

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

Form #7

Do Not Mark In This Box  
Filing Date

FILED  
1991 JUL 11 PM 1:19  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Effective Date

July 12, 1991, J

NOTICE OF AN EMERGENCY RULE

AGENCY: DIVISION OF PUBLIC SAFETY TITLE NUMBER: 81

CITE AUTHORITY: WEST VIRGINIA CODE §15-2-18(b)

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: V

TITLE OF RULE BEING FILED AS AN EMERGENCY: Contracted Police or  
Security Services

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

In March, 1989, the West Virginia Legislature passed Senate Bill 233 relating to the provision of extraordinary police or security services by members of the West Virginia State Police under contractual agreement. This legislation mandated that the Superintendent promulgate legislative rules and regulations relating to the implementation of contracts made under this authority. The attached emergency rule will allow the Superintendent to begin accepting contractual work assignments when such assignments are deemed to be in the public interest, thereby affording the citizens and the State of West Virginia increased police presence and protection.

3.20  
Use Additional Sheets If Necessary.

*J. R. Spring*

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

FILED

Rule Title: Contracted Police or Security Services 1991 JUN 11 PM 1:19

Type of Rule:  Legislative  Interpretive  Procedural

Agency Division of Public Safety Address 725 Jefferson Road  
South Charleston, WV 25309

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services					
Current Expense					
Repairs and Alterations	-0-	-0-	-0-	-0-	-0-
Equipment					
Other					

2. Explanation of above estimates:

N/A

3. Objectives of these rules:

These rules govern the provision of contracted police or security services by members of the West Virginia State Police under a contractual agreement.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

N/A

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

Organizations requesting contracted police or security services will be charged an hourly fee for the services requested. The cost to the organizations will depend on the total hours of services needed.

C. Economic Impact on Citizens/Public at Large.

N/A

Date:

7-11-91

Signature of Agency Head or Authorized Representative

M. R. Young

DIVISION OF PUBLIC SAFETY

FILED

JUL 11 PM 1:18

OFFICE OF THE ATTORNEY GENERAL  
STATE OF WEST VIRGINIA

DATE: July 11, 1991

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: DIVISION OF PUBLIC SAFETY ( STATE POLICE )

EMERGENCY RULE TITLE: CONTRACTED POLICE OR SECURITY SERVICES

1. Date of filing: July 11, 1991

2. Statutory authority for promulgating the emergency rule: West Virginia Code §15-2-18(b)

3. Date of filing of proposed legislative rule: \_\_\_\_\_

4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?  
Adopts new language

5. Has the same or similar emergency rule previously been filed and expired?  
NO

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.  
SEE ATTACHMENT

7. - If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

N/A

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8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

SEE ATTACHMENT

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Department of Public Safety  
(West Virginia State Police)  
725 Jefferson Road  
South Charleston, West Virginia 25309

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1991 JUL 11 PM 1:19

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Colonel J. R. Buckalew  
Superintendent

Gaston Caperton  
Governor

July 5, 1991

*Approved 11 July 91*

Major General Joseph J. Skaff  
Secretary, Department of Public Safety  
State Capitol Building  
Post Office Box 2930  
Charleston, West Virginia 25305-0001

Dear General Skaff:

Attached are the procedures governing the provision of extraordinary police or security services by members of the Division of Public Safety. These procedures require your review and approval before submission to the Secretary of State's Office.

Sincerely,

COLONEL J. R. BUCKALEW  
SUPERINTENDENT

JRB:crb

Attachment

FILED

MON JUL 11 PM 1:19

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

In March of 1989, the West Virginia Legislature passed Senate Bill 233 relating to the provision of extraordinary police or security services by members of the West Virginia State Police under contractual agreement. This legislation mandated that the Superintendent promulgate legislative rules and regulations relating to the implementation of contracts made under this authority.

The attached emergency rule will allow the Superintendent to begin accepting contractual work assignments, when such assignments are deemed to be in the public interest, thereby affording the citizens and the State of West Virginia increased police presence and protection.

  
\_\_\_\_\_  
DIVISION OF PUBLIC SAFETY

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WEST VIRGINIA LEGISLATIVE RULE  
DEPARTMENT OF PUBLIC SAFETY - 11 PM 1:19  
DIVISION OF PUBLIC SAFETY  
CHAPTER 15-2  
SERIES V  
FILING

Title: Contracted Police or Security Services

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Section 1. General

1.1 Scope - This rule specifies the conditions under which members of the Division may perform extraordinary police or security services and governs the procedure to be followed in the employment of said Division members.

1.2 Authority - West Virginia Code §15-2-18(b), effective July 5, 1989.

1.3 Filing Date -

1.4 Effective Date -

Section 2. For the purposes of this rule,

2.1 Superintendent means the Superintendent of the Division of Public Safety or his duly authorized agent.

2.2 Member means an employee of the Division, empowered under the provisions of West Virginia Code §15-2-12 with statewide law enforcement powers and who has taken and subscribed to the oath of office as required by West Virginia Code §15-2-14.

2.3 Officer in Charge of Field Operations means that member of the Division designated by the Superintendent as the principal operational supervisor of the Field Operations Force.

2.4 Company Commander means that member of the Division designated by the Superintendent as the principal operational supervisor for a field operations company area.

2.5 Criminalist means a member of the Division assigned to the Forensic Laboratory section.

2.6 Primary Communications Station means that Division facility that serves as a transmission and reception site for State Police radio traffic in a designated multi-county geographical area.

Dept. of Public Safety  
Division of Public Safety  
Series V

2.7 Extraordinary Police or Security Services/Contracted Police or Security Services means those services performed by a member of the Division, pursuant to a contractual agreement, on behalf of a private individual, firm or corporation or another entity of State government when said service is not prohibited by law and is not performed as a routine duty by members of the Division.

2.8 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.

Section 3. Application for Contracted Police or Security Services

3.1 All requests for contracted police or security services must be made, in writing, to the Superintendent who may approve such requests that have been deemed to be in the public interest.

a. All requests shall explain the funding source and the authority under which the request is made.

Section 4. Application Approval

4.1 The Superintendent will not approve any application for police or security services when such services would precipitate disfavor, disrespect or may discredit the Division or any member thereof.

a. Approval will not be granted for any contractual assignment in circumstances involving labor disputes.

Section 5. Contract Guidelines

5.1 All contracted police or security services shall be secured by contract as required by §15-2-18(b) of the Code of West Virginia.

5.2 The contractual employer shall agree to hold harmless and indemnify the State of West Virginia, the Division of Public Safety, its officers and members from any liability arising from the contractual employment.

5.3 The total cost and hours contracted for shall not exceed those which are outlined in the contract unless subsequently agreed to, in writing, by both parties.

Dept. of Public Safety  
Division of Public Safety  
Series V

5.4 Compensation rates for contracted services shall be negotiated on a manhour basis with additional consideration given for any extraordinary Division expenditures or costs.

5.5 Payment for services rendered by the Division shall be tendered by check, made payable to the West Virginia State Police, within five (5) days of receipt of an itemized invoice.

5.6 All law enforcement decisions encountered by members during contractual employment will be made by West Virginia State Police personnel and such decisions shall not be dictated or influenced by the contractual employer.

5.7 In the event that Division members who are assigned to a contractual work agreement are required to return to official duty in response to a public disaster or other emergency, neither the Division of Public Safety nor any of its officers or members shall be liable for any damages incurred as a result thereof.

#### Section 6. Assignment of Members

6.1 The Officer In Charge of Field Operations shall coordinate the manpower recruitment and allocation for all approved requests and may make minor contract negotiations.

6.2 Members accepting a contractual work assignment must be in the following duty status:

- a. Day Off Duty,
- b. Annual Leave
- c. Compensatory Day Off, or
- d. Holiday Off Duty;

excepting that a member may accept a contractual work assignment on a regularly scheduled work day when a minimum of eight (8) hours exists between the regularly scheduled work shift and the contractual work shift.

6.3 Members will not be permitted to accept any contractual work assignment when the accepting of such assignments would interfere with the member's ability to perform the primary duties of a State Police officer.

Dept. of Public Safety  
Division of Public Safety  
Series V

6.4 Members who have been placed in the following duty status shall not be eligible for participation in any contractual work assignment:

- a. Probationary Status,
- b. Active Suspension,
- c. Administrative Leave,
- d. Administrative or Light Duty due to a physical or mental condition,
- e. Sick Leave,
- f. Disability Leave, or
- g. Family Leave.

6.5 The Company Commander of the area in which the contractual assignment is to be performed shall ensure that sufficient supervisors are provided to properly supervise Division personnel and detail operations.

- a. Use of Criminalists as supervisors shall depend upon the nature of the assignment and shall be determined by the Officer In Charge of Field Operations.

6.6 Members assigned to contractual employment will be provided with Division vehicles for transportation to, during and from the location of the assignment. The Officer In Charge of Field Operations may establish mileage limitations and/or assign multiple members to vehicles.

6.7 Members shall be in an off-duty status while traveling to and from the location of assignment unless specifically instructed otherwise by the Company Commander or Officer In Charge of Field Operations.

- a. Members enroute to and returning from contractual work assignments will initiate any appropriate law enforcement action when a serious violation of the law or a life threatening situation is observed.

## Section 7. Compensation

7.1 Compensation for members on contractual employment shall be computed at the rate specified by the contract regardless of the member's classification under the Fair Labor Standards Act.

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Division of Public Safety  
Series V

Applicable state and federal taxes will be deducted from the member's total contractual compensation.

7.2 All members engaged in contractual employment shall retain coverage of Division benefits; excepting, there shall be no deduction of retirement contributions nor will the member's future retirement benefits be enhanced by participation in any contractual assignment.

Section 8. Member Conduct

8.1 Members engaged in contractual employment are subject to the same rules, regulations, Division operational policy and procedures and code of conduct as on-duty members.

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

ROBERT E. WILKINSON  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

SHEREE COHEN  
Special Assistant

(Plus all the volunteer  
help we can get)

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE

July 12, 1991

THIS DATE July 12, 1991  
ADMINISTRATIVE LAW DIVISION

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

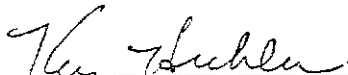
AGENCY: Division of Public Safety

RULE: New Rule, Series 5, Contracted Police or Security Services

DATE RULE FILED AS AN EMERGENCY RULE: July 11, 1991

DECISION NO. 59-91

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

  
KEN HECHLER  
Secretary of State

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Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

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## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

Charleston 25305

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(Plus all the volunteer  
help we can get)

#### DECISION

#### EMERGENCY RULE DECISION (ERD 59-91)

AGENCY: Division of Public Safety  
RULE: New Rule, Series 5, Contracted Police or Security Services  
FILED AS EMERGENCY RULE: July 11, 1991

- par. 1 The Division of Public Safety (Division) has filed the above new rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-a(a))].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The Division filed this emergency rule with supporting documents with the Secretary of State July 11, 1991 and with the LRMRC July 11, 1991.

par. 7 It is the determination of the Secretary of State that the Commission has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §15-2-18(b) reads:

*(b) Notwithstanding any other provision of this article, the superintendent may contract with public, quasi-public, military or private entities to provide extraordinary police or security services by the department when it is determined by the superintendent to be in the public interest. The superintendent shall assign such personnel, equipment or facilities as is deemed necessary and the department shall be reimbursed for the wages, overtime wages, benefits and costs of providing the contract services as negotiated between the parties. The compensation paid to public safety personnel by virtue of contracts provided for in this section shall be paid from a special account and shall be excluded from any formulation used to calculate an employee's benefits. All requests for obtaining extraordinary police or security services shall be made to the superintendent in writing and shall explain the funding source and the authority for making such a request. No officer or member of the department shall be required to accept any assignment made pursuant to this subsection. Every officer or member assigned to duty hereunder shall be paid according to the hours and overtime hours actually worked notwithstanding that officer's or member's status as exempt personnel under the Federal Labor Standards Act or applicable state statutes. Every contract entered into under this subsection shall contain the provision that in the event of public disaster or emergency where the reassignment to official duty of all officers and members is required, neither the department nor any of its officers or members shall be liable for any damages incurred as the result of the reassignment. Further, any entity contracting with the department of public safety under this section shall also agree as part of that contract to hold harmless and indemnify the state, department of public safety and its personnel from any liability arising out of employment under the contract. The superintendent is authorized to promulgate Legislative rules and regulations in accordance with §29A-1-1 et seq. of this code relating to the implementation of any contracts made under this subsection: Provided, That said regulations shall expressly prohibit private employment of officers or members in circumstances involving labor disputes.*

par. 9 It is the determination of the Secretary of State that the Division has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Division are as follows:

In March, 1989, the W. Va. Legislature passed SB 233 relating to the provisions of extraordinary police or security services by members of the West Virginia State Police under contractual agreement. This legislation mandated that the Superintendent promulgate legislative rules and regulations relating to the implementation of contracts made under this authority. The attached emergency rule will allow the Superintendent to begin accepting contractual work assignments with such assignments are deemed to be in the public interest, thereby affording the citizens and the State of West Virginia increased police presence and protection.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g). . . "time limitation: (Legislation - 1989).

par. 14 This decision shall be cited as Emergency Rule Decision 59-91 or ERD 59-91 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Division of Public Safety, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER  
Secretary of State

Entered \_\_\_\_\_

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE July 12, 1991  
ADMINISTRATIVE LAW DIVISION