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]

A BILL to amend and reenact §3-7-3 of the Code of West Virginia, 1931, as amended, relating to
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.
Where the elec	tion of Secre	etary of S	tate, Auditor,	Treasurer,	Attorney General,
2 commissioner of agriculture, or of a judge of the Supreme Court of Appeals, or of a circuit court, is					
contested, the case sha	l be heard an	d decided	by a special c	ourt constitu	ted as follows: The
4 contestee shall select one, the contestant another, and the Governor a third person, who shall					
preside in said court; and	I the three, or	any two of t	them, shall me	et at a time a	and place within the
6 state to be appointed by the Governor, and, being first duly sworn impartially to decide according					
to law and the truth upon	the petition, re	turns and e	vidence to be	submitted to	them, shall proceed
to hear and determine th	e case and ce	ertify their de	ecision thereo	n to the Gove	ernor. They shall be
entitled to \$10 a day each	n, and the sam	e mileage a	as members of	the Legislatu	ure, to be paid out of
the treasury of the sta	te, and such	special co	ourt is hereby	y given autl	nority to employ a
stenographer at a reason	able compens	ation, to be	also paid out	of the treasu	ry of the state. In all
hearings or proceedings	before such sp	pecial court	, the evidence	of witnesses	and the production
of documentary evidence	e may be requ	uired at any	/ designated p	lace of hear	ing by such special
court, or any member the	reof; and in ca	se of disobe	edience to a su	lbpoena or of	ther process of such
special court, or any mer	nber thereof, s	such specia	l court, or any	member the	reof, or either of the
parties to such contest,	may invoke tl	he aid of a	ny circuit cour	t in requiring	g the evidence and
testimony of witnesses a	and the produ	ction of pa	pers, books ai	nd documen	ts. And such circuit
court, in case of a refus	al to obey th	e subpoena	a issued to ar	ny person, s	hall issue an order
requiring such person to	appear before	such specia	al court and pro	oduce all boo	oks and papers, if so
ordered, and give eviden	ce touching th	e matter in	question. Any	failure to ob	ey such order of the
circuit court may be punis	hed by such c	ourt as a co	ntempt thereof	f. A written re	cord shall be kept of
	§3-7-3. Contests Where the elect commissioner of agricultur contested, the case shall contestee shall select or preside in said court; and state to be appointed by to law and the truth upon to hear and determine the entitled to \$10 a day each the treasury of the stat stenographer at a reason hearings or proceedings of documentary evidence court, or any member the special court, or any mer parties to such contest, testimony of witnesses a court, in case of a refus	§3-7-3. Contests before Where the election of Secret commissioner of agriculture, or of a judg contested, the case shall be heard and contestee shall select one, the contest preside in said court; and the three, or state to be appointed by the Governor, to law and the truth upon the petition, re- to hear and determine the case and ce entitled to \$10 a day each, and the same the treasury of the state, and such stenographer at a reasonable compense hearings or proceedings before such sp of documentary evidence may be require court, or any member thereof; and in car special court, or any member thereof, and testimony of witnesses and the product court, in case of a refusal to obey the requiring such person to appear before ordered, and give evidence touching the	§3-7-3. Contests before special Where the election of Secretary of S commissioner of agriculture, or of a judge of the Su contested, the case shall be heard and decided contestee shall select one, the contestant another preside in said court; and the three, or any two of a state to be appointed by the Governor, and, being to law and the truth upon the petition, returns and e to hear and determine the case and certify their determine the case and certify their determines and the treasury of the state, and such special court of documentary evidence may be required at any court, or any member thereof; and in case of disober special court, or any member thereof, such special parties to such contest, may invoke the aid of a testimony of witnesses and the production of particourt, in case of a refusal to obey the subpoend requiring such person to appear before such special court or any give evidence touching the matter in	§3-7-3. Contests before special court; Where the election of Secretary of State, Auditor, commissioner of agriculture, or of a judge of the Supreme Court of contested, the case shall be heard and decided by a special of contestee shall select one, the contestant another, and the Gov preside in said court; and the three, or any two of them, shall me state to be appointed by the Governor, and, being first duly swort to law and the truth upon the petition, returns and evidence to be to hear and determine the case and certify their decision thereor entitled to \$10 a day each, and the same mileage as members of the treasury of the state, and such special court is hereby stenographer at a reasonable compensation, to be also paid out hearings or proceedings before such special court, the evidence of documentary evidence may be required at any designated product, or any member thereof, such special court, or any parties to such contest, may invoke the aid of any circuit court testimony of witnesses and the production of papers, books are court, in case of a refusal to obey the subpoena issued to an requiring such person to appear before such special court and production of papers, books are court, in case of a refusal to obey the subpoena issued to an requiring such person to appear before such special court and production. Any	§3-7-3. Contests before special court; procedure; Where the election of Secretary of State, Auditor, Treasurer, commissioner of agriculture, or of a judge of the Supreme Court of Appeals, of contested, the case shall be heard and decided by a special court constitut contestee shall select one, the contestant another, and the Governor a third preside in said court; and the three, or any two of them, shall meet at a time a

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22

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

all testimony and other proceedings before such special court.

2

- 48 <u>as it determines</u> 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.
- 1

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.