

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 272

BY SENATORS CARMICHAEL (MR. PRESIDENT), TRUMP,

WOELFEL, PALUMBO, AND TARR

[Introduced January 11, 2019; 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, 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 and terms of members; redefining what constitutes a quorum for voting procedures of the
6 commission; specifying contents of the commission's annual report; authorizing the
7 employment of staff and the creation of certain staff positions; granting power to conduct
8 interviews and request production from agencies of the state and its political subdivisions
9 of books, records, documents, papers, and tangible things; authorizing the issuance of
10 written requests for production in lieu of subpoenas; authorizing the director to issue
11 subpoenas on the commission's behalf; authorizing the commission to require an agency
12 head to appear before the commission to answer for an agency's failure to appear or
13 produce requested or subpoenaed material or other failure to comply with a commission
14 investigation; providing for the confidentiality of investigations; providing for executive
15 session and confidentiality rights of witnesses; updating exemption of investigative
16 materials from public disclosure; removing requirement for pre-approval of expenses of
17 the commission by the Joint Committee on Government and Finance; providing
18 procedures for the commission's retention and disposal of records; establishing new
19 offenses of impersonating a commission member or staff member and of threatening or
20 otherwise obstructing a commission member or staff; establishing criminal penalties;
21 allowing the commission to award duty weapons to certain members on retirement;
22 exempting the commission from the jurisdiction of the agency for surplus property within
23 the Purchasing Division of the Department of Administration with respect to the disposal
24 of the commission's primary and secondary duty weapons; authorizing sale of surplus
25 weapons to active and retired members of the commission's investigative staff; and
26 updating language and terms for clarity throughout.

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 thereof~~ Speaker of the House of Delegates,
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 House of Delegates
10 or Senate, then the membership of that political party from the legislative house with less than 15
11 percent membership may be one from that house. The commission shall be ~~headed~~ chaired by
12 ~~two co-chairmen, one to be selected by and from the members appointed from the Senate, and~~
13 ~~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 deemed 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 employees of the
38 commission to administer oaths and take affidavits and depositions anywhere in the state;

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

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

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

55 request for production pursuant to this subdivision may be in the form of a written letter from the
56 director of the commission in lieu of a subpoena.

57 (c) Notwithstanding any provision of this code to the contrary, specific personnel may be
58 designated by the commission to carry a firearm in the course of performing his or her official
59 duties: *Provided*, That as a precondition of being authorized to carry a concealed weapon in the
60 course of their official duties, any such designated personnel ~~must have~~ shall first successfully
61 ~~completed~~ complete a firearms training and certification program which is equivalent to that which
62 is required of members of the State Police. ~~The designated persons must~~ A person so designated
63 shall also possess a license to carry a concealed deadly weapon in the manner prescribed in
64 §61-7-1 *et seq.* of 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~~ may
2 conduct proceedings in a confidential executive session for the purpose of establishing business,
3 establishing policy, an agenda and the interrogation of reviewing investigations, and interrogating
4 a witness or witnesses: *Provided*, That if a witness desires a public or open hearing ~~he shall have~~
5 ~~the right to demand the same~~ the witness may demand an open hearing and shall not be heard
6 otherwise: *Provided, however*, That if a witness desires a hearing in an executive session, ~~he~~
7 ~~shall have the right to demand the same~~ the witness may so request and shall not be heard
8 otherwise. However, members of the staff of the commission may be permitted to attend executive
9 sessions ~~with permission of the commission.~~

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 its
14 staff may administer oaths or affirmations to such witnesses. To compel ~~the attendance of~~
15 witnesses ~~at such hearings~~ to attend a hearing or ~~the production of~~ produce any books, records,

16 documents, or papers, or any other tangible thing, the commission is hereby empowered and
17 authorized to may issue subpoenas, signed by one of the ~~co-chairmen~~ in accordance with section
18 ~~five, article one, chapter four of this code~~ cochairs: *Provided, That the commission may*
19 specifically authorize, or delegate the power to its director to issue subpoenas on its behalf. Such
20 The subpoenas shall be served by any person authorized by law to serve and execute legal
21 process, and service shall be made without charge. Witnesses subpoenaed to attend hearings
22 shall be allowed the same mileage and per diem as is allowed witnesses before any petit jury in
23 this state.

24 If any person subpoenaed to appear at any hearing shall refuse to appear or to answer
25 inquiries there propounded, or shall fail or refuse to produce books, records, documents, papers,
26 or any other tangible thing within his or her control when the same are demanded, the commission
27 shall report the facts to the circuit court of Kanawha County or any other court of competent
28 jurisdiction and such court may compel obedience to the subpoena as though such subpoena
29 had been issued by such court in the first instance: *Provided, That prior to seeking circuit court*
30 relief, the commission may, in its discretion, first demand the head of the public agency in which
31 an employee has failed to appear or which has failed to produce requested or subpoenaed
32 material to appear before the commission and address the basis for the failure to comply and
33 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.

1 (a) The investigations conducted by the commission and the materials, in any medium,
2 including hard copy and electronic, placed in the files custody of the commission as a result of
3 any such investigation are exempt from public disclosure under the provisions of chapter 29B of
4 this code.

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

9 (c) The commission shall provide reasonable safeguards for the confidentiality and
10 integrity of the materials and information technology placed in its custody.

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

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

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

4 (2) Falsely represents himself or herself to be acting under the order or direction, or to
5 have the authority, of the commission or its staff; or

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

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

11 (c) Any person who violates any provision of this section is guilty of a misdemeanor and
12 upon conviction thereof, shall be fined not less than \$500 nor more than \$2,500, or confined in
13 jail for not more than one year, or both fined and confined.

§4-5-8. Award of duty weapon upon retirement; disposal of other weapons used by staff.

1 (a) Upon the retirement of a member of the commission's investigative staff, the cochairs
2 of the commission shall award to the retiring employee a duty weapon used by the employee
3 when that employee retires honorably after having served:

- 4 (1) At least 20 years of actual service on the commission's investigative staff;
5 (2) At least 20 years in law enforcement and an additional 10 years of service on the
6 commission's investigative staff; or
7 (3) Any period of service on the commission's investigative staff and retires due to total
8 physical disability resulting from his or her service to the commission.

9 (b) The award of the duty weapon shall be without charge to the employee or other
10 condition: *Provided*, That the cochairs shall not award a duty weapon to any retiring employee
11 whom the cochairs find to be mentally incapacitated or to be a danger to any person or to the
12 community.

13 (c) The commission has the sole authority to determine the manner of disposition of duty
14 weapons of members of the commission's investigative staff when replaced due to age or routine
15 wear. The commission may offer these surplus weapons for sale at fair market value to any active
16 or retired member of the commission's investigative staff who has been designated to carry a
17 firearm in the course of duties with the commission, with the proceeds of any sales to be used to
18 offset the cost of new weapons. Surplus duty weapons may also be included as trade-ins toward
19 the purchase of new weapons.

NOTE: The purpose of this bill is to update provisions of the code relating to the composition, powers, and procedures of the Commission on Special Investigations. It clarifies the existing powers of the commission regarding interviews, production of evidence, meeting in executive session, and the entities subject to the commission's review. This bill also creates new criminal offenses for obstructing the commission and for impersonating a member or employee of the commission. Finally, this bill also provides for the disposal of service weapons used by the commission staff and for awarding a duty weapon to a retiring employee. This bill has been recommended for introduction and passage by the Commission on Special Investigations.

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