

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Enrolled

Senate Bill 166

By Senators Chapman, Deeds, Hunt, Oliverio,
Roberts, Rucker, Swope, Tarr, Woodrum, and Stuart

[Passed March 7, 2024; to take effect January 1,
2025]

1 AN ACT 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, a justice of the Supreme Court of Appeals, a judge of the
3 Intermediate Court of Appeals, a judge of a circuit court, or a judge of a family court is contested,
4 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 and
7 place within the state to be appointed by the Governor, and, being first duly sworn impartially to
8 decide according to law and the truth upon the petition, returns, and evidence to be submitted to
9 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 the special court may employ a
12 stenographer at a reasonable compensation, to be also paid out of the treasury of the state.

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

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

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

42 shall fix a time for the final hearing on the application. The hearing of the matter shall take
43 precedence over all other matters before the court. For the final hearing, and before the day fixed
44 therefor, the special court shall file with the clerk of the Supreme Court of Appeals all papers,
45 documents, testimony, evidence, and records, or certified copies thereof, which were before it at
46 the hearing resulting in the final decision from which the petitioner appeals, together with a copy in
47 writing of its final decision; and, after argument by counsel, the court shall decide the matter in
48 controversy, both as to the law and the evidence, as it determines to be just and right.

49 (b) The Supreme Court of Appeals shall enforce the provisions of this section by writ of
50 prohibition, mandamus, certiorari or other appropriate mechanism.

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

1 (a) In all cases of contested elections, the circuit court with jurisdiction over the county or
2 district where the election took place shall be the judge of the election, qualifications, and returns
3 of all county, district, and municipal officers.

4 (b) An election contest challenging the election of any person to any county, district, or
5 municipal office, including the office of magistrate, must be brought within 10 days after the
6 election result is certified. An election contest shall be filed as a civil action in the circuit court with
7 jurisdiction over the county or district where the election took place.

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

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

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

1 (a) The circuit court with jurisdiction over the county or district where the election took place

2 shall hear and decide election contests initiated pursuant to §3-7-6 of this code.

3 (b) At the trial of the contest, the circuit court shall hear all legal and proper evidence that
4 may be brought before it by either party, and may, if considered necessary, require the production
5 of the poll books, certificates, and ballots deposited with the county clerk or municipal recorder or
6 clerk, and examine the same.

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

8 (d) At the conclusion of the trial of the contest, the circuit court shall direct that a certified
9 copy of the order declaring the result of the contest shall be delivered by the clerk of the circuit
10 court wherein the contest was held to the parties.

11 (e) An appeal of the decision of the circuit court shall be to the Supreme Court of Appeals.

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