

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #4

FILED
SEP 4 2 03 PM '97
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: BUREAU OF COMMERCE, DIVISION OF NATURAL TITLE NUMBER: 58

CITE AUTHORITY 20-7-1(e)

AMENDMENT TO AN EXISTING RULE: YES ___ NO X


IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 13

TITLE OF RULE BEING PROPOSED: CONTRACTED EXTRAORDINARY LAW
ENFORCEMENT SERVICES

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



JOHN B. RADER, DIRECTOR



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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

State Capitol - Room MB-49
Charleston, West Virginia 25305
(304) 347-4840

Senator: Mike Ross, Co-Chairman
Delegate: Mark Hunt, Co-Chairman
Counsel: Debra A. Graham

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Audrey R. Ross, Admin. Assistant

August 22, 1997

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Lt. Colonel W. B. Daniel
Division of Natural Resources
State Capitol Complex
Building 3
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: *Contracted Extraordinary Law Enforcement Services (58CSR13)*

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

TITLE 58
LEGISLATIVE RULE OR PROCEDURAL RULE?
BUREAU OF COMMERCE
DIVISION OF NATURAL RESOURCES

SERIES 13
CONTRACTED EXTRAORDINARY LAW ENFORCEMENT SERVICES

§58-13-1. General.

1.1. Scope. -- This rule specifies the conditions under which conservation officers of the Division of Natural Resources may perform extraordinary law enforcement services and establish the procedure to be followed in their employment.

1.2. Authority. -- West Virginia Code §20-7-1(e).

1.3. Filing Date. --

1.4. Effective Date. --

§58-13-2. Definitions.

2.1. "Chief" -- means the Chief of the Law Enforcement Section of the Division of Natural Resources.

2.2. "Deputy Chief" -- means the Deputy Chief of the Law Enforcement Section of the Division of Natural Resources.

2.3. "Captain" -- means the supervisory officer in an assigned Region.

2.4. "Officer" -- means a Conservation Officer of the Division of Natural Resources.

2.5. "Contracted Services" -- means those services determined by the Chief to be in the public interest performed by an officer pursuant to a contractual agreement with a public, quasi-public, military or private entity when the service is not prohibited by law and when the service would not have been otherwise performed by the Division.

2.6. "Compensatory Day Off" -- means that time off duty awarded to a member of the Division as compensation for working on a designated state or national holiday, or as compensation for accrued overtime hours worked.

2.7. "Division" -- means the West Virginia Division of Natural Resources Law Enforcement Section.

§58-13-3. Application for Contracted Extraordinary Law Enforcement Services.

3.1. Requests for contracted extraordinary law enforcement services must be made, in writing, to the Chief and shall explain the funding source and the authority under which the request is made.

3.2. Approval may only be granted if an adequate number of officers are available for assignment.

3.3. The Chief shall not grant approval of a request for any contractual employment in circumstances involving labor disputes.

§58-13-4. Contract Guidelines.

4.1. The Chief shall enter into a contract for all contracted extraordinary law enforcement services as required by West Virginia Code §20-7-1(e).

4.2. All contracts shall contain provisions that the contractual employer agrees to hold harmless and indemnify the State of West Virginia, the Division of Natural Resources, and the Division's officers and employees from any liability arising from the contractual employment.

4.3. The total cost of the services and the number of hours contracted for shall not exceed those outlined in the contract unless new terms are subsequently agreed to, in writing, by both parties.

4.4 The Chief or Deputy Chief are the only persons authorized to negotiate contract provisions

4.5 The Chief or Deputy Chief shall negotiate compensation rates for contracted services on a man-hour basis with consideration given for costs which may include, but not be limited to, salary, employee benefits, equipment, gasoline, oil, and other motor vehicle/boat related expenses.

4.6 The contractual employer shall pay for services rendered by the Division by check, made payable to the West Virginia Division of Natural Resources Law Enforcement Section, within ten (10) days of receipt of an itemized invoice.

4.7 Officers of the Division shall make all law enforcement decisions encountered by them during contractual employment and the contractual employer shall not dictate or influence, or attempt to dictate or influence, their decisions.

4.8 In the event officers who are assigned to contractual employment are required to return to official duty in response to a public disaster or other emergency, neither the Division of Natural Resources nor any of its officers or employees are liable for any damages incurred as a result of the reassignment.

§58-13-5. Assignment of Officers.

5.1 The Captain or his or her designee shall coordinate the staffing for all approved requests for contractual services.

5.2 Officers accepting contractual employment must be in the following duty status:

- a. Day off duty;
- b. Annual leave;
- c. Compensatory day off;

d. Holiday off duty; or

e. Regularly scheduled work day, provided that the officer is off-duty and that there are at least eight hours between the end of the contract work and the scheduled time the officer is to report to duty as a Conservation Officer.

5.3. Conservation Officers may not accept any contractual employment when the accepting of the employment would interfere with the officer's ability to perform the primary duties of a Conservation Officer.

5.4. Officers who are currently in, or placed in, the following duty status are not eligible for participation in any contractual employment:

a. Probationary status prior to attending Basic Police Training;

b. Attending Basic Police Training;

c. The first 90 days of employment, if officer is already Certified by the Law Enforcement Training Sub-Committee of the Governor's Committee on Crime, Delinquency and Correction;

d. Active suspension from duty;

e. Administrative leave;

f. Alternative duty due to a physical or mental condition;

g. Sick leave;

h. Leave of absence without pay;

I. Military leave;

j. Unauthorized leave; or

k. Any other time an officer is not available for duty as a Conservation Officer.

5.5. Officers assigned to contractual employment may use division owned or leased vehicles for transportation to, during and from the location of the employment. The Captain of the Region where the contractual employment is to be performed may establish mileage limitations and/or assign multiple officers to vehicles, if necessary.

5.6. Officers are in an off-duty status while traveling to and from the location of contractual employment, unless specifically instructed otherwise by the Chief or Deputy Chief.

a. Officers enroute to and returning from contractual employment shall initiate any appropriate law enforcement action when a serious violation of the law occurs or a life threatening situation is observed.

§58-13-6. Compensation.

6.1. The Division's Payroll Administrator shall compute compensation for officers on contractual employment at a rate to be announced by the Chief at the beginning of any contract period regardless of the officer's classification under the Fair Labor Standards Act or the officer's normal hourly compensation rate. The Payroll Administrator shall deduct applicable state and federal taxes from the officer's total contractual employment compensation.

6.2. The Payroll Administrator shall make no deduction of retirement contributions from contractual employment compensation and an officer's retirement benefits shall not be enhanced by participation in contractual employment. All other state benefits remain in force during contractual employment.

§58-13-7. Officer Conduct.

7.1. Officers engaged in contractual employment are subject to the same rules, general orders, policies and procedures as on-duty officers.