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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]

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 Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated [§4-5-7](#) and [§4-5-8](#), all relating to the Commission on Special Investigations; clarifying composition and chairmanship of commission; redefining what constitutes a quorum for voting procedures of commission; clarifying contents of commission's annual report; listing existing and necessary commission staff positions; granting power to conduct interviews and request production from agencies of the state and its political subdivisions of books, records, documents, papers or any other tangible thing, computers, laptops, computer hard drives, electronic records including, but not limited to, emails, files, documents and metadata, or any other thing, in any form in which they may exist; requiring compliance with such requests; authorizing the commission and director to order or direct that all or a portion of the information communicated to the commission at the commission's request, including the existence of the investigation, be confidential and not made public; establishing requirements for commission to enter into executive session; establishing procedures for conducting executive session; removing requirement that Joint Committee on Government and Finance approve expenses of commission; establishing procedure for commission retention and disposal of records; defining new offense of impersonating a commission member or staff member and of obstructing a commission member or staff; establishing penalties; allowing the commission to award duty weapons to certain members on retirement; exempting the commission from the jurisdiction of the agency for surplus property within the Purchasing Division of the Department of Administration with respect to the disposal of the commission's primary and secondary duty weapons; and authorizing sale of surplus weapons to active and retired members of the commission's investigative staff.

Be it enacted by the Legislature of West Virginia:

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 amended, be amended and reenacted; and that said code be amended by adding thereto two 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.

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

[§4-5-2](#). Powers and duties generally.

(a) The Commission on Special Investigations may, by majority vote of the members:

- (1) Conduct a comprehensive and detailed investigation into the purchasing practices and procedures of the state;
- (2) Determine if there is reason to believe that the laws or public policy of the state in connection with purchasing practices and procedures have been violated or are inadequate;
- (3) Determine if any criminal or civil statutes relating to the purchasing practices and procedures in this state are necessary to protect and control the expenditures of money by the state;

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

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

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

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

(b) The commission may also:

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

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

(3) Employ necessary legal, technical, investigative, clerical, stenographic, advisory and other personnel and, within the appropriation specified in section four of this article, fix reasonable compensation of any persons and firms that are employed. The commission's investigative staff may consist of a director, deputy director, senior investigators and investigators as approved by the co-chairs: *Provided*, That the commission may authorize certain personnel to administer oaths and take affidavits and depositions anywhere in the state;

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

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

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

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

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

(c) Notwithstanding any provision of this code to the contrary, specific personnel may be designated by the commission to carry a firearm in the course of performing his or her official duties: *Provided*, That as a precondition of being authorized to

carry a concealed weapon in the course of their official duties, any designated personnel shall first successfully complete a firearms training and certification program which is equivalent to that which is required of members of the West Virginia State Police. The designated persons ~~must~~ shall also possess a license to carry a concealed deadly weapon in the manner prescribed in article seven, chapter sixty-one of this code.

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

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

(b) The commission may examine witnesses and subpoena any persons and computers, laptops, computer hard drives, electronic records, including emails, electronic files, electronic documents and metadata, or any other thing, in any form in which it may exist, it believes should be examined to make a complete investigation. All witnesses appearing before the commission shall testify under oath or affirmation, and any member of the commission or member of the commission staff may administer oaths or affirmations to the witnesses. To witnesses to attend a hearing or produce any books, records, documents, papers, the commission may issue subpoenas, signed by one of the co-chairs, in accordance with section five, article one, chapter four of this code: *Provided*, That the commission may specifically authorize, or delegate such power to, its director to issue subpoenas on its behalf. The subpoenas shall be served by any person authorized by law to serve and execute legal process and service shall be made without charge. Witnesses subpoenaed to attend hearings shall be allowed the same mileage and per diem as is allowed witnesses before any petit jury in this state.

(c) If any person subpoenaed to appear at any hearing refuses to appear or to answer inquiries there propounded, or fails or refuses to produce books, records, documents, papers or any other tangible thing within his or her control when they are demanded, the commission shall report the facts to the circuit court of Kanawha County or any other court of competent jurisdiction and the court may compel obedience to the subpoena as though the subpoena had been issued by the court in the first instance: *Provided*, That prior to seeking circuit court relief, the commission may, in its discretion, first demand the head of the public agency in which an employee has failed to appear or which has failed to produce requested or subpoenaed material to appear before the commission and 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.~~

The members of the commission shall receive travel, interim and out-of-state expenses, as authorized in sections six, eight and nine, article two-a of this chapter. Such expenses and all other expenses, including those incurred in the employment of legal, technical, investigative, clerical, stenographic, advisory and other personnel, shall be paid from the appropriation under Account No. 103 for Joint Expenses.

§4-5-5. Investigations exempt from public disclosure requirements; retention and disposal of commission records.

(a) The investigations conducted by the commission and the materials placed in the files of the commission as a result of any such investigation are exempt from public disclosure under the provisions of chapter twenty-nine-b of this code.

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

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

(a) A person is guilty of impersonating a Commission on Special Investigations member or staff if he or she does one of the following:

- (1) Falsely represents himself or herself to be a member or staff member of the commission;
- (2) Falsely represents himself or herself to be under the order or direction of the commission or commission staff; or
- (3) Falsely presents a badge, credentials, other insignia or likeness thereof, used by the commission for identification as a commission member or staff.

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

(c) Any person who violates the provisions of subsections (a) or (b) of this section, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not 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.

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

- (1) At least twenty years of previously recognized law-enforcement service and an additional ten years of actual service as a member of the commission's investigative staff;
- (2) At least twenty years of actual service as a member of the commission's investigative staff; or
- (3) Less than the required service time, based upon a determination that he or she is totally physically disabled as a result of his or her service with the commission.

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

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