

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5341

By Delegates Rohrbach, T. Clark, Forsht, and Sheedy

[Introduced January 30, 2024; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §3-7-3 of the Code of West Virginia, 1931, as amended, relating to
2 contested election procedure.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. CONTESTED ELECTIONS.

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

1 Where the election of Secretary of State, Auditor, Treasurer, Attorney General,
2 commissioner of agriculture, or of a judge of the Supreme Court of Appeals, or of a circuit court, is
3 contested, the case shall be heard and decided by a special court constituted as follows: The
4 contestee shall select one, the contestant another, and the Governor a third person, who shall
5 preside in said court; and the three, or any two of them, shall meet at a time and place within the
6 state to be appointed by the Governor, and, being first duly sworn impartially to decide according
7 to law and the truth upon the petition, returns and evidence to be submitted to them, shall proceed
8 to hear and determine the case and certify their decision thereon to the Governor. They shall be
9 entitled to \$10 a day each, and the same mileage as members of the Legislature, to be paid out of
10 the treasury of the state, and such special court is hereby given authority to employ a
11 stenographer at a reasonable compensation, to be also paid out of the treasury of the state. In all
12 hearings or proceedings before such special court, the evidence of witnesses and the production
13 of documentary evidence may be required at any designated place of hearing by such special
14 court, or any member thereof; and in case of disobedience to a subpoena or other process of such
15 special court, or any member thereof, such special court, or any member thereof, or either of the
16 parties to such contest, may invoke the aid of any circuit court in requiring the evidence and
17 testimony of witnesses and the production of papers, books and documents. And such circuit
18 court, in case of a refusal to obey the subpoena issued to any person, shall issue an order
19 requiring such person to appear before such special court and produce all books and papers, if so
20 ordered, and give evidence touching the matter in question. Any failure to obey such order of the
21 circuit court may be punished by such court as a contempt thereof. A written record shall be kept of

22 all testimony and other proceedings before such special court.

23 Either party to such contest feeling aggrieved by the final decision of such special court
24 may present his or her petition in writing to the Supreme Court of Appeals, or a judge thereof in
25 vacation, within thirty days after such final decision is certified to the Governor, as hereinbefore
26 provided, praying for the suspension, setting aside, or vacation of such final decision. The
27 applicant shall deliver, or cause to be delivered, a copy of such petition to the other party to such
28 contest, or, in case of his or her absence from the state or from his or her usual place of abode, ~~he~~
29 the applicant shall mail, or cause to be mailed a copy of such petition addressed to his or her last
30 known post-office address, before presenting the same to the court, or the judge. The court, or the
31 judge, shall fix a time for the hearing on the application, but such hearing shall not be held sooner
32 than five days, unless by agreement of the parties, after the presentation of such petition, and
33 notice of the time and place of such hearing shall be forthwith delivered to the other party to such
34 contest, or, in case of absence from the state or from his or her usual place of abode, such notice
35 may be given by mailing, or causing to be mailed, the same, or a copy thereof, addressed to him or
36 her at his or her last known post-office address. If the court, or the judge, after such hearing, be of
37 the opinion that a suspending order should issue, the court in its, or the judge in his or her,
38 discretion, may suspend such final decision and may require bond upon such conditions and in
39 such penalty, and impose such terms and conditions upon the petitioner, as are just and
40 reasonable; and the court, or the judge, shall fix a time for the final hearing on the application. ~~The~~
41 ~~hearing of the matter shall take precedence over all other matters before the court~~ For such final
42 hearing, and before the day fixed therefor, the special court shall file with the clerk of the Supreme
43 Court of Appeals all papers, documents, testimony, evidence, and records, or certified copies
44 thereof, which were before it at the hearing resulting in the final decision from which the petitioner
45 appeals, together with a copy in writing of its final decision. ~~and, after argument by counsel~~ After
46 argument by counsel, if the Supreme Court of Appeals deems such argument to be necessary, the
47 court shall decide the matter in controversy, both as to the law and the evidence, ~~as may seem to it~~

48 as it determines to be just and right. The Supreme Court of Appeals is hereby given jurisdiction to
49 enforce the provisions of this section by writ of prohibition, mandamus and certiorari, as may be
50 appropriate.

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NOTE: The purpose of this bill is to clarify that the Supreme Court of Appeals, consistent with the Rules of Appellate Procedure, maintains the discretionary power to waive oral argument by counsel during a contested election.

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