

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #7

Do Not Mark In This Box
Filing Date

FILED

2003 APR 29 A 10: 58

OFFICE WEST VIRGINIA
SECRETARY OF STATE
Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: West Virginia State Police TITLE NUMBER: 81

CITE AUTHORITY: §15-2-51

EMERGENCY 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 RULE BEING PROPOSED: 16

TITLE OF RULE BEING PROPOSED: Re-employment of Retired Members

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Use additional sheets if necessary


Authorized Signature



EMERGENCY RULE QUESTIONNAIRE

DATE: 04/29/03

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia State Police

725 Jefferson Road
So. Charleston, WV 25309-1698
(304) 746-2109
1/Lt David W. Skeen

EMERGENCY RULE TITLE: Re-employment of Retired Members

1. Date of filing 04/29/03

2. Statutory authority for promulgating emergency rule:
§15-2-51

3. Date of filing of proposed legislative rule: 04/29/03

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule?
No

5. Has the same or similar emergency rule previously been filed and expired?
No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.

The West Virginia State Police is currently suffering from an unacceptably high number of vacant Trooper positions. Hiring and training personnel with no prior law enforcement experience requires significant time and expense. Re-employment of recently retired members in order to fill vacant positions is in the best interest of the State as it allows the most rapid and cost effective method for immediately filling vacancies.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

N/A

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

The State Police currently has 83 vacancies out of 679 funded positions. Current cadet classes will only fill 55 of the present vacancies. Field training for the new members will not be complete until early 2004. There is a realistic anticipation of additional vacancies due to retirement during the next year. This shortage of manpower results in staffing shortages at detachments. These shortages cause reduced coverage and increased response time.

**West Virginia State Police
Title 81
Series 16**

Summary of Proposed Rule

This rule as proposed governs the process for the re-employment of retired members of the West Virginia State Police as allowed by West Virginia Code §15-2-51, the West Virginia State Police Re-employment Act, and authorized by Executive Order of The Governor.

**West Virginia State Police
Title 81
Series 16**

Circumstances Requiring Filing of Rule

The West Virginia State Police is currently suffering from an unacceptably high number of vacant Trooper positions. The West Virginia State Police Re-employment Act, West Virginia Code §15-2-51, and Executive Order of The Governor allows the State Police to re-employ retired members as a means of filling vacancies. Filing of this rule will allow the Department to begin the re-employment process immediately and begin filling vacant positions within the Department.

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Re-employment of Retired Members

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia State Police

Address: 725 Jefferson Road

South Charleston, West Virginia 25309-1698

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$45,785.00	-0-	-0-	-0-	-0-
PERSONAL SERVICES	\$44,225.00	-0-	-0-	-0-	-0-
CURRENT EXPENSE	\$1,560.00	-0-	-0-	-0-	-0-
REPAIRS & ALTERATIONS	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-

2. Explanation of Above Estimates:

Re-employed members will fill current uniformed vacancies within the organization. These positions are already funded and no additional expenses will be incurred beyond currently budgeted amounts. Those annual costs reflected above are estimated costs associated with each re-employed Corporal.

3. Objectives of These Rules:

The objective of these rules is to provide a method for the State Police to re-employ retired members in order to fill vacancies of the field operations position within the agency.

Rule Title: Re-employment of Retired Members

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

See #2

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

None

C. Economic Impact on Citizens/Public at Large.

None

Date: 4/22/03

Signature of Agency Head or Authorized Representative:

LTC A.C.T.

FILED

TITLE 81
LEGISLATIVE RULE
WEST VIRGINIA STATE POLICE

2003 APR 29 A 10: 59

SERIES 16
RE-EMPLOYMENT OF RETIRED MEMBERS

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§81-16 -1. General.

1.1. Scope. -- This rule governs the process for the re-employment of retired members of the West Virginia State Police as allowed by West Virginia Code §15-2-51, the West Virginia State Police Re-employment Act, and authorized by Executive Order of The Governor.

1.2. Authority. -- W. Va. Code §15-2-51.

1.3. Filing Date.

1.4. Effective Date.

§81-16-2. Purpose

2.1 The purpose of this rule is to establish guidelines for re-employment of retired members and to establish procedures to govern the re-employment process.

§81-16-3. Definitions

3.1 For the purpose of this rule:

3.1.1. Corporal - means a uniformed, non-supervisory member assigned to traditional field operations positions that perform patrol and investigative duties and respond to calls for service.

3.1.2. Re-employed member - means an honorably retired member returning to a position as a uniformed member within the West Virginia State Police under the West Virginia State Police Re-employment Act.

§81-16-4. General Rules for State Police Re-employment.

4.1. The Superintendent shall establish within the State Police a Retired Member Re-employment Board, hereinafter "the Board", which shall consist of five members as follows: Three (3) members, selected by the Superintendent, from the senior staff holding the appointed rank of Captain, Major or Lieutenant Colonel; one (1) member, selected by blind lot, holding the supervisory rank of First Lieutenant; one (1) member, selected by blind lot, holding the supervisory rank of First Sergeant or Sergeant.

4.2. Retired members who were honorably retired from the West Virginia State Police, as provided under West Virginia Code §15-2-27, from December 1, 1997 to December 1, 2002, who do not have any limiting disability and do not have a disability petition currently pending before the Consolidated Public Retirement Board, shall be eligible to make application for re-employment consideration.

4.3. Any retired member re-employed shall serve as an at will and pleasure employee and employment may be terminated with or without cause at any time by the Superintendent.

4.4. Re-employed members shall hold the non-supervisory rank of Corporal. Re-employed members will not be eligible for temporary or permanent advancement in rank or classification.

4.5. Re-employed members who are not certified as a law enforcement officer at the time of re-employment shall complete a course of instruction prescribed by the Superintendent. Such instruction shall include, but is not limited to:

- 4.5.1. Firearms training and qualification.
- 4.5.2. Defensive driving.
- 4.5.3. Mechanics of arrest.
- 4.5.4. Laws of arrest, search and seizure.
- 4.5.5. West Virginia Motor Vehicle Law.
- 4.5.6. Criminal law update.
- 4.5.7. Domestic crimes.

4.6. The Superintendent may enter into a limited contract with a re-employed member for the purposes of establishing general duties and responsibilities of the member. Any contract of employment shall be for a period not exceeding five (5) years from the effective date of West Virginia Code §15-2-51. The contract shall not limit the Superintendent's ability to reassign a member to meet operational needs of the Department and shall not affect the at will employment status of re-employed members.

§81-16-5. Re-employment Process Initial Stage

5.1. All applications for re-employment shall initially be reviewed by the Board. The Board shall review the applicant's personnel file and any Professional Standards files concerning the applicant during this initial stage. The Board shall make a recommendation to the Superintendent that an applicant be given further consideration or eliminated as a candidate for re-employment.

5.2. Applicants recommended for further consideration for re-employment must successfully pass a physical fitness test as prescribed by the Superintendent. Applicants passing the prescribed physical fitness test shall be advanced to the background investigation stage.

§81-16-6. Background Investigation Stage

6.1. The background investigation shall be assigned for completion to a supervisory member of the State Police. The investigation shall be an abbreviation of the standard background investigation, covering the time the applicant has been retired from the Department. The background shall at a minimum include:

6.1.1. Inquiries into the applicant's criminal and driving history.

6.1.2. Inquiries with any employers of the applicant after retirement from the Department.

6.1.3. May include a psychological evaluation at the discretion of the Superintendent.

6.1.4. And any other areas requested by the Superintendent.

6.2. The Board shall review the completed background investigation and make its recommendation to the Superintendent that the applicant be further considered or eliminated.

6.3. The Superintendent shall review the recommendations of the Board and determine if the applicant will advance to the medical screening stage.

§81-16-7. Medical Screening Stage

7.1. Applicants applying for re-employment must receive a recommendation from the department's physician that the applicant is able to perform the duties of a police officer.

7.2. In the event the medical examination indicates a possible pre-existing medical condition that may adversely affect the applicant's ability to perform the required duties, an advanced medical evaluation may be required before further consideration. Such additional medical evaluation shall be conducted at the applicant's expense.

7.3. The Board shall review the application file of any applicant who receives a recommendation from the department physician and make recommendations to the Superintendent concerning the re-employment of the applicant.

§81-16-8. Final Selection Stage

8.1. The Superintendent shall review the recommendations of the Board and may re-employ applicants approved by the Board at his/her discretion.

8.2. The Superintendent shall have the absolute right to deny the re-employment of any applicant and/or eliminate an applicant from further consideration at any point in the re-employment process.