

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **Senate Bill 248**

BY SENATORS TRUMP, CARMICHAEL (MR. PRESIDENT),

HALL, PALUMBO, WOELFEL, BLAIR, PLYMALE AND

GAUNCH

[Introduced February 10, 2017; 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 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 of books, records, documents, papers, or any  
8 other tangible thing, computers, laptops, computer hard drives, electronic records  
9 (including emails, files, documents and metadata), or any other thing, in any form in which  
10 they may exist; authorizing the commission and director to order or direct that all or a  
11 portion of the information communicated to the commission at the commission's request,  
12 including the existence of the investigation, be confidential and not made public;  
13 establishing requirements for commission to enter into executive session; establishing  
14 procedures for conducting executive session; removing requirement that Joint Committee  
15 on Government and Finance approve expenses of commission; establishing procedure  
16 for commission retention and disposal of records; defining new offense of impersonating  
17 a commission member or staff member and of obstructing a commission member or staff;  
18 setting penalties; allowing the commission to award duty weapons to certain members on  
19 retirement; exempting the commission from the jurisdiction of the agency for surplus  
20 property within the Purchasing Division of the Department of Administration with respect  
21 to the disposal of the commission's primary and secondary duty weapons; and authorizing  
22 sale of surplus weapons to active and retired members of the commission's investigative  
23 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 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~~ one ~~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 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 request production of books, records, documents, papers,  
51 computers, laptops, computer hard drives, electronic records (including emails, files, documents,  
52 and metadata), or any other thing, in any form in which they may exist, as it believes should be  
53 examined to make a complete investigation: *Provided*, That such request for production may be  
54 in the form of a written letter from the director of the commission in lieu of subpoena; and

55 (8) Find that there is a reasonable likelihood that the dissemination of information in

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

65 (c) Notwithstanding any provision of this code to the contrary, specific personnel may be  
 66 designated by the commission to carry a firearm in the course of performing his or her official  
 67 duties: *Provided, That as a precondition of being authorized to carry a concealed weapon in the*  
 68 *course of their official duties, any ~~such~~ designated personnel ~~must have~~ shall first successfully*  
 69 *~~completed~~ complete a firearms training and certification program which is equivalent to that which*  
 70 *is required of members of the State Police State Police. The designated persons ~~must~~ shall also*  
 71 *possess a license to carry a concealed deadly weapon in the manner prescribed in article seven,*  
 72 *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~~ 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~~ 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~~  
16 computers, laptops, computer hard drives, electronic records (including emails, files, documents,  
17 and metadata), or any other thing, in any form in which they may exist, the commission ~~is hereby~~  
18 ~~empowered and authorized to~~ may issue subpoenas, signed by one of the ~~cochairmen~~ cochairs  
19 in accordance with section five, article one, chapter four of this code: Provided, That the  
20 commission may specifically authorize, or delegate such power to, its director to issue subpoenas  
21 on its behalf. ~~Such~~ The subpoenas shall be served by any person authorized by law to serve and  
22 execute legal process and service shall be made without charge. Witnesses subpoenaed to  
23 attend hearings shall be allowed the same mileage and per diem as is allowed witnesses before  
24 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~~ circuit court of  
29 Kanawha ~~county~~ County or any other court of competent jurisdiction and ~~such~~ the court may  
30 compel obedience to the subpoena as though ~~such~~ the subpoena had been issued by ~~such~~ the  
31 court in the first instance: Provided, That prior to seeking circuit court relief, the commission may,  
32 in its discretion, first demand the head of the public agency, in which an employee has failed to  
33 appear or which has failed to produce requested or subpoenaed material to appear before the  
34 commission, and address the basis for the failure to comply and whether compliance will be

35 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 subsection (a) or subsection (b) of this  
13 section is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not  
14 more than one year, or fined not less than \$500 nor more than \$2500, or both fined and confined.

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

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

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

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

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

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

27           (c) The disposal of the commission's primary and secondary duty weapons, when  
28 replaced due to age or routine wear, shall not fall under the jurisdiction of the agency for surplus  
29 property within the Purchasing Division of the Department of Administration. The commission may  
30 offer these surplus weapons for sale at fair market value to any active or retired member of the  
31 commission's investigative staff that is or was previously designated by the commission to carry

- 32 a firearm with the proceeds from any sales used to offset the cost of new weapons. These surplus  
33 weapons also may be included as trade-ins toward the purchase of new weapons.

NOTE: The purpose of this bill is to clarify the composition and chairmanship of the Commission on Special Investigations; redefine what constitutes a quorum for the voting procedures of the commission; clarify the contents of the commission's annual report; list the existing and necessary commission staff positions; authorizing witness interviews and subpoenas for information; establish the requirements for the commission to enter into executive session; establish procedures for conducting executive session; remove the requirement that the Joint Committee on Government and Finance approve expenses of the commission; establish a procedure for commission retention and disposal of records; set penalties for making a false statement to the commission; define a new criminal offense of impersonating a commission member or staff member; set penalties for impersonating a commission member or staff member; and authorizing the award of a duty weapon upon retirement.

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