



WEST VIRGINIA SECRETARY OF STATE

KRIS WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: State Police

RULE TYPE: Legislative

TITLE-SERIES: 81-05

RULE NAME: Contracted Police Or Security Services

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

The above proposed Legislative rules, 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.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Brandolyn N Felton-Ernest -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 81
LEGISLATIVE RULE
WEST VIRGINIA STATE POLICE

SERIES 5
CONTRACTED POLICE OR SECURITY SERVICES

§§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.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect after August 1, 2036.

§§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)~~ 5.2.1. Day off duty,

~~(b)~~ 5.2.2. Annual leave,

~~(c)~~ 5.2.3. Compensatory day off,

~~(d)~~ 5.2.4. Holiday off duty, or

~~(e)~~5.2.5. 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)~~ 5.4.1. Basic cadet training,

~~(b)~~ 5.4.2. Post-basic probationary status; Provided, That Members who have completed the field training officer program may be permitted to work contract services and patrols,

~~(c)~~ 5.4.3. Active suspension,

~~(d)~~ 5.4.4. Administrative leave,

~~(e)~~ 5.4.5. Temporary alternative duty due to a physical or mental condition,

~~(f)~~ 5.4.6. Sick leave,

~~(g)~~ 5.4.7. Disability leave, or

~~(h)~~ 5.4.8. 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)~~5.7.1. 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.