

# **WEST VIRGINIA LEGISLATURE**

**2024 REGULAR SESSION**

**ENGROSSED**

**Committee Substitute**

**for**

**House Bill 4205**

By Delegate Holstein

[Originating in the Committee on the Judiciary;

Reported January 24, 2024]



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; and identifying the Legislature as a necessary party.

*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 at its discretion shall have legal standing to intervene as a  
35 matter of right as a real party in interest in any lawsuit including but not limited to those seeking  
36 declaratory or injunctive relief by or against any state agency, department or state government  
37 official, including, but not limited to, the governor, secretary of state, or any state election official,  
38 regarding the legality or constitutionality of any election law or regulation or involving any illegal or  
39 unauthorized changes or attempted changes to any state election law or regulation.