

**WEST VIRGINIA**

**SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #3

**FILED**

**JUL 17 9 58 AM '97**

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: WEST VIRGINIA STATE POLICE TITLE NUMBER: 81

CITE AUTHORITY W. Va. Code 15-2-18(b)

AMENDMENT TO AN EXISTING RULE: YES X NO     

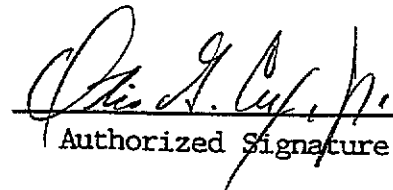
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 5

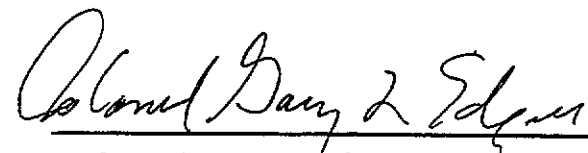
TITLE OF RULE BEING AMENDED: CONTRACTED POLICE OR SECURITY SERVICES

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

TITLE OF RULE BEING PROPOSED: N/A

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.

  
Authorized Signature

  
Superintendent (Agency Head)

DATE: July 17, 1997

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: WEST VIRGINIA STATE POLICE

LEGISLATIVE RULE TITLE: CONTRACTED POLICE OR SECURITY SERVICES

1. Authorizing statute(s) citation W. Va. Code 15-2-18(b)

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

June 12, 1997

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

NONE

c. Date of Hearing(s) N/A

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)

June 17, 1997

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

S.W. Cogar

Contact number: (304)746-2112/FAX: (304)746-2405

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

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

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

**Results of Comment Period**

**During the notice comment period no comments or suggestions were received in response to the proposed changes to the rule.**

**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
<b>ESTIMATED TOTAL COST</b>	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
<b>PERSONAL SERVICES</b>					
<b>CURRENT EXPENSE</b>					
<b>REPAIRS &amp; ALTERNATIONS</b>					
<b>EQUIPMENT</b>					
<b>OTHER</b>					

**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**

Det. Col. Gary H. Griffith

FILED

TITLE 81  
LEGISLATIVE RULE

~~DIVISION OF PUBLIC SAFETY~~ WEST VIRGINIA STATE POLICE

Nov 13 10 58 AM '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. 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, awarded to a member of the department as compensation for working on a designated state or national holiday.

W. Va. Code §15-2-12 with statewide law enforcement powers who has taken and subscribed to the oath of office as required by W. Va. Code §15-2-14.

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 given and may also negotiate compensation~~ for any extraordinary ~~Division~~ additional departmental expenditures or costs.

4.5. The contractual employer shall pay for services rendered by the ~~Division~~ department 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 ~~Division~~ department 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 ~~Division~~ West 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.~~