

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Second Enrolled Senate Bill 272

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2019 FEB 28 P 4:41

FILED

BY SENATORS CARMICHAEL (MR. PRESIDENT), TRUMP,

WOELFEL, PALUMBO, AND TARR

[Repassed February 21, 2019; in effect 90 days from

passage]

SB 272

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1 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
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, but exempting items deemed
10 confidential under state or federal law; authorizing the issuance of written requests for
11 production in lieu of subpoenas; authorizing the director to issue subpoenas on the
12 commission's behalf; authorizing the commission to require an agency head to appear
13 before the commission to answer for an agency's failure to appear or produce requested
14 or subpoenaed material or other failure to comply with a commission investigation;
15 providing for executive session and confidentiality rights of witnesses; updating exemption
16 of investigative materials from public disclosure; removing requirement for pre-approval of
17 expenses of the commission by the Joint Committee on Government and Finance;
18 requiring that protected information provided to the commission be kept confidential,
19 private, and secure in the same manner required of the government entity from which the
20 information was received; providing procedures and requirements for the commission's
21 retention and disposal of records; establishing new offenses of impersonating a
22 commission member or staff member and of threatening or otherwise obstructing a
23 commission member or staff; establishing criminal penalties; allowing the commission to
24 award duty weapons to certain members on retirement; exempting the commission from
25 the jurisdiction of the Agency for Surplus Property within the Purchasing Division of the
26 Department of Administration with respect to the disposal of the commission's primary and

27 secondary duty weapons; authorizing sale of surplus weapons to active and retired
28 members of the commission's investigative staff; and updating language and terms for
29 clarity throughout.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COMMISSION ON SPECIAL INVESTIGATIONS.

§4-5-1. Commission on Special Investigations continued; composition; appointment and terms of members.

1 The Commission on Special Investigations is continued. The commission shall continue
2 to be composed of the President of the Senate and four members of the Senate, to be appointed
3 by the President of the Senate, no more than two of whom shall be from the same political party;
4 and the Speaker of the House of Delegates and four members of the House of Delegates, to be
5 appointed by the Speaker of the House of Delegates, no more than two of whom shall be
6 appointed from the same political party: *Provided*, That in the event the membership of a political
7 party is less than 15 percent in the House of Delegates or Senate, then the membership of that
8 political party from the legislative house with less than 15 percent membership may be one from
9 that house. The commission shall be chaired by the President of the Senate and the Speaker of
10 the House of Delegates. All members appointed to the commission by the commission chairs
11 serve until their successors are appointed as provided in this section.

§4-5-2. Powers and duties generally.

1 (a) The Commission on Special Investigations may, by majority vote:
2 (1) Conduct a comprehensive and detailed investigation into the purchasing practices and
3 procedures of the state;
4 (2) Determine if there is reason to believe that the laws or public policy of the state in
5 connection with purchasing practices and procedures have been violated or are inadequate;

6 (3) Determine if any criminal or civil statutes relating to the purchasing practices and
7 procedures in this state are necessary to protect and control the expenditures of money by the
8 state;

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

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

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

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

23 (b) The commission may also:

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

25 (2) Recommend to the judge of any circuit court that a grand jury be convened pursuant
26 to the provisions of §52-2-14 of this code to consider any matter which the commission considers
27 in the public interest and, in support thereof, make available to the court and the grand jury the
28 contents of any reports, files, transcripts of hearings, or other evidence pertinent to the matter;

29 (3) Employ necessary legal, technical, investigative, clerical, stenographic, advisory, and
30 other personnel and, within the appropriation specified in §4-5-4 of this code, fix reasonable
31 compensation of any persons and firms that are employed. The commission's investigative staff

32 may consist of a director, deputy director, senior investigators, and investigators as approved by
33 the cochairs: *Provided*, That the commission may authorize certain employees of the commission
34 to administer oaths and take affidavits and depositions anywhere in the state;

35 (4) Consult and confer with all public and private persons and organizations, any entity of
36 federal or state government or of any political subdivision of the state, that have information and
37 data pertinent to an investigation; and all state agencies and state political subdivisions shall
38 cooperate to the fullest extent with the commission;

39 (5) Call upon any entity of state government or of any political subdivision of the state for
40 any services, information, and assistance the commission considers advisable;

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

44 (7) Interview witnesses and require production from any entity of state government, or of
45 any political subdivision of the state, of books, records, documents, papers, computers, laptops,
46 computer hard drives, electronic records including, but not limited to, emails, electronic files,
47 electronic documents and metadata, or any other thing, in any form in which it may exist, as the
48 commission believes should be examined to make a complete investigation, except where the
49 records, documents, data, or items are protected from disclosure by state or federal law or
50 privilege recognized by state or federal courts: *Provided*, That a request for production pursuant
51 to this subdivision may be in the form of a written letter from the director of the commission in lieu
52 of a subpoena.

53 (c) Notwithstanding any provision of this code to the contrary, specific personnel may be
54 designated by the commission to carry a firearm in the course of performing his or her official
55 duties: *Provided*, That as a precondition of being authorized to carry a concealed weapon in the
56 course of their official duties, any such designated personnel shall first successfully complete a
57 firearms training and certification program which is equivalent to that which is required of

58 members of the State Police. A person so designated shall also possess a license to carry a
59 concealed deadly weapon in the manner prescribed in §61-7-1 *et seq.* of this code.

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

1 The commission may conduct proceedings in a confidential executive session for the
2 purpose of establishing business, establishing policy, reviewing investigations, and interrogating
3 a witness or witnesses: *Provided*, That if a witness desires a public or open hearing the witness
4 may demand an open hearing and shall not be heard otherwise: *Provided, however*, That if a
5 witness desires a hearing in an executive session, the witness may so request and shall not be
6 heard otherwise. However, members of the staff of the commission may be permitted to attend
7 executive sessions.

8 All witnesses appearing before the commission shall testify under oath or affirmation, and
9 any member of the commission or its staff may administer oaths or affirmations to such witnesses.
10 To compel witnesses to attend a hearing or produce any books, records, documents, or papers,
11 or any other tangible thing except where the records, documents, data, or items are protected
12 from disclosure by state or federal law or privilege recognized by state or federal courts, the
13 commission may issue subpoenas, signed by one of the cochairs: *Provided*, That the commission
14 may specifically authorize or delegate the power to its director to sign subpoenas on its behalf.
15 The subpoenas shall be served by any person authorized by law to serve and execute legal
16 process, and service shall be made without charge. Witnesses subpoenaed to attend hearings
17 shall be allowed the same mileage and per diem as is allowed witnesses before any petit jury in
18 this state.

19 If any person subpoenaed to appear at any hearing shall refuse to appear or to answer
20 inquiries there propounded, or shall fail or refuse to produce books, records, documents, papers,
21 or any other tangible thing within his or her control when the same are demanded, the commission
22 shall report the facts to the circuit court of Kanawha County or any other court of competent
23 jurisdiction and such court may compel obedience to the subpoena as though such subpoena

24 had been issued by such court in the first instance: *Provided*, That prior to seeking circuit court
25 relief, the commission may, in its discretion, first demand the head of the public agency in which
26 an employee has failed to appear or which has failed to produce requested or subpoenaed
27 material to appear before the commission and address the basis for the failure to comply and
28 whether compliance will be forthcoming.

§4-5-4. Compensation and expenses of members; other expenses; how paid.

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 of this code. Such expenses and all other expenses,
3 including those incurred in the employment of legal, technical, investigative, clerical, stenographic,
4 advisory, and other personnel, shall be paid from the appropriation for Joint Expenses.

§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 custody of the commission as a result of any
3 such investigation are exempt from public disclosure under the provisions of chapter 29B of this
4 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) When the commission receives information, in any form, from any office, agency,
10 department, or branch of state or local government that is bound by state or federal law to maintain
11 the confidentiality, privacy, or security of the information, that governmental body shall identify to
12 the commission what information and materials are so protected and identify the law or laws
13 governing the confidentiality, privacy, or security of the information. The commission shall protect
14 the confidentiality, privacy, or security of the protected information in like manner and to the same
15 level as is required of the governmental body providing the information to the commission. When

16 the commission has completed an investigation and no longer has a need to maintain the
17 confidential or protected information or materials, the commission shall notify the entity from
18 whom the information was received and, unless requested to return the information or materials,
19 shall destroy the same in a secure fashion and notify the entity from whom the information was
20 received of this destruction.

§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: *Provided*, That failure to
11 produce information or records at the request of a member or employee of the commission is not
12 obstruction when such disclosure is prohibited by state or federal law.

13 (c) Any person who violates any provision of this section is guilty of a misdemeanor and
14 upon conviction thereof, shall be fined not less than \$500 nor more than \$2,500, or confined in
15 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 cochair
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.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Walt Mayer
.....
Chairman, Senate Committee

Woo Capito
.....
Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2019 FEB 28 P 4:41

FILED

Joe Lamm
.....
Clerk of the Senate

Steph J. Harris
.....
Clerk of the House of Delegates

Walter B. Canfield
.....
President of the Senate

Leslie Hankins
.....
Speaker of the House of Delegates

The within *is approved* this the *28th*
Day of *February* 2019.

James E. Cantor
.....
Governor

PRESENTED TO THE GOVERNOR

FEB 22 2019

Time 3:53 pm