

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2859

By Delegates Holstein, Foster, Steele, Keaton,

Forsht, Smith, Maynor, and Warner

[Introduced January 20, 2023; Referred to the

Committee on the Judiciary]

1 A BILL to amend and reenact §3-1-45 of the Code of West Virginia, 1931, as amended, relating to
2 legal standing of the West Virginia Legislature in court actions related to unauthorized
3 changes to election laws and rules; identifying the Legislature as a necessary party; and
4 clarifying who may seek mandamus relief.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-45. Court proceedings to compel performance of duties, standing of the West Virginia Legislature, etc.

1 (a) Any officer or person upon whom any duty is imposed by this chapter may be
2 compelled to perform his or her duty by writ of mandamus. The circuit courts, or the judges thereof
3 in vacation, shall have jurisdiction by writ and shall, upon affidavit filed showing a proper case,
4 issue a writ to be returned, heard and determined within fifteen days from the commencement of
5 the proceedings. If a circuit court, or a judge thereof in vacation, shall proceed against any board
6 of canvassers by mandamus, or otherwise, to control, in any manner, the action of the board in the
7 performance of its duties, under the provisions of this article, in any case concerning the election of
8 a member of the House of Delegates, or a state senator, and shall fail to enter a final order in the
9 proceedings, settling all questions presented therein within fifteen days from the commencement
10 of the proceedings, unless delayed by proceedings in the Supreme Court of Appeals, or a judge
11 thereof in vacation, the writ shall be dismissed. The board shall convene within not less than five
12 days thereafter and proceed forthwith to the performance of its duties under the provisions of this
13 article. A mandamus shall lie from the Supreme Court of Appeals, or any one of the judges thereof
14 in vacation, returnable before court, to compel any officer herein to do and perform legally any duty
15 required of him or her. In an election of a member of the House of Delegates and state senator, a
16 writ of certiorari, mandamus or prohibition shall lie from the Supreme Court of Appeals, or a judge
17 thereof in vacation, returnable before the court, to correct any error of law and review and correct
18 the proceedings of any circuit court, or the judge thereof in vacation, or any board of canvassers.

19 When any rule to show cause why a writ of mandamus, prohibition or certiorari is issued by the
20 court, or a judge thereof in vacation, it shall be the duty of the court to convene in special session at
21 the state capital, not later than 10 days from the date of the writ, to hear and determine all matters
22 arising upon the writ. The issues raised in the petition for a writ of mandamus, prohibition or
23 certiorari shall have precedence over all other business pending before the court. The issues
24 before the court shall be determined within five days from the assembling of the court and, in any
25 case, in ample time for the case to be remanded and final action taken by the circuit court and the
26 board of canvassers in order that the board may perform its duty and issue the certificate of
27 election before the second Wednesday in January, then next following. Mandamus and
28 prohibition proceedings under this section may be upon affidavit alone.

29 (b) The West Virginia Legislature shall have legal standing to bring an action against state
30 government officials including, but not limited to, the governor, secretary of state, or any state
31 election official who makes or attempts to make unauthorized changes in state election laws and
32 state rules or to waive such laws or rules including through settlement agreements or consent
33 decrees.

34 (c) The West Virginia Legislature shall be deemed a necessary party in any lawsuit against
35 any state agency, department or state government official, including, but not limited to, the
36 governor, secretary of state, or any state election official, contesting the legality or constitutionality
37 of any election law or regulation or involving any illegal or unauthorized changes or attempted
38 changes to any state election law or regulation.

39 (d) Any individual validly registered to vote in West Virginia may file a writ of mandamus, in
40 accordance with state law governing such writs, against any state or local official who fails to abide
41 by or to enforce a state election law or regulatory requirement. In the case of any contested
42 election occurring in West Virginia, as long as said writ of mandamus is filed within 30 days of the
43 conclusion of tabulation of such votes, it shall be considered timely filed.

NOTE: The purpose of this bill is to recognize legal standing of the West Virginia Legislature in court actions related to unauthorized changes to election laws and rules; identify the Legislature as a necessary party; and clarify who may seek mandamus relief.

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