

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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JAN 23 11 53 AM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: WEST VIRGINIA STATE POLICE TITLE NUMBER: 81

CITE AUTHORITY W. Va. 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: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



Authorized Signature

25 register on the twenty-third day of January, one thousand
26 nine hundred ninety-eight, relating to the state police
27 (carrying of handguns by retired or medically discharged
28 members, 81 CSR 6), is authorized.

29 (d) The legislative rule filed in the state register on the
30 seventeenth day of July, one thousand nine hundred
31 ninety-seven, under the authority of section eighteen,
32 article two, chapter fifteen, of this code, modified by the
33 state police to meet the objections of the legislative
34 rule-making review committee and refiled in the state
35 register on the twenty-third day of January, one thousand
36 nine hundred ninety-eight, relating to the state police
37 ~~(contracted police or security services, 81 CSR 5), is~~
38 ~~authorized with the following amendment:~~

39 "On page 2, Section 3.1, by reinserting the stricken
40 words 'in writing'."

41 (e) The legislative rule filed in the state register on the
42 seventeenth day of July, one thousand nine hundred
43 ninety-seven, under the authority of section forty-eight,
44 article two, chapter fifteen, of this code, relating to the state
45 police (modified vehicle inspections, 81 CSR 4), is
46 authorized.

47 (f) The legislative rule filed in the state register on the
48 thirtieth day of July, one thousand nine hundred
49 ninety-seven, under the authority of section six, article two,
50 chapter fifteen, of this code, modified by the state police
51 to meet the objections of the legislative rule-making
52 review committee and refiled in the state register on the
53 twenty-third day of January, one thousand nine hundred
54 ninety-eight, relating to the state police (police grievance
55 procedure, 81 CSR 8), is authorized.

§64-6-3. Division of veterans affairs; headstones or markers.

1 The legislative rule filed in the state register on the
2 tenth day of February, one thousand nine hundred ninety-
3 eight, relating to the division of veterans affairs (VA
4 headstones or markers, 86 CSR 4) is authorized.

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TITLE 81
LEGISLATIVE RULE
DIVISION OF PUBLIC SAFETY WEST VIRGINIA STATE POLICE 53 AM '98

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. Definitions.~~

2.1 Unless the content clearly requires a different meaning as used in the rule, the terms:

2.1. 2.2 Superintendent Company commander means the Superintendent of the Division of Public Safety or his duly authorized agent that member of the department designated by the Superintendent as the principal operational supervisor for a field operations company area.

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

2.4. 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.

2.5. 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.
2.6. 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.

2.7. 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 means that time off duty awarded to a member of the Division as compensation for working on a designated state or national holiday
2.8 Superintendent means the administrative head of the West Virginia State Police or his/her duly authorized agent as authorized by W. Va. Code 15-2-2.

§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 officers ~~employees~~ 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) Day off duty,
- (b) Annual leave,
- (c) Compensatory day off,
- (d) Holiday off duty, or

~~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.~~

~~e. Regularly scheduled work day, 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.~~

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. 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.~~

- 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.

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 department personnel and detail operations.

5.6. The Superintendent shall provide members assigned to contractual employment with Division department 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 Comptroller~~department 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 Comptrollercomptroller 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 Divisiondepartment 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.~~



FILED

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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

State Capitol - Room MB-49
Charleston, West Virginia 25305
(304) 347-4840

Senator: Mike Ross, Co-Chairman
Delegate: Mark Hunt, Co-Chairman
Counsel: Debra A. Graham

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Audrey R. Ross, Admin. Assistant

December 16, 1997

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: S. W. Cogar
West Virginia
State Police
725 Jefferson Road
South Charleston, WV 25309

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE Contracted Police or Security Services (81CSR5)

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
- 5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.