

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 527

(By Senators Palumbo, Cann and McCabe)

[Originating in the Committee on the Judiciary;
reported March 28, 2013.]

A BILL to repeal §3-10-4a of the Code of West Virginia, 1931, as amended; and to amend and reenact §3-10-1, §3-10-2, §3-10-3, §3-10-3a, §3-10-4, §3-10-5, §3-10-6, §3-10-7 and §3-10-8 of said code, all relating to filling vacancies by appointment or election in certain elected offices; defining terms; setting procedures for appointing persons to fill certain vacancies; requiring certain appointments within a certain period of time; listing time periods and certain offices where elections must be held to fill certain vacancies; setting special requirements for filling vacancies in certain offices; setting procedures for certain special elections; setting requirements for special filing

periods, where necessary; requiring certain notice be given regarding elections to fill vacancies; providing for payment of costs if a new election is necessary; allowing nomination of certain persons without party affiliation; allowing emergency orders by the Secretary of State in certain circumstances; removing and repealing certain language relating to previous elections; clarifying method used to fill vacancies in the Office of Governor; permitting meeting of the Judicial Vacancy Advisory Commission upon certain formal announcements of retirement or resignation; adjusting method to fill vacancies in certain statewide, legislative and judicial offices such that the timing for all are consistent; adjusting method to fill vacancies in United States Congress; requiring most elections to fill vacancies be held in conjunction with regularly scheduled elections; clarifying method used to fill vacancies in certain county offices; permitting vacancies in certain county offices to be filled by temporary replacements for no more than thirty days; and updating language regarding filling vacancies in certain elected offices.

Be it enacted by the Legislature of West Virginia:

That §3-10-4a of the Code of West Virginia, 1931, as amended, be repealed; and that §3-10-1, §3-10-2, §3-10-3, §3-10-3a, §3-10-4, §3-10-5, §3-10-6, §3-10-7 and §3-10-8 of said code be amended and reenacted, all to read as follows:

ARTICLE 10. FILLING VACANCIES.

§3-10-1. Elections to fill vacancies.

1 ~~Except as provided in sections three and four of this~~
2 ~~article, elections to fill vacancies shall be conducted to fill~~
3 ~~any unexpired term when more than one year of the term of~~
4 ~~office remains at the time of such election. When less than~~
5 ~~one year of the term of office remains at the time of the~~
6 ~~election, the person appointed to fill the vacancy shall~~
7 ~~continue in office until the completion of the term.~~

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

12 (1) “General cutoff date” means the eighty-fourth day
13 before the general election that immediately precedes the
14 general election where the office would be on the ballot for
15 election if there were not a vacancy; and

16 (2) “Primary cutoff date” means the eighty-fourth day
17 before the primary election that immediately precedes the
18 general cutoff date.

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

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

31 article, depending on the specific office vacated, shall be
32 followed; or

33 (2) If the vacancy occurs on or before the primary cutoff
34 date, then the office shall be filled at the following regular
35 primary and subsequent general election pursuant to this
36 article and the appointee shall hold the office until a qualified
37 replacement is elected and certified at that general election.
38 The elected replacement shall hold the office until the end of
39 the original term of office.

40 (c) If an election is required to fill the vacancy by
41 subsection (b) of this section and the other provisions of this
42 article, the election shall proceed depending on when the
43 vacancy occurs and in which office it occurs. Elections to fill
44 vacancies shall be held at the same places, and superintended,
45 conducted and returned, and the result ascertained, certified
46 and declared, in the same manner, and by the same officers,
47 as in general elections, unless otherwise stated in this article.

48 (1) For a vacancy in the Office of Governor, the times for
49 the special elections contained in section two of this article

50 shall control. The proclamation entered pursuant to section
51 two of this article by the person acting as Governor, shall
52 include the dates for the special candidate filing period, if
53 necessary, and shall follow the requirements set forth in this
54 section. All aspects of this section, where not in conflict with
55 section two of this article, shall also be followed. If a
56 regularly scheduled primary or general election fits within
57 the times for the special elections contained in section two of
58 this article, the special elections shall be conducted in
59 conjunction with the regularly scheduled election or
60 elections. If an election is required by section two of this
61 article and it cannot be held in conjunction with the regular
62 election dates, then the compensation of election officers,
63 cost of printing ballots and all other reasonable and necessary
64 expenses in holding and making the return of the new
65 election to fill a vacancy are obligations of the state incurred
66 by the ballot commissioners, clerks of the county
67 commissions and county commissions of the various counties
68 as agents of the state. All expenses of the new election are to

69 be audited by the Secretary of State. The Secretary of State
70 shall prepare and transmit to the county commissions forms
71 on which the county commissions shall certify all expenses
72 of the new election to the Secretary of State. If satisfied that
73 the expenses as certified by the county commissions are
74 reasonable and were necessarily incurred, the Secretary of
75 State shall requisition the necessary warrants from the
76 Auditor of the state to be drawn on the State Treasurer and
77 shall mail the warrants directly to the vendors of the new
78 election services, supplies and facilities.

79 (2) For a vacancy in the offices of United States House of
80 Representatives or United States Senate, the times for the
81 special election, if necessary, contained in section four of this
82 article shall control. All aspects of this section, where not in
83 conflict with section four of this article, shall also be
84 followed.

85 (A) With regard to United States House of
86 Representatives, the proclamation entered pursuant to section
87 four of this article by the Governor, shall include the dates

88 for the special candidate filing period, if necessary, and shall
89 follow the requirements set forth in this section. If a
90 regularly scheduled primary or general election fits within
91 the times for the special elections contained in section four of
92 this article, the special elections shall be conducted in
93 conjunction with the regularly scheduled election or
94 elections. If an election is required by section four of this
95 article and it cannot be held in conjunction with the regular
96 election dates, then the compensation of election officers,
97 cost of printing ballots and all other reasonable and necessary
98 expenses in holding and making the return of the new
99 election to fill a vacancy are obligations of the state incurred
100 by the ballot commissioners, clerks of the county
101 commissions and county commissions of the various counties
102 as agents of the state. All expenses of the new election are to
103 be audited by the Secretary of State. The Secretary of State
104 shall prepare and transmit to the county commissions forms
105 on which the county commissions shall certify all expenses
106 of the new election to the Secretary of State. If satisfied that

107 the expenses as certified by the county commissions are
108 reasonable and were necessarily incurred, the Secretary of
109 State shall requisition the necessary warrants from the
110 Auditor of the state to be drawn on the State Treasurer and
111 shall mail the warrants directly to the vendors of the new
112 election services, supplies and facilities.

113 (B) With regard to United States Senate, if a special
114 general election following the regular general election is
115 required by section four of this article, then the compensation
116 of election officers, cost of printing ballots and all other
117 reasonable and necessary expenses in holding and making the
118 return of the new election to fill the vacancy are obligations
119 of the state incurred by the ballot commissioners, clerks of
120 the county commissions and county commissions of the
121 various counties as agents of the state. All expenses of the
122 new election are to be audited by the Secretary of State. The
123 Secretary of State shall prepare and transmit to the county
124 commissions forms on which the county commissions shall
125 certify all expenses of the new election to the Secretary of

126 State. If satisfied that the expenses as certified by the county
127 commissions are reasonable and were necessarily incurred,
128 the Secretary of State shall requisition the necessary warrants
129 from the Auditor of the state to be drawn on the State
130 Treasurer and shall mail the warrants directly to the vendors
131 of the new election services, supplies and facilities.

132 (3) For all other offices, the Governor, or other person
133 granted authority by this article, shall issue a proclamation
134 stating that the office will appear on the next regular primary
135 election and subsequent general election, in order to fill the
136 vacancy: *Provided*, That if the vacancy for any county office
137 occurs during the window after the primary cutoff date, but
138 before the general cutoff date, the process contained in
139 sections six, seven and eight of this article shall be followed.
140 If the candidate filing period for the next regular primary
141 election has closed or has less than one week remaining, the
142 proclamation shall provide for a special primary candidate
143 filing period. If there are less than eighty-four days between
144 the vacancy and the next regular primary election, then the

145 proclamation shall state that the office will appear on the
146 subsequent regular primary election and corresponding
147 general election following the next regular primary election:
148 *Provided*, That if the vacancy for any county office occurs
149 during the window after the eighty-fourth day before the
150 primary date, but before the eighty-fourth day before the
151 general date, the process contained in sections six, seven and
152 eight of this article shall be followed.

153 (d) (1) If a special candidate filing period is necessary, it
154 shall begin no sooner than the day after the proclamation and
155 shall close no earlier than close of business on the fourteenth
156 day following the proclamation. A notarized declaration of
157 candidacy and filing fee provided by section seven, article
158 five of this chapter, shall be filed either in person, by United
159 States mail, electronic means or any other means authorized
160 by the Secretary of State and received by the appropriate
161 office before the close of the filing period. For petition in
162 lieu of payment of filing fees, a candidate seeking nomination
163 for the vacancy may utilize the process set forth in section

164 eight-a, article five of this chapter: *Provided*, That the
165 minimum number of signatures required is equivalent to one
166 qualified signature per one whole dollar of the filing fee for
167 that office.

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

170 (A) For all statewide, multicounty and legislative
171 elections, drawing for the primary election ballot position
172 will take place at the Secretary of State's office twenty-four
173 hours after the end of the filing period. For each major
174 political party on the ballot, a single drawing by lot shall
175 determine the candidate ballot position for ballots statewide.
176 This drawing shall be witnessed by four clerks of the county
177 commission chosen by the West Virginia Association of
178 County Clerks, with no more than two clerks representing a
179 single political party.

180 (B) For county elections, drawing for the primary
181 election ballot position will take place at the county clerk's
182 office twenty-four hours after the end of the filing period. For

183 each major political party on the ballot, a single drawing by
184 lot shall determine the candidate ballot position for ballots
185 statewide. This drawing shall be witnessed by the
186 chairperson of the county democratic and republican
187 executive committees or their designee, and the president of
188 the county commission or his or her designee.

189 (3) Ballot position for a general election required by this
190 article shall be determined pursuant to subdivision (3),
191 subsection (c), section two, article six of this chapter. If a
192 general election required by this article occurs in conjunction
193 with a regularly scheduled primary election, the general
194 election shall be listed along with the nonpartisan portion of
195 each ballot in the order of offices provided for regular ballots
196 in this chapter.

197 (e) When an election is required to fill a vacancy, the date
198 of the election and offices to be elected, as well as any other
199 information required in the proclamation, shall be published
200 prior to such election as a Class I-O legal advertisement in

201 compliance with the provisions of article three, chapter fifty-
202 nine of this code, and the publication area for such
203 publication shall be each county of the state that is eligible to
204 vote in the election for those offices.

205 (f) If an election is required by this article, the Secretary
206 of State may issue emergency administrative orders to
207 undertake other ministerial actions that are otherwise
208 authorized pursuant to this code when necessary to assure the
209 preservation of the voting rights of the citizens of this state
210 and avoid fraudulent voting and election activities and
211 otherwise assure the orderly and efficient conduct of the new
212 election provided in this subsection: *Provided, That*
213 emergency administrative orders may not contravene the
214 provisions of this article.

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

219 (h) The persons elected, having first duly qualified, shall
220 enter upon the duties of their respective offices. The elected
221 replacement shall hold the office until the end of the original
222 term of office.

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

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

14 **(b)** The new election shall consist of a special primary
15 election and a special general election, and shall occur at
16 such time as will permit the person elected as Governor in the
17 new election to assume office within one year of the date the
18 vacancy occurred: *Provided*, That the special general
19 election provided in this section may not apply to section
20 eight, article one of this chapter. Within thirty days from the
21 date the vacancy occurs, the person acting as Governor
22 pursuant to the State Constitution shall issue a proclamation
23 fixing the time for a ~~new~~ statewide election to fill the
24 vacancy in the Office of Governor. ~~which shall be published~~
25 ~~prior to such election as a Class H-O legal advertisement in~~
26 ~~compliance with the provisions of article three, chapter fifty-~~
27 ~~nine of this code, and the publication area for such~~
28 ~~publication shall be each county of the state. The~~
29 ~~proclamation issued by the person acting as Governor~~
30 ~~pursuant to the state Constitution shall provide for a special~~
31 ~~primary election to nominate candidates for the special~~
32 ~~general election.~~ The special primary election to fill a

33 vacancy in the Office of Governor shall take place no less
34 than ninety days after the proclamation and no later than one
35 hundred forty days from the date that the vacancy in the
36 office occurs. The proclamation issued by the person acting
37 as Governor pursuant to the State Constitution shall also
38 provide for a special general election to take place no sooner
39 than ninety days after the special primary election and no
40 later than two hundred eighty days from the date that the
41 vacancy in the office occurs.

42 ~~(b) The compensation of election officers, cost of printing~~
43 ~~ballots and all other reasonable and necessary expenses in~~
44 ~~holding and making the return of the new election provided~~
45 ~~in this section to fill a vacancy in the office of Governor are~~
46 ~~obligations of the state incurred by the ballot commissioners;~~
47 ~~clerks of the county commissions and county commissions of~~
48 ~~the various counties as agents of the state. All expenses of~~
49 ~~the new election are to be audited by the Secretary of State.~~
50 ~~The Secretary of State shall prepare and transmit to the~~
51 ~~county commissions forms on which the county commissions~~

52 shall certify all expenses of the new election provided in this
53 section to the Secretary of State. If satisfied that the expenses
54 as certified by the county commissions are reasonable and
55 were necessarily incurred, the Secretary of State shall
56 requisition the necessary warrants from the Auditor of the
57 state to be drawn on the State Treasurer and shall mail the
58 warrants directly to the vendors of the new election services,
59 supplies and facilities.

60 (c) Notwithstanding the provisions of subsection (a) of
61 this section to the contrary, for purposes of filling the
62 vacancy that occurred in the office of Governor on November
63 15, 2010, a new election shall occur as follows:

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

71 ~~(2) The special primary election shall be held on May 14,~~
72 ~~2011 and the special general election shall be held on~~
73 ~~October 4, 2011.~~

74 ~~(3) The proclamation for the special primary election and~~
75 ~~special general election shall be published prior to the special~~
76 ~~primary election and special general elections, respectively,~~
77 ~~as a Class II-0 legal advertisement in accordance with article~~
78 ~~three, chapter fifty-nine of this code and the publication area~~
79 ~~for the publication is each county of the state. The notice~~
80 ~~shall be filed with the Secretary of State who shall cause the~~
81 ~~document to be published within each county in accordance~~
82 ~~with this section.~~

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

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

96 ~~(B) The Secretary of State may issue emergency~~
97 ~~administrative orders to undertake other ministerial actions~~
98 ~~that are otherwise authorized pursuant to this code when~~
99 ~~necessary to assure the preservation of the voting rights of~~
100 ~~the citizens of this state and avoid fraudulent voting and~~
101 ~~election activities and otherwise assure the orderly and~~
102 ~~efficient conduct of the new election provided in this~~
103 ~~subsection. *Provided*, That emergency administrative orders~~
104 ~~may not contravene the provisions of this section;~~

105 ~~(C) For petition in lieu of payment of filing fees, a~~
106 ~~candidate seeking nomination for the vacancy in the office~~
107 ~~of Governor may utilize the process set forth in section~~

108 ~~eight-a, article five of this chapter: *Provided*, That the~~
109 ~~minimum number of signatures required is one thousand~~
110 ~~five hundred;~~

111 ~~(D) Drawing for special primary election ballot position~~
112 ~~will take place at the Secretary of State's office twenty-four~~
113 ~~hours after the end of the filing period. For each major~~
114 ~~political party on the ballot, a single drawing by lot shall~~
115 ~~determine the candidate ballot position for ballots statewide.~~
116 ~~This drawing shall be witnessed by four clerks of the county~~
117 ~~commission chosen by the West Virginia Association of~~
118 ~~County Clerks, with no more than two clerks representing a~~
119 ~~single political party. Ballot position for the special general~~
120 ~~election shall be determined pursuant to subdivision (3),~~
121 ~~subsection (c), section two, article six of this chapter;~~

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

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

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

137 ~~(H) Regularly scheduled locations of polling places may~~
138 ~~not be changed, except for situations as provided in sections~~
139 ~~seven-e and seven-f, article one of this chapter. *Provided,*~~
140 ~~That if multiple precincts voted in one polling location for~~
141 ~~the November 2, 2010, regularly scheduled general election,~~
142 ~~these precincts may be consolidated into a single precinct.~~
143 ~~Locations for consolidated precincts shall provide Internet~~
144 ~~access, insofar as possible, for the sole purpose of utilizing~~
145 ~~the statewide Voter Registration System (SVRS) as an~~

146 ~~electronic poll book. However, Constitutionally mandated~~
147 ~~redistricting may not take effect until the special primary~~
148 ~~election and special general election provided in this~~
149 ~~subsection are complete; and~~

150 ~~(f) Citizens having no party organization or affiliation~~
151 ~~may nominate candidates as provided by sections twenty-~~
152 ~~three and twenty-four of article five of this chapter:~~
153 ~~*Provided, That* the number of signatures required to be~~
154 ~~submitted shall be equal to not less than one-quarter of one~~
155 ~~percent of the entire vote cast at the last preceding general~~
156 ~~election for Governor. Notwithstanding the provisions of~~
157 ~~sections twenty three and twenty four of article five of this~~
158 ~~chapter, the signatures, notarized declaration of candidacy,~~
159 ~~and filing fee must be submitted no later than seven calendar~~
160 ~~days following the special primary election provided in this~~
161 ~~subsection.~~

162 ~~(j) For the special primary election to be held pursuant~~
163 ~~to this subsection, early voting will also be conducted from~~

164 ~~9 a.m. to 5 p.m. on the Saturday immediately prior to the~~
165 ~~end of early voting.~~

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

169 ~~(d) The Secretary of State shall by January 10, 2012~~
170 ~~report to the Joint Committee on Government and Finance~~
171 ~~findings regarding of the operation of the new election~~
172 ~~undertaken pursuant to subsection (c) of this section. This~~
173 ~~report shall provide analysis of the direct and indirect costs~~
174 ~~to the state associated with the conduct of the new election.~~

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

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

1 Any vacancy occurring in the offices of Secretary of
2 State, Auditor, Treasurer, Attorney General, Commissioner
3 of Agriculture, ~~United States Senator, judge~~ justice of the
4 Supreme Court of Appeals or in any office created or made

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

24 ~~code and the publication area for the publication is each~~
25 ~~county of the state. If the election is to fill a vacancy in the~~
26 ~~office of judge of a circuit court or judge of a family court,~~
27 ~~the proclamation must be published prior to the election as~~
28 ~~a Class H-0 legal advertisement in compliance with the~~
29 ~~provisions of article three, chapter fifty-nine of this code and~~
30 ~~the publication area for such publication is each county in~~
31 ~~the judicial or family court circuit. and subsequent election~~
32 ~~to fill the remainder of the term, if required by section one~~
33 ~~of this article.~~

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

1 (a) The Judicial Vacancy Advisory Commission ~~is hereby~~
2 ~~established to~~ shall assist the Governor in filling judicial
3 vacancies. The commission shall meet and submit a list of
4 no more than five nor less than two best qualified persons to
5 the Governor within ninety days of the occurrence of a
6 vacancy, or the formal announcement of the justice or judge
7 by letter to the Governor of an upcoming resignation or
8 retirement that will result in the occurrence of a vacancy, in

9 the office of justice of the Supreme Court of Appeals, ~~judge~~
10 ~~of an intermediate appellate court~~; judge of a circuit court,
11 or judge of a family court. The Governor shall make the
12 appointment to fill the vacancy, as required by this article,
13 within thirty days following the receipt of the list of
14 qualified candidates or within thirty days following the
15 vacancy, whichever occurs later.

16 (b) The commission shall consist of eight appointed
17 members. Four public members shall be appointed by the
18 Governor for six-year terms, except for the initial
19 appointments which shall be staggered in accordance with
20 subsection (c) of this section. Four attorney members shall
21 be appointed by the Governor for six-year terms, except as
22 provided in subsection (c) of this section, from a list of
23 nominees provided by the Board of Governors of the West
24 Virginia State Bar. The Board of Governors of the West
25 Virginia State Bar shall nominate no more than twenty nor
26 less than ten best qualified attorneys for appointment to the
27 commission whenever there is a vacancy in the membership

28 of the commission reserved for attorney members. The
29 commission shall choose one of its appointed members to
30 serve as chair for a three-year term. No more than four
31 appointed members of the commission shall belong to the
32 same political party. No more than three appointed
33 members of the commission shall be residents of the same
34 congressional district. All members of the commission shall
35 be citizens of this state. Public members of the commission
36 may not be licensed to practice law in West Virginia or any
37 other jurisdiction.

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

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

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

61 (f) The commission shall adopt written policies that
62 formalize and standardize all operating procedures and
63 ethical practices of its members including, but not limited to,
64 procedures for training commission members, publishing

65 notice of judicial vacancies, recruiting qualified individuals
66 for consideration by the commission, receiving applications
67 from qualified individuals, notifying the public of judicial
68 vacancies, notifying state or local groups and organizations
69 of judicial vacancies and soliciting public comment on
70 judicial vacancies. The written policies of the commission
71 are not subject to the provisions of chapter twenty-nine-a of
72 this code, but shall be filed with the Secretary of State.

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

75 (h) All organizational meetings of the commission shall
76 be open to the public and subject to the requirements of
77 article nine-a, chapter six of this code. An “organizational
78 meeting” means an initial meeting to discuss the
79 commission’s procedures and requirements for a judicial
80 vacancy. The commission shall hold at least one
81 organizational meeting upon the occurrence of a judicial
82 vacancy. All other meetings of the commission are exempt
83 from article nine-a, chapter six of this code.

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

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

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

1 (a) If there ~~be~~ is a vacancy in the representation from this
2 state in the House of Representatives in the Congress of the
3 United States, the Governor shall, within ~~ten~~ five days after
4 the fact comes to his or her knowledge, ~~of article three,~~
5 ~~chapter fifty-nine of this code, and the publication area for~~
6 ~~such publication shall be each county in the congressional~~
7 ~~district. In such proclamation he~~ the Governor shall appoint
8 ~~some day,~~ issue a proclamation ~~give notice thereof by~~
9 ~~proclamation, to be published prior to such election as a~~
10 ~~Class H-O legal advertisement in compliance with the~~
11 ~~provisions~~ setting dates for a special primary election that is
12 not less than ~~thirty~~ eighty-four nor more than ~~seventy-five~~
13 one hundred twenty days from the date thereof, for holding
14 ~~the election to fill such vacancy. Nominations to fill such~~
15 ~~vacancy shall be made in the manner prescribed for~~
16 ~~nominating a candidate to fill a vacancy in the office of~~
17 ~~Governor, to be voted for at a special election. The~~
18 ~~congressional district executive committee of a party shall~~

19 ~~perform the duties devolving upon the state executive~~
20 ~~committee in filling a state office: of the vacancy and a~~
21 ~~special general election that is not less than eighty-four nor~~
22 ~~more than one hundred twenty days following the date of~~
23 ~~the special primary election: *Provided*, That no such~~
24 ~~proclamation may be made nor may a special election be~~
25 ~~held if the vacancy occurs after the eighty-fourth day prior~~
26 ~~to the regularly scheduled primary election for a new full~~
27 ~~term of the office. The election shall follow the~~
28 ~~requirements of section one of this article that are not in~~
29 ~~conflict with this section.~~

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

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

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

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

1 (a) Any vacancy in the office of State Senator or member
2 of the House of Delegates shall be filled by appointment by
3 the Governor, from a list of three legally qualified persons
4 submitted by the party executive committee of the party with
5 which the person holding the office immediately preceding
6 the vacancy was affiliated. ~~Such~~The list of qualified
7 persons to fill the vacancy shall be submitted to the
8 Governor within fifteen days after the vacancy occurs and

9 the Governor shall duly make his or her appointment to fill
10 the vacancy from the list of legally qualified person within
11 five days after the list is received. If the list is not submitted
12 to the Governor within the fifteen day period, the Governor
13 shall appoint within five days thereafter a legally qualified
14 person of the same political party as the person vacating the
15 office.

16 (b) In the case of a member of the House of Delegates,
17 the list shall be submitted by the party executive committee
18 of the delegate district in which the vacating member
19 resided at the time of his or her election or appointment.
20 The appointment to fill a vacancy in the House of Delegates
21 is for the unexpired term.

22 (c) In the case of a State Senator, the list shall be
23 submitted by the party executive committee of the state
24 senatorial district in which the vacating senator resided at
25 the time of his or her election or appointment. ~~If the~~
26 ~~unexpired term in the office of the state Senator will be for~~
27 ~~less than two years and two months, the appointment is for~~

28 ~~the unexpired term. If the unexpired term will be for a~~
29 ~~period equal to or longer than two years and two months, the~~
30 ~~appointment is until the next general election and until the~~
31 ~~election and qualification of a successor to the person~~
32 ~~appointed, at which general election the vacancy shall be~~
33 ~~filled by election for the unexpired term. Notice of an~~
34 ~~election to fill a vacancy in the office of State Senator shall~~
35 ~~be given by the Governor by proclamation and shall be~~
36 ~~published before the election as a Class H-0 legal~~
37 ~~advertisement in compliance with the provisions of article~~
38 ~~three, chapter fifty-nine of this code, and the publication~~
39 ~~area for the publication shall be each county in the senatorial~~
40 ~~district. Nominations for candidates to fill a vacancy shall~~
41 ~~be made in the manner prescribed for nominating a~~
42 ~~candidate to fill a vacancy in the office of Governor to be~~
43 ~~voted for at a general election. The state senatorial district~~
44 ~~executive committee of the political party shall discharge the~~
45 ~~duties incident to State Senator nominations devolving upon~~
46 ~~the party state executive committee in nominating a~~

47 ~~candidate for a state office.~~ The appointment to fill a
48 vacancy in the State Senate is for the unexpired term, unless
49 section one of this article requires a subsequent election to
50 fill the remainder of the term, which shall follow the
51 procedure set forth in section one of this article.

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

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

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

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

27 ~~If~~ (d) Section one of this article shall be followed with
28 respect to any election needed to fill a vacancy, except that
29 if ~~If the vacancy occurs no later than the eighty-fourth day~~
30 ~~before the primary election held to nominate candidates to~~
31 ~~be voted for at the general election, at which any vacancy is~~
32 ~~to be filled, candidates to fill the vacancy shall be nominated~~

33 ~~at the primary election in accordance with the time~~
34 ~~requirements and the provisions and procedures prescribed~~
35 ~~in section eleven, article five of this chapter.~~ the vacancy
36 occurs after ~~the eighty-fourth day before the primary~~ cutoff
37 date but not later than the ~~eighty-fourth day before the~~
38 ~~general election, they~~ general cutoff date, candidates to fill
39 the vacancy shall be nominated by the county executive
40 committee in the manner provided in section nineteen,
41 article five of this chapter, as in the case of filling vacancies
42 in nominations, and the names of the persons, so nominated
43 and certified to the clerk of the county commission of the
44 county, shall be placed upon the ballot to be voted at the
45 next general election.

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

1 (a) Any vacancy in the office of county commissioner or
2 clerk of county commission shall be filled by the county
3 commission of the county, unless the number of vacancies
4 in a county commission deprive that body of a quorum, in

5 which case the Governor of the state shall fill any vacancy
6 in the county commission necessary to create a quorum
7 thereof. Persons appointed shall be of the same political
8 party as the officeholder vacating the office ~~and shall~~
9 ~~continue in office until the next general election is certified,~~
10 ~~or until the completion of the term if the term ends on~~
11 ~~December 31, following the next general election.~~
12 *Provided, That in the event for the period stated by section*
13 *one of this article. If* a quorum of the county commission
14 cannot agree upon a person to fill a vacancy in the office of
15 county commissioner within thirty days of the date the
16 vacancy first occurred, the county executive committee of
17 the vacating county commissioner's political party shall
18 select and name a person to fill the vacancy from the
19 membership of the vacating county commissioner's political
20 party.

21 ~~Notice of the election shall be given by order of the~~
22 ~~county commission and published as prescribed in section~~
23 ~~six of this article.~~

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

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

34 (d) Section one of this article shall be followed with
35 respect to any election needed to fill a vacancy, except that
36 if the vacancy occurs after the primary cutoff date but not
37 later than the general cutoff date, candidates to fill the
38 vacancy shall be nominated by the county executive
39 committee in the manner provided in section nineteen,
40 article five of this chapter, as in the case of filling vacancies
41 in nominations, and the names of the persons, so nominated
42 and certified to the clerk of the county commission of the

43 county, shall be placed upon the ballot to be voted at the
44 next general election. ~~Nomination of candidates to fill the~~
45 ~~office for an unexpired term in the office of county~~
46 ~~commissioner or clerk of the county commission shall be~~
47 ~~made in the manner prescribed for making nominations to~~
48 ~~fill a vacancy in the office of the clerk of the circuit court.~~

49 (e) ~~In the event that~~ If the election for an unexpired term
50 is held at the same time as the election for a full term for
51 county commissioner, the full term shall be counted first and
52 the unexpired term shall be counted second. If the candidate
53 with the highest number of votes for the unexpired term
54 resides in the same magisterial district as the candidate with
55 the highest number of votes for the full term, the candidate
56 for the full term shall be seated. The candidate with the next
57 highest number of votes for the unexpired term residing in
58 a different magisterial district shall be seated for the
59 unexpired term.

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

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

18 (b) Notwithstanding any code provision to the contrary,
19 a county commission may appoint a temporary successor to

20 the office of prosecuting attorney, sheriff, assessor or county
21 surveyor until the requirements of this section have been
22 met. The temporary successor may serve no more than thirty
23 days from the date of the vacancy.

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

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