

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

2012 AUG 31 AM 11:03

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Division of Protective Services TITLE NUMBER: 99

CITE AUTHORITY: 15-2D-3

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: 5

TITLE OF RULE BEING PROPOSED: Contracted Police or Security Services

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

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: 08/30/2012

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Division of Protective Services
1900 Kanawha Boulevard East
Building 1, Room 152-A
Charleston, West Virginia 25305
304-558-9911

LEGISLATIVE RULE TITLE: Contracted Police or Security Services

1. Authorizing statute(s) citation 15-2D-3

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
July 27, 2012

b. What other notice, including advertising, did you give of the hearing?
None

c. Date of Public Hearing(s) *or* Public Comment Period ended:
August 30, 2012

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)

August 31, 2012

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Director Randall K. Mayhew
Division of Protective Services
1900 Kanawha Boulevard East
Building 1, Room 152-A
Charleston, West Virginia 25305
304-558-9911(o)
304-558-5604(f)
rmayhew@state.wv.us

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Deputy Director Kevin J. Foreman
Division of Protective Services
1900 Kanawha Boulevard East
Building 1, Room 152-A
Charleston, West Virginia 25305
304-558-9911(o)
304-558-5604(f)
kevin.j.foreman@wv.gov

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 or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached

**West Virginia Division of Protective Services
Title 99
Series5**

Summary of Proposed Rule

The proposed rule specifies the conditions under which members of the Division of Protective Services are permitted to perform extraordinary police or security services and establishes the procedure to be followed when deploying members for this type of employment.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Contracted Police or Security Services

Type of Rule: Legislative Interpretive Procedural

Agency: Division of Protective Services

Address: 1900 Kanawha Boulevard East
Building 1 Room 152-A
Charleston, West Virginia 25305

Phone Number: 304-558-9911 Email: rmayhew@state.wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The proposed rule will have no fiscal impact on any state agency.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title: _____

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

None

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

The rule is proposed to specify the conditions under which members of the Division of Protective Services are permitted to perform extraordinary police or security services and establishes the procedures to be followed when deploying members for this type of employment.

Date: 07/27/2012

Signature of Agency Head or Authorized Representative

M. Austin J. Morris - WVD MAPS Dep Sec.

RE
2012 AUG 31 AM 11:03

**TITLE 99
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF PROTECTIVE SERVICES
SERIES 5
CONTRACTED POLICE OR SECURITY SERVICES**

§99-5-1. General.

- 1.1. Scope. -- This rule specifies the conditions under which members of the West Virginia Division of Protective Services may perform extraordinary police or security services and establishes the procedures to be followed.
- 1.2. Authority. -- W. Va. Code §15-2D-3.
- 1.3. Filing Date. -- July 27, 2012
- 1.4. Effective Date. --

§99-5-2. For the Purposes of This Rule.

- 2.1. "Director" means the individual responsible for the control and supervision of the West Virginia Division of Protective Services.
- 2.2. "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" or when a member has exhausted his allowable work hours under the Fair Labor Standards Act.
- 2.3. "Extraordinary police or security services" means those services determined by the director or his/her designee 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.
- 2.4. "Member" means a non-probationary employee of the division, empowered under the provisions of West Virginia Code §15-2D-3.
- 2.5. "Officer in Charge of Field Operations" means that member of the division designated by the Director as the principal operational supervisor of field operations.
- 2.6 "Equipment" means those items utilized by the division that are necessary to provide the extraordinary security and protection duties as required in West Virginia Code §15-2D-3.

§99-5-3. Application for Contracted Police or Security Services.

- 3.1. All requests for contracted police or security services must be made to the Director and shall explain the need for services, funding source, and the authority under which the request is made.

3.2. The Director shall not grant approval for any contractual employment under any circumstances involving labor disputes.

§99-5-4. Contract Guidelines.

4.1 The Director shall enter into a contract for all contracted police and security services.

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 Protective Services, 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 shall not exceed those outlined in the contract unless new terms are subsequently agreed to, in writing, by both parties.

4.4. The Director shall negotiate compensation rates for contracted services on a man-hour basis and may also negotiate compensation for equipment and other additional division expenditures or costs.

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

4.6. West Virginia Division of Protective Services 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 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 Division of Protective Services nor any of its officers or members are liable for any damages incurred as a result of the reassignment.

§99-5-5. 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 Division of Protective Services Officer.

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

- (a) Basic officer 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 Officer in Charge of Field Operations shall ensure that sufficient supervisors are provided to properly supervise division personnel and detail operations.

5.6. The Director shall provide members assigned to contractual employment with division vehicles for transportation to, during and from the location of the employment when necessary. 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 (1) Specifically instructed otherwise by the Officer In Charge of Field Operations or (2) A serious violation of the law or a life threatening situation is observed.

§99-5-6. Compensation.

6.1. The division 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 division benefits will remain in force during contractual employment.