

H. B. 2857

(By Delegates Miley, Manchin, Ferro, Moore
and Manypenny)

(By request of the Secretary of State)

[Introduced March 7, 2013; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §3-10-1, §3-10-2, §3-10-3, §3-10-4,
§3-10-4a and §3-10-5 of the Code of West Virginia, 1931, as
amended, all relating to vacancies for elected officials; and
clarifying how vacancies are to be filled in the offices of
Governor, state officials and judges, representatives in the
House of Representatives and United States Senate and State
Legislature.

Be it enacted by the legislature of West Virginia:

That §3-10-1, §3-10-2, §3-10-3, §3-10-4, §3-10-4a and §3-10-5
of the Code of West Virginia, 1931, as amended be amended and
reenacted, all to read as follows:

ARTICLE 10. FILLING VACANCIES.

§3-10-1. Elections to fill vacancies.

Except as otherwise provided in ~~sections three and four of~~

1 this article, elections to fill vacancies shall be conducted to
2 fill any unexpired term when more than one year of the term of
3 office remains at the time of such election. When less than one
4 year of the term of office remains at the time of the election, the
5 person appointed to fill the vacancy shall continue in office until
6 the completion of the term. Elections to fill vacancies shall be
7 held at the same places, and superintended, conducted and returned,
8 and the result ascertained, certified and declared, in the same
9 manner, and by the same officers, as in general elections. The
10 persons elected, having first duly qualified, shall enter upon the
11 duties of their respective offices. For purposes of this section,
12 "time of such election" is defined as the close of polls on the day
13 designated as election day.

14 **§3-10-2. Vacancy in office of Governor.**

15 (a) In case of the death, conviction on impeachment, failure
16 to qualify, resignation or other disability of the Governor, the
17 President of the Senate shall act as Governor until the vacancy is
18 filled or the disability removed; and if the President of the
19 Senate, for any of the above-named causes, shall be or become
20 incapable of performing the duties of Governor, the same shall
21 devolve upon the Speaker of the House of Delegates; and in all
22 other cases where there is no one to act as Governor, one shall be
23 chosen by the joint vote of the Legislature. Whenever a vacancy
24 shall occur in the office of Governor before the first three years

1 of the term shall have expired, a new election for Governor shall
2 take place to fill the vacancy.

3 **(b)** The new election shall consist of a special primary
4 election and a special general election, and shall occur at such
5 time as will permit the person elected as Governor in the new
6 election to assume office within one year of the date the vacancy
7 occurred: *Provided*, That the special general election provided in
8 this section may not apply to section eight, article one of this
9 chapter. Within thirty days from the date the vacancy occurs, the
10 person acting as Governor pursuant to the State Constitution shall
11 issue a proclamation fixing the time for a new statewide election
12 to fill the vacancy in the office of Governor, which shall be
13 published prior to such election as a Class II-0 legal
14 advertisement in compliance with the provisions of article three,
15 chapter fifty-nine of this code, and the publication area for such
16 publication shall be each county of the state. The proclamation
17 issued by the person acting as Governor pursuant to the State
18 Constitution shall provide for a special primary election to
19 nominate candidates for the special general election. The special
20 primary election shall take place no less than ninety days after
21 the proclamation and no later than one hundred forty days from the
22 date that the vacancy in the office occurs.

23 **(c)** The proclamation issued by the person acting as Governor
24 pursuant to the State Constitution shall also provide for a special

1 candidate filing period and a special general election to take
2 place no sooner than ninety days after the special primary election
3 and no later than two hundred eighty days from the date that the
4 vacancy in the office occurs.

5 (d) The special candidate filing period shall begin no sooner
6 than the day after the proclamation and shall close no earlier than
7 close of business on the second Friday following the proclamation.
8 A notarized declaration of candidacy and filing fee provided by
9 section seven, article five of this chapter, shall be filed and
10 received by the Secretary of State. The declaration of candidacy
11 may be filed in person, by United States mail, electronic means or
12 any other means authorized by the Secretary of State, but the
13 declaration and the filing fee must be received by the Secretary of
14 State by the close of the filing period. For petition in lieu of
15 payment of filing fees, a candidate seeking nomination for the
16 vacancy in the office of Governor may utilize the process set forth
17 in section eight-a, article five of this chapter: *Provided, That*
18 the minimum number of signatures required is one thousand five
19 hundred.

20 (e) Drawing for special primary election ballot position will
21 take place at the Secretary of State's office twenty-four hours
22 after the end of the filing period. For each major political party
23 on the ballot, a single drawing by lot shall determine the
24 candidate ballot position for ballots statewide. This drawing

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

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

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

1 prepare and transmit to the county commissions forms on which the
2 county commissions shall certify all expenses of the new election
3 provided in this section to the Secretary of State. If satisfied
4 that the expenses as certified by the county commissions are
5 reasonable and were necessarily incurred, the Secretary of State
6 shall requisition the necessary warrants from the Auditor of the
7 state to be drawn on the State Treasurer and shall mail the
8 warrants directly to the vendors of the new election services,
9 supplies and facilities.

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

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

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

23 ~~(3) The proclamation for the special primary election and~~
24 ~~special general election shall be published prior to the special~~

1 ~~primary election and special general elections, respectively, as a~~
2 ~~Class II-0 legal advertisement in accordance with article three,~~
3 ~~chapter fifty nine of this code and the publication area for the~~
4 ~~publication is each county of the state. The notice shall be filed~~
5 ~~with the Secretary of State who shall cause the document to be~~
6 ~~published within each county in accordance with this section.~~

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

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

18 ~~(B) The Secretary of State may issue emergency administrative~~
19 ~~orders to undertake other ministerial actions that are otherwise~~
20 ~~authorized pursuant to this code when necessary to assure the~~
21 ~~preservation of the voting rights of the citizens of this state and~~
22 ~~avoid fraudulent voting and election activities and otherwise~~
23 ~~assure the orderly and efficient conduct of the new election~~
24 ~~provided in this subsection: *Provided,* That emergency~~

1 ~~administrative orders may not contravene the provisions of this~~
2 ~~section;~~

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

8 ~~(D) Drawing for special primary election ballot position will~~
9 ~~take place at the Secretary of State's office twenty four hours~~
10 ~~after the end of the filing period. For each major political party~~
11 ~~on the ballot, a single drawing by lot shall determine the~~
12 ~~candidate ballot position for ballots statewide. This drawing shall~~
13 ~~be witnessed by four clerks of the county commission chosen by the~~
14 ~~West Virginia Association of County Clerks, with no more than two~~
15 ~~clerks representing a single political party. Ballot position for~~
16 ~~the special general election shall be determined pursuant to~~
17 ~~subdivision (3), subsection (c), section two, article six of this~~
18 ~~chapter;~~

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

23 ~~(F) When paper or optical scan ballots are the primary voting~~
24 ~~method used at any county, the total number of regular official~~

1 ~~ballots printed shall equal at a minimum fifty percent of the~~
2 ~~number of registered voters eligible to vote that ballot;~~

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

7 ~~(H) Regularly scheduled locations of polling places may not be~~
8 ~~changed, except for situations as provided in sections seven-e and~~
9 ~~seven-f, article one of this chapter: *Provided, That if multiple*~~
10 ~~precincts voted in one polling location for the November 2, 2010,~~
11 ~~regularly scheduled general election, these precincts may be~~
12 ~~consolidated into a single precinct. Locations for consolidated~~
13 ~~precincts shall provide Internet access, insofar as possible, for~~
14 ~~the sole purpose of utilizing the statewide Voter Registration~~
15 ~~System (SVRS) as an electronic poll book. However, constitutionally~~
16 ~~mandated redistricting may not take effect until the special~~
17 ~~primary election and special general election provided in this~~
18 ~~subsection are complete; and~~

19 ~~(I) Citizens having no party organization or affiliation may~~
20 ~~nominate candidates as provided by sections twenty three and~~
21 ~~twenty four of article five of this chapter: *Provided, That the*~~
22 ~~number of signatures required to be submitted shall be equal to not~~
23 ~~less than one quarter of one percent of the entire vote cast at the~~
24 ~~last preceding general election for governor. Notwithstanding the~~

1 ~~provisions of sections twenty three and twenty four of article five~~
2 ~~of this chapter, the signatures, notarized declaration of~~
3 ~~candidacy, and filing fee must be submitted no later than seven~~
4 ~~calendar days following the special primary election provided in~~
5 ~~this subsection.~~

6 ~~(J) For the special primary election to be held pursuant to~~
7 ~~this subsection, early voting will also be conducted from 9 a.m. to~~
8 ~~5 p.m. on the Saturday immediately prior to the end of early~~
9 ~~voting.~~

10 ~~(5) The provisions of this subsection shall expire upon the~~
11 ~~election and qualification of the Governor following the October 4,~~
12 ~~2011 special general election.~~

13 ~~(d) The Secretary of State shall by January 10, 2012 report to~~
14 ~~the Joint Committee on Government and Finance findings regarding of~~
15 ~~the operation of the new election undertaken pursuant to subsection~~
16 ~~(c) of this section. This report shall provide analysis of the~~
17 ~~direct and indirect costs to the state associated with the conduct~~
18 ~~of the new election.~~

19 **§3-10-3. Vacancies in offices of state officials, ~~United States~~**
20 **senators and judges.**

21 Any vacancy occurring in the office of Secretary of State,
22 Auditor, Treasurer, Attorney General, Commissioner of Agriculture,
23 ~~United States senator,~~ judge of the Supreme Court of Appeals or in
24 any office created or made elective to be filled by the voters of

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

1 judicial or family court circuit.

2 **§3-10-4. Vacancies in representation in Congress.**

3 (a) ~~If there be~~ When a vacancy in the representation from this
4 state in the House of Representatives in the Congress of the United
5 States occurs, the Governor ~~shall, within ten days after the fact~~
6 ~~comes to his or her knowledge, give notice thereof by~~ within thirty
7 days from the date the vacancy occurs, shall issue a proclamation
8 fixing the time for a new statewide election to fill the vacancy in
9 the office;

10 (b) The proclamation to shall be published ~~prior to such~~
11 ~~election~~ as a Class II-O legal advertisement in compliance with the
12 provisions of article three, chapter fifty-nine of this code, and
13 the publication area for such publication shall be each county in
14 the congressional district. ~~In such proclamation he~~ the Governor
15 ~~shall appoint some day, not less than thirty nor more than~~
16 ~~seventy-five days from the date thereof, for holding the election~~
17 ~~to fill such vacancy. Nominations to fill such vacancy shall be~~
18 ~~made in the manner prescribed for nominating a candidate to fill a~~
19 ~~vacancy in the office of Governor, to be voted for at a special~~
20 ~~election. The congressional district executive committee of a~~
21 ~~party shall perform the duties devolving upon the state executive~~
22 ~~committee in filling a state office.~~

23 (c) The proclamation shall provide for a special candidate
24 filing period and a special primary election to nominate candidates

1 for the special general election. The special primary election
2 shall take place no less than ninety days after the proclamation
3 and no later than one hundred forty days from the date that the
4 vacancy in the office occurs. The proclamation shall also provide
5 for a special general election to take place no sooner than ninety
6 days after the special primary election and no later than two
7 hundred eighty days from the date that the vacancy in the office
8 occurs.

9 (d) The special candidate filing period shall begin no sooner
10 than the day after the proclamation and shall close no earlier than
11 close of business on the second Friday following the proclamation.
12 A notarized declaration of candidacy and filing fee provided by
13 section seven, article five of this chapter, shall be filed and
14 received by the Secretary of State. The declaration of candidacy
15 may be filed in person, by United States mail, electronic means or
16 any other means authorized by the Secretary of State, but the
17 declaration and the filing fee must be received by the Secretary of
18 State by the close of the filing period. For petition in lieu of
19 payment of filing fees, a candidate seeking nomination for the
20 vacancy in the office of Governor may utilize the process set forth
21 in section eight-a, article five of this chapter: *Provided, That*
22 the minimum number of signatures required is one thousand five
23 hundred.

24 (e) Drawing for special primary election ballot position shall

1 take place at the Secretary of State's office twenty-four hours
2 after the end of the filing period. For each major political party
3 on the ballot, a single drawing by lot shall determine the
4 candidate ballot position for ballots statewide. This drawing
5 shall be witnessed by four clerks of the county commission chosen
6 by the West Virginia Association of County Clerks, with no more
7 than two clerks representing a single political party. Ballot
8 position for the special general election shall be determined
9 pursuant to subdivision (3), subsection (c), section two, article
10 six of this chapter.

11 (f) Citizens having no party organization or affiliation may
12 nominate candidates as provided by sections twenty-three and
13 twenty-four, article five of this chapter: *Provided*, That the
14 number of signatures required to be submitted shall be equal to not
15 less than one-quarter of one percent of the entire vote cast at the
16 last preceding general election for Governor. Notwithstanding the
17 provisions of sections twenty-three and twenty-four, article five
18 of this chapter, the signatures, notarized declaration of candidacy
19 and filing fee must be submitted no later than seven calendar days
20 following the special primary election.

21 (g) The compensation of election officers, cost of printing
22 ballots and all other reasonable and necessary expenses in holding
23 and making the return of the new election provided in this section
24 to fill a vacancy in the office of Governor are obligations of the

1 state incurred by the ballot commissioners, clerks of the county
2 commissions and county commissions of the various counties as
3 agents of the state. All expenses of the new election are to be
4 audited by the Secretary of State. The Secretary of State shall
5 prepare and transmit to the county commissions forms on which the
6 county commissions shall certify all expenses of the new election
7 provided in this section to the Secretary of State. If satisfied
8 that the expenses as certified by the county commissions are
9 reasonable and were necessarily incurred, the Secretary of State
10 shall requisition the necessary warrants from the Auditor of the
11 state to be drawn on the State Treasurer and shall mail the
12 warrants directly to the vendors of the new election services,
13 supplies and facilities.

14 **~~§3-10-4a. Special Senate vacancy election~~ Vacancy in United States**
15 **Senator.**

16 ~~(a) Notwithstanding the provisions of section three of this~~
17 ~~article establishing processes for the appointment and election to~~
18 ~~fill a vacancy in the office of United States Senator, for purposes~~
19 ~~of filling the vacant seat in the office of United States Senator~~
20 ~~existing on July 1, 2010, a special election shall be held to fill~~
21 ~~the unexpired term concurrent with the general election of November~~
22 ~~2, 2010. A special primary election shall be held to nominate~~
23 ~~party candidates for the November election.~~

24 ~~(b) For the special primary election required to be held prior~~

1 ~~to the November 2, 2010, election by operation of this section upon~~
2 ~~its enactment during the second extraordinary session of the~~
3 ~~Legislature, 2010, the Governor shall immediately issue a~~
4 ~~proclamation calling for a special primary election and general~~
5 ~~election. The special general election shall be held on November~~
6 ~~2, 2010. The following provisions apply to these special~~
7 ~~elections:~~

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

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

24 ~~(A) The special primary election is to be held August 28,~~

1 ~~2010;~~

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

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

14 ~~(D) 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 election:~~
20 ~~Provided, That such emergency administrative orders may not~~
21 ~~contravene the provisions of this section;~~

22 ~~(E) The compensation of election officers, cost of printing~~
23 ~~ballots and all other reasonable and necessary expenses in holding~~
24 ~~and making the return of the special election to fill a vacancy in~~

1 ~~the office of United States Senator are obligations of the state~~
2 ~~incurred by the ballot commissioners, clerks of the circuit courts,~~
3 ~~clerks of the county commissions and county commissions of the~~
4 ~~various counties as agents of the state. All expenses of the~~
5 ~~special election are to be audited by the Secretary of State. The~~
6 ~~Secretary of State shall prepare and transmit to the county~~
7 ~~commissions forms on which the county commissions shall certify all~~
8 ~~expenses of these special elections to the Secretary of State. If~~
9 ~~satisfied that the expenses as certified by the county commissions~~
10 ~~are reasonable and were necessarily incurred, the Secretary of~~
11 ~~State shall requisition the necessary warrants from the Auditor of~~
12 ~~the state to be drawn on the State Treasurer and shall mail the~~
13 ~~warrants directly to the vendors of the special election services,~~
14 ~~supplies and facilities;~~

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

20 ~~(G) Drawing for ballot position will take place at the~~
21 ~~Secretary of State's office 24 hours after the end of the filing~~
22 ~~period. For each major political party on the ballot, a single~~
23 ~~drawing by lot shall determine the candidate ballot position for~~
24 ~~ballots statewide. This drawing shall be witnessed by four clerks~~

1 of the county commission chosen by the West Virginia Association of
2 County Clerks, with no more than two clerks representing a single
3 political party;

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

7 ~~(I) Election officials shall be appointed by Tuesday, August~~
8 ~~3, 2010;~~

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

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

20 ~~(L) Election officials shall be trained by Thursday, August~~
21 ~~19, 2010: Provided, That election officials who attended training~~
22 ~~for the May 11, 2010, primary election are exempt from additional~~
23 ~~training for the August 28, 2010, special primary election;~~

24 ~~(M) A registered voter who has not reached eighteen years of~~

1 ~~age may vote in the August 28, 2010, special primary election:~~
2 ~~Provided, That the voter will attain eighteen years of age at the~~
3 ~~time of the special general election;~~

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

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

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

21 ~~(Q) For counties having no more than one daily newspaper or~~
22 ~~having one or more qualified newspapers which publish weekly, the~~
23 ~~clerk of the county commission shall publish each sample official~~
24 ~~August 28, 2010, primary ballot, on the last day in which a~~

1 ~~newspaper is published immediately preceding the August 28, 2010,~~
2 ~~special primary election, as a Class I-0 legal advertisement in the~~
3 ~~qualified daily newspaper within the county having the largest~~
4 ~~circulation in compliance with the provisions of article three,~~
5 ~~chapter fifty-nine of West Virginia Code;~~

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

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

11 ~~(T) Before voting machines are used, the clerks of the county~~
12 ~~commission shall have the ballots, vote recording devices, and~~
13 ~~electronic poll books inspected, and automatic tabulating equipment~~
14 ~~tested to ascertain that it will accurately count the votes cast.~~
15 ~~A single notice of the place and time of the inspection and testing~~
16 ~~shall be published, no less than three days in advance, as a class~~
17 ~~I-0 legal advertisement in compliance with the provisions of~~
18 ~~article three, chapter fifty-nine of West Virginia Code. The~~
19 ~~publication area is the county involved;~~

20 ~~(U) Applications for absentee ballots shall be accepted from~~
21 ~~the date of proclamation, other than from voters eligible to vote~~
22 ~~under the provisions of the Uniformed and Overseas Citizens~~
23 ~~Absentee Voting Act who may apply for an absentee ballot for all~~
24 ~~elections within a calendar year as early as the first day of~~

1 ~~January of an election year;~~

2 ~~(V) Regularly scheduled locations of polling places shall not~~
3 ~~be changed, except for emergency situations as provided for in~~
4 ~~§3-1-7(e) and (f): *Provided*, That if multiple precincts voted in~~
5 ~~one polling location for the May 11, 2010, regularly scheduled~~
6 ~~primary election, such precincts may be consolidated into a single~~
7 ~~precinct. Locations for consolidated precincts shall provide~~
8 ~~internet access, insofar as possible, for the sole purpose of~~
9 ~~utilizing the Statewide Voter Registration System (SVRS) as an~~
10 ~~electronic poll book; and~~

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

22 ~~(c) The Secretary of State, shall by January 10, 2011, report~~
23 ~~to the Joint Committee of Government and Finance findings regarding~~
24 ~~of the operation of the special elections undertaken pursuant to~~

1 ~~subsection (b) of this section. This report shall provide analysis~~
2 ~~of: direct and indirect costs to the state associated with the~~
3 ~~conduct of the election; benefits and disadvantages of conducting~~
4 ~~an election on a Saturday; the impact of compressed time periods on~~
5 ~~efficient election administration; and whether this election~~
6 ~~process impacted early voting and participation by military and~~
7 ~~overseas voters.~~

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

11 ~~(e) Upon the election and qualification of a United States~~
12 ~~Senator by the United States Senate following the November 2, 2010,~~
13 ~~election, the provisions of this section will expire.~~

14 (a) When there is a vacancy in the United States Senate, the
15 Governor, within thirty days from the date the vacancy occurs,
16 shall issue a proclamation fixing the time for a new statewide
17 election to fill the vacancy in the office.

18 (b) The proclamation shall be published as a Class II-O legal
19 advertisement in compliance with the provisions of article three,
20 chapter fifty-nine of this code, and the publication area for the
21 publication shall be each county in the state: *Provided*, That If
22 the vacancy occurs prior to the close of the filing period for a
23 regularly scheduled state-wide or federal election, then the
24 special filing period, primary and general election shall be held

1 in conjunction with the regularly scheduled candidate filing
2 period, primary election and general election.

3 (c) Except as in subsection (b), the proclamation shall
4 provide for a special candidate filing period and a special primary
5 election to nominate candidates for the special general election.
6 The special primary election shall take place no less than ninety
7 days after the proclamation and no later than one hundred forty
8 days from the date that the vacancy in the office occurs. The
9 proclamation shall also provide for a special general election to
10 take place no sooner than ninety days after the special primary
11 election and no later than two hundred eighty days from the date
12 that the vacancy in the office occurs.

13 (d) The special candidate filing period shall begin no sooner
14 than the day after the proclamation and shall close no earlier than
15 close of business on the second Friday following the proclamation.
16 A notarized declaration of candidacy and filing fee provided by
17 section seven, article five of this chapter, shall be filed and
18 received by the Secretary of State. The declaration of candidacy
19 may be filed in person, by United States mail, electronic means or
20 any other means authorized by the Secretary of State, but the
21 declaration and the filing fee must be received by the Secretary of
22 State by the close of the filing period. For petition in lieu of
23 payment of filing fees, a candidate seeking nomination for the
24 vacancy in the office of Governor may utilize the process set forth

1 in section eight-a, article five of this chapter: *Provided, That*
2 the minimum number of signatures required is one thousand five
3 hundred.

4 (e) Drawing for special primary election ballot position will
5 take place at the Secretary of State's office twenty-four hours
6 after the end of the filing period. For each major political party
7 on the ballot, a single drawing by lot shall determine the
8 candidate ballot position for ballots statewide. This drawing
9 shall be witnessed by four clerks of the county commission chosen
10 by the West Virginia Association of County Clerks, with no more
11 than two clerks representing a single political party. Ballot
12 position for the special general election shall be determined
13 pursuant to subdivision (3), subsection (c), section two, article
14 six of this chapter.

15 (f) Citizens having no party organization or affiliation may
16 nominate candidates as provided by sections twenty-three and
17 twenty-four, article five of this chapter: *Provided, That the*
18 number of signatures required to be submitted shall be equal to not
19 less than one-quarter of one percent of the entire vote cast at the
20 last preceding general election for Senator. Notwithstanding the
21 provisions of sections twenty three and twenty four, article five
22 of this chapter, the signatures, notarized declaration of candidacy
23 and filing fee must be submitted no later than seven calendar days
24 following the special primary election.

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

18 **§3-10-5. Vacancies in State Legislature.**

19 (a) Any vacancy in the office of State Senator or member of
20 the House of Delegates shall be filled by appointment by the
21 Governor, from a list of three legally qualified persons submitted
22 by the party executive committee of the party with which the person
23 holding the office immediately preceding the vacancy was
24 affiliated. ~~Such~~ The list of qualified persons to fill the vacancy

1 shall be submitted to the Governor within fifteen days after the
2 vacancy occurs and the Governor shall duly make his or her
3 appointment to fill the vacancy from the list of legally qualified
4 person within five days after the list is received. If the list is
5 not submitted to the Governor within the fifteen day period, the
6 Governor shall appoint within five days thereafter a legally
7 qualified person of the same political party as the person vacating
8 the office.

9 (b) In the case of a member of the House of Delegates, the
10 list shall be submitted by the party executive committee of the
11 delegate district in which the vacating member resided at the time
12 of his or her election or appointment. The appointment to fill a
13 vacancy in the House of Delegates is for the unexpired term.

14 (c) In the case of a State Senator, the list shall be
15 submitted by the party executive committee of the state senatorial
16 district in which the vacating senator resided at the time of his
17 or her election or appointment. If the unexpired term in the
18 office of the State Senator will be for less than two years and ~~two~~
19 six months, the appointment is for the unexpired term. If the
20 unexpired term will be for a period equal to or longer than two
21 years and two months, the appointment is until the next general
22 election and until the election and qualification of a successor to
23 the person appointed, at which general election the vacancy shall
24 be filled by election for the unexpired term. Notice of an

1 election to fill a vacancy in the office of State Senator shall be
2 given by the Governor by proclamation and shall be published before
3 the election as a Class II-0 legal advertisement in compliance with
4 the provisions of article three, chapter fifty-nine of this code,
5 and the publication area for the publication shall be each county
6 in the senatorial district. Nominations for candidates to fill a
7 vacancy shall be made in the manner prescribed for nominating a
8 candidate to fill a vacancy in the office of Governor to be voted
9 for at a general election. The state senatorial district executive
10 committee of the political party shall discharge the duties
11 incident to State Senator nominations devolving upon the party
12 state executive committee in nominating a candidate for a state
13 office.

NOTE: The purpose of this bill is to clarify the procedure to fill a vacancy in the offices of Governor, state officials and judges, representatives in the House of Representatives and United States Senate and State Legislature.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.