

US Code

(Unofficial compilation from the Legal Information Institute)

TITLE 2 - THE CONGRESS

CHAPTER 1—ELECTION OF SENATORS AND REPRESENTATIVES

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TITLE 2 THE CONGRESS

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CHAPTER 1—ELECTION OF SENATORS AND REPRESENTATIVES

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§ 1. Time for election of Senators

At the regular election held in any State next preceding the expiration of the term for which any Senator was elected to represent such State in Congress, at which election a Representative to Congress is regularly by law to be chosen, a United States Senator from said State shall be elected by the people thereof for the term commencing on the 3d day of January next thereafter.

(June 4, 1914, ch. 103, § 1, 38 Stat. 384; June 5, 1934, ch. 390, § 3, 48 Stat. 879.)

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 in part: “* * * 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 Senators, see Const. Art. I, § 4, cl. 1.

Vacancies in the Senate, see Const. Amend. XVII.

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§ 1a. Election to be certified by governor

It shall be the duty of the executive of the State from which any Senator has been chosen to certify his election, under the seal of the State, to the President of the Senate of the United States.

(R.S. § 18.)

Codification

R.S. § 18 derived from act July 25, 1866, ch. 245, § 3, 14 Stat. 244.

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§ 1b. Countersignature of certificate of election

The certificate mentioned in section 1a of this title shall be countersigned by the secretary of state of the State.

(R.S. § 19.)

Codification

R.S. § 19 derived from act July 25, 1866, ch. 245, § 3, 14 Stat. 244.

.....

§ 2. Omitted

Codification

Section, act Aug. 8, 1911, ch. 5, §§ 1, 2, 37 Stat. 13, 14, fixed composition of House of Representatives at 435 Members, to be apportioned to the States therein enumerated. For provisions dealing with reapportionment of Representatives and manner of election, etc., see sections 2a and 2b of this title.

.....

§ 2a. Reapportionment of Representatives; time and manner; existing decennial census figures as basis; statement by President; duty of clerk

(a) On the first day, or within one week thereafter, of the first regular session of the Eighty-second Congress and of each fifth Congress thereafter, the President shall transmit to the Congress a statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained under the seventeenth and each subsequent decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions, no State to receive less than one Member.

(b) Each State shall be entitled, in the Eighty-third Congress and in each Congress thereafter until the taking effect of a reapportionment under this section or subsequent statute, to the number of Representatives shown in the statement required by subsection (a) of this section, no State to receive less than one Member. It shall be the duty of the Clerk of the House of Representatives, within fifteen calendar days after the receipt of such statement, to send to the executive of each State a certificate of the number of Representatives to which such State is entitled under this section. In case of a vacancy in the office of Clerk, or of his absence or inability to discharge this duty, then such duty shall devolve upon the Sergeant at Arms of the House of Representatives.

(c) Until a State is redistricted in the manner provided by the law thereof after any apportionment, the Representatives to which such State is entitled under such apportionment shall be elected in the following manner:

- (1) If there is no change in the number of Representatives, they shall be elected from the districts then prescribed by the law of such State, and if any of them are elected from the State at large they shall continue to be so elected;
- (2) if there is an increase in the number of Representatives, such additional Representative or Representatives shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such State;
- (3) if there is a decrease in the number of Representatives but the number of districts in such State is equal to such decreased number of Representatives, they shall be elected from the districts then prescribed by the law of such State;

TITLE 2 - Section 2b - Number of Representatives from each State in 78th and subsequent...

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(4) if there is a decrease in the number of Representatives but the number of districts in such State is less than such number of Representatives, the number of Representatives by which such number of districts is exceeded shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such State; or

(5) if there is a decrease in the number of Representatives and the number of districts in such State exceeds such decreased number of Representatives, they shall be elected from the State at large.

(June 18, 1929, ch. 28, § 22, 46 Stat. 26; Apr. 25, 1940, ch. 152, 54 Stat. 162; Nov. 15, 1941, ch. 470, § 1, 55 Stat. 761; Pub. L. 104–186, title II, § 201, Aug. 20, 1996, 110 Stat. 1724.)

Amendments

1996—Subsec. (b). Pub. L. 104–186 struck out at end “; and in case of vacancies in the offices of both the Clerk and the Sergeant at Arms, or the absence or inability of both to act, such duty shall devolve upon the Doorkeeper of the House of Representatives”.

1941—Act Nov. 15, 1941, provided for reapportionment based on seventeenth and subsequent decennial censuses.

1940—Act Apr. 25, 1940, provided for reapportionment based on sixteenth decennial census.

Termination of Reporting Requirements

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the report required by subsec. (a) of this section is listed on page 17), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

Constitutional Provisions

Apportionment of Representatives among the several States, see Const. Art. I, § 2, cl. 3, and Amend. XIV, § 2.

Temporary Increase in Membership

Representation of States of Alaska and Hawaii in House of Representatives as not affecting basis of apportionment established by this section, see section 9 of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as a note preceding section 21 of Title 48, Territories and Insular Possessions, and section 8 of Pub. L. 86–3, Mar. 18, 1959, 73 Stat. 4, set out as a note preceding section 491 of Title 48.

.....

§ 2b. Number of Representatives from each State in 78th and subsequent Congresses

Each State shall be entitled, in the Seventy-eighth and in each Congress thereafter until the taking effect of a reapportionment under a subsequent statute or section 2a of this title, to the number of Representatives shown in the statement transmitted to the Congress on January 8, 1941, based upon the method known as the method of equal proportions, no State to receive less than one Member.

(Nov. 15, 1941, ch. 470, § 2(a), 55 Stat. 762.)

Certificates to Executives of States

Section 2(b) of act Nov. 15, 1941, required Clerk of House of Representatives, within 15 days of Nov. 15, 1941, to send a new certificate of entitlement of a State to Representatives, if such a certificate had been sent prior to Nov. 15, 1941, under provisions of section 2a of this title.

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§ 2c. Number of Congressional Districts; number of Representatives from each District

In each State entitled in the Ninety-first Congress or in any subsequent Congress thereafter to more than one Representative under an apportionment made pursuant to the provisions of section 2a (a) of this title, there shall be established by law a number of districts equal to the number

of Representatives to which such State is so entitled, and Representatives shall be elected only from districts so established, no district to elect more than one Representative (except that a State which is entitled to more than one Representative and which has in all previous elections elected its Representatives at Large may elect its Representatives at Large to the Ninety-first Congress).

(Pub. L. 90–196, Dec. 14, 1967, 81 Stat. 581.)

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§§ 3, 4. Omitted

Codification

Section 3, act Aug. 8, 1911, ch. 5, § 3, 37 Stat. 14, which related to election by districts, expired by its own limitation on enactment of Reapportionment Act of June 18, 1929, ch. 28, § 22, 46 Stat. 21 (section 2a of this title). It was not restated in act June 18, 1929, providing for reapportionment under Fifteenth Census, and hence it was not applicable thereto. See *Wood v. Broom*, 1932 (53 S. Ct. 1, 287 U.S. 1, 77 L. Ed. 131).

Section 4, act Aug. 8, 1911, ch. 5, § 4, 37 Stat. 14, which related to additional Representatives at large, expired by its own limitation on enactment of Reapportionment Act of June 18, 1929, ch. 28, § 22, 46 Stat. 21 (section 2a of this title). It was not restated in act June 18, 1929, providing for reapportionment under Fifteenth Census, and hence it was not applicable thereto. See *Wood v. Broom*, 1932 (53 S. Ct. 1, 287 U.S. 1, 77 L. Ed. 131).

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§ 5. Nominations for Representatives at large

Candidates for Representative or Representatives to be elected at large in any State shall be nominated in the same manner as candidates for governor, unless otherwise provided by the laws of such State.

(Aug. 8, 1911, ch. 5, § 5, 37 Stat. 14.)

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§ 6. Reduction of representation

Should any State deny or abridge the right of any of the male inhabitants thereof, being twenty-one years of age, and citizens of the United States, to vote at any election named in the amendment to the Constitution, article 14, section 2, except for participation in the rebellion or other crime, the number of Representatives apportioned to such State shall be reduced in the proportion which the number of such male citizens shall have to the whole number of male citizens twenty-one years of age in such State.

(R.S. § 22.)

Codification

R.S. § 22 derived from act Feb. 2, 1872, ch. 11, § 6, 17 Stat. 29.

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§ 7. Time of election

The Tuesday next after the 1st Monday in November, in every even numbered year, is established as the day for the election, in each of the States and Territories of the United States, of Representatives and Delegates to the Congress commencing on the 3d day of January next thereafter.

(R.S. § 25; Mar. 3, 1875, ch. 130, § 6, 18 Stat. 400; June 5, 1934, ch. 390, § 2, 48 Stat. 879.)

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.

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§ 8. Vacancies

(a) In general

Except as provided in subsection (b) of this section, 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 primary 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 [42 U.S.C. 1973ff 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.), as amended.
- (B) The Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee et seq.), as amended.
- (C) The Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.), as amended.
- (D) The National Voter Registration Act of 1993 (42 U.S.C. 1973gg 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.), as amended.

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

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, as amended, which is classified principally to subchapter I–G (§ 1973ff et seq.) of chapter 20 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 1971 of Title 42 and 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, as amended, which is 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. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of Title 42 and 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, as amended, which is classified generally to subchapter I–F (§ 1973ee et seq.) of chapter 20 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 1971 of Title 42 and 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, as amended, which is classified principally to subchapter I–H (§ 1973gg et seq.) of chapter 20 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 1971 of Title 42 and 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, as amended, 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 is classified principally to chapter 146 (§ 15301 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 15301 of Title 42 and 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) of this section, the time” for “The time”, and added subsec. (b).

Constitutional Provisions

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

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§ 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.)

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.