

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 344**

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

AND TRUMP

[Originating in the Committee on the Judiciary;

reported on February 24, 2016]



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 two new  
3 sections, designated §4-5-7 and §4-5-8, all relating to Commission on Special  
4 Investigations; clarifying composition and chairmanship of commission; redefining what  
5 constitutes a quorum for voting procedures of commission; clarifying contents of  
6 commission's annual report; listing existing and necessary commission staff positions;  
7 defining a person's or federal or state agency's duty to cooperate with commission during  
8 investigations and requiring persons and agencies to disclose information and documents  
9 to commission; establishing requirements for commission to enter into executive session;  
10 establishing procedures for conducting executive session; removing requirement that  
11 Joint Committee on Government and Finance approve expenses of commission;  
12 establishing procedure for commission retention and disposal of records; defining new  
13 felony offense of making false statement to commission; setting penalties for making false  
14 statement to commission; defining new felony offense of impersonating a commission  
15 member or staff member; setting penalties for impersonating a commission member or  
16 staff member; allowing the commission award duty weapons to certain members on  
17 retirement; and disposal of surplus weapons.

*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 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 House of  
10 Delegates or Senate, 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 cochairmen, 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~~  
35 are employed. The commission's investigative staff shall consist of a director, deputy director,  
36 senior investigators and investigators, as approved by the cochairs: *Provided*, That ~~such~~  
37 ~~personnel as the commission may determine shall have the authority~~ authorize certain personnel  
38 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, ~~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. Notwithstanding any provision of this code that imposes an  
44 obligation of confidentiality or secrecy, other than the provisions of Rule 6(e) of the West Virginia  
45 Rules of Criminal Procedure or matters relating to a person's attorney-client privilege, for the  
46 purposes of this subdivision, the term "cooperate" includes the disclosure and production of any  
47 documents, reports or other items in the possession of a state agency or state political subdivision  
48 and its personnel, upon the commission's request to assist it in its investigation: *Provided, That*  
49 the commission is not required to issue a subpoena as provided for in section three of this article  
50 when requesting disclosure of any information or the production of any documents;

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

54           (6) Refer ~~such~~ appropriate matters ~~as are appropriate~~ to the office of the United States  
55 ~~attorney~~ Attorney and cooperate with ~~such~~ that office in the disposition of matters so referred.

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

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

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

22           ~~(c) If any person subpoenaed to appear at any hearing shall refuse~~ refuses to appear or  
23 to answer inquiries there propounded, or ~~shall fail or refuse~~ fails or refuses to produce books,  
24 records, documents, papers or any other tangible thing within his or her control when ~~the same~~  
25 they are demanded, the commission shall report the facts to the ~~circuit court~~ Circuit Court of

26 Kanawha ~~county~~ County or any other court of competent jurisdiction and ~~such~~ the court may  
27 compel obedience to the subpoena as though ~~such~~ the subpoena had been issued by ~~such~~ the  
28 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 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.

**§4-5-6. 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~~ That person, with the intent to impede the commission or to impede an  
4 investigator of the commission acting in the lawful exercise of his or her official duties, knowingly



5 and willfully makes any false, fictitious or fraudulent statement or representation, or makes or  
6 uses any false writing or document knowing the same to contain any false, fictitious or fraudulent  
7 statement or entry;

8 (2) ~~Such~~ The 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 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 violates the provisions of this section is guilty of a felony. Upon  
10 conviction for impersonating a commission member or staff, a person will be committed to the

11 custody of the Division of Corrections for not less than one and not more than five years, or fined  
12 not more than \$5,000, or both, in the discretion of the circuit court.

**§4-5-8. Awarding duty weapon upon retirement and disposal of duty weapon when replaced due to routine wear.**

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

16 (1) At least twenty years of previously recognized law-enforcement service and an  
17 additional ten years of actual service as a member of the commission's investigative staff:

18 (2) At least twenty years of actual service as a member of the commission's investigative  
19 staff; or

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

22 (b) Notwithstanding the provisions of subsection (a) of this section, the cochairs shall not  
23 award his or her primary duty weapon to any retiring member whom the cochairs find to be  
24 mentally incapacitated or who constitutes a danger to any person or the community.

25 (c) The disposal of the commission's primary and secondary duty weapons, when  
26 replaced due to age or routine wear, shall not fall under the jurisdiction of the agency for surplus  
27 property within the Purchasing Division of the Department of Administration. The commission may  
28 offer these surplus weapons for sale at fair market value to any active or retired member of the  
29 commission's investigative staff that is or was previously designated by the commission to carry  
30 a firearm with the proceeds from any sales used to offset the cost of new weapons. Any unsold  
31 weapons may be included as trade-ins toward the purchase of new weapons.