

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 2509**

BY DELEGATES GEARHEART, MANDT, FERRELL,  
ZATEZALO, STORCH, PAYNTER, MAYNARD, BARNHART,  
ELLINGTON, AND CRISS

[Introduced February 15, 2021; Referred to the  
Committee on the Judiciary]

1 A BILL amend and reenact §3-10-4 of the Code of West Virginia, 1931, as amended, relating to  
 2 filling a vacancy occurring in the House of Representatives in the Congress of the United  
 3 States in the same manner as a vacancy in the Senate of the United States Congress.

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

**ARTICLE 10. FILLING VACANCIES.**

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

1 (a) ~~(1)~~ If there is a vacancy in the representation from this state in the House of  
 2 Representatives in the Congress of the United States, the vacancy shall be filled by the Governor.  
 3 The Governor shall make the appointment from a list of three legally qualified persons submitted  
 4 by the party executive committee of the congressional district of the same political party with which  
 5 the person holding the office immediately preceding the vacancy was affiliated at the time the  
 6 vacancy occurred. The list of qualified persons to fill the vacancy shall be submitted to the  
 7 Governor within 15 days after the vacancy occurs, and the Governor shall duly make his or her  
 8 appointment to fill the vacancy from the list of legally qualified persons within five days after the  
 9 list is received. If the list is not submitted to the Governor within the 15-day period, the Governor  
 10 shall appoint, within five days thereafter, a legally qualified person of the same political party with  
 11 which the person holding the office immediately preceding the vacancy was affiliated at the time  
 12 the vacancy occurred. The Governor shall then, within five days after the fact comes to his or her  
 13 ~~knowledge~~ issue a proclamation setting dates for a special general election that is not less than  
 14 84 nor more than 120 days from the date of filling the vacancy and requiring nomination of  
 15 candidates as provided in §3-10-4(a)(2) of this code: *Provided*, That no such proclamation may  
 16 be made nor may a special election be held if the vacancy occurs after the 84th day prior to the  
 17 regularly scheduled general election for a new full term of the office. The election shall follow the  
 18 requirements of §3-10-1 of this code that are not in conflict with this section.

19 ~~(2) The party executive committees for the congressional district for which there is a~~  
20 ~~vacancy shall each, within 30 days of the Governor's proclamation, nominate a candidate to stand~~  
21 ~~at the general election required by §3-10-4(a)(1) of this code~~

22 (b) If there is a vacancy in the representation from this state in the Senate of the United  
23 States Congress, the vacancy shall be filled by the Governor of the state by appointment. The  
24 Governor shall make the appointment from a list of three legally qualified persons submitted by  
25 the party executive committee of the same political party with which the person holding the office  
26 immediately preceding the vacancy was affiliated at the time the vacancy occurred. The list of  
27 qualified persons to fill the vacancy shall be submitted to the Governor within 15 days after the  
28 vacancy occurs, and the Governor shall duly make his or her appointment to fill the vacancy from  
29 the list of legally qualified persons within five days after the list is received. If the list is not  
30 submitted to the Governor within the 15-day period, the Governor shall appoint, within five days  
31 thereafter, a legally qualified person of the same political party with which the person holding the  
32 office immediately preceding the vacancy was affiliated at the time the vacancy occurred.

33 Furthermore,

34 (1) If the vacancy occurs on or before the primary cutoff date, then an election shall be  
35 held pursuant to §3-10-1 of this code; or

36 (2) If the vacancy occurs after the primary cutoff date, but on or before the general cutoff  
37 date, then the Governor shall issue a proclamation providing for: (A) A special filing period; (B) a  
38 special primary election to be held in conjunction with the upcoming general election; and (C) a  
39 special general election to be held not less than 84 nor more than 120 days following the date of  
40 the special primary election. Each election shall follow the requirements of §3-10-1 of this code  
41 that are not in conflict with this section.

NOTE: The purpose of this bill is to make the filling of a vacancy occurring in the House of Representatives in the Congress of the United States in the same manner as a vacancy in the Senate of the United States Congress.

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