

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 527**

4 (By Senator Palumbo, Cann and McCabe)

5 \_\_\_\_\_  
6 [Originating in the Committee on the Judiciary;

7 reported March 28, 2013.]  
8 \_\_\_\_\_

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10  
11 A BILL to repeal §3-10-4a of the Code of West Virginia, 1931, as  
12 amended; and to amend and reenact §3-10-1, §3-10-2, §3-10-3,  
13 §3-10-3a, §3-10-4, §3-10-5, §3-10-6, §3-10-7 and §3-10-8 of  
14 said code, all relating to filling vacancies by appointment or  
15 election in certain elected offices; defining terms; setting  
16 procedures for appointing persons to fill certain vacancies;  
17 requiring certain appointments within a certain period of  
18 time; listing time periods and certain offices where elections  
19 must be held to fill certain vacancies; setting special  
20 requirements for filling vacancies in certain offices; setting  
21 procedures for certain special elections; setting requirements  
22 for special filing periods, where necessary; requiring certain  
23 notice be given regarding elections to fill vacancies;  
24 providing for payment of costs if a new election is necessary;  
25 allowing nomination of certain persons without party  
26 affiliation; allowing emergency orders by the Secretary of

1 State in certain circumstances; removing and repealing certain  
2 language relating to previous elections; clarifying method  
3 used to fill vacancies in the Office of Governor; permitting  
4 meeting of the Judicial Vacancy Advisory Commission upon  
5 certain formal announcements of retirement or resignation;  
6 adjusting method to fill vacancies in certain statewide,  
7 legislative and judicial offices such that the timing for all  
8 are consistent; adjusting method to fill vacancies in United  
9 States Congress; requiring most elections to fill vacancies be  
10 held in conjunction with regularly scheduled elections;  
11 clarifying method used to fill vacancies in certain county  
12 offices; permitting vacancies in certain county offices to be  
13 filled by temporary replacements for no more than thirty days;  
14 and updating language regarding filling vacancies in certain  
15 elected offices.

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

17 That §3-10-4a of the Code of West Virginia, 1931, as amended,  
18 be repealed; and that §3-10-1, §3-10-2, §3-10-3, §3-10-3a, §3-10-4,  
19 §3-10-5, §3-10-6, §3-10-7 and §3-10-8 of said code be amended and  
20 reenacted, all to read as follows:

21 **ARTICLE 10. FILLING VACANCIES.**

22 **§3-10-1. Elections to fill vacancies.**

23 ~~Except as provided in sections three and four of this article,~~  
24 ~~elections to fill vacancies shall be conducted to fill any~~  
25 ~~unexpired term when more than one year of the term of office~~  
26 ~~remains at the time of such election. When less than one year of~~

1 ~~the term of office remains at the time of the election, the person~~  
2 ~~appointed to fill the vacancy shall continue in office until the~~  
3 ~~completion of the term.~~

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

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

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

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

21 (1) If the vacancy occurs after the primary cutoff date, then  
22 that appointee shall hold the office until the end of the term of  
23 office: *Provided*, That if the vacancy for any county office or  
24 United States Senate occurs during the window after the primary  
25 cutoff date, but before the general cutoff date, the process  
26 contained in sections four, six, seven and eight of this article,

1 depending on the specific office vacated, shall be followed; or

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

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

17 (1) For a vacancy in the Office of Governor, the times for the  
18 special elections contained in section two of this article shall  
19 control. The proclamation entered pursuant to section two of this  
20 article by the person acting as Governor, shall include the dates  
21 for the special candidate filing period, if necessary, and shall  
22 follow the requirements set forth in this section. All aspects of  
23 this section, where not in conflict with section two of this  
24 article, shall also be followed. If a regularly scheduled primary  
25 or general election fits within the times for the special elections  
26 contained in section two of this article, the special elections

1 shall be conducted in conjunction with the regularly scheduled  
2 election or elections. If an election is required by section two  
3 of this article and it cannot be held in conjunction with the  
4 regular election dates, then the compensation of election officers,  
5 cost of printing ballots and all other reasonable and necessary  
6 expenses in holding and making the return of the new election to  
7 fill a vacancy are obligations of the state incurred by the ballot  
8 commissioners, clerks of the county commissions and county  
9 commissions of the various counties as agents of the state. All  
10 expenses of the new election are to be audited by the Secretary of  
11 State. The Secretary of State shall prepare and transmit to the  
12 county commissions forms on which the county commissions shall  
13 certify all expenses of the new election to the Secretary of State.  
14 If satisfied that the expenses as certified by the county  
15 commissions are reasonable and were necessarily incurred, the  
16 Secretary of State shall requisition the necessary warrants from  
17 the Auditor of the state to be drawn on the State Treasurer and  
18 shall mail the warrants directly to the vendors of the new election  
19 services, supplies and facilities.

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

25 (A) With regard to United States House of Representatives, the  
26 proclamation entered pursuant to section four of this article by

1 the Governor, shall include the dates for the special candidate  
2 filing period, if necessary, and shall follow the requirements set  
3 forth in this section. If a regularly scheduled primary or general  
4 election fits within the times for the special elections contained  
5 in section four of this article, the special elections shall be  
6 conducted in conjunction with the regularly scheduled election or  
7 elections. If an election is required by section four of this  
8 article and it cannot be held in conjunction with the regular  
9 election dates, then the compensation of election officers, cost of  
10 printing ballots and all other reasonable and necessary expenses in  
11 holding and making the return of the new election to fill a vacancy  
12 are obligations of the state incurred by the ballot commissioners,  
13 clerks of the county commissions and county commissions of the  
14 various counties as agents of the state. All expenses of the new  
15 election are to be audited by the Secretary of State. The  
16 Secretary of State shall prepare and transmit to the county  
17 commissions forms on which the county commissions shall certify all  
18 expenses of the new election to the Secretary of State. If  
19 satisfied that the expenses as certified by the county commissions  
20 are reasonable and were necessarily incurred, the Secretary of  
21 State shall requisition the necessary warrants from the Auditor of  
22 the state to be drawn on the State Treasurer and shall mail the  
23 warrants directly to the vendors of the new election services,  
24 supplies and facilities.

25 (B) With regard to United States Senate, if a special general  
26 election following the regular general election is required by

1 section four of this article, then the compensation of election  
2 officers, cost of printing ballots and all other reasonable and  
3 necessary expenses in holding and making the return of the new  
4 election to fill the vacancy are obligations of the state incurred  
5 by the ballot commissioners, clerks of the county commissions and  
6 county commissions of the various counties as agents of the state.  
7 All expenses of the new election are to be audited by the Secretary  
8 of State. The Secretary of State shall prepare and transmit to the  
9 county commissions forms on which the county commissions shall  
10 certify all expenses of the new election to the Secretary of State.  
11 If satisfied that the expenses as certified by the county  
12 commissions are reasonable and were necessarily incurred, the  
13 Secretary of State shall requisition the necessary warrants from  
14 the Auditor of the state to be drawn on the State Treasurer and  
15 shall mail the warrants directly to the vendors of the new election  
16 services, supplies and facilities.

17 (3) For all other offices, the Governor, or other person  
18 granted authority by this article, shall issue a proclamation  
19 stating that the office will appear on the next regular primary  
20 election and subsequent general election, in order to fill the  
21 vacancy: Provided, That if the vacancy for any county office  
22 occurs during the window after the primary cutoff date, but before  
23 the general cutoff date, the process contained in sections six,  
24 seven and eight of this article shall be followed. If the  
25 candidate filing period for the next regular primary election has  
26 closed or has less than one week remaining, the proclamation shall

1 provide for a special primary candidate filing period. If there  
2 are less than eighty-four days between the vacancy and the next  
3 regular primary election, then the proclamation shall state that  
4 the office will appear on the subsequent regular primary election  
5 and corresponding general election following the next regular  
6 primary election: *Provided*, That if the vacancy for any county  
7 office occurs during the window after the eighty-fourth day before  
8 the primary date, but before the eighty-fourth day before the  
9 general date, the process contained in sections six, seven and  
10 eight of this article shall be followed.

11 (d) (1) If a special candidate filing period is necessary, it  
12 shall begin no sooner than the day after the proclamation and shall  
13 close no earlier than close of business on the fourteenth day  
14 following the proclamation. A notarized declaration of candidacy  
15 and filing fee provided by section seven, article five of this  
16 chapter, shall be filed either in person, by United States mail,  
17 electronic means or any other means authorized by the Secretary of  
18 State and received by the appropriate office before the close of  
19 the filing period. For petition in lieu of payment of filing fees,  
20 a candidate seeking nomination for the vacancy may utilize the  
21 process set forth in section eight-a, article five of this chapter:  
22 *Provided*, That the minimum number of signatures required is  
23 equivalent to one qualified signature per one whole dollar of the  
24 filing fee for that office.

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



1 (A) For all statewide, multicounty and legislative elections,  
2 drawing for the primary election ballot position will take place at  
3 the Secretary of State's office twenty-four hours after the end of  
4 the 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 (B) For county elections, drawing for the primary election  
11 ballot position will take place at the county clerk's office  
12 twenty-four hours after the end of the filing period. For each  
13 major political party on the ballot, a single drawing by lot shall  
14 determine the candidate ballot position for ballots statewide.  
15 This drawing shall be witnessed by the chairperson of the county  
16 democratic and republican executive committees or their designee,  
17 and the president of the county commission or his or her designee.

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

25 (e) When an election is required to fill a vacancy, the date  
26 of the election and offices to be elected, as well as any other

1 information required in the proclamation, shall be published prior  
2 to such election as a Class I-O legal advertisement in compliance  
3 with the provisions of article three, chapter fifty-nine of this  
4 code, and the publication area for such publication shall be each  
5 county of the state that is eligible to vote in the election for  
6 those offices.

7 (f) If an election is required by this article, the Secretary  
8 of State may issue emergency administrative orders to undertake  
9 other ministerial actions that are otherwise authorized pursuant to  
10 this code when necessary to assure the preservation of the voting  
11 rights of the citizens of this state and avoid fraudulent voting  
12 and election activities and otherwise assure the orderly and  
13 efficient conduct of the new election provided in this subsection:  
14 Provided, That emergency administrative orders may not contravene  
15 the provisions of this article.

16 (g) If an election is required by this article, citizens  
17 having no party organization or affiliation may nominate candidates  
18 as provided by sections twenty-three and twenty-four of article  
19 five of this chapter.

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

24 **§3-10-2. Vacancy in Office of Governor.**

25 (a) In case of the death, conviction on impeachment, failure

1 to qualify, resignation or other disability of the Governor, the  
2 President of the Senate shall act as Governor until the vacancy is  
3 filled or the disability removed; and if the President of the  
4 Senate, for any of the above-named causes, shall be or become  
5 incapable of performing the duties of Governor, the same shall  
6 devolve upon the Speaker of the House of Delegates; and in all  
7 other cases where there is no one to act as Governor, one shall be  
8 chosen by the joint vote of the Legislature. Whenever a vacancy  
9 shall occur in the Office of Governor before the first three years  
10 of the term shall have expired, a new election for Governor shall  
11 take place to fill the vacancy.

12       (b) The new election shall consist of a special primary  
13 election and a special general election, and shall occur at such  
14 time as will permit the person elected as Governor in the new  
15 election to assume office within one year of the date the vacancy  
16 occurred: *Provided*, That the special general election provided in  
17 this section may not apply to section eight, article one of this  
18 chapter. Within thirty days from the date the vacancy occurs, the  
19 person acting as Governor pursuant to the State Constitution shall  
20 issue a proclamation fixing the time for a ~~new~~ statewide election  
21 to fill the vacancy in the Office of Governor. ~~which shall be~~  
22 ~~published prior to such election as a Class II-O 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. The proclamation~~  
26 ~~issued by the person acting as Governor pursuant to the state~~

1 ~~Constitution shall provide for a special primary election to~~  
2 ~~nominate candidates for the special general election.~~ The special  
3 primary election to fill a vacancy in the Office of Governor shall  
4 take place no less than ninety days after the proclamation and no  
5 later than one hundred forty days from the date that the vacancy in  
6 the office occurs. The proclamation issued by the person acting as  
7 Governor pursuant to the State Constitution shall also provide for  
8 a special general election to take place no sooner than ninety days  
9 after the special primary election and no later than two hundred  
10 eighty days from the date that the vacancy in the office occurs.

11 ~~(b) The compensation of election officers, cost of printing~~  
12 ~~ballots and all other reasonable and necessary expenses in holding~~  
13 ~~and making the return of the new election provided in this section~~  
14 ~~to fill a vacancy in the office of Governor are obligations of the~~  
15 ~~state incurred by the ballot commissioners, clerks of the county~~  
16 ~~commissions and county commissions of the various counties as~~  
17 ~~agents of the state. All expenses of the new election are to be~~  
18 ~~audited by the Secretary of State. The Secretary of State shall~~  
19 ~~prepare and transmit to the county commissions forms on which the~~  
20 ~~county commissions shall certify all expenses of the new election~~  
21 ~~provided in this section to the Secretary of State. If satisfied~~  
22 ~~that the expenses as certified by the county commissions are~~  
23 ~~reasonable and were necessarily incurred, the Secretary of State~~  
24 ~~shall requisition the necessary warrants from the Auditor of the~~  
25 ~~state to be drawn on the State Treasurer and shall mail the~~  
26 ~~warrants directly to the vendors of the new election services,~~

1 ~~supplies and facilities.~~

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

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

13 ~~(2) The special primary election shall be held on May 14, 2011~~  
14 ~~and the special general election shall be held on October 4, 2011.~~

15 ~~(3) The proclamation for the special primary election and~~  
16 ~~special general election shall be published prior to the special~~  
17 ~~primary election and special general elections, respectively, as a~~  
18 ~~Class II-0 legal advertisement in accordance with article three,~~  
19 ~~chapter fifty-nine of this code and the publication area for the~~  
20 ~~publication is each county of the state. The notice shall be filed~~  
21 ~~with the Secretary of State who shall cause the document to be~~  
22 ~~published within each county in accordance with this section.~~

23 ~~(4) The provisions of this chapter apply to the special primary~~  
24 ~~election and special general election to the extent that those~~  
25 ~~provisions are consistent with the provisions of this section.~~  
26 ~~Statutory time deadlines for the purpose of the new election~~

1 ~~provided in this subsection are modified as follows:~~

2 ~~(A) A notarized declaration of candidacy and filing fee shall~~  
3 ~~be filed and received in hand by the Secretary of State by 5:00 p.m.~~  
4 ~~on the fifth calendar day following the proclamation of the special~~  
5 ~~primary election. The declaration of candidacy may be filed in~~  
6 ~~person, by United States mail, electronic means or any other means~~  
7 ~~authorized by the Secretary of State;~~

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

16 ~~(C) For petition in lieu of payment of filing fees, a candidate~~  
17 ~~seeking nomination for the vacancy in the office of Governor may~~  
18 ~~utilize the process set forth in section eight-a, article five of~~  
19 ~~this chapter: *Provided,* That the minimum number of signatures~~  
20 ~~required is one thousand five hundred;~~

21 ~~(D) Drawing for special primary election ballot position will~~  
22 ~~take place at the Secretary of State's office twenty-four hours~~  
23 ~~after the end of the filing period. For each major political party~~  
24 ~~on the ballot, a single drawing by lot shall determine the candidate~~  
25 ~~ballot position for ballots statewide. This drawing shall be~~  
26 ~~witnessed by four clerks of the county commission chosen by the West~~

~~1 Virginia Association of County Clerks, with no more than two clerks  
2 representing a single political party. Ballot position for the  
3 special general election shall be determined pursuant to subdivision  
4 (3), subsection (c), section two, article six of this chapter;~~

~~5 (E) A registered voter who has not reached eighteen years of  
6 age may vote in the May 14, 2011 special primary election:  
7 Provided, That the voter will attain eighteen years of age at the  
8 time of the special general election provided in this subsection;~~

~~9 (F) When paper or optical scan ballots are the primary voting  
10 method used at any county, the total number of regular official  
11 ballots printed shall equal at a minimum fifty percent of the number  
12 of registered voters eligible to vote that ballot;~~

~~13 (G) When paper ballots are used in conjunction with a direct  
14 recording electronic voting system, the total number of regular  
15 official ballots printed shall equal at a minimum thirty percent of  
16 the registered voters eligible to vote that ballot;~~

~~17 (H) Regularly scheduled locations of polling places may not be  
18 changed, except for situations as provided in sections seven-e and  
19 seven-f, article one of this chapter: Provided, That if multiple  
20 precincts voted in one polling location for the November 2, 2010,  
21 regularly scheduled general election, these precincts may be  
22 consolidated into a single precinct. Locations for consolidated  
23 precincts shall provide Internet access, insofar as possible, for  
24 the sole purpose of utilizing the statewide Voter Registration  
25 System (SVRS) as an electronic poll book. However, Constitutionally  
26 mandated redistricting may not take effect until the special primary~~

1 ~~election and special general election provided in this subsection~~  
2 ~~are complete; and~~

3 ~~(I) Citizens having no party organization or affiliation may~~  
4 ~~nominate candidates as provided by sections twenty-three and twenty-~~  
5 ~~four of article five of this chapter: *Provided, That* the number of~~  
6 ~~signatures required to be submitted shall be equal to not less than~~  
7 ~~one-quarter of one percent of the entire vote cast at the last~~  
8 ~~preceding general election for Governor. Notwithstanding the~~  
9 ~~provisions of sections twenty three and twenty four of article five~~  
10 ~~of this chapter, the signatures, notarized declaration of candidacy,~~  
11 ~~and filing fee must be submitted no later than seven calendar days~~  
12 ~~following the special primary election provided in this subsection.~~

13 ~~(J) For the special primary election to be held pursuant to~~  
14 ~~this subsection, early voting will also be conducted from 9 a.m. to~~  
15 ~~5 p.m. on the Saturday immediately prior to the end of early voting.~~

16 ~~(5) The provisions of this subsection shall expire upon the~~  
17 ~~election and qualification of the Governor following the October 4,~~  
18 ~~2011 special general election.~~

19 ~~(d) The Secretary of State shall by January 10, 2012 report to~~  
20 ~~the Joint Committee on Government and Finance findings regarding of~~  
21 ~~the operation of the new election undertaken pursuant to subsection~~  
22 ~~(c) of this section. This report shall provide analysis of the~~  
23 ~~direct and indirect costs to the state associated with the conduct~~  
24 ~~of the new election.~~

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



1 **§3-10-3. Vacancies in offices of state officials, United States**  
2 **senators and judges.**

3 Any vacancy occurring in the offices of Secretary of State,  
4 Auditor, Treasurer, Attorney General, Commissioner of Agriculture,  
5 ~~United States Senator, judge~~ justice of the Supreme Court of Appeals  
6 or in any office created or made elective to be filled by the voters  
7 of the entire state, judge of a circuit court or judge of a family  
8 court is filled by the Governor of the state by appointment ~~if the~~  
9 ~~unexpired term of a judge of the Supreme Court of Appeals, a judge~~  
10 ~~of the circuit court or judge of a family court is for less than two~~  
11 ~~years or if the unexpired term of any other office named in this~~  
12 ~~section is for a period of less than two years and six months, the~~  
13 ~~appointment to fill the vacancy is for the unexpired term. If the~~  
14 ~~unexpired term of any office is for a longer period than above~~  
15 ~~specified, the appointment is until a successor to the office has~~  
16 ~~timely filed a certificate of candidacy, has been nominated at the~~  
17 ~~primary election next following such timely filing and has~~  
18 ~~thereafter been elected and qualified to fill the unexpired term.~~  
19 ~~Proclamation of any election to fill an unexpired term is made by~~  
20 ~~the Governor of the state and, in the case of an office to be filled~~  
21 ~~by the voters of the entire state, must be published prior to the~~  
22 ~~election as a Class II-0 legal advertisement in compliance with the~~  
23 ~~provisions of article three, chapter fifty-nine of this code and the~~  
24 ~~publication area for the publication is each county of the state.~~  
25 ~~If the election is to fill a vacancy in the office of judge of a~~  
26 ~~circuit court or judge of a family court, the proclamation must be~~

1 ~~published prior to the election as a Class II-0 legal advertisement~~  
2 ~~in compliance with the provisions of article three, chapter fifty-~~  
3 ~~nine of this code and the publication area for such publication is~~  
4 ~~each county in the judicial or family court circuit. and subsequent~~  
5 ~~election to fill the remainder of the term, if required by section~~  
6 ~~one of this article.~~

7 **§3-10-3a. Judicial Vacancy Advisory Commission.**

8 (a) The Judicial Vacancy Advisory Commission ~~is hereby~~  
9 ~~established to~~ shall assist the Governor in filling judicial  
10 vacancies. The commission shall meet and submit a list of no more  
11 than five nor less than two best qualified persons to the Governor  
12 within ninety days of the occurrence of a vacancy, or the formal  
13 announcement of the justice or judge by letter to the Governor of  
14 an upcoming resignation or retirement that will result in the  
15 occurrence of a vacancy, in the office of justice of the Supreme  
16 Court of Appeals, ~~judge of an intermediate appellate court,~~ judge  
17 of a circuit court, or judge of a family court. The Governor shall  
18 make the appointment to fill the vacancy, as required by this  
19 article, within thirty days following the receipt of the list of  
20 qualified candidates or within thirty days following the vacancy,  
21 whichever occurs later.

22 (b) The commission shall consist of eight appointed members.  
23 Four public members shall be appointed by the Governor for six-year  
24 terms, except for the initial appointments which shall be staggered  
25 in accordance with subsection (c) of this section. Four attorney  
26 members shall be appointed by the Governor for six-year terms,

1 except as provided in subsection (c) of this section, from a list  
2 of nominees provided by the Board of Governors of the West Virginia  
3 State Bar. The Board of Governors of the West Virginia State Bar  
4 shall nominate no more than twenty nor less than ten best qualified  
5 attorneys for appointment to the commission whenever there is a  
6 vacancy in the membership of the commission reserved for attorney  
7 members. The commission shall choose one of its appointed members  
8 to serve as chair for a three-year term. No more than four  
9 appointed members of the commission shall belong to the same  
10 political party. No more than three appointed members of the  
11 commission shall be residents of the same congressional district.  
12 All members of the commission shall be citizens of this state.  
13 Public members of the commission may not be licensed to practice law  
14 in West Virginia or any other jurisdiction.

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

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

25 (e) Members of the commission shall serve without compensation,  
26 except that commission members are entitled to reimbursement of

1 travel and other necessary expenses actually incurred while engaged  
2 in official commission activities in accordance with the guidelines  
3 of the Travel Management Office of the Department of Administration,  
4 or its successor entity. The Governor's Office shall cooperate with  
5 the commission to ensure that all resources necessary to carrying  
6 out the official duties of the commission are provided, including  
7 staff assistance, equipment and materials.

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

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

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

1 vacancy. All other meetings of the commission are exempt from  
2 article nine-a, chapter six of this code.

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

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

20 **§3-10-4. Vacancies in representation in United States Congress.**

21 (a) If there ~~be~~ is a vacancy in the representation from this  
22 state in the House of Representatives in the Congress of the United  
23 States, the Governor shall, within ~~ten~~ five days after the fact  
24 comes to his or her knowledge, ~~of article three, chapter fifty nine~~  
25 ~~of this code, and the publication area for such publication shall~~  
26 ~~be each county in the congressional district. In such proclamation~~

1 ~~he the Governor shall appoint some day, issue a proclamation give~~  
2 ~~notice thereof by proclamation, to be published prior to such~~  
3 ~~election as a Class II-0 legal advertisement in compliance with the~~  
4 ~~provisions setting dates for a special primary election that is not~~  
5 ~~less than thirty eighty-four nor more than seventy-five one hundred~~  
6 ~~twenty days from the date thereof, for holding the election to fill~~  
7 ~~such vacancy. Nominations to fill such vacancy shall be made in the~~  
8 ~~manner prescribed for nominating a candidate to fill a vacancy in~~  
9 ~~the office of Governor, to be voted for at a special election. The~~  
10 ~~congressional district executive committee of a party shall perform~~  
11 ~~the duties devolving upon the state executive committee in filling~~  
12 ~~a state office. of the vacancy and a special general election that~~  
13 ~~is not less than eighty-four nor more than one hundred twenty days~~  
14 ~~following the date of the special primary election: Provided, That~~  
15 ~~no such proclamation may be made nor may a special election be held~~  
16 ~~if the vacancy occurs after the eighty-fourth day prior to the~~  
17 ~~regularly scheduled primary election for a new full term of the~~  
18 ~~office. The election shall follow the requirements of section one~~  
19 ~~of this article that are not in conflict with this section.~~

20 (b) If there is a vacancy in the representation from this state  
21 in the Senate of the United States Congress, the vacancy shall be  
22 filled by the Governor of the state by appointment and:

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

26 (2) If the vacancy occurs after the primary cutoff date, but

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

9 **§3-10-5. Vacancies in State Legislature.**

10 (a) Any vacancy in the office of State Senator or member of the  
11 House of Delegates shall be filled by appointment by the Governor,  
12 from a list of three legally qualified persons submitted by the  
13 party executive committee of the party with which the person holding  
14 the office immediately preceding the vacancy was affiliated. ~~Such~~  
15 The list of qualified persons to fill the vacancy shall be submitted  
16 to the Governor within fifteen days after the vacancy occurs and the  
17 Governor shall duly make his or her appointment to fill the vacancy  
18 from the list of legally qualified ~~person~~ persons within five days  
19 after the list is received. If the list is not submitted to the  
20 Governor within the fifteen day period, the Governor shall appoint  
21 within five days thereafter a legally qualified person of the same  
22 political party as the person vacating the office.

23 (b) In the case of a member of the House of Delegates, the list  
24 shall be submitted by the party executive committee of the delegate  
25 district in which the vacating member resided at the time of his or  
26 her election or appointment. The appointment to fill a vacancy in

1 the House of Delegates is for the unexpired term.

2 (c) In the case of a State Senator, the list shall be submitted  
3 by the party executive committee of the state senatorial district  
4 in which the vacating senator resided at the time of his or her  
5 election or appointment. ~~If the unexpired term in the office of the~~  
6 ~~state Senator will be for less than two years and two months, the~~  
7 ~~appointment is for the unexpired term. If the unexpired term will~~  
8 ~~be for a period equal to or longer than two years and two months,~~  
9 ~~the appointment is until the next general election and until the~~  
10 ~~election and qualification of a successor to the person appointed,~~  
11 ~~at which general election the vacancy shall be filled by election~~  
12 ~~for the unexpired term. Notice of an election to fill a vacancy in~~  
13 ~~the office of State Senator shall be given by the Governor by~~  
14 ~~proclamation and shall be published before the election as a Class~~  
15 ~~II-0 legal advertisement in compliance with the provisions of~~  
16 ~~article three, chapter fifty-nine of this code, and the publication~~  
17 ~~area for the publication shall be each county in the senatorial~~  
18 ~~district. Nominations for candidates to fill a vacancy shall be~~  
19 ~~made in the manner prescribed for nominating a candidate to fill a~~  
20 ~~vacancy in the office of Governor to be voted for at a general~~  
21 ~~election. The state senatorial district executive committee of the~~  
22 ~~political party shall discharge the duties incident to State Senator~~  
23 ~~nominations devolving upon the party state executive committee in~~  
24 ~~nominating a candidate for a state office. The appointment to fill~~  
25 ~~a vacancy in the State Senate is for the unexpired term, unless~~  
26 ~~section one of this article requires a subsequent election to fill~~



1 the remainder of the term, which shall follow the procedure set  
2 forth in section one of this article.

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

4       (a) When a vacancy occurs in the office of clerk of the circuit  
5 court, the circuit court by a majority vote of the judges or the  
6 chief judge thereof in vacation, shall fill the same within thirty  
7 days of the vacancy by appointment of a person of the same political  
8 party as the officeholder vacating the office until the next general  
9 election, or until the completion of the term if the term ends on  
10 December 31, following the next general election. The person so  
11 appointed shall hold office until his or her successor is elected  
12 and qualified. At the general election, a clerk shall be elected  
13 for the unexpired term if the unexpired term is greater than one  
14 year for the period required by section one of this article.

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

20       ~~The~~ (c) If an election is necessary, the circuit court, or the  
21 chief judge thereof in vacation, shall cause a notice of the  
22 election to be published prior to the election as a Class II-0 legal  
23 advertisement in compliance with the provisions of article three,  
24 chapter fifty-nine of this code. The publication area for the  
25 publication shall be the county is responsible for the proper  
26 proclamation, by order and notice required by section one of this

1 article.

2 ~~candidates to fill the vacancy shall be nominated at the~~  
3 ~~primary election in accordance with the time requirements and the~~  
4 ~~provisions and procedures prescribed in section eleven, article five~~  
5 ~~of this chapter. If (d) Section one of this article shall be~~  
6 ~~followed with respect to any election needed to fill a vacancy,~~  
7 ~~except that if~~ ~~If the vacancy occurs no later than the eighty-fourth~~  
8 ~~day before the primary election held to nominate candidates to be~~  
9 ~~voted for at the general election, at which any vacancy is to be~~  
10 ~~filled,~~ the vacancy occurs after ~~the eighty-fourth day before the~~  
11 primary cutoff date but not later than the ~~eighty-fourth day before~~  
12 ~~the general election, they~~ general cutoff date, candidates to fill  
13 the vacancy shall be nominated by the county executive committee in  
14 the manner provided in section nineteen, article five of this  
15 chapter, as in the case of filling vacancies in nominations, and the  
16 names of the persons, so nominated and certified to the clerk of the  
17 county commission of the county, shall be placed upon the ballot to  
18 be voted at the next general election.

19 **§3-10-7. Vacancies in offices of county commissioner and clerk of**  
20 **county commission.**

21 (a) Any vacancy in the office of county commissioner or clerk  
22 of county commission shall be filled by the county commission of the  
23 county, unless the number of vacancies in a county commission  
24 deprive that body of a quorum, in which case the Governor of the  
25 state shall fill any vacancy in the county commission necessary to  
26 create a quorum thereof. Persons appointed shall be of the same

1 political party as the officeholder vacating the office ~~and shall~~  
2 ~~continue in office until the next general election is certified, or~~  
3 ~~until the completion of the term if the term ends on December 31,~~  
4 ~~following the next general election: *Provided, That in the event*~~  
5 for the period stated by section one of this article. If a quorum  
6 of the county commission cannot agree upon a person to fill a  
7 vacancy in the office of county commissioner within thirty days of  
8 the date the vacancy first occurred, the county executive committee  
9 of the vacating county commissioner's political party shall select  
10 and name a person to fill the vacancy from the membership of the  
11 vacating county commissioner's political party.

12 ~~Notice of the election shall be given by order of the county~~  
13 ~~commission and published as prescribed in section six of this~~  
14 ~~article.~~

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

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

24 (d) Section one of this article shall be followed with respect  
25 to any election needed to fill a vacancy, except that if the vacancy  
26 occurs after the primary cutoff date but not later than the general

1 cutoff date, candidates to fill the vacancy shall be nominated by  
2 the county executive committee in the manner provided in section  
3 nineteen, article five of this chapter, as in the case of filling  
4 vacancies in nominations, and the names of the persons, so nominated  
5 and certified to the clerk of the county commission of the county,  
6 shall be placed upon the ballot to be voted at the next general  
7 election. ~~Nomination of candidates to fill the office for an~~  
8 ~~unexpired term in the office of county commissioner or clerk of the~~  
9 ~~county commission shall be made in the manner prescribed for making~~  
10 ~~nominations to fill a vacancy in the office of the clerk of the~~  
11 ~~circuit court.~~

12 (e) ~~In the event that~~ If the election for an unexpired term is  
13 held at the same time as the election for a full term for county  
14 commissioner, the full term shall be counted first and the unexpired  
15 term shall be counted second. If the candidate with the highest  
16 number of votes for the unexpired term resides in the same  
17 magisterial district as the candidate with the highest number of  
18 votes for the full term, the candidate for the full term shall be  
19 seated. The candidate with the next highest number of votes for the  
20 unexpired term residing in a different magisterial district shall  
21 be seated for the unexpired term.

22 **§3-10-8. Vacancies in offices of prosecuting attorney, sheriff,**  
23 **assessor and surveyor.**

24 (a) Any vacancy occurring in the office of prosecuting  
25 attorney, sheriff, assessor or county surveyor shall be filled by  
26 the county commission within thirty days of the vacancy by

1 appointment of a person of the same political party as the  
2 officeholder vacating the office. The appointed person shall hold  
3 the office ~~until the next general election is certified, or until~~  
4 ~~the completion of the term if the term ends on December 31,~~  
5 ~~following the next general election~~ Notice of an election to fill  
6 a vacancy in any of the offices named in this section shall be given  
7 by the county commission, or by the president thereof in vacation,  
8 and published or posted in the manner prescribed in section six of  
9 this article. ~~Nomination of candidates to fill any vacancy shall~~  
10 ~~be made in the manner prescribed in section six of this article for~~  
11 ~~nominating candidates to fill a vacancy in the office of the clerk~~  
12 ~~of the circuit court. for the period stated by section one of this~~  
13 article.

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

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

24 (d) Section one of this article shall be followed with respect  
25 to any election needed to fill a vacancy, except that if the vacancy  
26 occurs after the primary cutoff date but not later than the general

1 cutoff date, candidates to fill the vacancy shall be nominated by  
2 the county executive committee in the manner provided in section  
3 nineteen, article five of this chapter, as in the case of filling  
4 vacancies in nominations, and the names of the persons, so nominated  
5 and certified to the clerk of the county commission of the county,  
6 shall be placed upon the ballot to be voted at the next general  
7 election.