

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

orm #2

FILED

JUN 12 2 58 PM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: WEST VIRGINIA STATE POLICE TITLE NUMBER: 81

RULE TYPE: LEGISLATIVE; CITE AUTHORITY W. Va. Code 15-2-18(b)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 5

TITLE OF RULE BEING AMENDED: CONTRACTED POLICE OR SECURITY SERVICES

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: N/A

TITLE OF RULE BEING PROPOSED: N/A

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 14, 1997 AT 10:00 am. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

SUPERINTENDENT c/o S.W. Cogar

725 Jefferson Rd.

S. Charleston, WV 25309-1698

- Contact number: (304)746-2112

- FAX number: (304)746-2405

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

\$4.20

**West Virginia State Police
Title 81
Series 5**

Summary of Proposed Rule

The proposed rule specifies conditions under which members of the department may perform extraordinary police or security services and governs the procedure to be followed in the employment of department members.

**West Virginia State Police
Title 81
Series 5**

Circumstances Requiring Amendments to the Rule

The following circumstances led to the proposed amendments to §81-5-1 et seq.:

1.) The legislature changed the name of the agency from the "Division of Public Safety" to the "West Virginia State Police." The proposed rule reflects this change.

2.) Generic references to the West Virginia State Police will be made using "department" rather than "Division." This is a consequence of the legislative name change. The proposed rule reflects this change.

3.) The current rule is not clear in setting forth guidelines when a member may accept contractual employment on a regularly scheduled work day. The proposed rule clarifies this ambiguity.

4.) The current rule does not clearly prohibit a member in basic cadet training from accepting contractual employment. The proposed rule explicitly prohibits members in basic cadet training from accepting contractual employment.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: CONTRACTED POLICE OR SECURITY SERVICES

Type of Rule: X Legislative Interpretive Procedural

Agency WEST VIRGINIA STATE POLICE

Address 725 Jefferson Rd.
S. Charleston, WV 25309-1698

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$-0-	\$-0-	\$-0-	\$-0-	\$-0-
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

The proposed rules will have only nominal costs (if any at all) associated with them. Therefore, we have indicated that the proposed rules result in no costs to our agency.

3. Objectives of these rules:

To specify the conditions under which members of the department may perform extraordinary police or security services and governs the procedure to be followed in the employment of department members.

Rule Title: CONTRACTED POLICE OR SECURITY SERVICES

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

NONE

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

NONE

C. Economic Impact on Citizens/Public at Large.

NONE

Date: June 2, 1997

Signature of Agency Head or Authorized Representative

St. Col. Gary H. Griffith

TITLE 81
LEGISLATIVE RULE
DIVISION OF PUBLIC SAFETY WEST VIRGINIA STATE POLICE

FILED

JUN 12 2 58 PM '97

SERIES 5
CONTRACTED POLICE OR SECURITY SERVICES

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§81-5-1. General.

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

1.2. Authority. -- W. Va. Code §15-2-18(b)

1.3. Filing Date. --

1.4. Effective Date. --

§81-5-2. For the Purposes of this Rule.

2.1. Superintendent Company commander means the Superintendent that member of the Division of Public Safety or his duly authorized agent department designated by the Superintendent as the principal operational supervisor for a field operations company area.

2.2. Member Compensatory day off means an employee of the Division, empowered under the provisions of W what time off duty awarded to a member of the department as compensation for working on a designated state or national holiday.

Va. Code §15-2-12 with statewide law enforcement powers who has taken and subscribed to the oath of office as required by W-2.3. Extraordinary police or security services/contracted police or security services means those services determined by the Superintendent to be in the public interest performed by a member of the department 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 department.

2.4. Member means a non-probationary employee of the department, empowered under the provisions of W. Va. Code §15-2-12 with statewide law enforcement powers and who has taken and subscribed to the oath of office as required by W. Va. 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. 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.~~

~~2.6. Extraordinary Police or Security Services/Contracted Police or Security Services means those services determined by the Superintendent to be in the public interest performed by a member of the Division 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.~~
~~2.5. Officer in charge of field operations means that member of the department designated by the Superintendent as the principal operational supervisor of the field operations force.~~

~~2.6. Primary communications station means that department facility that serves as a transmission and reception site for State Police radio traffic in a designated multi-county geographical area.~~

~~2.7. Compensatory Day Off Superintendent means that time off duty awarded to a member the Superintendent of the Division as compensation for working on a designated state West Virginia State Police or national holiday his/her duly authorized agent.~~

§81-5-3. 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 and shall explain the funding source and the authority under which the request is made.

3.2. The Superintendent will not grant approval for any contractual employment in circumstances involving labor disputes.

§81-5-4. Contract Guidelines.

4.1. The Superintendent shall enter into a contract for all contracted police or security services as required by W. Va. Code

§15-2-18(b).

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 Public Safety West Virginia State Police, and its officersemployees and members 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 Superintendent shall negotiate compensation rates for contracted services on a man-hour basis with additional consideration givenand may also negotiate compensation for any extraordinary Divisionadditional departmental expenditures or costs.

4.5. The contractual employer shall pay for services rendered by the Divisiondepartment by check, made payable to the West Virginia State Police, within five (5) days of receipt of an itemized invoice.

4.6. West Virginia State Police personnel shall make all law enforcement decisions encountered by members during contractual employment and the contractual employer shall not dictate or influence the decisions.

4.7. In the event that Divisiondepartment members who are assigned to contractual employment are required to return to official duty in response to a public disaster or other emergency, neither the DivisionWest Virginia State Police of Public Safety nor any of its officers or members are liable for any damages incurred as a result of the reassignment.

§81-5-5. Assignment of Members.

5.1. The Officer In Charge officer in charge of Field Operations field operations or his/her designee shall coordinate the manpower recruitment and allocation for all approved requests for contractual services and negotiate minor contract provisions.

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

a(a) Day off duty,

(b) Annual leave,

(c) Compensatory day off,

(d) Holiday off duty, or

e. Day Off Duty Regularly scheduled work day,

b provided that there is a minimum of eight hours within the twenty-four hour period where the member is neither in an on-duty status nor on contractual-duty status.

Annual Leave

c. Compensatory Day Off, or

d. Holiday Off Duty;

Provided that a member may accept contractual employment on a regularly scheduled work day when a minimum of eight (8) hours exists between the regularly scheduled work shift and the contractual employment work shift. 5.3. Members may not accept any contractual employment when the accepting of such employment would interfere with the member's ability to perform the primary duties of a State Police officer.

5.4. Members who are placed in the following duty status are not eligible for participation in any contractual employment:

(a) Basic cadet training,

(b) Post-basic probationary status,

(c) Active suspension,

(d) Administrative leave,

(e) Temporary alternative duty due to a physical or mental condition,

(f) Sick leave,

(g) Disability leave, or

(h) Family leave.

Probationary Status,

b5.5. Active Suspension,

~~cThe Superintendent shall provide members assigned to contractual employment with department vehicles for transportation to, during, and from the location of the employment. Administrative Leave,~~

~~dThe department may establish mileage limitations and/or assign multiple members to vehicles.~~

~~Administrative or Light Duty due to a physical or mental condition,~~

~~e. Sick Leave,~~

~~f. Disability Leave, or~~

~~g. Family Leave.~~

~~5.5. The Company Commander of the area in which the contractual employment is to be performed shall ensure that sufficient supervisors are provided to properly supervise Division personnel and detail operations.~~

~~5.6. The Superintendent shall provide members assigned to contractual employment with Division vehicles for transportation to, during and from the location of the employment. The Officer In Charge of Field Operations may establish mileage limitations and/or assign multiple members to vehicles.~~

~~5.7. Members are in an off-duty status while traveling to and from the location of contractual employment unless specifically instructed otherwise by the Company Commander or Officer In Charge of Field Operations.~~

~~a. Members en route to and returning from contractual employment will initiate any appropriate law enforcement action when a serious violation of the law or a life threatening situation is observed.~~

§81-5-6. Compensation.

~~6.1. The Division Comptrollerdepartment comptroller shall compute compensation for members on contractual employment at the rate specified by the contract regardless of the member's classification under the Fair Labor Standards Act or the member's normal hourly compensation rate. The Comptrollercomptroller will deduct applicable state and federal taxes from the member's total contractual employment compensation.~~

6.2. The ~~Comptroller~~comptroller will make no deduction of retirement contributions from contractual employment compensation and a member's retirement benefits will not be enhanced by participation in contractual employment. All other ~~Division~~department benefits will remain in force during contractual employment.

~~§81-5-7. Member Conduct.~~

~~7.1. 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.~~

8.2.12.4. Movement Disorders, e.g. Parkinson's.

8.2.12.5. Cerebral Aneurysms.

8.2.12.6. Syncope.

8.2.12.7. Progressive Neurological Diseases - including, but not limited to, Multiple Sclerosis and Huntington's Chorea.

8.2.12.8. Peripheral Nerve Disorder - including, but not limited to, Polyneuritis, Mononeuritis, and Neurofibromatosis.

8.2.12.9. Narcolepsy.

8.2.12.10. Cerebral Vascular Accident.

8.2.12.11. Central Nervous System Infections.

8.2.13. Any condition that requires further evaluation beyond that offered by the State Police's physician shall be conducted at the applicant's expense.

8.3. The Cadet Selection Board may exclude those applicants who, in the opinion of the examining physician, possess any medical condition that would preclude the applicant from performing the duties attendant to the position of state police officer. The Cadet Selection Board shall remove those applicants excluded during the medical screening stage, and present a rank ordered list to the Superintendent.

§81-2-9. Final Selection Stage.

9.1. In conformity to W. Va. Code §15-2-7(b), the Superintendent shall appoint an applicant to the position of state police officer from among the top three names on the current list of eligible applicants until all available positions are filled.

9.2. Those applicants who successfully complete all phases of the selection process, but who are not appointed by the Superintendent due to the unavailability of positions or for any other reason, will may be retained on a standing list for no more than twelve months.