

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Group Self-Insurance
Joint Insurance Funds

Proposed Amendments: N.J.A.C. 11:15-2.6, 2.25, 3.6, 3.25, 4.6, 4.25, 5.6, 5.25 and 6.24

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:49A-1 et seq. 18A:18B-1. et seq. and 40A:10-36 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2003-108

Submit comments by June 6, 2003 to:

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The agency proposal follows:

Summary

N.J.A.C. 11:15-2 through 6 set forth the rules governing the formation and operation of pooling mechanisms formed by local units of government, boards of education, and non-profit corporations and Keys Amendment facilities, to self insure or jointly purchase various insurance coverages as authorized by law. The existing rules governing joint insurance funds (funds) formed by local units of government or school boards at N.J.A.C. 11:15-2.6(f), 3.6(f), 4.6(g) and 5.6(g), provide that the Commissioner of Banking and Insurance (Commissioner) may, at the time of the filing of bylaws and plan of risk management and whenever thereafter he or she

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 a fund. The fund examined bears the cost of examination. The Department of Banking and Insurance (Department) proposes to amend these rules to eliminate the mandatory minimum time frame within which the Department must examine a fund. Requiring that an examination be made once every five years, regardless of whether any problems have been noted by or reported to the Department, requires the expenditure of public moneys, ultimately borne by the taxpayer. There are currently 48 local governmental unit and school board joint insurance funds. The cost for an examination is approximately \$50,000. Accordingly, examinations ultimately cost taxpayers approximately \$2.4 million every five years, or almost \$500,000 a year. To the extent the Department does not deem it necessary to examine a joint insurance fund, the rule currently results in unnecessary expense to local units of government and school boards, and ultimately taxpayers, as well as the utilization of Department staff and resources. The Department notes that it will retain the authority currently afforded to it by N.J.A.C. 11:15-2.6, 3.6, 4.6 and 5.6 to examine a fund whenever it deems necessary. In addition, the Department receives substantial information regarding the operations of all joint insurance funds on an ongoing basis, enabling it to adequately monitor their conditions and operations. See, for example, N.J.A.C. 11:15-2.21, 2.24, 3.20, 3.24, 4.21, 4.24, 5.20 and 5.24. Among other things, joint insurance funds will continue to be required to file annual audited, and quarterly, financial statements. The Department will continue to conduct ongoing analysis of all funds' operations based on the financial and other information related to their operations required to be filed. Moreover, there is no statutory requirement to conduct a periodic examination of joint insurance funds. The relevant statutes

grant the Department authority to conduct examinations as deemed necessary. These proposed amendments in no way limit this authority. Further, the Department shares oversight of municipal funds with the Department of Community Affairs, and may seek consultation with the Department of Education, with respect to school board funds. Accordingly, the Department's ability to oversee and monitor a fund's operations and condition will not be affected by these proposed amendments.

In addition, the Department is proposing to amend N.J.A.C. 11:15-2.25, 3.25, 4.25, 5.25 and 6.24, to clarify subsection (b) of those rules, and to permit the fund members or commissioners to request that the Department examine the fund itself, in addition to requesting an examination of a fund member. There may be instances where a fund believes that it is necessary for the Department to examine its affairs. In these cases, the Department would determine the appropriateness and scope of any examination based upon the particular circumstances involved.

A 60-day comment period is provided for this notice of proposal, and therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed amendments will eliminate the unnecessary expense incurred by local units of government and school boards who are members of a fund, and ultimately taxpayers, which results from the mandatory cyclical examination of local unit and school board joint insurance funds by eliminating the requirement that Departmental examinations be performed at least once every five years. As set forth in the Summary above, joint insurance funds will continue to be

monitored appropriately by the Department through ongoing financial analysis and review of annual and quarterly financial information and other documentation required to be provided, as well as the Department's continuing ability to examine a joint insurance fund when the Department deems it necessary to do so. The proposed amendments will also permit a fund's members, or its commissioners or trustees, to request that the Department examine the fund itself if they believe it necessary.

Economic Impact

As noted above, the proposed amendments will eliminate expenditures of approximately \$500,000 a year by taxpayers to fund mandatory examinations regardless of whether they are deemed necessary by the Department. This will avoid unnecessary expenditure of taxpayer funds and permit the Department to better utilize its staff and resources as deemed necessary. As noted above, the Department will continue to retain the authority to properly monitor and, when deemed necessary, examine funds.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments are not subject to any Federal requirements or standards.

Jobs Impact

The Department does not believe that any jobs will be generated or lost as a result of the proposed amendments. However, to the extent that the unnecessary expenditure of local

governmental unit and school board funds' monies, ultimately funded by taxpayers, is reduced, this may further contribute to a healthy business climate in New Jersey.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposal together with their comments on other aspects of the proposal.

Agriculture Industry Impact

The proposed amendments will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping or other compliance requirements on "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. All of the proposed amendments, except for the proposed amendments to N.J.A.C. 11:15-6.24(b), apply to local units of government or school boards, which are not "small businesses." Further, the proposed amendments to N.J.A.C. 11:15-6.2(b) do not impose any reporting, recordkeeping or other compliance requirements. As set forth in the Summary, these amendments clarify the subsection and permit fund members or commissioners to request that the Department examine the fund itself, in addition to requesting examination of a fund member.

Smart Growth Impact

The proposed amendments will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 2. JOINT INSURANCE FUNDS FOR LOCAL GOVERNMENT UNITS
PROVIDING PROPERTY AND LIABILITY COVERAGES

11:15-2.6 Bylaws and plan of risk management; contents

(a) – (e) (No change.)

(f) The Commissioner may, at the time of filing of the bylaws and plan of risk management and whenever thereafter he or she 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 any 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 fund commissioners or the executive committee, if any, to authorize and employ such person or persons to conduct the same or to 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 examined to the appropriate entity or person upon presentation of a detailed account.

1. - 3 (No change.)

11:15-2.25 Examination of funds possibly in financial condition detrimental to the public

(a) (No change.)

(b) The [fund] fund's members, commissioners or executive committee, if any, may, upon majority vote, request that the Commissioner order an examination of the fund, or any fund member, which [the fund, commissioners or executive committee] they, in good faith,

[believes] **believe** may be in a financial condition detrimental to the fund's members or to the public.

(c) (No change.)

SUBCHAPTER 3. JOINT INSURANCE FUNDS FOR LOCAL GOVERNMENT UNITS
PROVIDING GROUP HEALTH AND TERM LIFE BENEFITS

11:15-3.6 Bylaws and plan of risk management; contents

(a) – (e) (No change.)

(f) The Commissioner may, at the time of filing of the bylaws and plan of risk management and whenever thereafter he or she 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 any 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 fund commissioners or the executive committee, if any, to authorize and employ such person or persons to conduct the same or to 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 examined to the appropriate entity or person upon presentation of a detailed account.

1. - 3. (No change.)

11:15-3.25 Examination of funds possibly in financial condition detrimental to the public

(a) (No change.)

(b) The [fund] **fund's** members, commissioners or executive committee, **if any**, may, upon majority vote, request that the Commissioner order an examination of **the fund, or** any fund member, which [the fund, commissioners or executive committee, if any] **they**, in good faith, [believes] **believe** may be in a financial condition detrimental to other fund members or to the public.

(c) (No change.)

SUBCHAPTER 4. JOINT INSURANCE FUNDS FOR SCHOOL BOARDS PROVIDING PROPERTY AND LIABILITY COVERAGE

11:15-4.6 Bylaws and risk management program; contents

(a) – (f) (No change.)

(g) The Commissioner may, at the time of filing of the bylaws and risk management program and whenever thereafter he **or she** 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 any 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 trustees to authorize and employ such person or persons to conduct the same or to 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 examined to the appropriate entity or person upon presentation of a detailed account.

1. - 3. (No change.)

11:15-4.25 Examination of funds

(a) (No change.)

(b) The **fund's** members or trustees may, upon majority vote, request that the Commissioner order an examination of **the fund, or** any fund member, which [the trustees] **they,** in good faith, believe may be in a financial condition detrimental to other fund members or to the public.

(c) (No change.)

SUBCHAPTER 5. JOINT INSURANCE FUNDS FOR SCHOOL BOARDS PROVIDING
GROUP HEALTH AND TERM LIFE BENEFITS

11:15-5.6 Bylaws and risk management program; contents

(a) – (f) (No change.)

(g) The Commissioner may, at the time of filing of the bylaws and risk management program and whenever thereafter he or she 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 any 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 trustees to authorize and employ such person or persons to conduct the same or to 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 examined to the appropriate entity or person upon presentation of a detailed account.

1. - 3. (No change.)

11:15-5.25 Examination of funds possibly in financial condition detrimental to the public

(a) (No change.)

(b) The [fund] **fund's** members or trustees may, upon majority vote, request that the Commissioner order an examination of **the fund, or** any fund member, which [the fund members or trustees] **they**, in good faith, believe may be in a financial condition detrimental to other fund members or to the public.

(c) (No change.)

SUBCHAPTER 6. JOINT INSURANCE FUNDS FOR NON-PROFIT CORPORATIONS
AND KEYS AMENDMENT FACILITIES

11:15-6.24 Examination of funds

(a) (No change.)

(b) The **fund's** members, commissioners, or executive committee, **if any**, may, upon majority vote, request that the Commissioner order an examination of **the fund, or** any fund member, which [the members, commissioners, or executive committee] **they**, in good faith,

[believes] **believe** may be in a financial condition detrimental to other fund members or to the public.

(c) (No change.)

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