

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #6

**FILED**

MAY 21 3 32 PM '98

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: West Virginia State Police TITLE NUMBER: 81

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: \_\_\_\_\_

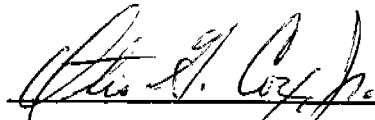
TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB4200

SECTION 64-6-2(d), PASSED ON March 12, 1998

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON  
THE FOLLOWING DATE: June 15, 1998

  
Authorized Signature

\$2.80

TITLE 81  
LEGISLATIVE RULES  
WEST VIRGINIA STATE POLICE

SERIES 5

CONTRACTED POLICE OR SECURITY SERVICES

PROMULGATION HISTORY

Notice of Comment Period on Proposed Rule:	June 12, 1997
Comment Period Ends:	July 14, 1997
Notice of Agency Approval of a Proposed Rule and Filing with the Legislative Rule-Making Review Committee:	July 17, 1997
Notice of Rule Modification of a Proposed Rule:	January 23, 1998
Notice of Final Filing and Adoption of a Legislative Rule Authorized by the West Virginia Legislature:	May 21, 1998.

TITLE 81  
LEGISLATIVE RULE  
WEST VIRGINIA STATE POLICE

SERIES 5  
CONTRACTED POLICE OR SECURITY SERVICES

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**§81-5-1. General.**

1.1. Scope. -- This rule specifies 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.

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

1.3. Filing Date. -- May 21, 1998.

1.4. Effective Date. -- June 15, 1998.

**§81-5-2. Definitions.**

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

2.2 Company commander means that member of the department designated by the Superintendent as the principal operational supervisor for a field operations company area.

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.

2.6. 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.

2.8 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 West Virginia State Police, and its 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 and may also negotiate compensation for any additional departmental expenditures or costs.

4.5. The contractual employer shall pay for services rendered by the 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 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 West Virginia State Police 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 of 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

(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) 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 department personnel and detail operations.

5.6. The Superintendent shall provide members assigned to contractual employment with 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 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 comptroller will deduct applicable state and federal taxes from the member's total contractual employment compensation.

6.2. The 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 department benefits will remain in force during contractual employment.

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81-5

1 Bill-SP, C

H. B. 4200

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(By Delegates Hunt, Linch, Compton, Jenkins,  
Faircloth and Riggs)

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[Introduced January 30, 1998; referred to the  
Committee on the Judiciary.]

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10 A BILL to amend article six, chapter sixty-four of the code  
11 of West Virginia, one thousand nine hundred  
12 thirty-one, as amended, by adding thereto a new  
13 section, designated section two, relating to  
14 authorizing the state police to promulgate a  
15 legislative rule relating to contracted police or  
16 security services.

17 *Be it enacted by the Legislature of West Virginia:*

18 That article six, chapter sixty-four of the code of  
19 West Virginia, one thousand nine hundred thirty-one, as  
20 amended, be amended by adding thereto a new section,  
21 designated section two, to read as follows:

22 **ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF MILITARY**  
23 **AFFAIRS AND PUBLIC SAFETY TO PROMULGATE LEGISLATIVE**

4200

1           **RULES.**

2 §64-6-2.   **State police.**

3           The legislative rule filed in the state register on  
4 the seventeenth day of July, one thousand nine hundred  
5 ninety-seven, under the authority of section eighteen,  
6 article two, chapter fifteen, of this code, modified by the  
7 state police to meet the objections of the legislative  
8 rule-making review committee and refiled in the state  
9 register on the twenty-third day of January, one thousand  
10 nine hundred ninety-eight, relating to the state police  
11 (contracted police or security services, 81 CSR 5), is  
12 authorized.

13

14           NOTE: The purpose of this bill is to authorize the  
15 State Police to promulgate a legislative rule relating to  
16 Contracted Police or Security Services.

17

18           This section is new; therefore, strike-throughs and  
19 underscoring have been omitted.

Senate Bill No. 341

81-5

(By Senator(s) Ross, Anderson, Bowman,  
Macnaughtan, Boley and Buckalew)

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