

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

Form #6

Do Not Mark In This Box

FILED

MAY 20 9 47 AM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: DIVISION OF NATURAL RESOURCES TITLE NUMBER: 58

CITE AUTHORITY: W. Va. Code §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

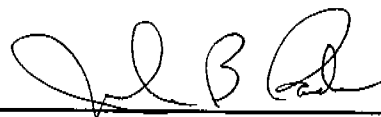
THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB320

SECTION §64-10-1(a), **PASSED ON** March 10, 1998

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS BILL BECOME EFFECTIVE ON THE

FOLLOWING DATE: June 27, 1998



JOHN B. RADER, DIRECTOR

3.20

**TITLE 58
LEGISLATIVE RULE
BUREAU OF COMMERCE
DIVISION OF NATURAL RESOURCES**

**SERIES 13
CONTRACTED EXTRAORDINARY LAW ENFORCEMENT SERVICES**

Promulgation History

June 27, 1997	Filed Form #2 - Notice of Comment Period of a Proposed Rule
August 1, 1997	Filed Form #3 - Notice of Agency Approval of a Proposed Rule & Filing With Legislative Rule Making Review Committee
September 4, 1997	Filed Form #4 - Notice of Rule Modification of a Proposed Rule
May 20, 1998	Filed Form #6 - Notice of Final Filing and Adoption of a Legislative Rule Authorized by the West Virginia Legislature

**TITLE 58
LEGISLATIVE 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 establishes the procedure to be followed in their employment.

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

1.3. Filing Date. -- May 20, 1997

1.4. Effective Date. -- June 27, 1998

§578-13-2. 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 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.

✓
2817
58-13

1 Bill-DNR,

H. B. 4182

2
3
4
5
6
7
8
9

(By Delegates Hunt, Linch, Compton, Jenkins,
Faircloth and Riggs)

[Introduced January 30, 1998; referred to the
Committee on Agriculture and Natural Resources
then the Judiciary.]

10 A BILL to amend and reenact section one, article ten,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the division of natural resources to
14 promulgate a legislative rule relating to contracted
15 extraordinary law enforcement services.

16 *Be it enacted by the Legislature of West Virginia:*

17 That section one, article ten, chapter sixty-four of
18 the code of West Virginia, one thousand nine hundred
19 thirty-one, as amended, be amended and reenacted, to read
20 as follows:

21 **ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO**
22 **PROMULGATE LEGISLATIVE RULES.**

23 **§64-10-1. Division of natural resources.**

4182

1 (a) The legislative rule filed in the state register
2 on the sixteenth day of August, one thousand nine hundred
3 ninety-six, authorized under the authority of section five-
4 d, article two, chapter twenty of this code, modified by
5 the division of natural resources to meet the objections of
6 the legislative rule-making review committee and refiled
7 in the state register on the twenty-seventh day of
8 September, one thousand nine hundred ninety-six, relating
9 to the division of natural resources (fertility control of
10 free roaming wildlife, 58 CSR 66), is authorized.

11 (b) The legislative rule filed in the state register
12 on the sixteenth day of August, one thousand nine hundred
13 ninety-six, authorized under the authority of section
14 seven, article one, chapter twenty of this code, modified
15 by the division of natural resources to meet the objections
16 of the legislative rule-making review committee and
17 refiled in the state register on the twenty-seventh day
18 of September, one thousand nine hundred ninety-six,
19 relating to the division of natural resources (prohibitions
20 when hunting and trapping, 58 CSR 47), is authorized.

21 (c) The legislative rule filed in the state register
22 on the sixteenth day of August, one thousand nine hundred
23 ninety-six, authorized under the authority of section

1 seven, article one, chapter twenty of this code, modified
2 by the division of natural resources to meet the objections
3 of the legislative rule-making review committee and
4 refiled in the state register on the twenty-seventh day of
5 September, one thousand nine hundred ninety-six, relating
6 to the division of natural resources (falconry, 58 CSR 65),
7 is authorized.

8 (d) The legislative rule filed in the state register
9 on the first day of August, one thousand nine hundred
10 ninety-seven, authorized under the authority of section
11 one-e, article seven, chapter twenty, of this code,
12 modified by the division of natural resources to meet the
13 objections of the legislative rule-making review committee
14 and refiled in the state register on the fourth day of
15 September, one thousand nine hundred ninety-seven, relating
16 to the division of natural resources (contracted
17 extraordinary law enforcement services, 58 CSR 13), is
18 authorized.

19

20 NOTE: The purpose of this bill is to authorize the
21 Division of Natural Resources to promulgate a legislative
22 rule relating to Contracted Extraordinary Law Enforcement
23 Services.

24

25 Strike-throughs indicate language that would be
26 stricken from the present law, and underscoring indicates

Senate Bill No. 318

(By Senator(s) Ross, Anderson, Bowman,
Macnaughtan, Boley and Buckalew)

58-13

[Introduced January 30, 1998; referred to the
Committee on Natural Resources; and then to the
Committee on the Judiciary.]

10 A BILL to amend and reenact section one, article ten,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the division of natural resources to
14 promulgate a legislative rule relating to contracted
15 extraordinary law enforcement services.

16 *Be it enacted by the Legislature of West Virginia:*

17 That section one, article ten, chapter sixty-four of
18 the code of West Virginia, one thousand nine hundred
19 thirty-one, as amended, be amended and reenacted, to read
20 as follows:

21 ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO
22 PROMULGATE LEGISLATIVE RULES.

23 §64-10-1. Division of natural resources.

1 (a) The legislative rule filed in the state register
2 on the sixteenth day of August, one thousand nine hundred
3 ninety-six, authorized under the authority of section five-
4 d, article two, chapter twenty of this code, modified by
5 the division of natural resources to meet the objections of
6 the legislative rule-making review committee and refiled
7 in the state register on the twenty-seventh day of
8 September, one thousand nine hundred ninety-six, relating
9 to the division of natural resources (fertility control of
10 free roaming wildlife, 58 CSR 66), is authorized.

11 (b) The legislative rule filed in the state register
12 on the sixteenth day of August, one thousand nine hundred
13 ninety-six, authorized under the authority of section
14 seven, article one, chapter twenty of this code, modified
15 by the division of natural resources to meet the objections
16 of the legislative rule-making review committee and
17 refiled in the state register on the twenty-seventh day
18 of September, one thousand nine hundred ninety-six,
19 relating to the division of natural resources (prohibitions
20 when hunting and trapping, 58 CSR 47), is authorized.

21 (c) The legislative rule filed in the state register
22 on the sixteenth day of August, one thousand nine hundred
23 ninety-six, authorized under the authority of section

1 seven, article one, chapter twenty of this code, modified
2 by the division of natural resources to meet the objections
3 of the legislative rule-making review committee and
4 refiled in the state register on the twenty-seventh day of
5 September, one thousand nine hundred ninety-six, relating
6 to the division of natural resources (falconry, 58 CSR 65),
7 is authorized.

8 (d) The legislative rule filed in the state register
9 on the first day of August, one thousand nine hundred
10 ninety-seven, authorized under the authority of section
11 one-e, article seven, chapter twenty, of this code,
12 modified by the division of natural resources to meet the
13 objections of the legislative rule-making review committee
14 and refiled in the state register on the fourth day of
15 September, one thousand nine hundred ninety-seven, relating
16 to the division of natural resources (contracted
17 extraordinary law enforcement services, 58 CSR 13), is
18 authorized.

19

20 NOTE: The purpose of this bill is to authorize the
21 Division of Natural Resources to promulgate a legislative
22 rule relating to Contracted Extraordinary Law Enforcement
23 Services.

24

25 Strike-throughs indicate language that would be
26 stricken from the present law, and underscoring indicates

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Natural Resources

Subject: Contracted Extraordinary Law Enforcement Services,
58CSR13

PERTINENT DATES

Filed for public comment: June 28, 1997
Public comment period ended: July 28, 1997
Filed following public comment period: August 1, 1997
Filed LRMRC: August 1, 1997
Filed as emergency:
Fiscal Impact: None

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

AUG 13 9 30 AM '97

FILED

ABSTRACT

The proposed rule amends a current legislative rule. The following is a synopsis of the substantive amendments.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 defines terms.

Section 3 requires that all requests for contracted extraordinary law enforcement services be made to the Chief, in writing and that the Chief will not approve contractual employment in circumstances involving labor disputes.

Section 4 requires the Chief to enter into a contract for all contracted extraordinary law enforcement services and requires that all contracts contain a provision holding harmless and indemnifying the State. The Chief is to negotiate compensation rates on a man-hour basis.

Section 5 provides that the Captain is the staffing for all approved requests and specifies the status of those officers who may and who may not accept contractual employment.

Section 6 provides that the Division's Payroll Administrator is to compute the compensation based upon the rate negotiated by the Chief and is to deduct applicable state and federal taxes.

Retirement contributions are not to be deducted and an officer's retirement are not to be enhanced by contractual employment.

Section 7 provides that officers engaged in contractual employment are subject to the same rules as on-duty officers.

AUTHORITY

Statutory authority: W.Va. Code, §20-7-1e, which provides, in part, as follows:

The director is authorized to propose legislative rules, subject to approval by the Legislature, in accordance with chapter twenty-nine-a of this code relating to the implementation of contracts entered into pursuant to this subsection: *Provided*, That the rules expressly prohibit private employment of officers in circumstances involving labor disputes.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.