts thereof
12 and the chairman and secretary of the convention shall promptly
13 certify the names and addresses of the persons so selected as
14 delegates to the state convention to the chairman of the state
15 executive committee of the political party.~~

16 (b) The compensation of election officers, cost of printing
17 ballots and all other reasonable and necessary expenses in holding
18 and making the return of the new election provided in this section
19 to fill a vacancy in the office of Governor are obligations of the
20 state incurred by the ballot commissioners, clerks of the county
21 commissions and county commissions of the various counties as
22 agents of the state. All expenses of the new election are to be
23 audited by the Secretary of State. The Secretary of State shall
24 prepare and transmit to the clerks of the county commissions forms
25 on which the clerks of the county commissions shall certify all
26 expenses of the new election provided in this section to the

1 Secretary of State. If satisfied that the expenses as certified by
2 the clerks of the county commissions are reasonable and were
3 necessarily incurred, the Secretary of State shall requisition the
4 necessary warrants from the Auditor of the state to be drawn on the
5 State Treasurer and shall mail the warrants to the clerks of the
6 county commissions to pay such certified expenses deemed reasonable
7 and necessary by the Secretary of State.

8 (c) Notwithstanding the provisions of subsection (a) of this
9 section to the contrary, a new election for purposes of filling the
10 vacancy that occurred in the office of Governor on November 15,
11 2010, shall occur as provided in this subsection:

12 (1) In addition to the new election set forth in the
13 proclamation dated January 21, 2011, a special primary election
14 shall also be held. For purposes of this subsection, the new
15 election provided in the proclamation dated January 21, 2011,
16 means the special general election as set forth in this subsection.

17 (2) The person acting as Governor shall issue a proclamation
18 calling for a special primary election to nominate candidates for
19 the special general election. The special primary election shall
20 be held on June 20, 2011.

21 (3) The proclamation for the special primary election and
22 special general election shall be published prior to the special
23 primary election and special general elections, respectively, as a
24 Class II-0 legal advertisement in accordance with article three,
25 chapter fifty-nine of this code and the publication area for the
26 publication is each county of the state. The notice shall be filed

1 with the Secretary of State who shall cause the document to be
2 published within each county in accordance with this section.

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

8 (A) A notarized declaration of candidacy and filing fee shall
9 be filed and received in hand by the Secretary of State by 5:00
10 p.m. on the tenth calendar day following the proclamation of the
11 special primary election. The declaration of candidacy may be
12 filed in person, by United States mail, electronic means or any
13 other means authorized by the Secretary of State;

14 (B) The Secretary of State may issue emergency administrative
15 orders to undertake other ministerial actions that are otherwise
16 authorized pursuant to this code when necessary to assure the
17 preservation of the voting rights of the citizens of this state and
18 avoid fraudulent voting and election activities and otherwise
19 assure the orderly and efficient conduct of the new election
20 provided in this subsection: *Provided,* That emergency
21 administrative orders may not contravene the provisions of this
22 section;

23 (C) For petition in lieu of payment of filing fees, a
24 candidate seeking nomination for the vacancy in the office of
25 Governor may utilize the process set forth in section eight-a,
26 article five of this chapter: *Provided,* That the minimum number of

1 signatures required is one thousand five hundred;

2 (D) Drawing for ballot position will take place at the
3 Secretary of State's office twenty-four hours after the end of the
4 filing period. For each major political party on the ballot, a
5 single drawing by lot shall determine the candidate ballot position
6 for ballots statewide. This drawing shall be witnessed by four
7 clerks of the county commission chosen by the West Virginia
8 Association of County Clerks, with no more than two clerks
9 representing a single political party;

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

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

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

22 (H) Regularly scheduled locations of polling places may not be
23 changed, except for emergency situations as provided in sections
24 seven-e and seven-f, article one of this chapter: Provided, That
25 if multiple precincts voted in one polling location for the August
26 28, 2010 special primary election, these precincts may be

1 consolidated into a single precinct. Locations for consolidated
2 precincts shall provide Internet access, insofar as possible, for
3 the sole purpose of utilizing the statewide Voter Registration
4 System (SVRS) as an electronic poll book. However, constitutionally
5 mandated redistricting may not take effect until the special
6 primary election and special general election provided in this
7 subsection are complete; and

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

14 (J) For the special primary election to be held pursuant to
15 this subsection, early in-person voting will be conducted during
16 regular business hours beginning on the twentieth day before the
17 special primary and continuing through the fourth day before the
18 special primary. Early voting will also be conducted from 9 a.m.
19 to 5 p.m. on the Saturday immediately prior to the end of early
20 voting.

21 (5) The provisions of this subsection shall expire upon the
22 election and qualification of the Governor following the October 4,
23 2011 special general election.

24 (d) The Secretary of State shall by January 10, 2012, report
25 to the Joint Committee on Government and Finance findings regarding
26 of the operation of the new election undertaken pursuant to

1 subsection (c) of this section. This report shall provide analysis
2 of the direct and indirect costs to the state associated with the
3 conduct of the new election.