

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 248

SENATORS TRUMP, CARMICHAEL (MR. PRESIDENT), HALL,

PALUMBO, WOELFEL, BLAIR, PLYMALE AND GAUNCH,

original sponsors

[Passed April 1, 2017; in effect 90 days from passage]

1 AN ACT 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 clarifying composition and chairmanship of commission; redefining what constitutes a
5 quorum for voting procedures of commission; clarifying contents of commission's annual
6 report; listing existing and necessary commission staff positions; granting power to
7 conduct interviews and request production from agencies of the state and its political
8 subdivisions of books, records, documents, papers or any other tangible thing, computers,
9 laptops, computer hard drives, electronic records including, but not limited to, emails, files,
10 documents and metadata, or any other thing, in any form in which they may exist; requiring
11 compliance with such requests; authorizing the commission and director to order or direct
12 that all or a portion of the information communicated to the commission at the
13 commission's request, including the existence of the investigation, be confidential and not
14 made public; establishing requirements for commission to enter into executive session;
15 establishing procedures for conducting executive session; removing requirement that
16 Joint Committee on Government and Finance approve expenses of commission;
17 establishing procedure for commission retention and disposal of records; defining new
18 offense of impersonating a commission member or staff member and of obstructing a
19 commission member or staff; establishing penalties; allowing the commission to award
20 duty weapons to certain members on retirement; exempting the commission from the
21 jurisdiction of the agency for surplus property within the Purchasing Division of the
22 Department of Administration with respect to the disposal of the commission's primary and
23 secondary duty weapons; and authorizing sale of surplus weapons to active and retired
24 members of the commission's investigative staff.

Be it enacted by the Legislature of West Virginia:

1 That §4-5-1, §4-5-2, §4-5-3, §4-5-4 and §4-5-5 of the Code of West Virginia, 1931, as
2 amended, be amended and reenacted; and that said code be amended by adding thereto two
3 new sections, designated §4-5-7 and §4-5-8, all to read as follows:

ARTICLE 5. COMMISSION ON SPECIAL INVESTIGATIONS.

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

1 The Commission on Special Investigations is continued. The commission shall be
2 composed of the President of the Senate and four members of the Senate, to be appointed by
3 the President of the Senate, no more than two of whom shall be from the same political party; and
4 the Speaker of the House of Delegates and four members of the House of Delegates, to be
5 appointed by the Speaker of the House of Delegates, no more than two of whom shall be
6 appointed from the same political party: *Provided*, That in the event the membership of a political
7 party is less than fifteen percent in the Senate or the House of Delegates, then the membership
8 of that political party from the legislative house with less than fifteen percent membership may be
9 one from that house. The commission shall be chaired by the President of the Senate and the
10 Speaker of the House of Delegates. All members appointed to the commission by the commission
11 chairs serve until their successors are appointed as provided in this section.

§4-5-2. Powers and duties generally.

1 (a) The Commission on Special Investigations may, by majority vote:

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

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

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

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

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

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

18 (7) Make written reports determined advisable by the commission to the members of the
19 Legislature between its sessions. On the first day of each regular session of the Legislature, the
20 commission shall make an annual report on its activities to the Legislature containing
21 recommendations for any proposed legislation which it considers necessary to carry the
22 recommendations into effect.

23 (b) The commission may also:

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

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

30 (3) Employ necessary legal, technical, investigative, clerical, stenographic, advisory and
31 other personnel and, within the appropriation specified in section four of this article, fix reasonable
32 compensation of any persons and firms that are employed. The commission's investigative staff
33 may consist of a director, deputy director, senior investigators and investigators as approved by

34 the co-chairs: *Provided*, That the commission may authorize certain personnel to administer oaths
35 and take affidavits and depositions anywhere in the state;

36 (4) Consult and confer with all public and private persons and agencies, including federal
37 and state agencies and state political subdivisions, that have information and data pertinent to an
38 investigation; and all state agencies and state political subdivisions shall cooperate to the fullest
39 extent with the commission;

40 (5) Call upon any department or agency of state government or state political subdivision
41 for any services, information and assistance it considers advisable;

42 (6) Refer appropriate matters to the office of the United States Attorney, or other
43 appropriate state or federal law-enforcement entity, and cooperate with such office in the
44 disposition of matters so referred;

45 (7) Interview witnesses and require production from state agencies and subdivisions of
46 the state of books, records, documents, papers, computers, laptops, computer hard drives,
47 electronic records including, but not limited to, emails, electronic files, electronic documents and
48 metadata, or any other thing, in any form in which it may exist, as the commission believes should
49 be examined to make a complete investigation: *Provided*, That a request for production pursuant
50 to this subdivision may be in the form of a written letter from the director of the commission in lieu
51 of a subpoena; and

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

60 confidentiality order or direction of the director or commission may request a hearing before the
61 commission to void or limit such confidentiality.

62 (c) Notwithstanding any provision of this code to the contrary, specific personnel may be
63 designated by the commission to carry a firearm in the course of performing his or her official
64 duties: *Provided*, That as a precondition of being authorized to carry a concealed weapon in the
65 course of their official duties, any designated personnel shall first successfully complete a firearms
66 training and certification program which is equivalent to that which is required of members of the
67 West Virginia State Police. The designated persons shall also possess a license to carry a
68 concealed deadly weapon in the manner prescribed in article seven, chapter sixty-one of this
69 code.

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

1 (a) By majority vote, the commission may hold executive sessions for the purpose of
2 establishing business, establishing policy, reviewing investigations, and interrogating a witness
3 or witnesses: *Provided*, That if a witness desires a public or open hearing the witness may
4 demand one and shall not be heard otherwise: *Provided, however*, That if a witness desires a
5 hearing in an executive session, the witness may demand one and shall not be heard otherwise.
6 Members of the staff of the commission may be permitted to attend executive sessions with
7 permission of the commission chairs.

8 (b) The commission may examine witnesses and subpoena any persons and computers,
9 laptops, computer hard drives, electronic records, including emails, electronic files, electronic
10 documents and metadata, or any other thing, in any form in which it may exist, it believes should
11 be examined to make a complete investigation. All witnesses appearing before the commission
12 shall testify under oath or affirmation, and any member of the commission or member of the
13 commission staff may administer oaths or affirmations to the witnesses. To compel witnesses to
14 attend a hearing or produce any books, records, documents, papers, the commission may issue
15 subpoenas, signed by one of the co-chairs, in accordance with section five, article one, chapter

16 four of this code: *Provided*, That the commission may specifically authorize, or delegate such
17 power to, its director to issue subpoenas on its behalf. The subpoenas shall be served by any
18 person authorized by law to serve and execute legal process and service shall be made without
19 charge. Witnesses subpoenaed to attend hearings shall be allowed the same mileage and per
20 diem as is allowed witnesses before any petit jury in this state.

21 (c) If any person subpoenaed to appear at any hearing refuses to appear or to answer
22 inquiries there propounded, or fails or refuses to produce books, records, documents, papers or
23 any other tangible thing within his or her control when they are demanded, the commission shall
24 report the facts to the circuit court of Kanawha County or any other court of competent jurisdiction
25 and the court may compel obedience to the subpoena as though the subpoena had been issued
26 by the court in the first instance: *Provided*, That prior to seeking circuit court relief, the commission
27 may, in its discretion, first demand the head of the public agency in which an employee has failed
28 to appear or which has failed to produce requested or subpoenaed material to appear before the
29 commission and address the basis for the failure to comply and whether compliance will be
30 forthcoming.

§4-5-4. Compensation and expenses of members; other expenses; how paid.

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 of this chapter. Such expenses and all
3 other expenses, including those incurred in the employment of legal, technical, investigative,
4 clerical, stenographic, advisory and other personnel, shall be paid from the appropriation under
5 Account No. 103 for Joint Expenses.

**§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 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, acts or otherwise forcibly or illegally hinders or
10 obstructs or attempts to hinder or obstruct a Commission on Special Investigations member or
11 staff acting in his or her official capacity is guilty of obstruction.

12 (c) Any person who violates the provisions of subsections (a) or (b) of this section, is guilty
13 of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than one
14 year or fined not less than \$500 nor more than \$2500, 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 co-chairs
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 twenty years of previously recognized law-enforcement service and an
5 additional ten years of actual service as a member of the commission's investigative staff;

6 (2) At least twenty years of actual service as a member of the commission's investigative
7 staff; 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 subsection (a) of this section, the co-chairs shall not
11 award his or her primary duty weapon to any retiring member whom the co-chairs find to be
12 mentally 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 also may be included as trade-ins toward the purchase of new weapons.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2017.

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Governor