

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

Senate Bill 248

BY SENATORS TRUMP, CARMICHAEL (MR. PRESIDENT),

HALL, PALUMBO, WOELFEL, BLAIR, PLYMALE AND

GAUNCH

[Originating in the Committee on the Judiciary;

reported on February 15, 2017]

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 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 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 fifteen percent in the Senate or the
10 House of Delegates, then the membership of that political party from the legislative house with
11 less than fifteen percent membership may be one from that house. The commission shall be
12 ~~headed~~ chaired by ~~two co-chairmen, one to be selected by and from the members appointed from~~
13 ~~the Senate, and one to be selected by and from the members appointed from the House of~~
14 ~~Delegates~~ the President of the Senate and the Speaker of the House of Delegates. All members
15 ~~of the 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 majority vote by a quorum 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 section fourteen, article two, chapter fifty-two of this code to consider any
29 matter which the commission ~~may deem~~ considers in the public interest and, in support thereof,

30 make available to ~~such~~ the court and ~~such~~ the grand jury the contents of any reports, files,
31 transcripts of hearings or other evidence pertinent ~~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 section
34 four of this article, 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 co-chairs: *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 article seven,
74 chapter sixty-one of this code.

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

1 (a) Upon a quorum vote, The ~~the~~ commission shall have the power and authority to may
2 hold executive sessions for the purpose of establishing business, establishing policy, ~~an agenda~~
3 and the interrogation of reviewing investigations, and interrogating a witness or witnesses:
4 *Provided*, That if a witness desires a public or open hearing ~~he~~ the witness ~~shall have the right to~~
5 may 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, 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~~ co-chairs, in accordance with section five, article one, chapter four of this code:
20 Provided, That the commission may specifically authorize, or delegate such power to, its director
21 to issue subpoenas on its behalf. ~~Such~~ The subpoenas shall be served by any person authorized
22 by law to serve and execute legal process and service shall be made without charge. Witnesses
23 subpoenaed to attend hearings shall be allowed the same mileage and per diem as is allowed
24 witnesses before any petit jury in 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 County or any other court of competent jurisdiction and ~~such~~ the court may compel obedience to
30 the subpoena as though ~~such~~ the subpoena had been issued by ~~such~~ the court in the first
31 instance: Provided, That prior to seeking circuit court relief, the commission may, in its discretion,
32 first demand the head of the public agency in which an employee has failed to appear or which

33 has 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 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. ~~but no expense of any kind whatever shall be incurred unless~~
6 ~~the 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 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.