

Editorial Notes

CODIFICATION

R.S. §25 derived from act Feb. 2, 1872, ch. 11, §3, 17 Stat. 28.

The second sentence of this section, which was based on section 6 of the act Mar. 3, 1875 and made this section inapplicable to any State that had not yet changed its day of election and whose constitution required an amendment to change the day of election of its State officers, was omitted.

AMENDMENTS

1934—Act June 5, 1934, substituted “3d day of January” for “fourth day of March”.

CONSTITUTIONAL PROVISIONS

The first section of Amendment XX to the Constitution provides: “The terms of Senators and Representatives [shall end] at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.”

Time for election of Representatives, see Const. Art. I, §4, cl. 1.

§ 8. Vacancies**(a) In general**

Except as provided in subsection (b), the time for holding elections in any State, District, or Territory for a Representative or Delegate to fill a vacancy, whether such vacancy is caused by a failure to elect at the time prescribed by law, or by the death, resignation, or incapacity of a person elected, may be prescribed by the laws of the several States and Territories respectively.

(b) Special rules in extraordinary circumstances**(1) In general**

In extraordinary circumstances, the executive authority of any State in which a vacancy exists in its representation in the House of Representatives shall issue a writ of election to fill such vacancy by special election.

(2) Timing of special election

A special election held under this subsection to fill a vacancy shall take place not later than 49 days after the Speaker of the House of Representatives announces that the vacancy exists, unless, during the 75-day period which begins on the date of the announcement of the vacancy—

(A) a regularly scheduled general election for the office involved is to be held; or

(B) another special election for the office involved is to be held, pursuant to a writ for a special election issued by the chief executive of the State prior to the date of the announcement of the vacancy.

(3) Nominations by parties

If a special election is to be held under this subsection, the determination of the candidates who will run in such election shall be made—

(A) by nominations made not later than 10 days after the Speaker announces that the vacancy exists by the political parties of the State that are authorized by State law to nominate candidates for the election; or

(B) by any other method the State considers appropriate, including holding pri-

mary elections, that will ensure that the State will hold the special election within the deadline required under paragraph (2).

(4) Extraordinary circumstances**(A) In general**

In this subsection, “extraordinary circumstances” occur when the Speaker of the House of Representatives announces that vacancies in the representation from the States in the House exceed 100.

(B) Judicial review

If any action is brought for declaratory or injunctive relief to challenge an announcement made under subparagraph (A), the following rules shall apply:

(i) Not later than 2 days after the announcement, the action shall be filed in the United States District Court having jurisdiction in the district of the Member of the House of Representatives whose seat has been announced to be vacant and shall be heard by a 3-judge court convened pursuant to section 2284 of title 28.

(ii) A copy of the complaint shall be delivered promptly to the Clerk of the House of Representatives.

(iii) A final decision in the action shall be made within 3 days of the filing of such action and shall not be reviewable.

(iv) The executive authority of the State that contains the district of the Member of the House of Representatives whose seat has been announced to be vacant shall have the right to intervene either in support of or opposition to the position of a party to the case regarding the announcement of such vacancy.

(5) Protecting ability of absent military and overseas voters to participate in special elections**(A) Deadline for transmittal of absentee ballots**

In conducting a special election held under this subsection to fill a vacancy in its representation, the State shall ensure to the greatest extent practicable (including through the use of electronic means) that absentee ballots for the election are transmitted to absent uniformed services voters and overseas voters (as such terms are defined in the Uniformed and Overseas Citizens Absentee Voting Act [52 U.S.C. 20301 et seq.]) not later than 15 days after the Speaker of the House of Representatives announces that the vacancy exists.

(B) Period for ballot transit time

Notwithstanding the deadlines referred to in paragraphs (2) and (3), in the case of an individual who is an absent uniformed services voter or an overseas voter (as such terms are defined in the Uniformed and Overseas Citizens Absentee Voting Act), a State shall accept and process any otherwise valid ballot or other election material from the voter so long as the ballot or other material is received by the appropriate State election official not later than 45 days after the State transmits the ballot or other material to the voter.

(6) Application to District of Columbia and territories

This subsection shall apply—

(A) to a Delegate or Resident Commissioner to the Congress in the same manner as it applies to a Member of the House of Representatives; and

(B) to the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, and the United States Virgin Islands in the same manner as it applies to a State, except that a vacancy in the representation from any such jurisdiction in the House shall not be taken into account by the Speaker in determining whether vacancies in the representation from the States in the House exceed 100 for purposes of paragraph (4)(A).

(7) Rule of construction regarding Federal election laws

Nothing in this subsection may be construed to affect the application to special elections under this subsection of any Federal law governing the administration of elections for Federal office (including any law providing for the enforcement of any such law), including, but not limited to, the following:

(A) The Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.) [now 52 U.S.C. 10301 et seq.], as amended.

(B) The Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee et seq.) [now 52 U.S.C. 20101 et seq.], as amended.

(C) The Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.) [now 52 U.S.C. 20301 et seq.], as amended.

(D) The National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.) [now 52 U.S.C. 20501 et seq.], as amended.

(E) The Americans With Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), as amended.

(F) The Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), as amended.

(G) The Help America Vote Act of 2002 (42 U.S.C. 15301 et seq.) [now 52 U.S.C. 20901 et seq.], as amended.

(R.S. § 26; Pub. L. 109-55, title III, § 301, Aug. 2, 2005, 119 Stat. 588.)

Editorial Notes

REFERENCES IN TEXT

The Uniformed and Overseas Citizens Absentee Voting Act, referred to in subsec. (b)(5), (7)(C), is Pub. L. 99-410, Aug. 28, 1986, 100 Stat. 924, which was formerly classified principally to subchapter I-G (§1973ff et seq.) of chapter 20 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering in Title 52, Voting and Elections, and is now classified principally to chapter 203 (§20301 et seq.) of Title 52. For complete classification of this Act to the Code, see Tables.

The Voting Rights Act of 1965, referred to in subsec. (b)(7)(A), is Pub. L. 89-110, Aug. 6, 1965, 79 Stat. 437, which was formerly classified generally to subchapters I-A (§ 1973 et seq.), I-B (§ 1973aa et seq.), and I-C (§ 1973bb et seq.) of chapter 20 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering in Title 52, Voting and Elections, and is now classified generally to chapters 103 (§ 10301 et seq.), 105 (§ 10501 et seq.), and 107 (§ 10701 et seq.) of Title 52. For

complete classification of this Act to the Code, see Tables.

The Voting Accessibility for the Elderly and Handicapped Act, referred to in subsec. (b)(7)(B), is Pub. L. 98-435, Sept. 28, 1984, 98 Stat. 1678, which was formerly classified generally to subchapter I-F (§ 1973ee et seq.) of chapter 20 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering in Title 52, Voting and Elections, and is now classified generally to chapter 201 (§ 20101 et seq.) of Title 52. For complete classification of this Act to the Code, see Tables.

The National Voter Registration Act of 1993, referred to in subsec. (b)(7)(D), is Pub. L. 103-31, May 20, 1993, 107 Stat. 77, which was formerly classified principally to subchapter I-H (§ 1973gg et seq.) of chapter 20 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering in Title 52, Voting and Elections, and is now classified principally to chapter 205 (§ 20501 et seq.) of Title 52. For complete classification of this Act to the Code, see Tables.

The Americans with Disabilities Act of 1990, referred to in subsec. (b)(7)(E), is Pub. L. 101-336, July 26, 1990, 104 Stat. 327, which is classified principally to chapter 126 (§ 12101 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of Title 42 and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (b)(7)(F), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§ 701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

The Help America Vote Act of 2002, referred to in subsec. (b)(7)(G), is Pub. L. 107-252, Oct. 29, 2002, 116 Stat. 1666, which was formerly classified principally to chapter 146 (§ 15301 et seq.) of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering in Title 52, Voting and Elections, and is now classified principally to chapter 209 (§ 20901 et seq.) of Title 52. For complete classification of this Act to the Code, see Tables.

CODIFICATION

R.S. § 26 derived from act Feb. 2, 1872, ch. 11, § 4, 17 Stat. 28.

AMENDMENTS

2005—Pub. L. 109-55 designated existing provisions as subsec. (a), inserted heading, substituted “Except as provided in subsection (b), the time” for “The time”, and added subsec. (b).

CONSTITUTIONAL PROVISIONS

Vacancies in the House of Representatives, see Const. Art. I, § 2, cl. 4.

§ 9. Voting for Representatives

All votes for Representatives in Congress must be by written or printed ballot, or voting machine the use of which has been duly authorized by the State law; and all votes received or recorded contrary to this section shall be of no effect.

(R.S. § 27; Feb. 14, 1899, ch. 154, 30 Stat. 836.)

Editorial Notes

CODIFICATION

R.S. § 27 derived from acts Feb. 28, 1871, ch. 99, § 19, 16 Stat. 440, and May 30, 1872, ch. 239, 17 Stat. 192.

CHAPTER 2—ORGANIZATION OF CONGRESS

Sec. 21. Oath of Senators.