

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

Senate Bill 644

BY SENATOR CHAPMAN

[Originating in the Committee on the Judiciary;

reported on February 20, 2023]

1 A BILL to amend and reenact §3-7-3, §3-7-6, and §3-7-7 of the Code of West Virginia, 1931, as
2 amended, all relating to contested elections procedure update; changing jurisdiction of
3 election contests for county, district, and municipal elections to the circuit courts; requiring
4 a recount proceeding to be completed before filing certain election contests; providing
5 certain procedural requirements for election contests before circuit courts; providing for
6 appeals of a decision made by a circuit court in an election contest be made to the
7 Supreme Court of Appeals; and granting rule-making authority to the Supreme Court of
8 Appeals regarding election contests before circuit courts.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. CONTESTED ELECTIONS.

§3-7-3. Contests before special court; procedure; enforcement.

1 (a) Where the election of Secretary of State, Auditor, Treasurer, Attorney General,
2 Commissioner of Agriculture, ~~or of a judge~~ a justice of the Supreme Court of Appeals, a judge of
3 the Intermediate Court of Appeals, ~~or a judge~~ of a circuit court, or a judge of a family court is
4 contested, the case shall be heard and decided by a special court constituted as follows:

5 (1) The contestee shall select one, the contestant another, and the Governor a third
6 person, who shall preside in said court; and the three, or any two of them, shall meet at a time
7 and place within the state to be appointed by the Governor, and, being first duly sworn impartially
8 to decide according to law and the truth upon the petition, returns, and evidence to be submitted
9 to them, shall proceed to hear, and determine the case and certify their decision thereon to the
10 Governor. They shall be entitled to \$10 a day each, and the same mileage as members of the
11 Legislature, to be paid out of the treasury of the state, and ~~such the special court is hereby given~~
12 ~~authority to~~ may employ a stenographer at a reasonable compensation, to be also paid out of the
13 treasury of the state.

14 (2) In all hearings or proceedings before ~~such the~~ special court, the evidence of witnesses
15 and the production of documentary evidence may be required at any designated place of hearing

16 by ~~such the~~ special court, or any member thereof;

17 ~~(3) and in case of~~ If there is disobedience to a subpoena or other process of ~~such the~~
18 special court, or any member thereof, ~~such the~~ special court, or any member thereof, or either of
19 the parties to ~~such the~~ contest, may invoke the aid of any circuit court in requiring the evidence
20 and testimony of witnesses and the production of papers, books, and documents. And ~~such the~~
21 circuit court, in case of a refusal to obey the subpoena issued to any person, shall issue an order
22 requiring ~~such that~~ person to appear before ~~such the~~ special court and produce all books and
23 papers, if so ordered, and give evidence touching the matter in question. Any failure to obey ~~such~~
24 the order of the circuit court may be punished by ~~such the~~ court as a contempt thereof. A written
25 record shall be kept of all testimony and other proceedings before ~~such the~~ special court.

26 (4) Either party to ~~such the~~ contest ~~feeling~~ aggrieved by the final decision of ~~such the~~
27 special court may present his or her petition in writing to the Supreme Court of Appeals, or a judge
28 justice thereof in vacation, within 30 days after ~~such the~~ final decision is certified to the Governor,
29 as hereinbefore provided, praying for the suspension, setting aside, or vacation of ~~such the~~ final
30 decision. The applicant shall deliver, or cause to be delivered, a copy of ~~such the~~ petition to the
31 other party to ~~such the~~ contest, or, in case of his or her absence from the state or from his or her
32 usual place of abode, ~~he the applicant~~ shall mail, or cause to be mailed a copy of ~~such the~~ petition
33 addressed to his or her last known post-office address, before presenting the ~~same~~ petition to the
34 court, or the ~~judge~~ justice. The court, or the ~~judge~~ justice, shall fix a time for the hearing on the
35 application, but ~~such the~~ hearing ~~shall~~ may not be held sooner than five days, unless by
36 agreement of the parties, after the presentation of ~~such the~~ petition, and notice of the time and
37 place of ~~such the~~ hearing shall be forthwith delivered to the other party to ~~such the~~ contest, or, in
38 case of absence from the state or from his or her usual place of abode, ~~such the~~ notice may be
39 given by mailing, or causing to be mailed, the ~~same~~ notice, or a copy thereof, addressed to him
40 or her at his or her last known post-office address. If the court, or the ~~judge~~ justice, after ~~such the~~
41 hearing, ~~be is~~ is of the opinion that a suspending order should issue, the court ~~in its~~, or the ~~judge~~

42 justice in his or her, discretion, may suspend ~~such~~ the final decision and may require bond upon
43 such conditions and in such penalty, and impose such terms and conditions upon the petitioner,
44 as are just and reasonable; and the court, or the ~~judge~~ justice, shall fix a time for the final hearing
45 on the application. The hearing of the matter shall take precedence over all other matters before
46 the court. For ~~such~~ the final hearing, and before the day fixed therefor, the special court shall file
47 with the clerk of the Supreme Court of Appeals all papers, documents, testimony, evidence, and
48 records, or certified copies thereof, which were before it at the hearing resulting in the final
49 decision from which the petitioner appeals, together with a copy in writing of its final decision; and,
50 after argument by counsel, the court shall decide the matter in controversy, both as to the law and
51 the evidence, as ~~may seem to~~ it determines to be just and right.

52 (b) The Supreme Court of Appeals ~~is hereby given jurisdiction to~~ shall enforce the
53 provisions of this section by writ of prohibition, mandamus, and certiorari, ~~as may be appropriate~~
54 or other appropriate mechanism.

§3-7-6. County and district contests; notices; time.

1 (a) In all cases of contested elections, the ~~county commission~~ circuit court with jurisdiction
2 over the county or district where the election took place shall be the judge of the election,
3 qualifications, and returns ~~of their own members and of all county, and district, and municipal~~
4 officers. ~~Provided, That a member of the county commission whose election is being contested~~
5 ~~may not participate in judging the election, qualifications and returns~~

6 (b) ~~A person intending to~~ An election contest challenging the election of any person
7 ~~another~~ to any county, ~~or~~ district, or municipal office, including the office of judge of any
8 magistrate, court or including any office that shall hereafter be created to be filled by the voters of
9 the county or of any magisterial or other district therein, shall, within ten ~~seven~~ days after the
10 result of the election is certified, give the contestee notice in writing of such intention and a list of
11 the votes he will dispute, with the objections to each, and of the votes rejected for which he will
12 contend. If the contestant objects to the legality of the election or the qualification of the person

13 ~~returned as elected, the notice shall set forth the facts on which such objection is founded. The~~
14 ~~person whose election is so contested shall, within ten days after receiving such notice, deliver to~~
15 ~~the contestant a like list of the votes he will dispute, with the objections to each, and of the rejected~~
16 ~~votes for which he will contend; and, if he has any objection to the qualification of the contestant,~~
17 ~~he shall specify in writing the facts on which the objection is founded. Each party shall append to~~
18 ~~his notice an affidavit that he verily believes the matters and things set forth to be true. If new~~
19 ~~facts be discovered by either party after he has given notice as aforesaid, he may, within ten days~~
20 ~~after such discovery, give an additional notice to his adversary, with the specifications and affidavit~~
21 ~~prescribed in this section.~~

22 ~~The provisions of this section apply to all elections, including municipal elections, except~~
23 ~~that the governing body of the municipality is the judge of any contest of a municipal election must~~
24 ~~be brought within 10 days after the election result is certified. An election contest shall be filed as~~
25 ~~a civil action in the circuit court with jurisdiction over the county or district where the election took~~
26 ~~place.~~

27 (c) For an election contest challenging specific votes cast, votes rejected, or voters who
28 participated in the election, the recount procedure set forth in §3-6-9 of this code is a prerequisite
29 to the initiation of an election contest and that procedure and any related proceeding must be
30 completed prior to the filing of an election contest on those grounds.

31 (d) For an election contest challenging an elected candidate's eligibility, the legality of the
32 election, or fraud, an election contest civil action can be initiated without the completion of the
33 recount procedure set forth in §3-6-9 of this code.

**§3-7-7. County Circuit court to hear county, and district, and municipal contests;
procedure; review.**

1 (a) The ~~county circuit court~~ circuit court with jurisdiction over the county or district where
2 the election took place shall hear and decide election contests initiated pursuant to the provisions
3 of the preceding section §3-7-6 of this code. Subpoenas for witnesses for either party shall be

4 ~~issued by the clerk of the county court, and served as in other cases, and the witnesses shall be~~
5 ~~entitled to the same allowances and privileges, and be subject to the same penalties, as witnesses~~
6 ~~attending a circuit court in a civil suit. The notice of contest shall be presented to the county court~~
7 ~~at its first term after the same is delivered to the person whose election is contested, and the~~
8 ~~same shall be docketed for trial in such court~~

9 (b) At the trial of such the contest, the circuit court shall hear all such legal and proper
10 evidence that may be brought before it by either party, and may, if deemed considered necessary,
11 require the production of the poll books, certificates, and ballots deposited with its the county clerk
12 or municipal recorder or clerk, and examine the same. The hearing may be continued by the court
13 from time to time, if it be shown that justice and right require it, but not beyond three months from
14 the day of election.

15 (c) A contestant has the burden of proof in an election contest.

16 (d) At the final conclusion of the trial of such the contest, the circuit court shall declare the
17 true result of such election, and cause the same to be entered on the records of the court. When
18 the result of the election is declared, as aforesaid, direct that a certified copy of the order declaring
19 such the result of the contest shall, if required, be delivered by the clerk of the circuit court wherein
20 the contest was held to the person declared elected, if such be the result of the trial, and such
21 copy shall be received in all courts and places as legal evidence of the result of the election therein
22 declared parties. Either the contestant or contestee shall have the right of appeal to the circuit
23 court of the county from the final order or decision of the county court in such proceeding, upon
24 the filing of a bond with good personal security, by the party desiring the appeal, to be approved
25 by the county court, in a sum deemed sufficient by such court, with condition to the effect that the
26 person proposing to appeal will perform and satisfy any judgment which may be rendered against
27 him by the circuit court on such appeal. But such appeal shall not be granted unless the party
28 desiring the appeal shall make application for such appeal, and file such bond, within thirty days
29 from the entering of the final order in such proceeding; and the circuit court may at any time

30 ~~require a new bond or increase the penalty thereof when the court deems it necessary. When~~
31 ~~such appeal is taken to the circuit court, as hereinbefore provided, it shall be heard and~~
32 ~~determined upon the original papers, evidence, depositions and records filed before and~~
33 ~~considered by the county court, and the circuit court shall decide the contest upon the merits.~~
34 ~~From the decision of the circuit court, an~~

35 (e) An appeal of the decision of the circuit court shall lie be to the Supreme Court of
36 Appeals. ~~as in other cases, but such appeal shall be heard upon the original papers and copies~~
37 ~~of all orders made, without requiring the same to be printed~~

38 (f) The Supreme Court of Appeals, exercising the rule-making power granted by §51-1-4
39 of this code, may promulgate rules and regulations consistent with this article governing the
40 pleadings, practice, and procedure to be employed during county, district, and municipal election
41 contests in the courts of this state.