

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 2038**

By Delegates Kimble, Kirby, Phillips, Burkhammer,  
Horst, Martin, C. Pritt, Mazzocchi, Fast and Holstein

[Introduced January 11, 2023; Referred to the  
Committee on Political Subdivisions then the  
Judiciary]

1 A BILL to amend and reenact §3-1A-6 of the Code of West Virginia, 1931, as amended, relating to  
2 requiring the Secretary of State to refer potential election fraud to the Attorney General for  
3 prosecution instead of a county prosecuting attorney.

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

**ARTICLE 1A. STATE ELECTION COMMISSION AND SECRETARY OF STATE.**

**§3-1A-6. Powers and duties of Secretary of State; exercise of powers by appointees.**

1 (a) The Secretary of State shall be the chief election official of the state. Except for those  
2 rules required by the provisions of §3-1A-5 of this code to be promulgated by the commission, the  
3 Secretary of State ~~shall have the authority~~ may, after consultation with the state Election  
4 Commission, of which he or she is a member, ~~to~~ make, amend and rescind such orders and to  
5 promulgate legislative rules, in accordance with ~~the provisions of~~ Chapter 29A of this code, as may  
6 be necessary to standardize and make effective the provisions of this chapter. All election officials,  
7 county commissions, clerks of county commissions, clerks of circuit courts, boards of ballot  
8 commissioners, election commissioners and poll clerks shall abide by any orders that may be  
9 issued and any legislative rules that may be promulgated by the Secretary of State and the  
10 commission.

11 (b) The Secretary of State also ~~shall have authority to~~ may require collection and report of  
12 statistical information and to require other reports by county commissions, clerks of county  
13 commissions and clerks of circuit courts.

14 (c) The Secretary of State shall also advise with election officials; furnish to the election  
15 officials a sufficient number of indexed copies of the current election laws of West Virginia and the  
16 administrative orders and rules issued or promulgated thereunder; investigate the administration  
17 of election laws, frauds and irregularities in any registration or election; report violations of election  
18 laws to the appropriate prosecuting officials; and prepare an annual report.

19 (d) The Secretary of State ~~shall also have the power to~~ may administer oaths and  
20 affirmations, issue subpoenas for the attendance of witnesses, issue subpoena duces tecum to

21 compel the production of books, papers, records, registration records and other evidence and fix  
22 the time and place for hearing any matters relating to the administration and enforcement of this  
23 chapter, or the rules promulgated by the state Election Commission or by the Secretary of State as  
24 the chief election official of the state. In case of disobedience to a subpoena or subpoena duces  
25 tecum, he or she may invoke the aid of any circuit court in requiring the attendance, evidence and  
26 testimony of witnesses and the production of papers, books, records, registration records and  
27 other evidence. In addition, in instances of potential election fraud, the Secretary of State may, if  
28 the county prosecuting attorney has declined to prosecute after a period of review of 60 days, refer  
29 prosecutions to the Attorney General instead of the county prosecuting attorney.

30 (e) (1) The Secretary of State ~~shall also have the power~~ may, after consultation with the  
31 Secretary of the Department of Military Affairs and Public Safety, ~~to~~ implement emergency  
32 procedures and rules to ensure that all eligible voters have the opportunity to cast a valid ballot  
33 and to uphold the integrity of an election in the event of natural disaster as declared by the  
34 Governor of this state, terrorist attack, war or general emergency, if any of which occur during or  
35 immediately preceding an election.

36 (2) For purposes of this subsection, a "general emergency" means circumstances  
37 preventing the casting of ballots in one or more voting precincts. The chief judge of the circuit court  
38 of the county where the casting of ballots is being prevented must declare by order that a general  
39 emergency exists.

40 (f) All powers and duties vested in the Secretary of State pursuant to this article may be  
41 exercised by appointees of the Secretary of State at his or her discretion, but the Secretary of  
42 State ~~shall~~ is ~~be~~ responsible for their acts.

NOTE: The purpose of this bill is to require the Secretary of State to refer potential election fraud to the Attorney General for prosecution instead of a county prosecuting attorney.

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