

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: DIVISION OF PUBLIC SAFETY TITLE NUMBER: 81

CITE AUTHORITY West Virginia Code §15-2-18(b)

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 NEW RULE BEING PROPOSED: V

TITLE OF RULE BEING PROPOSED: Contracted Police or Security Services

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



COLONEL J. R. BUCKALEW
Superintendent
Division of Public Safety

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Contracted Police or Security Services

Type of Rule: X 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

A. R. Young

DIVISION OF PUBLIC SAFETY

DATE: August 12, 1991

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Division of Public Safety (State Police)

LEGISLATIVE RULE TITLE: Contracted Police or Security Services

1. Authorizing statute(s) citation West Virginia Code §15-2-18(b)

2. a. Date filed in State Register with Notice of Hearing:

July 11, 1991

b. What other notice, including advertising, did you give of the hearing?

Class I Legal Advertisement was run in the Charleston Gazette on
7-16-91. Division members received copies of the rule via Division
Notice 91-28 which encouraged them to read the rule and make their
comments, in writing, to the Superintendent.

c. Date of ~~hearing~~: July 12, 1991

Comment Period:

August 10, 1991

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received x

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing:
(be exact)

August 12, 1991

f. Name and phone number of agency person to contact for additional information:

Colonel J. R. Buckalew, Superintendent

Division of Public Safety

725 Jefferson Road

South Charleston, WV 25309 746-2111

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A



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

Gaston Caperton
Governor

Colonel J. R. Buckalew
Superintendent

COMMENTS RECEIVED AND AMENDMENTS MADE TO
WEST VIRGINIA STATE POLICE
LEGISLATIVE RULE
SERIES V
FILING

The comment period for this proposed rule was in effect from July 12 - August 10, 1991. No comments were received, therefore, no changes to the proposed rule were made.

SUMMARY OF RULE EFFECTS

The Legislative Rule of the West Virginia State Police regarding contracted police or security services was written in compliance with §15-2-18(b) of the Code of West Virginia, as amended during the 1989 session of the West Virginia Legislature, in order to ensure that only appropriate assignments are accepted by the Division and that all sworn Division members are considered for employment on a fair and consistent basis.

Section 1 is a **General** section, identifying the rule's scope and the statutory authority under which the rule was promulgated.

Section 2 is an explanation of terms frequently referred to in the text of the rule and are intended to make the rule more easily understood by the general public.

Section 3 explains the manner in which an **Application for Contracted Police or Security Services** must be made.

Section 4 explains the circumstances under which **Application Approval** will be made.

Section 5 outlines the **Contract Guidelines** which must be an integral part of any contract approved under the provisions of this rule.

Section 6 deals with the methods by which the **Assignment of Members** to the contractual work assignment will be made.

Section 7 governs the process by which the **Compensation** of members assigned to a contractual work detail will be accomplished.

Section 8 details what **Member Conduct** will be expected from any sworn Division member who accepts a contractual work assignment.

The West Virginia State Police Legislative Rule regarding contracted police or security services sets forth specific guidelines which must be followed when accepting such extraordinary assignments on behalf of the Division. This rule effects only the sworn Division employees who voluntarily accept a contractual work assignment and those public, quasi-public, military, or private entities who make application for such services. This rule has no effect on the Division civilian employees or other employees of the Department of Public Safety.



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

Gaston Caperton
Governor

Colonel J. R. Buckalew
Superintendent

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,

A handwritten signature in cursive script, appearing to read "J. R. Buckalew".

COLONEL J. R. BUCKALEW
SUPERINTENDENT

JRB:crb

Attachment

WEST VIRGINIA LEGISLATIVE RULE
DEPARTMENT OF PUBLIC SAFETY
DIVISION OF PUBLIC SAFETY
CHAPTER 15-2
SERIES V
FILING

Title: Contracted Police or Security Services

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.

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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.

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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.

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.