E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

H. B. 201

(BY MR. SPEAKER, MR. THOMPSON, AND DELEGATE ARMSTEAD)
[BY REQUEST OF THE EXECUTIVE]

[Passed July 19, 2010; in effect from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section designated §3-10-4a, relating to filling a vacancy in the office of United States Senator; providing for an election to fill the unexpired term; requiring the election to occur in conjunction with the 2010 general election; providing for a special primary election to nominate party candidates for the 2010 general election; authorizing the Governor to appoint a person to serve as United States Senator until a successor is elected and qualified; providing that the provisions of the law relating to elections shall apply to the special primary election unless inconsistent with section; modifying certain statutory time periods; directing special primary election to be held on August 28, 2010; modifying certain statutory time lines relating to declaration of candidacy and early voting for special elections; modifying procedures relating to payment of filing fees, drawing of ballot positions, selecting and training individuals working as election official;

clarifying the eligibility of certain minors to vote in special primary election; modifying statutory provisions relating to minimum number of ballots to be printed; modifying publications requirements of sample ballots, lists of candidates, and public testing of voting machines; providing applications deadlines for absentee ballots and procedures for changing polling places; modifying procedures for persons without party affiliations to nominate candidates for the special general election; authorizing the Secretary of State to issue administrative orders and to establish procedures and deadlines necessary to preserve voting rights, avoid fraudulent voting and other election irregularities and assure orderly and efficient administration of the special primary election; requiring the state to pay costs incurred in connection with a special election to fill a vacancy in the office of United States Senator; requiring Secretary of State to report to joint committee on government and finance and establishing guidelines for the report; providing for the expiration of the section; and clarifying that the special general election held on November 2, 2010, for the United States Senate vacancy is a separate election from the general election held on the same date.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section designated as §3-10-4a, to read as follows:

ARTICLE 10. FILLING VACANCIES.

§3-10-4a. Special Senate vacancy election.

1 (a) Notwithstanding the provisions of section three of this
2 article establishing processes for the appointment and
3 election to fill a vacancy in the office of United States
4 Senator, for purposes of filling the vacant seat in the office of

United States Senator existing on July 1, 2010, a special election shall be held to fill the unexpired term concurrent with the general election of November 2, 2010. A special primary election shall be held to nominate party candidates for the November election.

(b) For the special primary election required to be held prior to the November 2, 2010 election by operation of this section upon its enactment during the second extraordinary session of the Legislature, 2010, the Governor shall immediately issue a proclamation calling for a special primary election and general election. The special general election shall be held on November 2, 2010. The following provisions apply to these special elections:

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

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

(A) The special primary election is to be held August 28, 2010;

37 (B) A notarized declaration of candidacy and filing fee
38 shall be filed and received in hand by the Secretary of State
39 by 5:00 p.m. on the fourth calendar day following the
40 proclamation of the special primary election. The declaration
41 of candidacy may be filed in person, by United States mail,
42 electronic means or any other means authorized by the
43 Secretary of State;

44 (C) Early-in-person voting shall be conducted during
45 regular business hours beginning on Friday, August 20, 2010
46 and continuing through close of business Wednesday, August
47 25, 2010. In addition, early-in-person voting shall be
48 conducted from 9:00 a.m. to 5:00 p.m. on Saturday, August
49 21, 2010. No satellite polling locations will be utilized for the
50 August 28, 2010 special primary election;

51 (D) The Secretary of State may issue emergency
52 administrative orders to undertake other ministerial actions
53 that are otherwise authorized pursuant to this code when
54 necessary to assure the preservation of the voting rights of the
55 citizens of this state and avoid fraudulent voting and election
56 activities and otherwise assure the orderly and efficient
57 conduct of the election: *Provided, that* such emergency
58 administrative orders may not contravene the provisions of
59 this section;

60 (E) The compensation of election officers, cost of
61 printing ballots and all other reasonable and necessary
62 expenses in holding and making the return of the special
63 election to fill a vacancy in the office of United States
64 Senator are obligations of the state incurred by the ballot
65 commissioners, clerks of the circuit courts, clerks of the
66 county commissions and county commissions of the various
67 counties as agents of the state. All expenses of the special
68 election are to be audited by the Secretary of State. The
69 Secretary of State shall prepare and transmit to the county

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

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

85 (G) Drawing for ballot position will take place at the
86 Secretary of State's office 24 hours after the end of the filing
87 period. For each major political party on the ballot, a single
88 drawing by lot shall determine the candidate ballot position
89 for ballots statewide. This drawing shall be witnessed by four
90 clerks of the county commission chosen by the West Virginia
91 Association of County Clerks, with no more than two clerks
92 representing a single political party;

93 (H) The clerks of the county commission shall submit the
94 list of persons who worked in the May 11, 2010 primary
95 election to the county commission for appointment as
96 election officials;

97 (I) Election officials shall be appointed by Tuesday,
98 August 3, 2010;

99 (J) The clerks of the county commission shall provide
100 notice to all election officials of the fact of their appointment

by Wednesday, August 4, 2010. Included with the notice shall be a response notice form for the appointed person to return indicating if he or she agrees to serve in the specified capacity in the August 28, 2010 special primary election;

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

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

(M) A registered voter who has not reached eighteen years of age may vote in the August 28, 2010 special primary election: *Provided,* That the voter will attain eighteen years of age at the time of the special general election;

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

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

(P) For counties in which two or more qualified newspapers publish a daily newspaper, the clerk of the county commission shall publish at least once each sample

official August 28, 2010 primary ballot, on the last day on which a newspaper is published immediately preceding the August 28, 2010 special primary election, as a Class I-0 legal advertisement in the two qualified daily newspapers of different political parties within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of West Virginia Code;

(Q) For counties having no more than one daily newspaper or having one or more qualified newspapers which publish weekly, the clerk of the county commission shall publish each sample official August 28, 2010 primary ballot, on the last day in which a newspaper is published immediately preceding the August 28, 2010 special primary election, as a Class I-0 legal advertisement in the qualified daily newspaper within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of West Virginia Code;

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

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

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

163 (U) Applications for absentee ballots shall be accepted
164 from the date of proclamation, other than from voters eligible
165 to vote under the provisions of the Uniformed and Overseas
166 Citizens Absentee Voting Act who may apply for an absentee
167 ballot for all elections within a calendar year as early as the
168 first day of January of an election year;

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

179 (W) Persons having no party affiliation may nominate
180 candidates for the U.S. Senate vacancy under the procedures
181 set forth in sections twenty-three and twenty-four, article five
182 of this chapter: *Provided,* That the number of signatures
183 required to be submitted shall be equal to not less than one-
184 quarter of one percent of the entire vote cast at the last
185 preceding general election for any statewide congressional or
186 presidential candidate. Notwithstanding the provisions of
187 sections twenty-three and twenty- four of article three of this
188 section, the signatures, notarized declaration of candidacy,
189 and filing fee must be submitted no later than August 23,
190 2010.

191 (c) The Secretary of State, shall by January 10, 2011,
192 report to the Joint Committee of Government and Finance
193 findings regarding of the operation of the special elections
194 undertaken pursuant to subsection (b) of this section. This
195 report shall provide analysis of: direct and indirect costs to

196 the state associated with the conduct of the election; benefits
197 and disadvantages of conducting an election on a Saturday;
198 the impact of compressed time periods on efficient election
199 administration; and whether this election process impacted
200 early voting and participation by military and overseas
201 voters.

202 (d) Any special election, which is held under the
203 provisions of this section and occurs concurrently with a
204 general election, shall be a separate election from the general
205 election.

206 (e) Upon the election and qualification of a United States
207 Senator by the United States Senate following the November
208 2, 2010 election, the provisions of this section will expire.