

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 110

97TH GENERAL ASSEMBLY

0039H.03P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 21.110, 28.190, 29.280, 30.030, 30.060, 30.070, 30.080, 78.090, 105.030, 105.040, 105.050, 115.123, 115.365, 115.601, and 115.755, RSMo, and to enact in lieu thereof sixteen new sections relating to vacancies and time limits for certain offices, with an emergency clause.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 21.110, 28.190, 29.280, 30.030, 30.060, 30.070, 30.080, 78.090, 2 105.030, 105.040, 105.050, 115.123, 115.365, 115.601, and 115.755, RSMo, are repealed and 3 sixteen new sections enacted in lieu thereof, to be known as sections 21.110, 26.016, 27.015, 4 28.190, 29.280, 30.030, 30.060, 30.080, 78.090, 105.030, 105.031, 105.040, 105.050, 115.123, 5 115.365, and 115.601, to read as follows:

21.110. If the governor receives any resignation or notice of vacancy, or if he is satisfied 2 of the death of any member of either house, during the recess, he shall, without delay, issue a 3 writ of election to supply the vacancy. **For purposes of this section, the phrase "without 4 delay" shall mean that the writ of election is issued in such a manner that the election to 5 supply the vacancy shall be held, in accordance with all general laws governing such 6 elections, not later than six months from the time that the governor receives any 7 resignation or notice of the vacancy.**

26.016. In the case of any vacancy for any cause in the office of lieutenant governor, 2 the governor shall appoint an acting lieutenant governor to fill such vacancy for the 3 remainder of the term in which the vacancy occurred until a successor is elected and 4 qualified at the next election scheduled for the lieutenant governor under section 105.031. 5 The acting lieutenant governor shall take charge of such office and superintend the

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

6 **business of the office until a successor is elected and qualified. In cases of impeachment**
7 **as provided in chapter 106, the lieutenant governor shall be suspended until the**
8 **impeachment is determined. If the lieutenant governor is acquitted, the lieutenant**
9 **governor shall be reinstated to office and the acting lieutenant governor shall be relieved**
10 **of the duties of the office. If the lieutenant governor is convicted, the vacancy shall be filled**
11 **in the same manner as provided in this section.**

27.015. **In the case of any vacancy for any cause in the office of attorney general,**
2 **the governor shall appoint an acting attorney general to fill such vacancy for the remainder**
3 **of the term in which the vacancy occurred until a successor is elected and qualified at the**
4 **next election scheduled for the attorney general under section 105.031. The acting attorney**
5 **general shall take charge of such office and superintend the business of the office until a**
6 **successor is elected and qualified. In cases of impeachment as provided in chapter 106, the**
7 **attorney general shall be suspended until the impeachment is determined. If the attorney**
8 **general is acquitted, the attorney general shall be reinstated to office and the acting**
9 **attorney general shall be relieved of the duties of the office. If the attorney general is**
10 **convicted, the vacancy shall be filled in the same manner as provided in this section.**

28.190. **In case of death, resignation, removal from office, impeachment, or vacancy**
2 **from any cause in the office of secretary of state, the governor shall immediately appoint [a**
3 **qualified person] an acting secretary of state to fill such vacancy for the remainder of the term**
4 **in which such vacancy occurred [and] until [his] a successor is elected [or appointed,**
5 **commissioned] and qualified[; and the governor shall take charge of the office and superintend**
6 **its business until such person is appointed, commissioned and qualified; except that in case of**
7 **impeachment the governor shall appoint a qualified person to serve only until such impeachment**
8 **is determined, when the suspended officer, if acquitted, shall be reinstated in office, or if the**
9 **suspended officer is convicted, a new appointment shall be made by the governor as in the case**
10 **of other vacancies] at the next election scheduled for the secretary of state under section**
11 **105.031. The acting secretary of state shall take charge of such office and superintend the**
12 **business of the office until a successor is elected and qualified. In cases of impeachment**
13 **as provided in chapter 106, the secretary of state shall be suspended until the impeachment**
14 **is determined. If the secretary of state is acquitted, the secretary of state shall be reinstated**
15 **to office and the acting secretary of state shall be relieved of the duties of the office. If the**
16 **secretary of state is convicted, the vacancy shall be filled in the same manner as provided**
17 **in this section.**

29.280. **When a vacancy occurs in the office of state auditor, the governor shall**
2 **immediately appoint an acting auditor to fill such vacancy for the residue of the term in which**
3 **the vacancy occurred[, and] until [his] a successor is elected [or appointed, commissioned] and**

4 qualified at the next election scheduled for the state auditor under section 105.031. The
5 acting auditor shall take charge of such office and superintend the business of the office
6 until a successor is elected and qualified. In cases of impeachment as provided in chapter
7 106, the auditor shall be suspended until the impeachment is determined. If the auditor
8 is acquitted, the auditor shall be reinstated to office and the acting auditor shall be relieved
9 of the duties of the office. If the auditor is convicted, the vacancy shall be filled in the same
10 manner as provided in this section.

30.030. If the state treasurer fails to give the bond required in section 30.020 within sixty
2 days after [he] the treasurer receives [his] the treasurer's certificate of election or appointment
3 or fails to renew the bond in accordance with the provisions of section 30.020 within thirty days
4 after the time prescribed by law for renewal, or if the bond is not approved by the governor, then
5 twenty days after the refusal of the governor to approve the bond, [his] the treasurer's office
6 shall be ipso facto forfeited and the governor shall take possession and supervise the business
7 of the office until the vacancy is filled in the manner prescribed in section [30.070] 30.060.

30.060. In case of death, resignation, removal from office, impeachment, or vacancy
2 from any cause[,] in the office of the state treasurer, the governor shall appoint an acting state
3 treasurer to fill such vacancy for the remainder of the term in which such vacancy
4 occurred until a successor is elected and qualified at the next election scheduled for the
5 state treasurer under section 105.031. The acting state treasurer shall take charge of such
6 office and superintend the business thereof until a successor is [appointed, commissioned]
7 elected and qualified [except] . In case of impeachment[, when no appointment shall be made
8 until a determination of the matter is had, when, in the event of an acquittal, the suspended
9 officer shall be reinstated in office] as provided in chapter 106, the state treasurer shall be
10 suspended until the impeachment is determined. If the state treasurer is acquitted, the
11 state treasurer shall be reinstated to office and the acting state treasurer shall be relieved
12 of the duties of the office. If the treasurer is convicted, the vacancy shall be filled in the
13 same manner as provided in this section.

30.080. Immediately after the appointment or election and qualification of a state
2 treasurer, made to fill any vacancy occurring in said office, or the resumption of [his] duties by
3 said officer, after the removal of any disability or temporary suspension therefrom the general
4 assembly if in session, or, if such assembly be not in session, then the governor, shall cause a
5 settlement to be made of the accounts of the former state treasurer, or any such office ad interim,
6 remaining unsettled, and ascertain what balance, if any, is due the state or such officer, as the
7 case may be.

78.090. 1. Candidates to be voted for at all general municipal elections at which a mayor
2 and councilmen are to be elected under the provisions of sections 78.010 to [78.420] 78.400 shall

3 be nominated by a primary election, **except as provided in this section**, and no other names
4 shall be placed upon the general ballot except those selected in the manner herein prescribed.
5 The primary election for such nomination shall be held on the first Tuesday after the first
6 Monday in February preceding the municipal election.

7 **2. (1) In lieu of conducting a primary election under this section, any city organized**
8 **under sections 78.010 to 78.400 may, by order or ordinance, provide for the elimination of**
9 **the primary election and the conduct of elections for mayor and councilman as provided**
10 **in this subsection.**

11 **(2) Any person desiring to become a candidate for mayor or councilman shall file**
12 **with the city clerk a signed statement of such candidacy, stating whether such person is a**
13 **resident of the city and a qualified voter of the city, that the person desires to be a**
14 **candidate for nomination to the office of mayor or councilman to be voted upon at the next**
15 **municipal election for such office, that the person is eligible for such office, that the person**
16 **requests to be placed on the ballot, and that such person will serve if elected. Such**
17 **statement shall be sworn to or affirmed before the city clerk.**

18 **(3) Under the requirements of section 115.023, the city clerk shall notify the**
19 **requisite election authority who shall cause the official ballots to be printed, and the names**
20 **of the candidates shall appear on the ballots in the order that their statements of candidacy**
21 **were filed with the city clerk. Above the names of the candidates shall appear the words**
22 **"Vote for (number to be elected)". The ballot shall also include a warning that voting for**
23 **more than the total number of candidates to be elected to any office invalidates the ballot.**

105.030. 1. Whenever any vacancy, caused in any manner or by any means whatsoever,
2 occurs or exists in any state or county office originally filled by election of the people, other than
3 in the offices of lieutenant governor, **attorney general, secretary of state, state auditor, state**
4 **treasurer**, state senator or representative, sheriff, or recorder of deeds in the city of St. Louis,
5 the vacancy shall **only** be filled by appointment by the governor except that when a vacancy
6 occurs in the office of county assessor after a general election at which a person other than the
7 incumbent has been elected, the person so elected shall be appointed to fill the remainder of the
8 unexpired term; and the person appointed after duly qualifying and entering upon the discharge
9 of [his] **the** duties under the appointment shall continue in office until the first Monday in
10 January next following the first ensuing general election, at which general election a person shall
11 be elected to fill the unexpired portion of the term, or for the ensuing regular term, as the case
12 may be, and the person so elected shall enter upon the discharge of the duties of the office the
13 first Monday in January next following his election, except that when the term to be filled begins
14 on any day other than the first Monday in January, the appointee of the governor shall be entitled
15 to hold the office until such other date. This section shall not apply to vacancies in county

16 offices in any county which has adopted a charter for its own government under section 18,
17 article VI of the constitution. Any vacancy in the office of recorder of deeds in the city of St.
18 Louis shall be filled by appointment by the mayor of that city.

19 **2. Any vacancy occurring in the offices of lieutenant governor, attorney general,**
20 **secretary of state, state auditor, or state treasurer shall be filled by the appointment of an**
21 **acting lieutenant governor, acting attorney general, acting secretary of state, acting state**
22 **auditor, or acting state treasurer by the governor, or by a special election called for such**
23 **purpose under section 105.031. No person appointed by the governor under this subsection**
24 **shall be eligible to be a candidate for such office to which such person was appointed under**
25 **this subsection at the election to fill such office immediately following such person's**
26 **appointment, but may be a candidate for such office after one intervening election has been**
27 **held.**

105.031. In the case of a vacancy for any cause in the offices of senator of the United
2 **States from this state, lieutenant governor, attorney general, secretary of state, state**
3 **auditor, or state treasurer, such vacancy shall be filled by a special election at the same**
4 **time as the general election when there is a general election scheduled before the expiration**
5 **of the term of such offices as required by section 17, article IV, Constitution of Missouri,**
6 **or Amendment XVII of the Constitution of the United States. If there is no general election**
7 **scheduled before the expiration of the term of such offices, then the acting official**
8 **appointed by the governor shall serve out the remainder of the full term in office. The**
9 **candidate elected and qualified at a special election held on the general election day shall**
10 **take office on January first immediately following such election, and shall relieve any**
11 **acting official filling such vacancy of the duties of the office. Candidates for election shall**
12 **be selected by nominating committee as provided under sections 115.361 to 115.379.**

105.040. Whenever a vacancy in the office of senator of the United States from this state
2 exists, the governor [, unless otherwise provided by law,] shall appoint [a person to fill such
3 vacancy, who shall continue in office until a successor shall have been duly elected and qualified
4 according to law] **an acting senator of the United States to fill the vacancy for the remainder**
5 **of the term in which the vacancy occurred until a successor is elected and qualified at the**
6 **next election under section 105.031.**

105.050. If any vacancy shall happen from any cause in the office of the [attorney
2 general,] circuit attorney, prosecuting attorney or assistant prosecuting attorney, the governor,
3 upon being satisfied that such vacancy exists, shall appoint some competent person to fill the
4 same until the next regular election for [attorney general,] prosecuting attorney or assistant
5 prosecuting attorney, as the case may be; provided, in the case of a vacancy in the office of
6 prosecuting attorney, if there is no qualified person in the county who can or will accept such

7 appointment, then the governor may appoint any person who possesses all the qualifications set
8 forth in section 56.010, except the qualification as to residence.

115.123. 1. All public elections shall be held on Tuesday. Except as provided in
2 subsections 2 and 3 of this section, and section 247.180, all public elections shall be held on the
3 general election day, the primary election day, the general municipal election day, the first
4 Tuesday after the first Monday in November, or on another day expressly provided by city or
5 county charter, and in nonprimary years on the first Tuesday after the first Monday in August.
6 Bond elections may be held on the first Tuesday after the first Monday in February but no other
7 issue shall be included on the ballot for such election.

8 2. Notwithstanding the provisions of subsection 1 of this section, an election for a
9 presidential primary held pursuant to sections [115.755] **115.758** to 115.785 shall be held on the
10 first Tuesday after the first Monday in [February] **March** of each presidential election year.

11 3. The following elections shall be exempt from the provisions of subsection 1 of this
12 section:

- 13 (1) Bond elections necessitated by fire, vandalism or natural disaster;
- 14 (2) Elections for which ownership of real property is required by law for voting;
- 15 (3) Special elections to fill vacancies and to decide tie votes or election contests; and
- 16 (4) Tax elections necessitated by a financial hardship due to a five percent or greater
17 decline in per-pupil state revenue to a school district from the previous year.

18 4. Nothing in this section prohibits a charter city or county from having its primary
19 election in March if the charter provided for a March primary before August 28, 1999.

20 5. Nothing in this section shall prohibit elections held pursuant to section 65.600, but no
21 other issues shall be on the March ballot except pursuant to this chapter.

115.365. 1. The nominating committee authorized to select a candidate for nomination
2 or election to office pursuant to section 115.363 shall be one of the following:

- 3 (1) To select a candidate for county office, the nominating committee shall be the county
4 committee of the party;
- 5 (2) To select a candidate for state representative, the nominating committee shall be the
6 legislative district committee of the party;
- 7 (3) To select a candidate for state senator, the nominating committee shall be the
8 senatorial district committee of the party;
- 9 (4) To select a candidate for circuit court judge not subject to the provisions of article
10 V, section 25 of the state constitution, the nominating committee shall be the judicial district
11 committee of the party;
- 12 (5) To select a candidate for representative in Congress, the nominating committee shall
13 be the congressional district committee of the party;

14 (6) To select a candidate for statewide office **or senator of the United States**, the
15 nominating committee shall be the state committee of the party.

16 2. After any decennial redistricting, the nominating committee shall be composed from
17 the new districts, and the new district lines shall be used in the selection of a candidate; provided,
18 however, that members of nominating committees for candidates for special elections to fill
19 vacancies conducted pursuant to section 21.130 shall be from the old districts.

115.601. 1. Any contestant in a primary or other election contest who was defeated by
2 less than one percent of the votes cast for the office and any contestant who received the second
3 highest number of votes cast for that office if two or more are to be elected and who was
4 defeated by less than one percent of the votes cast, or any person whose position on a question
5 was defeated by less than one percent of the votes cast on the question, shall have the right to a
6 recount of the votes cast for the office or on the question.

7 2. In cases where the candidate filed or the ballot question was originally filed with an
8 election authority as defined in section 115.015, such recount shall be requested in accordance
9 with the provisions of section 115.531 or 115.577 and conducted under the direction of the court
10 or the commissioner representing the court trying the contest according to the provisions of this
11 subchapter.

12 3. In cases where the candidate filed or the ballot question was originally filed with the
13 secretary of state, the defeated candidate or the person whose position on a question was defeated
14 by less than **one-half of** one percent of the votes cast on the question shall be allowed a recount
15 pursuant to this section by filing with the secretary of state a request for a recount stating that the
16 person or the person's position on a question was defeated by less than **one-half of** one percent
17 of the votes cast. Such request shall be filed not later than seven days after certification of the
18 election. The secretary of state shall notify all concerned parties of the filing of the request for
19 a recount. The secretary of state shall authorize the election authorities to conduct a recount
20 pursuant to this section if the requesting party or his position on a question was defeated by less
21 than **one-half of** one percent of the votes cast. The secretary of state shall conduct and certify
22 the results of the recount as the official results in the election within twenty days of receipt of the
23 aforementioned notice of recount.

24 4. Whenever a recount is requested pursuant to subsection 3 of this section, the secretary
25 of state shall determine the number of persons necessary to assist with the recount and shall
26 appoint such persons equally from lists submitted by the contestant and the opponent who
27 received more votes or a person whose position on a question received more votes than the
28 contestant's position on that question. Each person appointed pursuant to this section shall be
29 a disinterested person and a registered voter of the area in which the contested election was held.
30 Each person so appointed shall take the oath prescribed for and receive the same pay as an

31 election judge in the jurisdiction where the person is registered. After being sworn not to
32 disclose any facts uncovered by the recount, except those which are contained in the report, the
33 contestant and the opponent who received more votes or a person whose position on a question
34 received more votes than the contestant's position on that question shall be permitted to be
35 present in person or represented by an attorney at the recount and to observe the recount. Each
36 recount shall be completed under the supervision of the secretary of state with the assistance of
37 the election authorities involved, and the persons appointed to assist with the recount shall
38 perform such duties as the secretary of state directs. Upon completion of any duties prescribed
39 by the secretary of state the persons appointed to assist with the recount shall make a written and
40 signed report of their findings. The findings of the persons appointed to assist with the recount
41 shall be prima facie evidence of the facts stated therein, but any person present at the
42 examination of the votes may be a witness to contradict the findings. No one other than the
43 secretary of state, the election authorities involved, the contestant and the other witnesses
44 described in this subsection, their attorneys, and those specifically appointed by the secretary of
45 state to assist with the recount shall be present during any recount conducted pursuant to this
46 section.

47 5. For purposes of this section, "recount" means one additional counting of all votes
48 counted for the office or on the question with respect to which the recount is requested.

2 [30.070. When a vacancy occurs in the office of state treasurer, the
3 governor shall immediately appoint a state treasurer to fill such vacancy for the
4 residue of the term in which the vacancy occurred, and until his successor is
5 elected or appointed, commissioned and qualified.]

2 [115.755. A statewide presidential preference primary shall be held on
3 the first Tuesday after the first Monday in February of each presidential election
4 year.]

2 Section B. Because immediate action is necessary to preserve the democratic process in
3 Missouri, this act is deemed necessary for the immediate preservation of the public health,
4 welfare, peace, and safety, and is hereby declared to be an emergency act within the meaning of
the constitution, and this act shall be in full force and effect upon its passage and approval.

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