

**Atlantic County Municipal Joint Insurance Fund**

**Bylaws**

**Originally Adopted: January 1, 1987**

**Revised and Amended: November 12, 1997**

**Revised and Amended: December 18, 2006**

**ATLANTIC COUNTY MUNICIPAL JOINT INSURANCE FUND  
BYLAWS**

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## **RECITALS**

**WHEREAS**, local units of government throughout the State of New Jersey have been continually subjected to the chaotic cycles which occur in the commercial insurance industry; and

**WHEREAS**, during these cycles, many local units could not obtain adequate insurance or were/are faced with unaffordable premiums; and

**WHEREAS**, Public Law 1983, c.372 (N.J.S.A. 40A:10-36 et seq.) permits local units to join together to form a Joint Insurance Fund; and

**WHEREAS**, said law is designed to give local units of government an opportunity to use alternative risk management techniques, provided they are based on sound actuarial principles; and

**WHEREAS**, the founding members of the Atlantic County Municipal Joint Insurance Fund studied the feasibility of forming a joint insurance fund; and

**WHEREAS**, it was concluded that the formation of a “Joint Insurance Fund” would result in significant savings in insurance costs as well as provide stability in coverage; and

**WHEREAS**, N.J.S.A. 40A:10-39 requires the adoption of bylaws for a Joint Insurance Fund.

**NOW, THEREFORE**, pursuant to and in furtherance of the Indemnity and Trust Agreement and the desire of the involved local units to be organized as a Joint Insurance Fund per N.J.S.A. 40A:10-36 et seq., and in order to manage the Fund formed as the Atlantic County Municipal Joint Insurance Fund (ACMJIF), hereinafter called “Fund”, the local units hereby adopt the following as the Bylaws of the Atlantic County Municipal Joint Insurance Fund, intending to be bound thereby:

## **ARTICLE I**

### **NAME**

The name of this group shall be the **ATLANTIC COUNTY MUNICIPAL JOINT INSURANCE FUND (ACMJIF)**, hereinafter called the “Fund.” The Fund lists its principal office annually in its plan of risk management. (N.J.A.C. 11:15-2.6(b)1). The Fund commenced operations on January 1, 1987 with seven charter members. The charter members are:

Borough of Folsom, 1700 12th Street, Folsom, NJ, 08037; Town of Hammonton, 3rd Street & Central Avenue, Hammonton, NJ, 08037; Borough of Longport, 2305 Atlantic Avenue, Longport, NJ, 08403; Borough of Newfield, P.O. Box 977, Newfield, NJ, 08344; City of Northfield, 1600 Shore Road, Northfield, NJ, 08225; City of Pleasantville, 18 North First Street, Pleasantville, NJ, 08232, and Waterford Township, 2131 Auburn Avenue, Atco, NJ, 08004.

**ARTICLE II**  
**DEFINITIONS**  
**(N.J.A.C. 11:15-2.2)**

**“ACTUARY”** means a person who is a fellow in good standing of the Casualty Actuarial Society with three years recent experience in loss reserving; an associate in good standing of the Casualty Actuarial Society with five years recent experience in loss reserving; or an associate in good standing of the American Academy of Actuaries who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries and who has seven years recent experience in loss reserving.

**“ADMINISTRATOR”** means a person, partnership, corporation or other legal entity engaged by the Fund commissioners or Executive Committee, as defined herein, to act as executive director to carry out the policies established by the joint insurance fund commissioners or Executive Committee (if the Fund has an executive committee), and to otherwise administer and provide day-to-day management of the joint insurance fund. The administrator may also be the lead agency, an employee of a the fund, a fund member, or an independent contractor.

**“ALLOCATED CLAIMS EXPENSE”** means attorneys’ fees, expert witness fees (i.e., engineering, physicians, etc.), medical reports, professional photographers’ fees, police reports, and other similar expenses. The exact definition of “Allocated Claims Expense” or similar terms for any line of insurance coverage shall be the definition in the excess insurance policy(ies) purchased by or on behalf of the Fund, (if any).

**“APPOINTED OFFICIAL”** means an individual, partnership, association or corporation, that has contracted with the Fund to provide, on the Fund’s behalf, specific functions as defined in these bylaws and limited to an administrator, attorney, auditor and treasurer. These functional positions are considered to be essential roles in the successful operation of the Fund and are therefore listed separately from servicing organizations.

**“AUTOMOBILE AND EQUIPMENT LIABILITY”** means liability resulting from the use or operation of motor vehicles, equipment or apparatus owned by or controlled by the local unit or owned by or under the control of any subdivisions thereof including its departments, boards, agencies, commissions or other entities which the local unit may provide coverage for under N.J.S.A. 40A:10-2.

**“CHAIRMAN”** means the chairman of the fund commission, elected by the commission pursuant to N.J.S.A. 40A:10-37.

**“COMMISSIONER”** means the Commissioner of Banking and Insurance.

**“DEPARTMENT”** means the Department of Banking and Insurance.

**“EMPLOYER’S LIABILITY”** means the legal liability of a member to pay damages because of bodily injury or death by accident or disease at any time resulting therefrom sustained by an employee arising out of and in the course of the individual’s employment by the local unit, which is not covered by a workers’ compensation law. The exact definition of “Employer’s Liability” or similar terms shall be the definition used in the excess insurance policy(ies) purchased by or on behalf of the Fund, (if any).

**“ENVIRONMENTAL IMPAIRMENT LIABILITY FUND”** means a joint insurance fund formed for the sole purpose of insuring against bodily injury and property damage claims arising

from environmental liability and legal representation therefor to the extent and for coverages set forth in this subchapter.

**“EXCESS CARRIER”** means an insurer that provides excess insurance or reinsurance to a fund.

**“EXCESS INSURANCE”** means insurance, purchased from an insurance company authorized or admitted in the State of New Jersey or deemed eligible by the Commissioner as a surplus lines insurer, or from any other entity authorized to provide such coverage in this State pursuant to law, covering losses in excess of an amount established between the joint insurance fund and the insurer up to the limits of coverage set forth in the insurance contract on a specific per occurrence or per accident or annual aggregate basis.

**“EXECUTIVE COMMITTEE”** means the committee of insurance fund commissioners, as provided in N.J.S.A. 40A:10-36 et seq. See Article IV, C.

**“EXECUTIVE DIRECTOR”** See Administrator.

**“FUND”** means the Atlantic County Municipal Joint Insurance Fund (hereinafter referred to as “Fund”).

**“FUND YEAR or FISCAL YEAR”** means the calendar year January 1 through December 31.

**“GENERAL LIABILITY”** means any and all liability which may be insured under the laws of the State of New Jersey, excluding worker’s compensation, employer’s liability, automobile and equipment liability. The exact definition of “general liability” or similar term is the definition used in the excess insurance policy purchased by or on behalf of the Fund (if any).

**“INCURRED CLAIMS”** means claims which occur during a Fund year including claims reported or paid during a later period. The exact definition of “incurred claims” or any similar term is the definition used in the excess insurance policy purchased by or on behalf of the Fund (if any).

**“HAZARDOUS FINANCIAL CONDITION”** means that, based on its present or reasonably anticipated financial condition, a fund, although not yet financially impaired or insolvent, is unlikely to be able:

1. To meet obligations to claimants with respect to known claims and reasonably anticipated claims; or
2. To pay other obligations in the normal course of business.

**“INDEMNITY AND TRUST AGREEMENT”** means a written contract signed by and duly adopted by the members of the joint insurance fund under which each agrees to jointly and severally assume and discharge the liabilities of each and every party to such agreement arising from their participation in the Fund.

1. The agreement shall also create a trust and govern the operation thereof under which the monies shall be held by the Fund Commissioners as fiduciaries for the benefit of Fund claimants.
2. Where the Fund shall provide for the retention on a self-insured basis of any or all of the risks or liabilities specified in i. through iv. below, the agreement shall require and provide for the establishment of separate trust accounts from which



monies shall be disbursed solely for the payment of claims, allocated claim expenses and excess insurance or reinsurance premiums for each such risk or liability:

- i. Workers' compensation and employers' liability
- ii. Liability, other than motor vehicle
- iii. Property damage, including automobile physical damage
- iv. Automobile liability and equipment liability

**“INSOLVENT FUND”** means a joint insurance fund which has been determined by a court of competent jurisdiction to be unable to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liabilities over its assets or by its not having sufficient assets to reinsure all of its outstanding liabilities after paying all accrued claims owed by it, or for which, or for the assets of which, a receiver or liquidator, however entitled, has been appointed by a court of competent jurisdiction and authority, after the effective date of this subchapter.

**“INSURER”** means any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer or other person engaged in the business of insurance pursuant to Subtitle 3 of Title 17 of the Revised Statutes.

**“INTERTRUST FUND TRANSFER”** means an actual transfer of funds from one claim or loss retention fund account in a fiscal year to another account within the same fiscal year.

**“INTERYEAR FUND TRANSFER”** means the transfer of funds from a claim or loss retention trust account for a fiscal year to a claim or loss retention trust account of similar risk or liability for a different fiscal year.

**“JOINT INSURANCE FUND” or “FUND”** means a group organized by two or more local units of government to establish an insurance fund for the purposes of insuring and/or self-insuring against property damage, general liability, vehicular and equipment liability, workers' compensation liability and employers' liability, or for the sole purpose of insuring against bodily injury and property damage claims arising from environmental impairment liability and legal representation therefor, to the extent and for coverages approved by the Commissioner pursuant to the authority of N.J.S.A. 40A:10-36 et seq. and this subchapter.

**“JOINT INSURANCE FUND COMMISSIONERS”** means local unit representatives chosen to represent those units in the fund, as provided in N.J.S.A. 40A:10-36.

**“LEAD AGENCY”** means a member of the joint insurance fund responsible for the custody and maintenance of the assets of the fund and such other duties as may be designated by the joint insurance fund commissioners. The duties performed by a lead agency may include duties that may be performed by an administrator or servicing organization.

**“LOCAL UNIT OF GOVERNMENT” or “LOCAL UNIT”** means a county, municipality, county vocational school (pursuant to N.J.S.A. 18A:18B-8 and 40A:10-50), county college (pursuant to N.J.S.A. 18A:64A-25.40 and 40A:10-51), any contracting unit as defined in N.J.S.A. 40A:11-2., boards of education of certain school districts, to the extent permitted pursuant to N.J.S.A. 40A:10-52 through 57, or any “local unit and/or contracting unit” of government as described in any subsequent law which may expand the definition present in

N.J.S.A. 40A as it relates to Joint Insurance Funds. A local unit which joins the Fund shall be deemed a member. Where local unit is a member the term local unit and member may be used interchangeably.

**“MANUAL PREMIUM”** means the premium computed according to the mandatory merit rating plan for workers’ compensation and similar insurance industry rating plans for other lines of coverage.

**“MEMBER”** - see **“LOCAL UNIT OF GOVERNMENT”** or **“LOCAL UNIT.”**

**“NET CURRENT SURPLUS”** or **“SURPLUS”** means that amount of monies in a trust account established pursuant to N.J.A.C. 11:15-2.6(b)10 that is in excess of all costs, earned investment income, refunds made pursuant to N.J.A.C. 11:15-2.21, incurred losses and loss adjustment expenses and incurred but not reported reserves, including the associated loss adjustment expenses attributed to the Fund net of any recoverable per occurrence or aggregate excess insurance or reinsurance for a particular year.

**“OCCURRENCE”** means a single event. The exact definition of “occurrence” or any similar term shall be the definition used in the excess insurance policy purchased by or on behalf of the Fund, (if any).

**“PROBABLE NET COST”** means the estimated ultimate cost of claims incurred during a Fund year plus the cost of allocated claims expense and other costs of operating the Fund until all claims incurred during the Fund year are settled. For purposes of computing the probable net cost, losses within the deductible of members and future investment income on outstanding loss reserves held by the Fund shall not be taken into consideration.

**“PROBABLE TOTAL COST”** means the probable net cost plus the estimated ultimate cost of losses incurred within the deductible of local units.

**“PRODUCER”** means any person engaged in the business of an insurance agent, insurance broker or insurance consultant as defined in N.J.S.A. 17:22A-1 et seq.

**“PROPERTY DAMAGE”** means any loss or damage, however caused, on property, motor vehicles, equipment, or apparatus owned by the local unit or owned by or under the control of any of its departments, boards, agencies, commissions, or other entities for which the local unit may provide coverage under N.J.S.A. 40A:10-2. The exact definition of “property damage” or similar terms shall be the definition in the excess insurance policy(ies) purchased by or on behalf of the Fund (if any).

**“SECRETARY”** means the secretary of the fund commission elected by the commission pursuant to N.J.S.A. 40A:10-37.

**“SERVICING ORGANIZATION”** means an individual, partnership, association or corporation other than the administrator, that has contracted with the fund to provide, on the fund’s behalf, any function as designated by the fund commissioners including, but not limited to, actuarial services, claims administration, cost containment services, loss prevention/safety engineering services, compilation and maintenance of the fund’s underwriting file, coordination and preparation of coverage documents, risk selection and pricing, excess insurance or reinsurance producer services, which include producer negotiations on behalf of the fund for excess insurance or reinsurance from an insurer, member assessment and fee development,

report preparation pursuant to N.J.S.A. 40A:10-36 et seq. and this subchapter, and such other duties as designated by the fund.

**“UNPAID CLAIMS” or “UNPAID LOSSES”** means case reserves and reserves for Incurred But Not Reported (IBNR) claims attributed to the Fund net of any recoverable “Per Occurrence” or “Aggregate Excess” insurance or reinsurance for a particular year coverage or Fund Year.

**“WORKERS’ COMPENSATION”** means the provisions of N.J.S.A. 34:15-7 et seq.. The exact definition of “worker’s compensation” or similar terms shall be the definition in the excess insurance policy purchased by or on behalf of the Fund .

### **ARTICLE III MEMBERSHIP (N.J.A.C. 11:15-2.3)**

#### **A. AGREEMENT TO JOIN THE FUND**

1. Pursuant to N.J.S.A. 40A:10-36 et seq., the governing body of a qualified local unit, once said governing body determines to join the Fund, shall, by resolution or ordinance, as appropriate, agree to join the Fund.
  - a. The resolution or ordinance shall provide for execution of a written agreement specifically providing for acceptance of the Fund’s Bylaws as approved and adopted pursuant to N.J.S.A. 40A:10-36, et seq. (N.J.A.C. 11:15-2.3(a)).
  - b. The agreement shall specify the extent of the local unit’s participation in the Fund with respect to the types of insurance coverage to be provided by the Fund and shall include the duration of Fund membership, which in no event shall exceed three years pursuant to N.J.S.A. 40A:11-15(6). (N.J.A.C. 11:15-2.3(a)).
  - c. The agreement shall also specify that the local unit has never defaulted on claims if self-insured and has not been canceled for nonpayment of insurance premiums for a period of at least two years prior to application. (N.J.A.C. 11:15-2.3(a)).
  - d. The agreement shall include an executed Indemnity and Trust Agreement. (N.J.A.C. 11:15-2.6(b)10).
2. The Executive Committee may require an application fee, which will cover the costs to the Fund associated with evaluating the applicant with respect to risk management and safety programs, physical exposure to risk and in having the actuary determine the appropriate contribution/ assessment offer.
3. Any applicant who wishes to avail itself of excess coverage available through the Municipal Excess Liability Joint Insurance Fund shall, by resolution or ordinance, as appropriate, make application to said excess fund for membership to run concurrently with its membership in this Fund.

#### **B. INITIAL MEMBERSHIP**

Any local unit which participated in the initial feasibility study may be a part of the Fund's initial application for approval by the Commissioner and the Department of Community Affairs.

### **C. SUBSEQUENT MEMBERSHIP**

1. Any local unit seeking membership after the Fund's initial approval by the Commissioner shall submit an application for membership to the Fund's Executive Committee, on a form acceptable to the Commissioner. (N.J.A.C. 11:15-2.9(a)). The application shall include a copy of the resolution of participation and executed Indemnity and Trust agreement and other documentation required under Section A above.
2. The application of a local unit for membership in the Fund must be approved by a two-thirds vote of the Executive Committee based on the following criteria:
  - a. The applicant's claims history, (five years preferred), shows safety performance consistent with the Fund's objectives and the applicant's safety performance, physical location and makeup indicates a prospective likelihood of satisfactory future claim performance;
  - b. A safety inspection and evaluation conducted by the Fund's Safety Director and/or its agent shows the applicant meets the Fund's safety standards; and
  - c. The Fund actuary has established an appropriate loss fund requirement and provided a certification for same.
  - d. The Fund has the administrative capability to absorb additional memberships without undue inconvenience or strain.
3. If the application is approved by the Fund, it shall be filed with the Department and the Department of Community Affairs within 15 days of such approval and shall be accompanied by a revised budget with contribution/assessment detail, if otherwise required pursuant to N.J.A.C. 11:15-2.4(f)6, an actuarial statement regarding the adequacy of the member's assessment to cover anticipated losses, and any amendments to the Fund's bylaws and plan of risk management as may be necessary. The Fund shall file only the specific changes to the bylaws or risk management program in effect for the current fund year. Where the Fund purchases direct insurance, or where an actuary has determined a "per capita" rate for the member's assessment to cover anticipated losses which has been previously filed with the Department, actuarial certification of the adequacy of these same rates for each new member is not required. The Commissioner may nevertheless require actuarial certification of a per capita rate for the new member's assessment to cover anticipated losses if, in his or her opinion, the new member will impose an extraordinary impact on the exposure of the Fund. In addition, the Fund shall file the following information in the form prescribed by the Department and the Department of Community Affairs and known as NEW JERSEY DEPARTMENT OF INSURANCE NEW MEMBER STATEMENT FOR THE ATLANTIC COUNTY MUNICIPAL JOINT INSURANCE FUND, within 15 days after approval of a new member.

- a. The name and address of the new member;
  - b. The effective date of coverage;
  - c. The name of the new member's risk manager;
  - d. The name of the new member's Fund Commissioners and alternates in accordance with N.J.A.C. 11:15-2.6(a);
  - e. The lines of coverage for which the new member participates;
  - f. The amount of assessment, if not otherwise provided; and
  - g. An affirmative statement from the Fund that in accepting the new member, an application has been filed, the Fund has adhered to its bylaws and plan of risk management, and the agreement to participate and indemnity and trust agreement have been filed with the Fund. (N.J.A.C. 11:15-2.9(b)1-7).
4. In order for the Fund to extend an offer of membership to a local unit which would require a change in the Fund's Bylaws, the Fund must first change the Bylaws as specified in Article VIII, C.
  5. If a non-member is not approved for membership, the Fund shall set forth in writing the reasons for disapproval and send the reasons for disapproval to the non-member. The Fund shall retain a copy of all membership application disapprovals for five years. (N.J.A.C. 11:15-2.9(c)).

#### **D. CONDITIONS OF MEMBERSHIP**

As a condition of membership, each local unit shall:

1. Form a safety committee and actively participate in all Fund sponsored safety programs;
2. Participate in all of the major lines of coverage offered by the Fund (N.J.A.C. 11:15-2.6(b)2);
3. Promptly pay all contributions/assessments, supplemental contributions/assessments, fees, charges or other obligations arising out of or related to the municipality's participation in the Fund.
4. Actively participate in all Fund Sponsored or directed meetings, programs or activities so as to ensure the successful operation of the Fund;
5. Provide that its officials, officers, employees and appointees shall cooperate with the Fund, the Fund Attorney, Claims Administrator, and any designated defense attorney; and
6. Comply with the Plan of Risk Management and the policies and procedures adopted by the Executive Committee for the management of the Fund.

#### **E. AGREEMENT TO JOIN OTHER JOINT INSURANCE FUNDS**

1. Pursuant to N.J.S.A. 40A:10-36, et seq., the Fund may, by resolution, agree to join another qualified joint insurance fund for the purposes of insuring and/or self-insuring to the extent and for coverages approved by the Commissioner.

- a. The resolution shall provide for execution of a written agreement specifically providing for acceptance of the other joint insurance fund's bylaws as approved and adopted pursuant to N.J.S.A. 40A:10-39.
  - b. The resolution shall also provide for the execution of an Indemnity and Trust Agreement as defined in N.J.A.C. 11:15-2.6(b)(10).
2. The Fund shall also submit an application for membership to another qualified joint insurance fund, as required, on a form acceptable to the Commissioner. The application shall include the executed Indemnity and Trust Agreement and the resolution required under subsection 1 above.

#### **F. RISK MANAGEMENT CONSULTANTS**

1. Each member shall provide for the services of an individual or firm to serve as the member's Risk Management Consultant who shall be an Insurance Producer as defined under N.J.S.A. 17:22A-1 et seq., and shall have demonstrated experience in the management of public sector insurances and risk management. The Risk Management Consultant shall not be an employee of the member. The Risk Management Consultant shall not be a Fund Commissioner;
2. The Risk Management Consultant shall advise the member on matters relating to the Fund's operation and coverages. The Risk Management Consultant shall, in addition to such items as may be included in such individual's or firm's contract or agreement with the member, be governed by the following:
  - a. The Risk Management Consultant shall be retained by each member in conformance with applicable State Law or regulation;
  - b. Risk Management Consultants, who can not be local unit employees, shall be paid in accordance with the procedures established in the Fund's Plan of Risk Management; and
  - c. Specific responsibilities shall include, but not be limited to:
    1. Evaluation of the member's exposure;
    2. Explanation of the various coverages available from the Fund;
    3. Preparation of applications, statements of values, timely reporting of changes in exposures, and any other exposure based questionnaires and/or applications requested by the Fund;
    4. Review of the local unit's assessment and assistance in preparing the member's insurance budget;
    5. Review and analysis of the member's safety engineering reports and periodic loss runs in order to help the member identify areas requiring greater attention;
    6. Assist the member in establishing, monitoring and evaluating a safety committee and claims handling procedure;
    7. Attend the majority of meetings of the Fund's Executive Committee; and

8. Analyze and recommend insurance coverages not offered through the Fund.

#### **G. MEMBERSHIP RENEWALS**

1. Members may renew their participation by execution of a new agreement to join the Fund as provided for in Article III, Section A above, ninety (90) days prior to the expiration of the term period. Failure of the member municipality to provide such notice shall serve as the member's intention to withdraw from the Fund and not be renewed for the subsequent Fund year. (N.J.A.C. 11:15-2.3(b)).
2. If the existing ordinance or resolution did not specify the duration of Fund membership, the member shall affirm the new membership agreement by resolution. (N.J.A.C. 11:15-2.3(b)).
3. If the existing ordinance or resolution specified the duration for Fund membership, the member shall either amend the existing ordinance or resolution, or adopt a new ordinance or resolution, as appropriate, to authorize the continued participation in the Joint Insurance Fund prior to the execution of the new membership agreement. (N.J.A.C. 11:15-2.3(b)).
4. The Executive Committee must act upon any renewal application no later than forty-five (45) days prior to the expiration of the term period. Otherwise, the renewal application is automatically approved.
5. In order to deny a renewal application, the Fund shall find by majority vote of the Executive Committee that the applicant has failed to fulfill its responsibilities as a member or no longer meets the Fund's written safety standards or other objective criteria duly adopted.
6. If a member's renewal application is rejected, the Fund shall comply with the provisions of these bylaws relating to termination and/or withdrawal of Fund members.
7. Non-renewal of a Fund member does not relieve the member of responsibility for claims incurred during its period of membership, either collectively through the Fund's retention within a line or lines of coverage by Fund year, or individually associated with an individual member deductible or retention within a line or lines of coverage by Fund year.

#### **H. TERMINATION AND/OR WITHDRAWAL OF FUND MEMBERS**

1. A member must remain in the Fund for the full term of membership unless earlier terminated by a two thirds (2/3) vote of the full membership of the Fund Commissioners for nonpayment of assessments, noncompliance with risk management or underwriting standards, noncompliance with the Fund's Bylaws, or other reasons subject to the prior approval by the Commissioner as reasons for termination. However, such member shall not be deemed terminated for any reason until (N.J.A.C. 11:15-2.10(a)):
  - a. After 30 days written notice of the intention to terminate the member has been given by the Fund to the member, which notice shall state the

reasons for termination and shall be given by registered mail or certified mail, return receipt requested;

- b. Like notice shall have been filed with the Department, together with a certified statement that the notice provided for by 1.a. above has been given; and
  - c. Thirty days have elapsed after the filing required by 1.b. has been made.
2. A member of the Fund that does not desire to continue as a member after the expiration of its membership term, as provided in the Fund's bylaws, must give written notice of its intent to withdraw or not to renew membership at least ninety (90) days before the expiration of the term period. Failure of the member to provide such notice shall serve as the member's intention to withdraw from the Fund and not be renewed for the subsequent Fund Year. A member of the Fund that did not approve any amendment to the Fund bylaws approved pursuant to N.J.S.A. 40A:10-43, and desiring to withdraw from the Fund pursuant to N.J.S.A. 40A:10-43e, shall provide written notice of its intent to withdraw 90 days prior to its withdrawal. This notice shall not relieve the member from its pro-rata responsibility for general expenses through the current budget year. The Fund shall immediately notify the Department and Department of Community Affairs of all members that have given notice of withdrawal from or non-renewal of membership in the Fund. (N.J.A.C. 11:15-2.10(b)).
  3. A member that has been terminated by the Fund or does not continue as a member of the Fund shall nevertheless share in any surplus in the appropriate trust accounts for that Fund year and shall remain jointly and severally liable for claims incurred by the Fund and its members during the period of its membership, including, but not limited to, being subject to and liable for supplemental assessments. (N.J.A.C. 11:15-2.10(c)).
  4. The Fund shall immediately notify the Department and the Department of Community Affairs if the termination or withdrawal of a member causes the Fund to fail to meet any of the requirements of N.J.S.A. 40A:10-36 et seq., or any other law or regulation of the State of New Jersey. Within fifteen (15) days of such notice, the Fund shall advise the Department and the Department of Community Affairs of its plan to bring the Fund into compliance. (N.J.A.C. 11:15-2.10(d)).
  5. A Fund member is not relieved of the claims incurred during its period of membership, either collectively through the Fund's retention within a line or lines of coverage by Fund year, or individually associated with an individual member deductible or retention within a line or lines of coverage by Fund year, except through payment by the Fund or member of those claims.
  6. A member that has been terminated or that has withdrawn from membership in the Fund may be considered for new membership after a period of three [3] years from the date of the termination or withdrawal, and upon meeting such conditions and standards for membership as may be established by the Executive Committee at the time of re-application.



**ARTICLE IV**  
**ORGANIZATION**  
**(N.J.A.C. 11:15-2.6(a)1)**

**A. FUND COMMISSIONERS**

**1. Appointment:**

- a. **Fund Commissioners:** In the manner generally prescribed by law, each member shall appoint one (1) Fund commissioner to the Fund. Each Fund commissioner shall be either a member of the local unit's governing body or one of its employees. No individual may serve as Fund commissioner for more than one (1) member.
- b. **Alternate Commissioner:** Each member may also appoint an alternate Fund commissioner provided that person is also a member of the governing body or employee of the local unit.
- c. **Special Commissioner:** In the event that the number of members is an even number, one (1) additional Fund commissioner shall be appointed annually by a member on a rotating basis determined alphabetically. The member's privilege to appoint the special commissioner shall remain with that member for one entire Fund year and the subsequent admission to the Fund of a member with a preceding alphabetical prefix shall not deprive any local unit already a member of the Fund of its prerogative to appoint a special commissioner during a current Fund Year.

**2. Terms of Office and Vacancy:**

- a. All terms of office shall expire on January 1 at 12:01 A.M., or until a successor is duly appointed and qualified, except as hereinafter provided.
- b. A Fund commissioner or alternate commissioner other than the special commissioner, who is a member of the appointing local unit's governing body, shall hold office for two years or for the remainder of his/her term of office as a member of the local unit's governing body, whichever shall be less.
- c. A Fund commissioner or alternate who is an employee of the appointing member shall hold office at the pleasure of the member and can be removed by the member at any time without cause.
- d. The special commissioner, if any, shall serve until January 1 of the year following appointment; provided, however, that if the special commissioner is an employee of the appointing member, he/she can be removed by the appointing member at any time without cause. In the event an odd number of members is reestablished during the term of the special commissioner, then the special commissioner's term of office shall terminate at time the said new member officially joins the Fund.
- e. The unexpired term of a Fund commissioner, other than the special commissioner shall be filled by the appointing member.

- f. In the event of a vacancy of the special commissioner caused by reason other than the expiration of the term of office, the member which appointed the special commissioner shall appoint the replacement for the unexpired term.
- g. Any Fund commissioner can be removed from office for cause by two-thirds vote of the full membership of the Fund Commissioners (see Article VIII, A4a, Quorum). Upon such a vote it shall be incumbent upon the member to replace the Fund commissioner.
- h. Fund Commissioners shall serve without compensation, except as otherwise permitted by the laws and/or regulations of the State of New Jersey.

**3. Responsibilities:**

- a. The Fund commissioners are hereby authorized and empowered to operate the Fund in accordance with these Bylaws and appropriate state laws and regulations.
- b. Each Fund commissioner shall have one vote; provided, however, that the special commissioner, if any, shall only vote in the event of a tie.

**B. OFFICERS**

- 1. As soon as possible after the beginning of each year, the Fund commissioners shall meet to elect the officers of the Fund from their own membership. Fund officers shall serve until January 1 of the following year, or until a successor is duly elected and qualified. The officers shall be as follows:
  - a. **Chairperson:** The chairperson shall preside at all meetings of the Fund commissioners and shall perform such other duties as provided for in these Bylaws and the laws and regulations of the State of New Jersey.
  - b. **Secretary:** The secretary shall preside over the meetings of the Fund commissioners in the absence of the chairperson, maintain written minutes of its meetings, retain all books, records, files and other documents of the Fund, and shall perform such other duties as provided for in these Bylaws and the laws and regulations of the State of New Jersey. Upon the Secretary presiding over the meetings of the Fund Commissioners in the absence of the Chairperson, the next highest-ranking member of the Executive Committee shall serve as the Secretary at such meetings and shall perform all of the duties of Fund Secretary.
  - c. The Secretary shall have oversight responsibility for the maintenance of the books and records at the office of the Fund's Administrator and/or Executive Director.
- 2. In the event of a vacancy in any of the officer positions caused by other than the expiration of the term of office, the Executive Committee shall by majority vote fill the vacancy for the unexpired term.

3. Any officer can be removed without cause at any time by a two-thirds vote of the full membership of the Fund commissioners. In this event, the full membership of the Fund commissioners, by majority vote, shall fill the vacancy for the unexpired term.
4. The chairperson and the secretary shall serve without compensation except as otherwise provided by the laws and/or regulations of the State of New Jersey.

### **C. EXECUTIVE COMMITTEE**

1. If the total number of Fund commissioners exceeds seven (7), as soon as possible after the beginning of the Fund Year they shall meet and elect five (5) Fund commissioners to serve with the chairperson and the secretary as the Executive Committee of the Fund. During their terms of office, members of the executive committee shall exercise the full power and authority of the commissioners except as expressly provided by these Bylaws and the laws and regulations of the State of New Jersey.
2. The executive committee shall serve until January 1 of the following year, or until their successors are duly elected and qualified.
3. Vacancies on the executive committee caused by a reason other than the expiration of the term of office shall be filled by a majority vote of the Fund commissioners.
4. Any member of the executive committee can be removed at any time without cause by a two-thirds vote of the Fund Commissioners.
5. Upon creation of the executive committee, said committee shall be vested with the full authority of the commissioners, except as otherwise expressly provided by these Bylaws, applicable State Law, or administrative regulation, and shall be charged with operating the Fund in a manner consistent with the Bylaws, applicable State Law, and administrative regulations.
6. At the time when the commissioners meet to elect the members of the executive committee, they shall also elect seven (7) alternate executive committee members. If the number of member municipalities does not allow for seven (7) alternates, then the greatest number possible, up to seven (7), shall be elected. Alternative executive committee members shall serve in the absence of an executive committee member or members during any meeting of the Fund. Alternate executive committee members shall exercise the full authority of an executive committee member during any meeting of the Fund at which their services are required.
7. Each executive committee member shall have one vote. An executive committee member who was absent for all or part of a meeting where a particular item was discussed but not voted on shall be eligible to vote on the matter notwithstanding his or her absence, provided that the member has available to him or her the transcript or recording of the meeting or portion of the meeting from which he or she was absent, and certifies in writing that he or she has read the transcript or listened to such recording.

**8. Alternate Executive Committee Members:**

- a. Each alternate executive committee member shall be designated with a specific number at the time of his/her election. The first alternate elected shall be designated "Alternate Number One" and each alternate elected shall follow in numerical order.
- b. Alternate executive committee members may participate in discussions of the proceedings, but may not vote except in the absence or disqualification of a regular executive committee member.
- c. A vote shall not be delayed in order that a regular member might vote instead of an alternate member.
- d. Alternate executive committee members shall serve in the order of their numerical priority, with alternate number one serving first, and so forth. Service among the alternates shall not be on a rotating basis.

**D. APPOINTED OFFICIALS**

As soon as possible after the beginning of each year, the Fund commissioners shall meet and select individuals to serve in the following appointed positions. These individuals shall serve until January 1 of the following year, or until a successor is duly appointed, whichever is later.

Appointed officials shall be compensated for their services pursuant to written fee guidelines submitted annually and approved by a majority of the Executive Committee. The written fee schedule shall be part of the official's contract.

All appointed officials shall be required to provide evidence of errors and omissions insurance coverage. (N.J.A.C. 11:15-2.6(c)5).

**1. Treasurer/Custodian of Funds:** The treasurer shall:

- a. Not be a Fund commissioner; and
- b. Have the following duties and responsibilities:
  1. Be the custodian of the Fund's assets and shall maintain the various trust funds;
  2. Certify and/or review all receipts, payments and financial records;
  3. Prepare the Fund's Cash Management Plan and shall invest all balances in accordance with the Fund's Cash Management Plan and consistent with the statutes and regulations governing the investment of surplus public monies of the State and these bylaws;
  4. Perform such other duties as provided for by the Executive Committee, these Bylaws and the laws and regulations of the State of New Jersey; and
  5. Provide a fidelity bond protecting the Fund's assets in a form and amount to be determined annually by the Executive Committee and acceptable to the Commissioner. Said bond shall be paid for

by the Fund. The Treasurer shall also be covered by Errors and Omissions insurance. Said coverage may be paid for by the Fund.

- 2. Administrator:** The Administrator shall:
- a. Be experienced in risk management matters and shall not be a Fund commissioner of the Fund;
  - b. Except with prior notice to the Fund commissioners and members, the Administrator, its employees, officers or directors shall not be an employee, officer or director of or have either a direct or indirect financial interest in an appointed official, insurance producer as defined in N.J.A.C. 11:15-2.6(c)10, or a servicing organization of the Fund (N.J.A.C. 11:15-2.26(a)), nor shall any appointed official, insurance producer as defined in N.J.A.C. 11:15-2.6(c)10, or servicing agent be an employee, officer or director of or have either a direct or indirect financial interest in the administrator without first disclosing any and all such interests to the Fund commissioners and members (N.J.A.C. 11:15-2.26(a)(b)); and
  - c. Have the following duties and responsibilities:
    1. Carry out the policies established by the Executive Committee and to otherwise administer and provide for the day-to-day management of the Fund;
    2. Advise the Fund commissioners on risk management matters and shall prepare a draft risk management plan;
    3. Maintain underwriting data and assist the Fund in the purchase of group insurance purchase(s), excess insurance(s), or reinsurance(s), provided, however, that the Fund administrator shall not act in the capacity of the Fund producer with respect to the placement of the Fund's group insurance purchase(s), excess insurance(s), or reinsurance(s), unless expressly authorized to do so by the Executive Committee in writing;
    4. Prepare draft bid specifications for services including but not limited to claims administration, safety engineering, and actuarial projections;
    5. Monitor the performance of the other appointed officials and the servicing organizations retained by the Fund;
    6. Prepare a draft budget for review by the commissioners;
    7. Serve as the agent in New Jersey to receive service of process on behalf of the Fund; and
    8. Perform such other duties as directed by the Executive Committee, these Bylaws, and the laws and regulations of the State of New Jersey which shall be detailed in the Fund minutes (N.J.A.C. 11:15-2.26(e)).

- d. Be bonded in a form and amount acceptable to the Commissioner. The Administrator shall also be covered by Errors and Omissions insurance as provided by N.J.A.C. 11:15-2.6(c)5 and/or supplements or amendments thereto. Said coverage may be paid for by the Fund.
  - e. The Fund shall designate one of the Administrator's employees as Executive Director and may designate as many of the Administrator's employees as Deputy Executive Director as it deems appropriate.
- 3. Auditor:** The Auditor shall:
- Be an independent Certified Public Accountant (CPA) or a Registered Municipal Accountant (RMA) but shall not be a Fund commissioner of the Fund. The Auditor shall conduct the annual audit of the Fund according to generally accepted accounting principles and shall perform such other duties as provided for by the Executive Committee, these Bylaws and the laws and regulations of the State of New Jersey. The Auditor shall not serve as Treasurer/Custodian of Funds for the Fund.
- 4. Attorney:** The Attorney shall:
- a. Be admitted to the New Jersey Bar but shall not be a Fund commissioner.
  - b. Have the following responsibilities:
    - 1. Advise the Fund on legal matters and the appropriateness of claim settlements recommended by the Claims Administrator;
    - 2. Advise the Executive Committee on the selection of counsel to represent the Fund in the defense of claims. However, neither the Attorney nor any member of the Attorney's law firm shall defend any claim which is the responsibility of the Fund unless directed to do so by the Executive Committee;
    - 3. Perform such other duties as provided for by the Executive Committee, these Bylaws, and the laws and regulations of the State of New Jersey which duties shall be recorded in the Fund minutes and provided for by an amendment to the contract between the Attorney and the Fund; and
    - 4. Steward the Fund's Litigation Management Program as adopted by the Fund's Executive Committee.
- 5. Vacancy In Appointed Positions - Procedure**
- a. In the event of a vacancy in any one of the appointed positions caused by other than the expiration of the appointment, the Executive Committee shall, by majority vote, establish a new contract with a replacement professional for the remainder of the Fund year.
  - b. All appointed officials shall be retained on a contractual basis, pursuant to the Local Public Contracts Law, which shall be approved by the Executive Committee and submitted to the Commissioner.

- c. The Fund commissioners shall notify the Department and the Department of Community Affairs within 10 days of any determination to terminate or nonrenew any agreement with an appointed official. The notification shall include a detailed statement that sets forth the manner and method by which claims handling and other obligations performed by the appointed official will be provided or a statement that sets forth the reasons why the Fund commissioners believe that the particular service is no longer necessary. (N.J.A.C. 11:15-2.26(d)).

**6. Disclosure**

- a. No appointed official or servicing organization of a fund or producer appointed pursuant to N.J.A.C. 11:15-2.6(c)10, or their employees, officers or directors shall have either a direct or indirect financial interest in the administrator of the Fund, or be an employee, officer or director of the administrator, unless notice of such interest has been provided to the Fund commissioners and members. (N.J.A.C. 11:15-2.26(a)).
- b. No administrator of a fund or its employees, officers or directors shall be an employee, officer or director of, or have either a direct or indirect financial interest in, an appointed official who is not the administrator, or a servicing organization, or a producer appointed pursuant to N.J.A.C. 11:15-2.6(c)10, of the Fund, unless notice of such interest has been provided to the Fund commissioners and members. (N.J.A.C. 11:15-2.26(b)).
- c. Any employee, officer or director of an administrator, servicing organization, appointed official, or producer appointed pursuant to N.J.A.C. 11:15-2.6(c)10, shall disclose to the Fund commissioners or executive committee, as applicable, any direct or indirect financial interest such employee, officer or director has in any other administrator, servicing organization, appointed official or insurance producer. (N.J.A.C. 11:15-2.26(f)).

## **ARTICLE V**

### **INDEMNIFICATION OF OFFICERS AND OFFICIALS**

- A.** The Administrator shall provide Errors and Omissions coverage in a form satisfactory to the Commissioner.
- B.** The Executive Committee shall require the Auditor, Treasurer, Fund Attorney and Defense Attorneys or any other appointee or contractor to produce evidence of Errors and Omissions coverage, and such other coverages as they deem advisable, as a condition of employment or appointment.
- C.** Except to the extent covered by Errors and Omissions insurance as may be required, as set forth above, the Fund shall indemnify any past, present or future Fund Commissioner, executive committee member, official, agent or employee of the Fund for claims arising from an act or omission of such Fund Commissioner, executive committee member, official, agent or employee while acting within the scope of the performance of such individual's duties as Fund Commissioner, executive committee member, official, agent or employee. Such indemnification shall include reasonable costs and expenses incurred in defending such claims. Nothing contained herein shall require the Fund to pay

punitive damages or exemplary damages or damages arising from the commission of a crime by such an individual and the Fund shall not be required to provide for the defense or indemnification of such an individual when the act or omission which caused the injury was the result of actual fraud, actual malice, gross negligence or willful misconduct of such individual or in the event of a claim against such an individual by the State of New Jersey or if such Fund Commissioner, executive committee member, official, agent or employee is either covered, or required to be covered by Errors and Omissions liability insurance. The determination as to whether an individual's conduct falls within any of the above exceptions shall be made by the Fund's Executive Committee. Nothing herein contained is intended to shield any Fund commissioner, executive committee member, employee, agent or appointed official from liability for any act, omission or wrongdoing which would not customarily be covered by Errors and Omissions insurance if same had been required of said Fund commissioner, executive committee member, employee, agent or appointed official.

- D.** A present, past or future Fund commissioner, executive committee member, official, agent or employee of the Fund shall not be entitled to a defense or indemnification from the Fund unless:
1. Within ten (10) calendar days of the time he or she is served with the summons, complaint, process, notice, or pleading, he or she delivers the original or exact copy to the Fund's attorney, together with a request that the Fund provide for his or her defense;
  2. He or she cooperates in the preparation and presentation of the defense with the attorney selected to defend the case; and
  3. Except in those instances where a conflict of interest exists, as determined by an attorney selected by the Fund to handle such matters, the past, present or future Fund commissioner, executive committee member, official, agent or employee shall agree that the Fund and its counsel shall have exclusive control over the handling of the litigation.
- E.** The foregoing right of indemnification shall not be exclusive of any other rights to which any Fund commissioner, executive committee member, official, agent or employee may be entitled as a matter of law or which may be lawfully granted to him or her; and the right to indemnification hereby granted by this Fund shall be in addition to and not in restriction or limitation of any other privilege or power which the Fund may lawfully exercise with respect to the indemnification or reimbursement of a Fund commissioner, executive committee member, official, agent or employee; except that in no event shall a Fund commissioner, executive committee member, official, agent or employee receive compensation in excess of the full amount of a claim and reasonable costs and expense incurred in defending such claim.
- F.** Expenses incurred by any Fund commissioner, executive committee member, official, agent or employee in defending an action, suit or proceeding may be paid by the Fund in advance of final determination of such action, suit or proceeding as authorized by the Fund in a specific case upon receipt of an agreement by or on behalf of such Fund commissioner, executive committee member, official, agent or employee to repay such



amount in the event of an ultimate determination that his or her conduct was outside the scope of this indemnification provision.

## **ARTICLE VI COMMITTEES**

- A. Standing Committees:** The Fund shall have five (5) standing committees, their specific functions to be defined in the Fund’s Plan of Risk Management and as otherwise directed by the Executive Committee. The five standing committees shall be:
1. Claims
  2. Coverage
  3. Finance
  4. Operations and Planning
  5. Safety
- B. Ad Hoc Committees:** In addition to the standing committees, the Executive Committee may establish ad hoc committees as it deems appropriate for the efficient management of the Fund, with the specific duties and goals to be set forth by the Executive Committee.
- C. Size of Committees:** All committees shall be comprised of at least three (3) Fund commissioners one of who shall be a member of the Executive Committee, exclusive of the Fund Chair or Executive Director. The maximum size of any particular committee shall be determined by the Executive Committee.
- D. Appointment:** All members of committees shall be appointed by the Chair. In the event the chairperson is absent from a Fund meeting when the appointments are to be made, the acting chairperson shall have the authority to make said appointments. The Chair and the Administrator shall serve, ex officio, as members of all committees.
- E. Membership:** In addition to the three Fund commissioners as required above, and as to be determined by the Executive Committee where a need arises, Fund professionals, members of their staffs, RMCs, appointed officials, and members of service organizations may be appointed as members of committees.
- F. Duties:** All committees shall be advisory in nature and shall report to the Executive Committee.

## **ARTICLE VII OPERATION OF THE FUND**

### **A. GENERAL OPERATION**

1. The Fund shall be subject to and operate in compliance with the provisions of the “Local Fiscal Affairs Law” (N.J.S.A. 40A:5-1 et seq.), The “Local Public Contracts Law” (N.J.S.A 40A:11-1 et seq.), regulations (including, but not limited to, N.J.A.C. 11:15-2.1 et seq.), the various statutes authorizing the investment of public funds, including, but not limited to, N.J.S.A. 40A:10-10 (b),

- N.J.S.A. 40A:10-38, N.J.S.A. 17:12B-241 and N.J.S.A. 17:16I-1 et seq., and in the case of a joint insurance fund providing environmental impairment liability coverage, the “Local Bond Law” (N.J.S.A. 40A:2-1 et seq.), but shall not be subject to the debt limitation set forth in N.J.S.A. 40A:2-6. (N.J.A.C.11:15-2.4(a)).
2. The Fund shall be considered a local unit for purposes of the “Local Public Contracts Law” (N.J.S.A. 40A:11-1 et seq.) and shall be governed by the provisions of that law in the purchase of any goods, materials, supplies and services. (N.J.A.C. 11:15-2.4(c)).
  3. The Fund shall be operated with sufficient aggregate financial strength and liquidity to assure that all obligations will be promptly met. The Fund shall prepare a financial statement on a form acceptable to the Commissioner showing the financial ability of the Fund to meet its obligations. The Fund may, upon majority vote of the Executive Committee request that the Commissioner order an examination of any Fund member which the Executive Committee, in good faith believes may be in a financial condition detrimental to other Fund members or to the public.
  4. The Fund further recognizes the Commissioner’s right to order an examination of the Fund pursuant to N.J.A.C. 11:15-2.25(a) and N.J.A.C. 11:15-2.6(f), any person or the business of any person pursuant to N.J.A.C. 11:15-2.6(f)1, or any of its officers, directors, and agents pursuant to N.J.A.C. 11:15-2.6(f)2. The Fund recognizes the costs for such investigations are to be borne by the Fund.
  5. The FUND shall annually adopt a resolution designating a public depository or depositories for its monies pursuant to N.J.S.A. 40A:5-14. Such resolution shall also designate a person to be custodian of funds for the Fund and shall authorize the custodian to invest the temporarily free balances of any claim/trust or administrative accounts periodically as authorized by law. The custodian shall report to the Fund commissioners at least quarterly on investment and interest income. The Custodian’s report shall include all of the costs of the investment program, i.e., all commissions and fees paid to make or redeem investments, custodial fees, advisor’s fees and interest income foregone through any compensating balance arrangements, etc. (N.J.A.C. 11:15-2.4(e)).
  6. The minimum Workers’ Compensation contribution of the members shall be at least \$250,000 for the Fund’s first year and at least \$500,000 for each subsequent year of operation unless otherwise approved by the Commissioner.

**B. RISK MANAGEMENT PLAN (N.J.A.C.11:15-2.6(e))**

1. The Fund commissioners (Executive Committee, if the Fund has an executive committee), shall prepare or cause to be prepared a plan of risk management for the Fund. The plan shall include, but not be limited to, the following:
  - a. The perils of liability to be insured against;
  - b. Limits of coverage, whether self-insurance, direct insurance purchased from a commercial carrier, or reinsurance;
  - c. The amount of risk to be retained by the Fund;

- d. The amount of unpaid claims to be established;
  - e. The proposed method of assessing contributions to be paid by each member of the Fund;
  - f. Procedures governing loss adjustment and legal fees;
  - g. Coverage to be purchased from a commercial insurer, if any;
  - h. Reinsurance to be purchased, if any, and the amount of premium therefore;
  - i. Procedures for the closure of fund years including the maintenance of all relevant accounting records;
  - j. The assumptions and methodology used for the calculation of appropriate reserves required to be established, maintained and administered in accordance with sound actuarial principles;
  - k. The maximum amount a certifying and approving officer may approve for payment pursuant to N.J.A.C. 11:15-2.22;
  - l. For environmental impairment liability funds, a full description of all coverages to be provided, including, but not limited to, defense services, environmental management or risk management services, above-ground/underground storage tank and/or storage/spills involving sudden and accidental claims, and third-party liability claims; and
  - m. Such other items required by state law, regulation or the Executive Committee.
2. The Risk Management Plan, and all amendments thereto, must be approved by the Commissioner and the ~~Commissioner of the~~ Department of Community Affairs before it takes effect, in accordance with N.J.S.A. 40A:10-41. (N.J.A.C. 11:15-2.7).
  3. Whenever the risk management plan of a joint insurance fund requires the Fund's members to individually retain a specific amount of risk, potential liability, or incurred losses, the participant shall provide for such liability, or incurred loss (N.J.A.C. 11:15-2.18):
    - a. As a deductible to be charged to the operating expenses of the incurring department or agency;
    - b. Through a separate item of appropriation for the Fund year in its annual budget; or
    - c. Through establishment of an insurance fund pursuant to N.J.S.A. 40A:10-1 et seq.

## **C. SERVICING ORGANIZATIONS**

1. **Disclosure**
  - a. No appointed official, servicing organization of a fund or producer appointed pursuant to N.J.A.C. 11:15-2.6(c)10, or their employees, officers or directors

shall have either a direct or indirect financial interest in the administrator of the Fund, or be an employee, officer or director of the administrator, unless notice of such interest has been provided to the Fund commissioners and members. (N.J.A.C. 11:15-2.26(a)).

- b. No administrator of a fund, or its employees, officers or directors shall be an employee, officer or director of, or have either a direct or indirect financial interest in, an appointed official who is not the administrator, a servicing organization, or a producer appointed pursuant to N.J.A.C. 11:15-2.6(c)10, of the Fund, unless notice of such interest has been provided to the Fund commissioners and members. (N.J.A.C. 11:15-2.26(b)).
  - c. Any employee, officer or director of an administrator, servicing organization, appointed official, or producer appointed pursuant to N.J.A.C. 11:15-2.6(c)10 shall disclose to the Executive Committee any direct or indirect financial interest such employee, officer or director has in any other administrator, servicing organization, appointed official or insurance producer. (N.J.A.C. 11:15-2.26(f)).
2. The Fund may contract to have the following services performed:
    - a. Claims administration;
    - b. Safety consultant;
    - c. Compilation of statistics and the preparation of assessments, loss and expense reports;
    - d. Preparation of reports required pursuant to P.L. 1983, c.372 or any regulations and/or rules of the New Jersey Department of Insurance including, but not limited to, N.J.A.C. 11:15-2;
    - e. Development of members' assessments and fees;
    - f. Actuarial services; and
    - g. Other services as determined by the Executive Committee.
  3. Each service contract shall include a clause stating, "Unless the fund commissioners otherwise permit, the servicing organization shall handle to their conclusion all claims and other obligations incurred during the contract period." (N.J.A.C. 11:15-2.26(c)).
  4. All servicing organizations shall be required to provide evidence of errors and omissions insurance coverage. (N.J.A.C. 11:15-2.6(c)5).
  5. A surety bond for the claims administrator, or any other servicing organization, appointed official or producer appointed pursuant to N.J.A.C. 11:15-2.6(c)10 deemed necessary by the Commissioner in a form and amount acceptable to the Commissioner, and a surety bond for any other servicing organization, appointed official or producer appointed pursuant to N.J.A.C. 11:15-2.6(c)10 deemed appropriate by the Fund commissioners in a form and amount acceptable to the Fund commissioners is required. (N.J.A.C. 11:15-2.6(c)4).

6. The Fund commissioners shall notify the Department and the Department of Community Affairs within 10 days of any determination to terminate or nonrenew any agreement with a servicing organization. The notification shall include a detailed statement that sets forth the manner and method by which claims handling and other obligations performed by the servicing organization will be provided or a statement that sets forth the reasons why the Fund commissioners believe that the particular service is no longer necessary. (N.J.A.C. 11:15-2.26(d)).

#### **D. FINANCIAL STATEMENT AND REPORTS**

1. The Fund shall provide its members with periodic reports concerning the activities and status of the Fund for the reporting period. Such reports shall be made at least quarterly and may be made more frequently at the discretion of the Executive Committee. In addition to the annual audit performed by the Fund Auditor, the Fund shall file with the Department semi-annual unaudited statements of the financial condition of the Fund in a form acceptable to the Commissioner within 60 days after the end of each six month period. The semi-annual report covering the six month period ending December 31 shall include a compilation of the results reported in the semi-annual report for the period ending June 30 immediately preceding. All statements filed pursuant to this section shall include the information set forth in 2, a-e below, except that certification by a certified public accountant, registered municipal accountant, or the actuarial opinion statement shall not be required. (N.J.A.C. 11:15-2.24(b)).
2. An annual certified report in a form acceptable to the Commissioner shall be prepared by the Fund, filed concurrently with the Department and the Department of Community Affairs and made available to each Fund member on or before June 30th of each year. The report shall include (N.J.A.C. 11:15-2.24(a)1-5):
  - a. An annual audited statement of the financial condition of the Fund prepared by an independent certified public accountant or registered municipal accountant and performed in accordance with generally accepted accounting principles and N.J.S.A. 40A:10-46, which shall include a statement of the organization of the Fund indicating the persons who perform each function for the Fund and the relationship and interdependency of each function, and including its balance sheet and revenue and expense for the preceding year;
  - b. Reports of outstanding liabilities by line of coverage showing the number of claims, amounts paid to date and current reserves for unpaid losses, claims, and unearned assessments as certified by an actuary; and
  - c. A certification by the chairman or administrator that periodic reports were made to Fund members in the form and manner required by N.J.A.C. 11:15-2.4(i);
  - d. Any material changes in information from that previously submitted; and
  - e. Such other information as may be required by the Department upon request from the Fund.

## E. COVERAGES

1. The Fund shall offer the following coverages to the members:
  - a. Workers' Compensation and Employer's Liability. The workers' compensation benefit levels will equal those required by the workers' compensation law and other applicable statutes. The Fund shall make payment to workers' compensation recipients in a timely fashion in accordance with the regulations of the Department of Labor;
  - b. Liability, other than motor vehicle;
  - c. Property damage, including automobile physical damage;
  - d. Automobile and equipment liability; and
  - e. Other coverages permitted by law and approved by the Executive Committee, pursuant to N.J.S.A. 40A:10-36 et seq. and N.J.A.C. 11:15-2.6 et seq.
  - f. The exact terms and conditions of coverage shall be the same as the excess insurance policy purchased by the Fund.

## ARTICLE VIII

### MEETINGS AND RULES OF ORDER

#### A. MEETINGS

1. **Annual Organization Meeting:** As soon as possible after the beginning of the year, the Fund commissioners shall meet to elect officers and the Executive Committee to appoint officials and to conduct such other business as is necessary. The time and place for the meeting shall be established by the chairperson, and the secretary, and either directly or through the Fund administrator they shall send written notice to the clerk of each participating local units municipality at least two (2) weeks in advance.
2. **Monthly Business Meetings:** The Executive Committee shall establish a schedule of monthly meetings to conduct the business of the Fund. All Fund commissioners may attend open or closed sessions of the executive committee.
3. **Special Meetings:** The chairperson, or three (3) Fund commissioners may call a special meeting by notifying the administrator at least three (3) days in advance. The Administrator shall notify the Executive Committee by telephone. If the Administrator is unable to reach an Executive Committee member as of forty-eight (48) hours before the meeting, the administrator shall telephone another official of the member.

If, in attempting to organize a special meeting, the administrator is unable to contact a member of the Executive Committee as of forty-eight (48) hours before the meeting, the administrator shall, after first telephoning another Official of the member, contact one or more Alternate Executive Committee members. Alternate Executive Committee members shall be contacted in numerical order, by member, until a full Executive Committee is established. If a full Executive

Committee cannot be established, a quorum of the Executive Committee shall suffice. If a quorum of the Executive Committee cannot be established then a quorum of the Fund commissioners will suffice.

4. **Quorum:** The quorum for meetings of the Fund shall be as follows:
  - a. If no Executive Committee has been established or applies, a simple majority of the Fund commissioners representing the total membership will establish a quorum; and
  - b. If an Executive Committee has been established, a quorum for executive committee meetings shall be a simple majority of the total executive committee.

## **B. CONDUCT OF MEETINGS**

1. All meetings of the Fund shall be subject to the rules and regulations of the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.
2. Unless otherwise provided in these Bylaws, or in the laws or regulations of the State of New Jersey, the most recent edition of "Robert's Rules of Order" shall govern the conduct of all meetings.

## **C. AMENDMENTS TO THE BYLAWS**

1. Any Fund Commissioner may propose an amendment to the Bylaws by filing the proposed amendment in writing with the secretary.
2. Upon receipt of a proposed amendment, the secretary shall notify the chairperson who shall schedule a hearing of the Fund's commissioners to be held not more than forty-five (45) days from the date the amendment was filed. The secretary shall notify in writing all Fund commissioners of the hearing date and shall send all Fund commissioners a copy of the proposed amendment.
3. The amendment is adopted by the Fund when the governing bodies of three-fourths of the members approve the amendment within six (6) months of the hearing on the amendment. In the event Section 40A:10-39 et seq. is amended, the procedure and vote required by said statute as amended shall control. If, after six (6) months, the secretary has not received written notice of approval from the required number of members, the secretary shall notify the members that the time has expired for the adoption of the amendment.
4. If adopted, the amendment shall not take effect until approved by the Commissioner and the Commissioner of the Department of Community Affairs. If not disapproved within the time limits established by N.J.S.A. 40A:10-41, the amendment shall be deemed approved.
5. A member of the Fund that did not approve any amendment to the Fund bylaws approved pursuant to N.J.S.A. 40A:10-43, and desiring to withdraw from the Fund pursuant to N.J.S.A. 40A:10-43e, shall provide written notice of its intent to withdraw 90 days prior to its withdrawal. The Fund shall immediately notify the Department and the Department of Community Affairs of all members that have given written notice of withdrawal from the Fund. (N.J.A.C. 11:15-2.10(b)).

## **ARTICLE IX BUDGETS**

### **A. BUDGET PREPARATION**

1. In November of each year, the Executive Committee shall prepare the proposed budget for the subsequent fiscal year. The budget shall identify the proposed items and amounts of expenditure for its operations in the aggregate and allocated by member, the anticipated amounts and sources of assessments and other income to be received during the fiscal year and the status of the self-insurance or loss retention trust accounts maintained by the Fund. The budget shall be prepared on a basis that does not recognize investment income or discounting of claim reserves, but recognizes all anticipated or forecasted losses and administrative expenses associated with that fiscal year. (N.J.A.C. 11:15-2.4(f)).
2. The budget shall be reviewed by an actuary who shall comment on its adequacy and shall recommend changes as appropriate by November 15.
3. A copy of the Fund's proposed budget or any amendments thereto shall be made available to each member of the Fund at least two weeks prior to the time scheduled for its adoption. No budget or amendment shall be adopted until a public hearing has been held in accordance with N.J.S.A. 40A:4-1 et seq. giving all members of the Fund the opportunity to present comments or objections. (N.J.A.C. 11:15-2.4(f)1).

### **B. FINAL BUDGET ADOPTION**

1. Not later than December 31st of each year, the Fund commissioners or the Executive Committee thereof, shall adopt by majority vote the budget for the Fund's operation for the subsequent fiscal year. (N.J.A.C. 11:15-2.4(f)2).
2. A copy of the Fund's final budget (as changed to reflect the actuary report) shall be sent to each member at least two (2) weeks prior to the time scheduled for its adoption. No budget or amendment shall be adopted until a hearing has been held giving all members the opportunity to present comments or objections. (N.J.A.C. 11:15-2.4(f)2).
3. A copy of the adopted budget shall be filed with the governing body of each participating local unit, the Commissioner, and the Commissioner of the Department of Community Affairs within thirty (30) days of its (their) adoption, including a certification by an actuary that the budget is actuarially sound with respect to funding for the claim or loss retention fund accounts. (N.J.A.C. 11:15-2.4(f)4).

### **C. AMENDMENTS**

1. An adopted budget may be amended by majority vote of the membership of the Fund commissioners, or Executive Committee thereof after giving the members at least two weeks notice prior to the time scheduled for its adoption and conducting a hearing on the proposed amendment. (N.J.A.C. 11:15-2.4(f)1, 3).



2. A copy of any amendment to the Fund budget shall be filed quarterly with the governing body of each participating local unit. (N.J.A.C. 11:15-2.4(f)5).
3. A copy of any amendment to the Fund budget shall be filed with the Commissioner and the Commissioner of the Department of Community Affairs within 30 days of the adoption of any budget amendment which either singly or cumulatively with other adopted budget amendments changes the total budget five percent from the original budget or the latest filed amended budget. (N.J.A.C. 11:15-2.4(f)6).

## **ARTICLE X**

### **CONTRIBUTION/ASSESSMENT**

#### **A. ANNUAL CONTRIBUTION/ASSESSMENT**

1. By November 15th of each year, the actuary shall compute and deliver to the Fund the probable net cost for each line of coverage in which the Fund maintains a retention for the upcoming Fund year.
2. The annual contribution/assessment of each member shall consist of an amount allocated for the administrative account, payment of interest and repayment of principal on bonds issued for environmental impairment liability funds, when appropriate, plus a specific assessment to establish and/or replenish the claim or loss retention trust fund account for each type of coverage provided by the Fund and in which such member participates. (N.J.A.C. 11:15-2.15(b)).
3. The total amount of each member's annual contribution/assessment shall be certified by majority vote of the Executive Committee to the governing body of each member at least one (1) month prior to the beginning of the next fiscal year. As a condition of continued participation in the Fund, each member shall pay the amount certified at such time and in such manner provided in the Fund's bylaws. (N.J.A.C. 11:15-2.15(c)).
4. The annual contribution/assessment shall be paid to the Fund in a manner to be determined by the Executive Committee and set forth annually in the Risk Management Plan. Any payment plan approved by the Executive Committee shall conform to N.J.A.C. 11:15-2.15 (a).
5. In the event the final budget passed in December necessitates changes in the annual contribution/assessment, the subsequent installment(s) shall be adjusted to reflect this difference. (N.J.A.C. 11:15-2.15(e)).
6. The treasurer shall allocate each member's contribution/assessment into the appropriate accounts, including the administrative account, and the loss retention account by Fund year for each type of coverage in which the member participates.
7. If a local unit becomes a member of the Fund after the start of the Fund year, such local unit's contributions/assessments and supplemental contributions/assessments shall be reduced in proportion to that part of the year which has elapsed.

8. Unless otherwise approved by the Commissioner, the annual contribution/assessment of each Fund member providing for the self-insurance of workers' compensation and employers' liability coverages shall be based upon the Experience Rating Plan provided for in the New Jersey Workers' Compensation and Employers' Liability Insurance Manual on file with the Commissioner. The Commissioner may withdraw his or her approval of any contribution/assessment if he or she finds that such contribution/assessment is unreasonable or inadequate for the members of the fund to which it applies. In taking any action under this section, the Commissioner may require that the Fund commissioners, the executive committee, the administrator, any appointed officials, any servicing organization or agent of the Fund provide such information as he or she deems necessary. (N.J.A.C. 11:15-2.15(d)).

## **B. SUPPLEMENTAL CONTRIBUTION/ASSESSMENT**

1. The Executive Committee shall by majority vote levy upon the members additional contributions/assessments wherever needed or whenever so ordered by the Commissioner to supplement the Fund's claim or loss retention or administrative accounts to assure the payment of the Funds obligations, including payment of benefits under the workers' compensation law. (N.J.A.C. 11:15-2.16(a)).
  - a. All supplemental contributions/assessments shall be charged to the members by applicable Fund year, and shall be apportioned by each member's proportionate share of original assessments for that line of coverage or coverages.
  - b. All members shall be given thirty (30) days advance written notice of the Fund's intention to charge an additional assessment, and the Fund shall conduct a hearing before adopting the supplemental assessment.
  - c. The members shall have thirty (30) days to pay the Fund from the date any supplemental assessment is adopted.
  - d. The members shall provide such additional assessments in accordance with the provisions of Local Budget Law (N.J.S.A. 40A:4-1 et seq.), or Local Authority Fiscal Control Law (N.J.S.A. 40A:5A-1 et seq.), as applicable. (N.J.A.C. 11:15-2.16(c)).
2. The Fund shall submit to the Commissioner and the Commissioner of the Department of Community Affairs a report of the causes of the Fund's insufficiency, the assessments necessary to replenish it, and the steps taken to prevent a reoccurrence of such circumstances. (N.J.A.C. 11:15-2.16(b)).

## **C. FAILURE OR REFUSAL TO PROVIDE REQUIRED CONTRIBUTION/ASSESSMENT**

Should any member fail or refuse to pay its contributions/assessments or supplemental contributions/assessments, or should the Fund fail to assess funds required to meet its obligations, the chairperson or, in the event of their failure to do so, the custodian of the Fund's assets, shall notify in writing the Commissioner and the Commissioner of the Department of Community Affairs. Past due assessments shall bear interest at the rate of interest to be established annually by the Executive Committee. (N.J.A.C. 11:15-2.17).

## **D. INSOLVENCY AND/OR BANKRUPTCY OF FUND MEMBERS**

The insolvency or bankruptcy of a member does not relieve the Fund, or any other member, of joint and several liability for the payment of any claim incurred by the insolvent or bankrupt member during the period of its membership, including, but not limited to, being subject to and liable for supplemental contributions/assessments. (N.J.A.C. 11:15-2.11).

### **ARTICLE XI REFUNDS**

- A.** Any monies for a Fund year in excess of the amount necessary to fund all obligations for that fiscal year as certified by an actuary may be declared to be refundable by the Executive Committee no sooner than twenty four (24) months after the end of the fiscal year. (N.J.A.C. 11:15-2.21(a)).
- B.** The Fund may seek approval from the Commissioner to make initial and subsequent refund payments from a claims or loss retention Fund account remaining from any year which has been completed at least 24 months by submitting a written notification to the Department and Department of Community Affairs with accompanying documentation as set forth in this subsection, at least 30 days prior to the proposed refund. If the Commissioner does not disapprove, in writing, the request to make the refund within the 30 day period, the request shall be deemed approved. The Commissioner may also affirmatively approve the request prior to the expiration of the 30 day period. The written notification shall be accompanied by appropriate documentation including, but not limited to, contribution/assessment, claims and expense detail; actuarial certification that the loss and loss expense reserves are adequate for the Fund to have an overall surplus for that fiscal year; and such other information that the Commissioner may require. The initial and any subsequent refund for any year from a claim or loss retention trust account may be in any amount subject to the limitation that after the refund, the remaining net current surplus in the account from which the refund is made must equal or exceed the surplus retention requirement to be calculated as follows (N.J.A.C. 11:15-2.21(b)):
1. Fund year paid losses shall be multiplied by the appropriate paid loss factor for the line of coverage and duration of maturity set forth in the current exhibit for the purpose in N.J.A.C. 11:15-2.21(b)1.
  2. Fund year unpaid claim reserves, excluding reserves for incurred but not reported claims, shall be multiplied by the appropriate unpaid claim factor for the line of coverage and duration of maturity set forth in the current exhibit for the purpose in N.J.A.C. 11:15-2.21(b)2. Unpaid claim reserves, excluding reserves for incurred but not reported claims, shall be established at full value and not discounted. (N.J.A.C. 11:15-2.21(b)2).
  3. The greater of the results from the calculation set forth in B.1. and 2. above shall then be reduced by the amount of outstanding losses reported, including incurred but not reported claims, as certified by an actuary. The result of this calculation, but not less than zero, shall be the surplus retention requirement for that Fund year. (N.J.A.C. 11:15-2.21(b)3).

- C. A full and final refund of net current surplus will not be allowed until all case reserves and all unpaid claim reserves are closed. (N.J.A.C. 11:15-2.21(d)).
- D. A refund for any fiscal year shall be paid directly to the member only in proportion to the member's participation in the fund for such year. Payment of a refund on a previous year is not contingent on the member's continued membership in the fund after that year (N.J.A.C. 11:15-2.21(e)); or
- E. At the option of the member the refund may be retained by the Fund and applied towards the member's next annual contribution/assessment, or for the payment, in part or in whole, of any current demand for supplemental contribution/assessment for a prior Fund year or years (N.J.A.C. 11:15-2.21(f)).

**ARTICLE XII**  
**EXCESS INSURANCE and/or REINSURANCE**  
**and AGGREGATE EXCESS INSURANCE**

**A. General**

1. In order to minimize the financial risk which catastrophic claims present to the members, the FUND seeks to secure protection against claims that cost more than the members are able or willing to bear. This is done through the analysis of loss patterns by an actuary to determine how much money would be needed to safely finance various self-insured retentions. Once completed, the FUND then seeks to cede the financial risk of loss above its retention/s to a commercial insurer through the purchase of specific or single occurrence/accident excess or reinsurance policies. Secondly, because the members also bear the risk of accumulated losses adding up to more than they had set aside in loss funds within their retention/s, the FUND also seeks to cede this risk to a commercial insurer or reinsurer through the purchase of aggregate excess or stop loss insurance.
2. The policies of excess insurance and/or reinsurance issued to the Fund shall provide single accident (single occurrence) excess insurance and/or reinsurance, and aggregate excess insurance and/or reinsurance, in accordance with this Article XII and N.J.A.C. 11:15-2.23(b). All such insurances purchased by the Fund shall be recorded on certificates of excess insurance and/or reinsurance which will show policy limits, specific and aggregate retentions, and other information, and shall be made available to the members and filed with the Commissioner. (N.J.A.C. 11:15-2.23(c)). Losses in excess of the established self-insurance retention/s, on either specific excess or aggregate excess insurance policies, shall be borne by the excess carrier/s according to the terms and conditions of the excess contract/s. (N.J.A.C. 11:15-2.23(d)). Any proposed change in the terms or limits of excess insurance and/or reinsurance shall be submitted to the Department and the Department of Community Affairs for approval at least 30 days prior to the effective date of the proposed change. (N.J.A.C. 11:15-2.23(e)).

**B. Specific Excess**

1. Consistent with N.J.A.C. 11:15-2.6(a)6, the Fund shall secure specific excess insurance or reinsurance in a form, in an amount and by an insurer, or other entity authorized to provide such coverage in the State pursuant to law, acceptable to the

Commissioner, if commercially available and not unreasonably priced, as determined by the Fund's Executive Committee for each Fund year, and as approved by the Department and the Department of Community Affairs, for each line of coverage in which the Fund provides primary or underlying coverage on a self-insured or commercially insured basis. (N.J.A.C. 11:15-2.23(a)).

2. Any approval by the Department pursuant to (A) above not to purchase excess insurance or reinsurance, shall be for a period not to exceed either the longer of 12 months from the date of approval or the end of the current fund year. If the Fund seeks to extend the period of the approval, it shall notify the Department not later than 45 days prior to the expiration of the approval. The notification shall specify the basis upon which the Trustees determined that excess insurance or reinsurance required pursuant to (A) above is not commercially available or is not reasonably priced, and shall include all actions taken by the Fund to obtain required excess insurance or reinsurance. (N.J.A.C. 11:15-2.23(a)1).
3. If the Fund's limit of liability as set forth in its approved plan of risk management is equal to or less than its single accident (single occurrence) self-insured retention as approved by the Department, then it may not purchase specific excess insurance. (N.J.A.C. 11:15-2.23(f)1).

### C. Aggregate Excess

1. **Commercial Aggregate Excess** - The Fund shall maintain a minimum cap for aggregate excess insurance in the appropriate amount depending upon the specific per occurrence/per accident retention and the size of the Fund's cumulated budgeted losses as determined in accordance with the current N.J.A.C. 11:15-2.23 Aggregate Excess Criteria Schedule - Maximum Attachment Point. To the extent that the Fund has different specific per occurrence/accident retentions for different lines, the Fund shall use the highest specific occurrence/accident retention it has in determining the aggregate excess funding needed. Additionally, if the Fund's highest specific occurrence/accident retention is not shown on the current N.J.A.C. 11:15-2.23 Aggregate Excess Criteria Schedule - Maximum Attachment Point, then the FUND shall use the next highest applicable specific per occurrence retention set forth in the N.J.A.C. 11:15-2.23 Aggregate Excess Criteria Schedule- Maximum Attachment Point. (N.J.A.C. 11:15-2.23(b)1).

The Fund's aggregate self-insured retention for any individual Fund year shall be no greater than 125 percent of its budgeted losses. (N.J.A.C. 11:15-2.23(b)2).

2. **Aggregate Excess Loss Contingency Fund** - In lieu of maintaining aggregate excess insurance as provided above, the Fund may establish and provide for the funding of an aggregate excess loss contingency fund. The Fund shall make annual contributions to the loss contingency fund, the amount of which shall be based on the Fund's cumulated budgeted losses and specific per occurrence/accident retention, and determined in accordance with the current N.J.A.C. 11:15-2.23 Aggregate Excess Criteria Schedule - Aggregate Excess Loss Contingency Fund As A Percentage Of Budgeted Losses. The required contribution for a Fund year shall be the current year's budgeted losses, multiplied by the appropriate factor in the current N.J.A.C. 11:15-2.23 Aggregate Excess Criteria Schedule - Aggregate Excess Loss Contingency Fund As A

Percentage Of Budgeted Losses. To the extent the Fund has different specific per occurrence/accident retentions for different lines, the Fund shall utilize the highest specific occurrence/accident retention. To the extent the specific occurrence/accident retention is not specified in the current N.J.A.C. 11:15-2.23 Aggregate Excess Criteria Schedule - Aggregate Excess Loss Contingency Fund As A Percentage Of Budgeted Losses, the Fund shall interpolate the appropriate percentage from the percentages indicated. For any Fund year, the loss contingency fund shall include the required annual contribution for the current Fund year and for the Fund year immediately preceding. Such contingency fund may be utilized solely for the replenishment of a claim or loss retention Fund account in excess of losses for a Fund year. The Fund shall notify the Department within 30 days of the transfer of monies from the aggregate excess loss contingency fund to a claim or loss retention account. Annual contributions for the second preceding Fund year, and Fund years prior to the second preceding Fund year, which have not been utilized to replenish a claim or loss retention Fund account, may be released without restriction. The Fund, however, shall notify the Department in writing within 30 days of any release of prior contributions. (N.J.A.C. 11:15-2.23(f)2).

### 3. **Combined Aggregate Excess**

- a. **Full Commercial Coverage and Funded Aggregate** - The Fund may obtain aggregate excess insurance from a commercial excess or reinsurer in accordance with item 1. above for some lines of coverage for a particular Fund year. For lines of coverage not covered by commercial excess or reinsurer, the Fund shall provide a loss contingency fund pursuant to item 2. above. For purposes of determining the annual contribution, the Fund shall utilize its cumulated budgeted losses for all lines to determine the appropriate factor in the current N.J.A.C. 11:15-2.23 Aggregate Excess Criteria Schedule - Aggregate Excess Loss Contingency Fund As A Percentage Of Budgeted Losses, and multiply that factor by the budgeted losses only for those lines of coverage for which the loss contingency fund is established. (N.J.A.C. 11:15-2.23(f)3).
- b. **Partial Commercial Coverage and Funded Aggregate** - If the Fund seeks to purchase aggregate excess insurance and/or reinsurance, but such coverage is only available at a retention greater than 125 percent, the Fund shall establish a modified loss contingency fund at an amount determined as follows (N.J.A.C. 11:15-2.23(f)4):
  1. 125 percent shall be subtracted from the attachment point of the aggregate excess insurance and/or reinsurance purchased (N.J.A.C. 11:15-2.23(f)4.i);
  2. 125 percent shall be subtracted from the minimum reinsurance cap required for the Fund determined by the current N.J.A.C. 11:15-2.23 Aggregate Excess Criteria Schedule - Aggregate Excess Loss Contingency Fund (N.J.A.C. 11:15-2.23(f)4.ii);
  3. The dollar amount of a loss contingency fund, as if established pursuant to Article XII, B.2. above, shall be multiplied by 125 percent; and (N.J.A.C. 11:15-2.23(f)4.iii);

4. The amount of the loss contingency fund required shall be equal to the amount obtained by multiplying the result in b.3. above, by the result in b.1. above, and dividing that result by the result in b.2. above. In no event shall the modified loss contingency fund required by this section Article XII, B.3.b., above, be required to be greater than that required to be established pursuant to Article XII, B.1. and Article XII, B.2., above. (N.J.A.C. 11:15-2.23(f)4.iv).

#### **D. Section Definitions And Conditions**

1. **“Budgeted losses”** - means the amount established in the Fund’s budget for losses anticipated for a particular Fund year, as annually certified by an actuary. (N.J.A.C. 11:15-2.23(g)1).
2. **“Cumulated budgeted losses”** - means the FUND’s budgeted losses for the current Fund year plus the four Fund years immediately preceding. (N.J.A.C. 11:15-2.23(g)2).
3. The Fund shall meet the obligations of this Article XII by January 1, 1998. (N.J.A.C. 11:15-2.23(h)).
4. Nothing shall prohibit the Fund from establishing an aggregate excess insurance cap or a loss contingency fund, as applicable, in amounts greater than that required in Section 11:15-2.23 of the New Jersey Administrative Code. (N.J.A.C. 11:15-2.23(i)).

### **ARTICLE XIII**

#### **TRUST FUND ACCOUNTS, INVESTMENTS AND DISBURSEMENTS**

##### **A. ESTABLISHMENT OF TRUST FUND ACCOUNTS**

1. By resolution, the Fund shall designate a public depository or depositories for its monies pursuant to N.J.S.A. 40A:5-14. Such resolution shall also designate a person to be custodian of funds for the Fund, who shall be the treasurer of the Fund, and shall authorize the custodian to invest the temporarily free balances of any claim/trust or administrative accounts periodically as authorized by law. The custodian shall report to the Executive Committee at least quarterly on investment and interest income. (N.J.A.C. 11:15-2.4(e)).
2. The Fund shall establish a separate Trust Fund Account from which monies shall be disbursed solely for the payment of claims, allocated claim expenses, and excess insurance or reinsurance premiums for each line of coverage by Fund year. Such accounts shall be designated as Claims or Loss Retention Fund Accounts.
3. Other than for claims, allocated claims, allocated claims expenses, or excess insurance premiums, no transfers or withdrawals may be made from a claim or loss retention account without the prior written approval of the Commissioner, except for intertrust fund transfers. Intertrust fund transfers, within an individual fund fiscal year, may be conducted by the Fund at any time, by providing 30 days prior written notification to the Commissioner and the Commissioner of the Department of Community Affairs. If the Commissioner does not disapprove of the transfer, in

- writing, within 30 days after receiving such written notification, the request for intertrust fund transfer(s) shall be deemed approved. Any intertrust fund transfer request must be supported by appropriate assessment and claim and expense documentation, and be accompanied by a certification signed by an actuary that the amount remaining in the trust fund account after the intertrust fund transfer will be at a level which is reasonable in relation to that account's unpaid losses, along with all documentation in support of such certification. Intertrust fund transfers may be conducted only where each member participates in each and every claim or loss retention fund account during that fund year. (N.J.A.C. 11:15-2.13(a)1).
4. The Fund may seek approval from the Commissioner to make interyear fund transfers at any time from a claims or loss retention trust account from any year not sooner than 12 months after the end of that year by submitting a written notification to the Department and Department of Community Affairs with appropriate documentation as set forth in N.J.A.C. 11:15-2.21(b) at least 30 days prior to the proposed transfer. If the Commissioner does not disapprove, in writing, the request within the 30 day period, the request shall be deemed approved. The Commissioner may also affirmatively approve the request prior to the expiration of the 30 day period. The interyear fund transfer may be in any amount subject to the limitation that after the transfer, the remaining net current surplus in the account from which the transfer is made must equal or exceed the surplus retention requirement determined pursuant to N.J.A.C. 11:15-2.21(b), for that account for the fiscal year. The membership for each fiscal year involving interyear fund transfers must be identical between fiscal years. The Commissioner may waive the identical membership requirement provided the fund demonstrates to the Department that it maintains records of each member's pro rata share of each claim or loss retention fund account, and that the transfer shall be made so that any potential dividend shall not be reduced for a member that did not participate in the year receiving the transfer. (N.J.A.C. 11:15-2.21(h)).
  5. The Fund shall also establish an administrative account which shall be utilized for payment of the Fund's general operating expenses, loss prevention activities, data processing services, and general legal expenses. (N.J.A.C. 11:15-2.13(a)1).
  6. The Fund shall maintain a general ledger and accounting system which allows all expenses incurred and paid, and investment earnings accrued and received, to be allocated by line of coverage and Fund year. The system will also allow for the appropriate allocation of surplus or deficit share by member and Fund year. (N.J.A.C. 11:15-2.13(a)1 and 2.14).

## **B. INVESTMENTS**

1. The free balance of any account maintained by the Fund, whether for claim or loss retention, administrative, or contingency, shall be invested to obtain the maximum interest return practicable. All investments shall be in accordance with the Fund's cash management plan and consistent with the statutes and rules governing the investment of public funds by local governments and pursuant to N.J.S.A. 40A:10-10b. In addition, the Executive Committee may transfer monies held to the Director of the Division of Investment in the Department of the Treasury for investment on behalf of the Fund in accordance with standards



governing the investment of other funds which are managed under the rules and regulations of the State Investment Council. Any monies transferred to the Director for investment may not thereafter be withdrawn except under the conditions set forth in N.J.S.A. 40A:10-38b. (N.J.A.C. 11:15-2.20(a)).

2. The investment and interest income earned by the investment of the assets of each claim or loss retention account shall be allocated to each such account by Fund year. (N.J.A.C. 11:2.20(b)).
3. The investment and interest income earned by investment of the assets of the administrative account shall be credited to that account. (N.J.A.C. 11:2.20(c)).

### **C. DISBURSEMENTS**

1. Prior to any commitment or agreement requiring the expenditure of funds, the Fund's Treasurer shall certify as to the availability of sufficient unencumbered funds to fully pay all charges or commitments to be accepted. (N.J.A.C. 11:15-2.19).
2. All disbursements, payments of claims settlements, or other expenditure of funds of the Fund whether for administrative expenses or for claims purposes must be approved by a majority vote of the Fund's Executive Committee (N.J.A.C. 11:15-2.22(a)).
3. To allow the expeditious resolution of certain claims, the Executive Committee may designate the Fund's Administrator or service organization as a "certifying and approving officer" pursuant to N.J.S.A. 40A:5-17. The Fund may authorize the "certifying and approving officer" to approve for payment of any or specified claims in an amount not to exceed the amount indicated in its Plan of Risk Management as approved by the Commissioner. The authority of the certifying and approving officer may be conditioned or restricted by the Executive Committee to require prior consultation, limitation as to the types or total amount of claims or payments which may be approved, or such other procedures or restrictions as the Executive Committee may deem appropriate. The authority of the certifying and approving officer may be revoked or modified at any time by the Executive Committee. (N.J.A.C. 11:15-2.22(b)).
  - a. Upon approval, the certifying and approving officer shall certify the amount and particulars of such approved claims to the custodian of the Fund's assets, who shall be the treasurer, directing that a check for payment be prepared. (N.J.A.C.11:15-2.22(b)1).
  - b. The certifying and approving officer shall prepare a report of all claims approved since the last report, detailing the nature and the amount of the claim, the payee, the reasons supporting payment, and any other pertinent information. This report shall be submitted to the Fund's Executive Committee at their next regularly scheduled meeting. If any payment is not approved by the Executive Committee, they shall direct appropriate action to be taken.
4. All requests for payments must be accompanied by a detailed bill of items or demand, specifying particularly how the bill or demand is made up, with the

certification of the party claiming payment that it is correct, and shall be certified by an officer or duly designated agent or employee of the Fund having knowledge of the facts that the goods have been received by, or the services rendered to, the Fund. In the case of claims or losses to be charged against any loss Fund, the Fund's claims administrator shall certify as to the correctness and validity of the claim(s). (N.J.A.C. 11:15-2.22(c)).

5. All claims shall be paid by check. The checks shall be signed by two persons so designated by the Fund's Executive Committee. Payment of claims may be made in such other manner as provided in the Fund's bylaws as approved by the Commissioner and the Commissioner of the Department of Community Affairs. (N.J.A.C. 11:15-2.22(d)).
6. All claims or other disbursements approved for payment by the Fund commissioners, the Executive Committee thereof or the certifying and approving officer shall be recorded in a claims register maintained by the custodian of the Fund's assets or Fund's treasurer. (N.J.A.C. 11:15-2.22(e)).

## **ARTICLE XIV**

### **CONFLICT OF INTEREST**

- A. No official or employee of a participating local unit or any members of the family of such officials or employees, or any businesses in which such officials, employees or family members have a beneficial interest shall seek to obtain or participate in any contract to be entered into by the Fund for administration, loss control, investment, or depository services, insurance coverage or any other service, commodity, or material without first fully disclosing in writing the nature and extent of such interest, financial or otherwise, to the Executive Committee. It shall be the responsibility of the Executive Committee to determine if the interest so disclosed is such as to constitute an actual or potential conflict of such degree as to impair the ability of the officer, employee, family member, or business from fully and impartially performing the duties required by the Fund. If so, the officer, employee, family member, or business shall be prohibited from entering into such contract until the cause of such conflict is removed. All officials or employees of a participating local unit or any member of the family of such officials or employees shall comply with the "Local Government Ethics Law" pursuant to N.J.S.A. 40A:9-22.1 et seq. (N.J.A.C. 11:15-2.27).
- B. Any contract entered into between the Fund and any individual, firm, corporation, or agency which fails to disclose an actual or potential conflict situation shall be void.
- C. There shall be no collusion or evidence or appearance of collusion, between any official or employee of the members or employees of the Fund and any official or employee of any contractor, vendor, insurance company, bank, consultant, brokerage firm, or any other profit-making or non-profit firm attempting to solicit a contract with the Fund or awarded a contract by the Fund.

**ARTICLE XV**  
**VOLUNTARY DISSOLUTION OF THE FUND**

- A. If the Fund’s Executive Committee deems it in the best interest of the member local units to dissolve the Fund, they shall by majority vote direct that a written plan of dissolution be prepared. (N.J.A.C. 11:15-2.12(a)1).
- B. The Fund may not voluntarily dissolve or cease to do business and distribute its assets to its members, unless and until it satisfies the following requirements. (N.J.A.C. 11:15-2.12(a)).
- C. A majority of the Fund’s members must have voted in favor of a resolution to dissolve the Fund, pursuant to a written plan adopted pursuant to the procedures set forth in the Fund’s bylaws, at a meeting duly called for such purposes. (N.J.A.C. 11:15-2.12(a)1).
- D. The plan of dissolution must provide for the payment of all unpaid losses of the Fund and its members, including all Incurred But Not Reported losses, as certified by an actuary, before any assets of the Fund or the trust fund accounts may be used for any other purpose. (N.J.A.C. 11:15-2.12(a)2).
- E. The plan of dissolution shall contain a statement of the Fund’s current financial condition computed both on a statutory basis and according to generally accepted accounting principles as attested to by an independent certified public accountant. (N.J.A.C. 11:15-2.12(a)3).
- F. The plan of dissolution and other such information as may be required, must be filed with and approved in writing by the Commissioner and the Commissioner of the Department of Community Affairs before the dissolution of the Fund is effective. The plan shall be filed with the Commissioner and the Commissioner of the Department of Community Affairs not later than 90 days prior to the proposed effective date of dissolution. (N.J.A.C. 11:15-2.12(a)4).

**ARTICLE XVI**  
**CLAIMS HANDLING PROCEDURE**

**A. ESTABLISHMENT OF PROCEDURE**

- 1. The Fund’s Executive Committee shall, on the recommendations of the Fund’s administrator, attorney and claims administrator, establish the procedures to be followed by the Fund, its member local units, administrator and service organizations on an annual basis as a part of the Fund’s Plan of Risk Management.
- 2. The procedures shall include the following areas:
  - a. Registration of Claims;
  - b. Claims Response;
  - c. Claims Acknowledgment and Initial Evaluation;
  - d. Periodic Reviews of Claim Status;

- e. Notice of Settled Claims;
- f. Notice of Intended Settlement; and
- g. Approval of Payments and Settlements.

## **ARTICLE XVII**

### **COMPLAINT HANDLING PROCEDURES**

- A.** Whenever any interested party shall submit a complaint in writing to the Fund, the administrator, or any individual member of the Fund, a copy thereof shall be forthwith communicated to the Fund's Executive Committee for consideration at its next regularly scheduled meeting.
- B.** At said meeting, the Fund's Executive Committee shall consider the complaint, and by recorded vote take such action as might be appropriate.
- C.** The complaining party and the Fund commissioner from the member wherein the complaining party resides (if the complaining party is a resident of a member ) shall receive written notice of the Fund Executive Committees' findings. The written notice to the complaining party may, where appropriate, include an opportunity for the complaining party to have a hearing concerning their complaint before the Fund's Executive Committee.
- D.** The Fund shall keep a separate record of all complaints received and the disposition of same.
- E.** If the complaining party is dissatisfied with the Fund commissioners or Executive Committee's decision, the complaining party may appeal this determination to the American Arbitration Association for binding arbitration.

## **ARTICLE XVIII**

### **OTHER CONDITIONS**

#### **A. INSPECTION AND AUDIT**

The Fund shall be permitted, but not obligated, to inspect, at any reasonable time, the workplaces and operations of each member. Neither the right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the member or others to determine or warrant that such workplaces and/or operations are safe or healthful, or are in compliance with any law, rule, or regulation.

The Fund shall be permitted to examine and audit the member's payroll records, general ledgers, disbursements, vouchers, contracts, tax reports, and all other books, documents, and records at any reasonable time as far as they show or tend to show or verify an amount of remuneration or other assessment basis, or relate to the subject matter of the member local unit's participation in the Fund.

## **B. NOTICE OF INJURY**

When an injury occurs, written notice shall be given by or on behalf of the member to the Fund or any of its authorized agents as soon as practicable. Such notice shall contain particulars sufficient to identify the member and also reasonably obtainable information respecting the time, place, and circumstances of the injury, the names and addresses of the injured and of available witnesses, and all in compliance with the claims handling procedures as set forth in the Fund's Plan of Risk Management.

## **C. NOTICE OF CLAIM OR SUIT**

If claim is made or formal petition or suit or other proceeding is brought against the member, the member shall immediately forward to the Fund every demand, notice, summons, or other process received by the local unit or its representative and all in compliance with the claims handling procedures as set forth in the Fund's Plan of Risk Management.

## **D. ASSISTANCE AND COOPERATION OF THE MEMBER LOCAL UNIT**

The member shall cooperate with the Fund and, upon the Fund's request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits or proceedings. The member shall not, except at its own cost, voluntarily make any payment, assume any obligation, or incur any expense other than for such immediate medical and other services at the time of injury as are required by the Workers' Compensation Law.

## **E. ACTION AGAINST FUND**

No action shall lie against the Fund unless, as a condition precedent thereto, the member shall have fully complied with all the terms of the Agreement to join the Fund, State laws and regulations, and these bylaws, nor until the amount of the member's obligation to pay shall have been finally determined either by judgment against the member after actual trial or by written agreement of the member, the claimant, and the Fund. Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover from the Fund pursuant to the membership agreement and the protection afforded thereby. Nothing contained in these Bylaws shall give any person or organization any right to join the Fund as a codefendant in any action against a member to determine the member's liability.

Bankruptcy or insolvency of the member shall not relieve the Fund of any of its obligations.

## **F. SUBROGATION**

In the event of any payment pursuant to membership in the Fund, the Fund shall be subrogated to all rights of recovery of the member and any person entitled to the benefits of membership in the Fund against any person or organization and the member shall execute and deliver to the Fund any instruments and/or papers, and shall do whatever else is necessary, to secure for the Fund such rights. The Participant shall do nothing after loss to prejudice any such rights of subrogation.

## **G. CONFORMANCE WITH STATUTE**

In the event any portion of these Bylaws conflicts with any statute or administrative regulation governing Joint Insurance Funds, the provision of any such regulation shall control to the extent it conflicts with these Bylaws.

## **ARTICLE XIX**

### **OWNERSHIP AND MAINTENANCE OF RECORDS**

#### **A. GENERAL RECORDS**

All books, records, files, documents and equipment of the Fund are the property of the Fund and, except as provided in N.J.A.C. 11:15-2.22(e) and Article IV, D.1. of these bylaws, shall be retained by the Fund administrator or Fund secretary, if any, at the discretion of the Fund's Executive Committee. (N.J.A.C. 11:15-2.4(g)).

#### **B. CLAIM AND FINANCIAL RECORDS**

All claims information for a particular Fund year and all financial information shall be retained for a period not less than the longer of either (N.J.A.C. 11:15-2.4(g)1):

1. For financial information, seven years from the date of their creation; for claims information, seven years after all claims for that year have been fully paid; or (N.J.A.C. 11:15-2.4(g)1i)
2. Until the completion and filing of the next financial condition examination of the Fund by the Commissioner. (N.J.A.C. 11:15-2.4(g)1ii).

#### **C. MEETING MINUTES**

The Fund shall maintain written minutes of its meetings and shall file such approved, ratified and adopted minutes with the Commissioner within 30 days after such minutes have been approved, ratified and adopted. (N.J.A.C. 11:15-2.4(h)).

#### **D. QUARTERLY REPORTING**

The Fund shall deliver reports to its members covering the activities and status of the Fund at each meeting which shall be at least quarterly. Such reports will contain the current financial status of the Fund, minutes of the last meeting, the Fund administrator's report, the treasurer's report, claim administrator's report, any other service provider's report if tendered, and any other information the Fund's Executive Committee deems appropriate. The Fund will file all minutes with the Commissioner as stated above and will provide any other information the Commissioner may request. (N.J.A.C. 11:15-2.4(i)).

#### **E. RECORD SURRENDER**

All officers, employees and agents of the Fund, including the administrator, appointed officials and servicing organizations of the Fund, on the final day of their contract or employment shall surrender and deliver to their successors all accounts, funds, property, records, books and any other material relating to their contract or employment. (N.J.A.C. 11:15-2.4(j)).

**ARTICLE XX**  
**EXAMINATION OF THE FUND**

**A. POWER TO EXAMINE**

1. The Commissioner may, at the time of the filing of the bylaws and plan of risk management and whenever thereafter he deems it expedient, but at a minimum not less frequently than once every five years, make or cause to be made, an examination of the assets and liabilities, financial condition, method of conducting business and all other affairs of the Fund. For the purpose of the examination, the Commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals or specialists as examiners, or may request the Executive Committee to authorize and employ such person or persons to conduct the same or assist therein as he or she deems advisable. The reasonable expenses of the examination shall be fixed and determined by the Commissioner, and such expenses shall be paid by the Fund to the appropriate entity or person upon presentation of a detailed account. (N.J.A.C. 11:15-2.6(f)).
2. In addition to an examination as described above, the Commissioner may conduct an examination of the Fund as he or she deems necessary, or at any time the Commissioner has reasonable cause to believe the Fund may be insolvent or in a financial condition detrimental to its members or the public. It shall be the duty of the Fund members, commissioners, executive committee and administrator to notify the Commissioner of any information indicating that the Fund may be insolvent or in a financial condition detrimental to the Fund's members or the public. (N.J.A.C. 11:15-2.25(a)).
3. The Fund members, commissioners or executive committee may, upon majority vote, request that the Commissioner order an examination of any Fund member which the Fund, commissioners or executive committee, in good faith believe may be in a financial condition detrimental to other members or to the public. (N.J.A.C. 11:15-2.25(b)).
4. Any examination made pursuant to N.J.S.A. 40A:10-36 and N.J.A.C. 11:15-2.25 and this article shall be conducted in accordance with the procedures set forth in N.J.A.C. 11:15-2.6(f), which are also recorded below. (N.J.A.C. 11:15-2.25(c)).

**B. EXAMINATION PROCEDURES**

1. For the purposes of completing an examination of the Fund pursuant to N.J.S.A. 40A:10-47 and this article, the Commissioner may examine or investigate any person, or the business of any person, insofar as such examination or investigation is, in the sole discretion of the Commissioner, necessary or material to the examination of the Fund. (N.J.A.C. 11:15-2.6(f)1).
2. The Fund or person from whom information is sought, including its officers, directors and agents, shall provide the Commissioner or other person appointed as examiner pursuant to this article, timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents

- and any or all computer or other recordings relating to the property, assets, business and affairs of the Fund. (N.J.A.C. 11:15-2.6(f)2).
3. The administrator, appointed official(s), servicing organization(s), and their officers, directors, employees and agents, or other person, shall facilitate the examination and aid in the examination so far as it is in their power to do so. The Commissioner may, in accordance with the procedures set forth in N.J.A.C. 11:15-2.8 (“Revocation of approval”), suspend or terminate the authority of the Fund, if the Fund, by its administrator, appointed officials, servicing organizations, or officers, directors, employees, or agents thereof, refuses to submit to an examination or to comply with any reasonable request of the examiners. (N.J.A.C. 11:15-2.6(f)3).
  4. The Commissioner shall give prior written notice of any proposed suspension, revocation of authority, cease and desist order, or other enforcement action to the Fund commissioners, executive committee, or member local unit as the case may be, or to any person to whom the proposed enforcement action applies specifically. Such notice shall be served personally or by certified or registered mail upon all interested parties, shall set forth the grounds for the proposed enforcement action, and shall inform the interested party of its right to request a hearing on the proposed enforcement action. A copy of such written notice shall also be provided to the Commissioner of the Department of Community Affairs. (N.J.A.C. 11:15-2.28(a)).
  5. The interested party shall have 20 days from the mailing of the notice to request a hearing on the proposed enforcement action. Such a hearing shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. Failure to mail a request for hearing within the time prescribed shall result in the suspension, revocation, monetary penalty or cease and desist order becoming effective 30 days from issuance of the original notice. In no event shall any revocation become effective prior to the date that a hearing is scheduled. (N.J.A.C. 11:15-2.28(b)).
  6. After notice and opportunity for a hearing, as provided in N.J.A.C. 11:15-2.28, the Commissioner may issue an order revoking or suspending the Fund’s authority or requiring a person or the Fund to cease and desist from engaging in an act or practice found to be in violation of any provision of either N.J.S.A. 40A:10-36 et seq. or N.J.A.C. 11:15-2.6 et seq. (N.J.A.C. 11:15-2.29(a)).
  7. Upon a finding, after notice and opportunity for a hearing, as provided in N.J.A.C. 11:15-2.28, that the Fund has violated any cease and desist order, the Commissioner may revoke his or her approval of the Fund. (N.J.A.C. 11:15-2.29(b)).
  8. Upon a finding, after notice and opportunity for a hearing, as provided in N.J.A.C. 11:15-2.28, the Commissioner may issue an order requiring the Executive Committee to dismiss an administrator, appointed official or servicing organization or terminate the contract of an administrator, appointed official or servicing organization because of any fraud, material misrepresentation,



incompetence or untrustworthiness, misappropriation or conversion of monies or violation of any fiduciary responsibilities by such administrator, appointed official or servicing organization, or any of the employees, officers or directors thereof. (N.J.A.C. 11:15-2.29(c)).

9. A copy of any notice issued pursuant to this article shall be furnished to the Commissioner of the Department of Community Affairs. (N.J.A.C. 11:15-2.29(d)).
10. Effective January 1, 1998, the Fund shall include in all contracts with its administrator, appointed officials, and servicing organizations a clause recognizing this article in its entirety, and requiring the administrator, appointed officials and servicing organizations to be contractually bound by these provisions.

## **ARTICLE XXI**

### **DISAPPROVAL OF BYLAWS AND PLAN OF RISK MANAGEMENT**

- A. If the Commissioner determines that the bylaws or risk management program of the Fund or any subsequent amendments thereto do not contain all the information set forth in N.J.A.C. 11:15-2.6., are not submitted in the proper format set forth in N.J.A.C. 11:15-2.5, or otherwise do not meet the requirements of N.J.S.A. 40A:10-36 et seq. or N.J.A.C. 11:15-2.6 through 2.30, the Commissioner shall disapprove the bylaws or plan of risk management and notify the Fund in writing, which notice shall contain the specific reasons for disapproval, and the requirements to be met before approval may be granted. If not disapproved by the Commissioner within 30 working days of receipt of the bylaws and plan of risk management or any amendments thereto, which contain all of the information and documentation set forth in N.J.A.C. 11:15-2.6, in the format set forth in N.J.A.C. 11:15-2.5, and which meet the requirements of N.J.S.A. 40A:10-36 et seq. and N.J.A.C. 11:15-2.6 through 2.30, the bylaws and plan of risk management shall be deemed approved. (N.J.A.C. 11:15-2.7).

## **ARTICLE XXII**

### **REVOCATION OF APPROVAL OF BYLAWS AND PLAN OF RISK MANAGEMENT**

- A. After notice and opportunity for a hearing, the Commissioner may suspend or terminate the authority of the Fund, or direct or take any action deemed necessary for good cause, to enable the Fund to meet its obligations, cover its expected losses, or to liquidate, rehabilitate or otherwise modify its affairs if the Fund (N.J.A.C. 11:15-2.8(a)):
  1. Is found to be insolvent or has experienced a deterioration in financial condition to the extent that it causes or may cause an adverse affect upon the ability of the Fund to pay expected losses. (N.J.A.C. 11:15-2.8(a)1);
  2. Fails to timely pay any fee or assessment. (N.J.A.C. 11:15-2.8(a)2);

3. Fails to pay any claim within 30 days after a final judgment is rendered against the Fund or the Fund's obligation for such claim otherwise becomes final. (N.J.A.C. 11:15-2.8(a)3);
  4. Fails to comply with any of the provisions of N.J.S.A. 40A:10-36 et seq. and N.J.A.C. 11:15-2.6 through 2.30, or with any lawful order of the Commissioner within the time prescribed (N.J.A.C. 11:15-2.8(a)4), or;
  5. Fails to follow its approved bylaws or plan of risk management. (N.J.A.C. 11:15-2.8(a)5).
- B. In addition, the Commissioner may suspend or terminate the Fund's authority if, after notice and opportunity for a hearing, he or she finds that (N.J.A.C. 11:15-2.8(b)):
1. There was a material misrepresentation in any of the information supplied to the Commissioner or the Commissioner of the Department of Community Affairs (N.J.A.C. 11:15-2.8(b)1);
  2. The Fund or any of its Fund commissioners, administrator, appointed officials, servicing organizations or agents has otherwise shown itself to be untrustworthy or incompetent. (N.J.A.C. 11:15-2.8(b)2), or;
  3. The Fund, its commissioners, administrator, appointed officials, servicing organizations or agents has misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any monies that belong to a member, an employee of a member, or a person otherwise entitled thereto. (N.J.A.C. 11:15-2.8(b)3).