

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 344

BY SENATORS COLE (MR. PRESIDENT), HALL, KESSLER

AND TRUMP

[Introduced January 21, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend and reenact §4-5-1, §4-5-2, §4-5-3, §4-5-4, §4-5-5 and §4-5-6 of the Code of
2 West Virginia, 1931, as amended; and to amend said code by adding thereto a new
3 section, designated §4-5-7, all relating to Commission on Special Investigations; clarifying
4 composition and chairmanship of commission; redefining what constitutes a quorum for
5 voting procedures of commission; clarifying contents of commission's annual report; listing
6 existing and necessary commission staff positions; defining an agency's duty to cooperate
7 with commission during investigations and requiring agencies to disclose information and
8 documents to commission; establishing requirements for commission to enter into
9 executive session; establishing procedures for conducting executive session; removing
10 requirement that Joint Committee on Government and Finance approve expenses of
11 commission; establishing procedure for commission retention and disposal of records;
12 defining new felony offense of making false statement to commission; setting penalties for
13 making false statement to commission; defining new felony offense of impersonating a
14 commission member or staff member; and setting penalties for impersonating a
15 commission member or staff member.

Be it enacted by the Legislature of West Virginia:

1 That §4-5-1, §4-5-2, §4-5-3, §4-5-4, §4-5-5 and §4-5-6 of the Code of West Virginia, 1931,
2 as amended, be amended and reenacted; and that said code be amended by adding thereto a
3 new section, designated §4-5-7, all to read as follows:

ARTICLE 5. COMMISSION ON SPECIAL INVESTIGATIONS.

**§4-5-1. Commission continued as "Commission on Special Investigations"; composition;
appointment and terms of members.**

1 The purchasing practices and procedures commission, heretofore created, shall continue
2 in existence but on and after the effective date of this section shall be named and designated the
3 "Commission on Special Investigations." The commission shall continue to be composed of five
4 the President of the Senate and four members of the Senate, to be appointed by the president

5 thereof, no more than ~~three~~ two of whom shall be from the same political party; and ~~five~~ the
 6 Speaker of the House of Delegates and four members of the House of Delegates, to be appointed
 7 by the speaker thereof, no more than ~~three~~ two of whom shall be appointed from the same political
 8 party: *Provided*, That in the event the membership of a political party is less than fifteen percent
 9 in the House of Delegates or Senate, then the membership of that political party from the
 10 legislative house with less than fifteen percent membership may be one from that house. The
 11 commission shall be headed chaired by ~~two cochairmen, one to be selected by and from the~~
 12 ~~members appointed from the Senate, and one to be selected by and from the members appointed~~
 13 ~~from the House of Delegates~~ the President of the Senate and the Speaker of the House of
 14 Delegates. All members ~~of the commission shall~~ appointed to the commission by the commission
 15 chairs, serve until their successors ~~shall have been~~ are appointed as ~~heretofore~~ provided in this
 16 section.

§4-5-2. Powers and duties generally.

1 (a) The Commission on Special Investigations shall have the power, duty and
 2 responsibility, upon a ~~majority~~ vote by a quorum of the members appointed, with a quorum
 3 consisting of a majority of the total authorized membership of the commission, to:

4 (1) Conduct a comprehensive and detailed investigation into the purchasing practices and
 5 procedures of the state;

6 (2) Determine if there is reason to believe that the laws or public policy of the state in
 7 connection with purchasing practices and procedures have been violated or are inadequate;

8 (3) Determine if any criminal or civil statutes relating to the purchasing practices and
 9 procedures in this state are necessary to protect and control the expenditures of money by the
 10 state;

11 (4) Investigate or examine any matter involving conflicts of interest, bribery of state
 12 officials, malfeasance, misfeasance or nonfeasance in office by any employee or officer of the
 13 state;

14 (5) Conduct comprehensive and detailed investigations to determine if any criminal or civil
15 statutes have been violated at any level of state government;

16 (6) Determine whether to recommend criminal prosecution or civil action for any violation,
17 either criminal or civil, at any level of state government and, if it is determined that action is
18 necessary, to make appropriate recommendation to the Attorney General, prosecuting attorney
19 or other authority empowered to act on such recommendation; and

20 (7) Make such written reports to the members of the Legislature between sessions thereof
21 as the commission may deem advisable and on the first day of each regular session of the
22 Legislature make an annual report of Commission activities to the Legislature containing the
23 ~~commission's findings and recommendations including in such report drafts of~~ for any proposed
24 legislation which it deems necessary to carry such recommendations into effect.

25 (b) The commission is also expressly empowered and authorized to:

26 (1) Sit during any recess of the Senate and House of Delegates;

27 (2) Recommend to the judge of any circuit court that a grand jury be convened pursuant
28 to the provisions of section fourteen, article two, chapter fifty-two of this code, to consider any
29 matter which the commission may deem in the public interest and, in support thereof, make
30 available to such court and such grand jury the contents of any reports, files, transcripts of
31 hearings or other evidence pertinent thereto;

32 (3) Employ such legal, technical, investigative, clerical, stenographic, advisory and other
33 personnel as it deems needed and, within the appropriation herein specified, fix reasonable
34 compensation of such persons and firms as may be employed. The Commission's investigative
35 staff shall consist of a director, deputy director, senior investigators and investigators, as approved
36 by the cochairs. *Provided*, That such personnel as the commission may determine shall have the
37 authority to administer oaths and take affidavits and depositions anywhere in the state;

38 (4) Consult and confer with all persons and agencies, public (whether federal, state or
39 local) and private, that have information and data pertinent to an investigation; and all state and

40 local governmental personnel and agencies shall cooperate to the fullest extent with the
41 commission. For the purposes of this subdivision the term “cooperate” includes the disclosure
42 and production to the commission or commission staff of any documents, reports or other items
43 in the possession of the person, agency of the state or local government upon the commission’s
44 request to assist it in its investigation, notwithstanding any provision of law that imposes an
45 obligation of confidentiality or secrecy, other than the provisions of Rule 6(e) of the West Virginia
46 Rules Of Criminal Procedure or matters relating to a person's attorney-client privilege. For the
47 purposes of carrying out its responsibilities under this chapter, the commission investigative staff
48 shall be deemed a criminal justice agency under all federal and state laws and regulations and
49 as such shall have access to any information that is available to other criminal justice agencies;

50 (5) Call upon any department or agency of state or local government for such services,
51 information and assistance as it may deem advisable; and

52 (6) Refer such matters as are appropriate to the office of the United States attorney and
53 cooperate with such office in the disposition of matters so referred.

54 (c) Notwithstanding any provision of this code to the contrary, specific personnel may be
55 designated by the commission to carry a firearm in the course of performing his or her official
56 duties: *Provided*, That as a precondition of being authorized to carry a concealed weapon in the
57 course of their official duties, any such designated personnel must have first successfully
58 completed a firearms training and certification program which is equivalent to that which is
59 required of members of the State Police. The designated persons must also possess a license to
60 carry a concealed deadly weapon in the manner prescribed in article seven, chapter sixty-one of
61 this code.

§4-5-3. Executive sessions; hearings; subpoena power; enforcement provisions.

1 The commission shall have the power and authority to hold executive sessions for the
2 purpose of establishing business, establishing policy, ~~an agenda and the interrogation of~~
3 reviewing investigations and interrogating a witness or witnesses: *Provided*, That if a witness

4 desires a public or open hearing ~~he~~ the witness shall have the right to demand the same and shall
 5 not be heard otherwise: *Provided, however,* That if a witness desires a hearing in an executive
 6 session, ~~he~~ the witness shall have the right to demand the same and shall not be heard otherwise.
 7 ~~However,~~ Members of the staff of the commission may be permitted to attend executive sessions
 8 with permission of the commission chairs: *Provided, That for the purpose of entering into*
 9 *executive session, a quorum vote of the commission is required.*

10 The commission is hereby empowered and authorized to examine witnesses and to
 11 subpoena such persons and books, records, documents, papers or any other tangible things as
 12 it believes should be examined to make a complete investigation. All witnesses appearing before
 13 the commission shall testify under oath or affirmation, and any member of the commission or
 14 member of the commission staff may administer oaths or affirmations to such witnesses. To
 15 compel the attendance of witnesses at such hearings or the production of any books, records,
 16 documents, papers or any other tangible thing, in any form they may exist, the commission is
 17 hereby empowered and authorized to issue subpoenas, signed by one of the ~~cochairmen~~ cochairs
 18 in accordance with section five, article one, chapter four of this code. Such subpoenas shall be
 19 served by any person authorized by law to serve and execute legal process and service shall be
 20 made without charge. Witnesses subpoenaed to attend hearings shall be allowed the same
 21 mileage and per diem as is allowed witnesses before any petit jury in this state.

22 If any person subpoenaed to appear at any hearing shall refuse to appear or to answer
 23 inquiries there propounded, or shall fail or refuse to produce books, records, documents, papers
 24 or any other tangible thing within his or her control when the same are demanded, the commission
 25 shall report the facts to the circuit court of Kanawha county or any other court of competent
 26 jurisdiction and such court may compel obedience to the subpoena as though such subpoena
 27 had been issued by such court in the first instance.

**§4-5-4. Compensation and expenses of members; other expenses; how paid. ~~joint~~
~~committee approval.~~**

1 The members of the commission shall receive travel, interim and out-of-state expenses,
2 as authorized in sections six, eight and nine, article two-a, chapter four of this code. Such
3 expenses and all other expenses including those incurred in the employment of legal, technical,
4 investigative, clerical, stenographic, advisory and other personnel shall be paid from the
5 appropriation under "Account No. 103 for Joint Expenses." ~~but no expense of any kind whatever~~
6 ~~shall be incurred unless the approval of the Joint Committee on Government and Finance therefor~~
7 ~~is first had and obtained by the commission.~~

**§4-5-5. Investigations exempt from public disclosure requirements; retention and disposal
of Commission records.**

1 (a) The investigations conducted by the commission and the materials placed in the files
2 of the commission as a result of any such investigation are exempt from public disclosure under
3 the provisions of chapter twenty-nine-b of this code.

4 (b) Notwithstanding any other provision of this code, printed materials placed in the files
5 of the commission may be disposed of upon a vote of the commission: *Provided*, That copies of
6 materials placed in the commission files on or after January 1, 2010, shall be saved in electronic
7 form prior to disposal.

§4-5-6. False statements to commission; felony.

1 (a) A person is guilty of making a false statement to the Commission on Special
2 Investigations when:

3 (1) Such person, with the intent to impede the commission or to impede an investigator of
4 the commission acting in the lawful exercise of his or her official duties, knowingly and willfully
5 makes any false, fictitious or fraudulent statement or representation, or makes or uses any false
6 writing or document knowing the same to contain any false, fictitious or fraudulent statement or
7 entry;

8 (2) Such statement, representation, writing or document is made or given to the
9 commission or an investigator of the commission acting in the lawful exercise of his or her official

10 duties; and

11 (3) The misrepresentation is material.

12 (b) The provisions of subsection (a) of this section are not applicable to a person in the
 13 relation of husband and wife, parent or grandparent, child or grandchild, brother or sister, by
 14 consanguinity or affinity, of an individual who is the subject of an investigation by the commission.

15 (c) Any person who violates the provisions of this section is guilty of a ~~misdemeanor~~ felony,
 16 and, upon conviction thereof, shall be committed to the custody of the Division of Corrections for
 17 not less than one and not more than five years, or fined not less than ~~\$100~~ \$1,000 nor more than
 18 ~~\$1,000 or confined in jail for not more than one year,~~ \$5,000 or both, in the discretion of the circuit
 19 court.

§4-5-7. Impersonation of commission member or staff; felony.

1 (a) A person is guilty of impersonating a Commission on Special Investigations member
 2 or staff if he or she does one of the following:

3 (1) Falsely represents him or herself to be a member or staff member of the commission;

4 (2) Falsely represents him or herself to be under the order or direction of the commission
 5 or commission staff; or

6 (3) Falsely presents a badge, credentials, other insignia, or likeness thereof, used by the
 7 commission for identification as a commission member or staff.

8 (b) Any person who violates the provisions of this section is guilty of a felony. Upon
 9 conviction for impersonating a commission member or staff, a person will be committed to the
 10 custody of the Division of Corrections for not less than one and not more than five years, or fined
 11 not more than \$5,000, or both, in the discretion of the circuit court.

NOTE: The purpose of this bill is to clarify the composition and chairmanship of the Commission on Special Investigations; redefine what constitutes a quorum for the voting procedures of the commission; clarify the contents of the commission’s annual report; list the existing and necessary commission staff positions; define an agency’s duty to cooperate with the commission during investigations and requiring agencies to disclose

information and documents to commission; establish the requirements for the commission to enter into executive session; establish procedures for conducting executive session; remove the requirement that the Joint Committee on Government and Finance approve expenses of the commission; establish a procedure for commission retention and disposal of records; define a new felony offense of making a false statement to the commission; set penalties for making a false statement to the commission; define a new felony offense of impersonating a commission member or staff member; and set penalties for impersonating a commission member or staff member.

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