

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 292**

BY SENATORS WOELFEL AND TRUMP

[Originating in the Committee on the Judiciary;

reported on January 19, 2018]

1 A BILL to amend and reenact §4-5-1, §4-5-2, §4-5-3, §4-5-4, and §4-5-5 of the Code of West  
2 Virginia, 1931, as amended; and to amend said code by adding thereto two new sections,  
3 designated §4-5-7 and §4-5-8, all relating to the Commission on Special Investigations;  
4 continuing the commission; clarifying composition and chairmanship of the commission;  
5 redefining what constitutes a quorum for voting procedures of the commission; clarifying  
6 contents of the commission's annual report; listing existing and necessary commission  
7 staff positions; granting power to conduct interviews and request production from agencies  
8 of the state and its political subdivisions of books, records, documents, papers, or any  
9 other tangible thing, computers, laptops, computer hard drives, electronic records  
10 including, but not limited to, emails, files, documents and metadata, or any other thing, in  
11 any form in which they may exist; requiring compliance with such requests; authorizing  
12 the director to issue subpoenas on the commission's behalf; granting authority to the  
13 commission to require an agency head to appear before the commission to answer  
14 questions regarding a failure to appear or produce requested or subpoenaed material or  
15 other related concerns including the basis for the failure to comply; authorizing the  
16 commission and director to order or direct that all or a portion of the information  
17 communicated to the commission at the commission's request, including the existence of  
18 the investigation, be confidential and not made public; establishing requirements for the  
19 commission to enter into executive session; establishing procedures for conducting  
20 executive session; removing requirement that Joint Committee on Government and  
21 Finance approve expenses of the commission; establishing procedure for the  
22 commission's retention and disposal of records; establishing new offenses of  
23 impersonating a commission member or staff member and of threatening or otherwise  
24 obstructing a commission member or staff; establishing penalties; allowing the  
25 commission to award duty weapons to certain members on retirement; exempting the  
26 commission from the jurisdiction of the agency for surplus property within the Purchasing

27 Division of the Department of Administration with respect to the disposal of the  
28 commission's primary and secondary duty weapons; and authorizing sale of surplus  
29 weapons to active and retired members of the commission's investigative staff.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 5. COMMISSION ON SPECIAL INVESTIGATIONS.**

**§4-5-1. ~~Commission continued as~~ Commission on Special Investigations continued;  
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 is continued. The commission shall ~~continue to be~~  
4 composed of ~~five~~ the President of the Senate and four members of the Senate, to be appointed  
5 by the ~~president thereof~~ President of the Senate, no more than ~~three~~ two of whom shall be from  
6 the same political party; and ~~five~~ the Speaker of the House of Delegates and four members of the  
7 House of Delegates, to be appointed by the ~~speaker~~ Speaker of the House of Delegates thereof,  
8 no more than ~~three~~ two of whom shall be appointed from the same political party: *Provided*, That  
9 in the event the membership of a political party is less than 15 percent in the Senate or the House  
10 of Delegates, then the membership of that political party from the legislative house with less than  
11 15 percent membership may be one from that house. The commission shall be ~~headed~~ chaired  
12 by ~~two co-chairmen, one to be selected by and from the members appointed from the Senate,~~  
13 ~~and one to be selected by and from the members appointed from the House of Delegates~~ the  
14 President of the Senate and the Speaker of the House of Delegates. All members ~~of the~~  
15 ~~commission shall~~ appointed to the commission by the commission chairs serve until their  
16 successors ~~shall have been~~ are appointed as ~~heretofore provided in this section.~~

**§4-5-2. Powers and duties generally.**

1 (a) The Commission on Special Investigations ~~shall have the power, duty and~~  
2 ~~responsibility~~ may, upon a by majority vote: ~~of the members appointed, to~~

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

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

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

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

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

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

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

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

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 §52-2-14 of this code to consider any matter which the commission ~~may deem~~

29 considers in the public interest and, in support thereof, make available to ~~such~~ the court and ~~such~~  
30 the grand jury the contents of any reports, files, transcripts of hearings, or other evidence pertinent  
31 ~~thereto~~ to the matter;

32 (3) Employ ~~such~~ necessary legal, technical, investigative, clerical, stenographic, advisory,  
33 and other personnel ~~as it deems needed~~ and, within the appropriation ~~herein~~ specified in §4-5-4  
34 of this code, fix reasonable compensation of ~~such~~ any persons and firms ~~as may be~~ that are  
35 employed. The commission's investigative staff may consist of a director, deputy director, senior  
36 investigators, and investigators as approved by the cochairs; *Provided*, That ~~such personnel as~~  
37 the commission may ~~determine shall have the authority~~ authorize certain personnel to administer  
38 oaths and take affidavits and depositions anywhere in the state;

39 (4) Consult and confer with all public and private persons and agencies, ~~public (whether~~  
40 ~~federal, state or local) and private~~ including federal and state agencies and state political  
41 subdivisions, that have information and data pertinent to an investigation; and all state ~~and local~~  
42 ~~governmental personnel and agencies~~ and state political subdivisions shall cooperate to the  
43 fullest extent with the commission;

44 (5) Call upon any department or agency of state ~~or local~~ government or state political  
45 subdivision for ~~such~~ any services, information, and assistance ~~as it may deem~~ it considers  
46 advisable; and

47 (6) Refer ~~such~~ appropriate matters ~~as are appropriate~~ to the office of the United States  
48 ~~attorney~~ Attorney, or other appropriate state or federal law-enforcement entity, and cooperate with  
49 such office in the disposition of matters so referred;

50 (7) Interview witnesses and require production from state agencies and subdivisions of  
51 the state of books, records, documents, papers, computers, laptops, computer hard drives,  
52 electronic records including, but not limited to, emails, electronic files, electronic documents and  
53 metadata, or any other thing, in any form in which it may exist, as the commission believes should  
54 be examined to make a complete investigation: *Provided*, That a request for production pursuant

55 to this subdivision may be in the form of a written letter from the director of the commission in lieu  
56 of a subpoena; and

57 (8) Make a finding that there is a reasonable likelihood that the dissemination of  
58 information in connection with a pending investigation will interfere with the investigation, or  
59 otherwise prejudice the due administration of justice, and may order or direct that all or a portion  
60 of the information communicated to the commission at the commission's request, including the  
61 existence of the investigation, be confidential and not made public and the person or agency  
62 providing the information shall be bound to such confidentiality until further order or direction of  
63 the commission: *Provided*, That the director may make such order or direction of confidentiality  
64 on behalf of the commission: *Provided, however*, That a person or agency under such  
65 confidentiality order or direction of the director or commission may request a hearing before the  
66 commission to void or limit such confidentiality.

67 (c) Notwithstanding any provision of this code to the contrary, specific personnel may be  
68 designated by the commission to carry a firearm in the course of performing his or her official  
69 duties: *Provided*, That as a precondition of being authorized to carry a concealed weapon in the  
70 course of their official duties, any ~~such~~ designated personnel ~~must have~~ shall first successfully  
71 ~~completed~~ complete a firearms training and certification program which is equivalent to that which  
72 is required of members of the West Virginia State Police. The designated persons ~~must~~ shall also  
73 possess a license to carry a concealed deadly weapon in the manner prescribed in §61-7-1 *et*  
74 *seq.* of this code.

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

1 (a) By majority vote, The ~~the~~ commission shall have the power and authority to ~~may~~ hold  
2 executive sessions for the purpose of establishing business, establishing policy, ~~an agenda and~~  
3 ~~the interrogation of~~ reviewing investigations, and interrogating a witness or witnesses: *Provided*,  
4 That if a witness desires a public or open hearing, ~~he~~ the witness ~~shall have the right to~~ may  
5 demand ~~the same~~ one and shall not be heard otherwise: *Provided, however*, That if a witness

6 desires a hearing in an executive session, ~~he shall have the right to~~ the witness may demand the  
7 ~~same one~~ and shall not be heard otherwise. ~~However,~~ Members of the staff of the commission  
8 may be permitted to attend executive sessions with permission of the commission chairs.

9 (b) ~~The commission is hereby empowered and authorized to~~ may examine witnesses and  
10 ~~to subpoena such~~ any persons and ~~books, records, documents, papers or any other tangible~~  
11 ~~things as~~ computers, laptops, computer hard drives, electronic records, including emails,  
12 electronic files, electronic documents and metadata, or any other thing, in any form in which it  
13 may exist, it believes should be examined to make a complete investigation. All witnesses  
14 appearing before the commission shall testify under oath or affirmation, and any member of the  
15 commission or member of the commission staff may administer oaths or affirmations to ~~such the~~  
16 witnesses. To compel ~~the attendance of~~ witnesses at such hearings to attend a hearing or ~~the~~  
17 ~~production of~~ produce any books, records, documents, or papers, ~~or any other tangible thing~~ the  
18 ~~commission is hereby empowered and authorized to~~ may issue subpoenas, signed by one of the  
19 ~~co-chairmen~~ cochairs, in accordance with §4-1-5 of this code: Provided, That the commission  
20 may specifically authorize, or delegate such power to, its director to issue subpoenas on its behalf.  
21 ~~Such~~ The subpoenas shall be served by any person authorized by law to serve and execute legal  
22 process, and service shall be made without charge. Witnesses subpoenaed to attend hearings  
23 shall be allowed the same mileage and per diem as is allowed witnesses before any petit jury in  
24 this state.

25 (c) If any person subpoenaed to appear at any hearing ~~shall refuse~~ refuses to appear or  
26 to answer inquiries there propounded, or ~~shall fail or refuse~~ fails or refuses to produce books,  
27 records, documents, papers or any other tangible thing within his or her control when ~~the same~~  
28 they are demanded, the commission shall report the facts to the circuit court of Kanawha County  
29 or any other court of competent jurisdiction and ~~such the~~ court may compel obedience to the  
30 subpoena as though ~~such the~~ subpoena had been issued by ~~such the~~ court in the first instance:  
31 Provided, That prior to seeking circuit court relief, the commission may, in its discretion, first

32 demand the head of the public agency in which an employee has failed to appear or which has  
33 failed to produce requested or subpoenaed material to appear before the commission and  
34 address the basis for the failure to comply and whether compliance will be forthcoming.

**§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 §4-2A-6, and §4-2A-8, ~~and §4-2A-9~~ of this code. Such expenses and all other  
3 expenses, including those incurred in the employment of legal, technical, investigative, clerical,  
4 stenographic, advisory and other personnel, shall be paid from the appropriation under ~~Account~~  
5 ~~No. 103~~ for Joint Expenses. ~~but no expense of any kind whatever shall be incurred unless the~~  
6 ~~approval of the Joint Committee on Government and Finance therefor is first had and obtained~~  
7 ~~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 §29B-1-1 *et seq.* of this code.

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

**§4-5-7. Impersonation or obstruction of commission member or staff.**

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 himself or herself to be a member or staff member of the  
4 commission;

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

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

9 (b) Any person who by threats, menaces, or acts, or who otherwise forcibly or illegally  
10 hinders or obstructs or attempts to hinder or obstruct a Commission on Special Investigations  
11 member or staff acting in his or her official capacity, is guilty of obstruction.

12 (c) Any person who violates the provisions of §4-5-7(a) or §4-5-7(b) of this code, is guilty  
13 of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than  
14 \$2,500, or confined in jail for not more than one year, or both fined and confined.

**§4-5-8. Awarding duty weapon upon retirement.**

1 (a) Upon the retirement of a member of the commission's investigative staff, the cochairs  
2 shall award to the retiring member his or her primary duty weapon, without charge, upon  
3 determining that the retiring member is retiring honorably with:

4 (1) At least 20 years of previously recognized law-enforcement service and an additional  
5 10 years of actual service as a member of the commission's investigative staff;

6 (2) At least 20 years of actual service as a member of the commission's investigative staff;  
7 or

8 (3) Less than the required service time, based upon a determination that he or she is  
9 totally physically disabled as a result of his or her service with the commission.

10 (b) Notwithstanding the provisions of §4-5-8(a) of this code, the cochairs shall not award  
11 his or her primary duty weapon to any retiring member whom the cochairs find to be mentally  
12 incapacitated or who constitutes a danger to any person or the community.

13 (c) The disposal of the commission's primary and secondary duty weapons, when  
14 replaced due to age or routine wear, shall not fall under the jurisdiction of the agency for surplus  
15 property within the Purchasing Division of the Department of Administration. The commission may

16 offer these surplus weapons for sale at fair market value to any active or retired member of the  
17 commission's investigative staff that is or was previously designated by the commission to carry  
18 a firearm, with the proceeds from any sales used to offset the cost of new weapons. These surplus  
19 weapons may also be included as trade-ins toward the purchase of new weapons.