

**WEST VIRGINIA
SECRETARY OF STATE**

JOE MANCHIN, III

ADMINISTRATIVE LAW DIVISION

Form #3 □

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2003 JUL 29 P 2:46

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY: W. Va. Code §§29-12A-16(g), 29-12A-17(d) and 33-2-10

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 65

TITLE OF RULE BEING PROPOSED: Self-Insurance Pools for Political Subdivisions

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

QUESTIONNAIRE

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

DATE: July 29, 2003

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: OFFICE OF THE INSURANCE COMMISSIONER
ATTN: Legal Division
1124 Smith Street
Post Office Box 50540
Charleston, West Virginia 25305-0540

LEGISLATIVE RULE TITLE: SELF-INSURANCE POOLS FOR POLITICAL
SUBDIVISIONS - (TITLE 114, SERIES 65)

1. Authorizing statute(s) citation:

W. Va. Code §§29-12A-16(g), 29-12A-17(d) and 33-2-10.

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

May 28, 2003 - Comment Period.

b. What other notice, including advertising, did you give of the hearing?

None

c. Date of Public Hearing(s) or Public Comment Period ended:

Comment period ended June 27, 2003.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

**e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing:
(be exact)**

July 29, 2003

Insurance Commissioner
Title 114, Series 65

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

Mary Jane Pickens, General Counsel
West Virginia Insurance Commission
Legal Division
P.O. Box 50540
Charleston, WV 25305-0540
Phone: (304) 558-0401
Fax: (304) 558-1362
E-mail: pickensm@mail.wvnet.edu

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

Same

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

Not applicable

- b. Date of hearing or comment period:

Not applicable

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

Not applicable

- d. Attach findings and determinations and reasons:

Not applicable

ATTACHMENT TO QUESTION 2 (d):

Two sets of comments were received during the comment period in response to the proposed legislative rule entitled "Self-Insurance Pools for Political Subdivisions": one from Dennis R. Vaughan, Jr., Attorney at Law, and one from the West Virginia Municipal League.

A. Dennis R. Vaughan, Jr. – Letter dated June 13, 2003

Mr. Vaughan is counsel for the West Virginia Municipal League ("League"). On behalf of the League, Mr. Vaughan comments in his letter dated June 13, 2003 and received on June 16, 2003 that changes to the following portions of the proposed rule are needed in order to authorize a pool's board of directors to establish cash contributions, reserves and reinsurance through "certificates of participation": paragraph 3, subdivision a, subsection 4.1; paragraph 2, subdivision b, subsection 4.1; and subdivision / of subsection 4.1.

Specifically, Mr. Vaughan states that the proposed changes are essential modifications to the rule that will insure that insurance pools for political subdivisions will be properly and adequately funded. Without these changes, according to Mr. Vaughan, political subdivisions will be unable to come up with the moneys needed to establish the pools. Contributions to a self-insurance pool may only be made pursuant to the properly approved budgets of Municipalities and other political subdivisions. These budgets have already been established for the current year. In addition, Mr. Vaughan has suggested that it would be difficult, if not impossible, for political subdivisions to contribute the large amount of moneys needed to insure financial solvency of a liability pool going forward.

Mr. Vaughan states that there are only three ways that municipalities are able to raise the necessary capital to adequately capitalize the proposed pools:

- 1) Ask the cities to contribute (in addition to their premium payment);
- 2) Ask the state to appropriate cash, security, a guarantee or both (not likely in the current budget environment); or
- 3) Use public finance instruments (like certificates of participation being proposed through the comment).

According to Mr. Vaughan, revenue bonds are a common method of raising capital for governmental entities and the concept of the certificates of participation is the same. The use of certificates of participation would enable the pool to sell the certificates to an investment bank which would then sell them to investors. The investors would be investing in the income stream of the insurance pool premiums. Interest on the certificates of participation is tax exempt in the hands of the certificate holders. The pool will invest the moneys received from the sale of the certificates at a rate that should be higher than that paid to the certificate holders, thereby creating additional capital and reserves.

According to Mr. Vaughan, the investment bank that purchases the certificates will conduct due diligence when deciding to purchase the certificates of participation, which will add a level of care and certainty to the financing mechanism. In addition, bond counsel will be issuing an opinion that the documents involved in the transaction are enforceable against the municipalities, i.e. that the transaction will essentially work as proposed. Therefore, Mr. Vaughan states that there are reliability factors built into the transactions.

The issuance of certificates of participation as a means of capitalizing the pools, providing money for the purchase of reinsurance and establishing pool reserves for the payment of claims is a complex area that is subject to federal tax laws. It is the Insurance Commissioner's belief that only experienced investment bankers and bond attorneys should be involved in these kinds of transactions. However, given the need that has been pointed out for a mechanism to capitalize the pools, and given the fact that revenue bonds are already a common mechanism for raising funds for public projects, and given further the fact that many states that authorize political subdivisions to join together to self-insure through a pool also authorize the issuance of public debt to capitalize the pool and establish reserves, the Commissioner agrees to add the authority of the pools to issue certificates of participation as suggested by Mr. Vaughan. However, the Commissioner believes that the authority to issue public debt to fund the pool, establish reserves and purchase reinsurance must be limited to those political subdivisions that already possess the legal authority to do so under current law.

Therefore, the Commissioner agrees to amend paragraph 3, subdivision a, subsection 4.1; paragraph 2, subdivision b, subsection 4.1; and subdivision *l* of subsection 4.1 as follows:

4.1. Before a pool may begin to offer coverage to members, the following must be filed with the commissioner:

a. A copy of a financial plan which must set forth:

1. The insurance coverages to be offered by the pool, applicable deductible levels, and the maximum level of claims to be self-insured against;

2. The pool's proposed rates, which should not be excessive, inadequate or unfairly discriminatory taking into account all underwriting, exposure and claims history when pricing any current or prospective pool members. A pool's rates are not subject to prior approval by the Commissioner, however appropriate regulatory action may be taken if he or she determines that the rates are not in compliance with this rule;

3. The amount of cash reserves as are necessary, in the exercise of sound and prudent actuarial judgment, to cover potential pool members and employee liability, expense, loss, and damage, which cash reserves may be funded by the issuance of certificates of participation by the pool and its members and reinsurance; and

4. *The amount of aggregate excess insurance or reinsurance coverage to be purchased in the event that the pool's resources are exhausted in a given fiscal period;*

b. *A copy of a plan of management which describes the governing authority of the pool, which must be a board of directors, and provides the following with regard to the board:*

1. *The manner in which member contributions to the pool will be determined;*

2. *The methods for maintaining reserves, levying and collecting assessments for deficiencies, the financing of cash reserves and reinsurance, and disposing of surplus;*

3. *The basis upon which new members may be admitted to, and existing members may leave or have membership terminated by the pool;*

4. *The identification of funds and reserves by exposure areas;*

5. *The manner in which the pool will be administered in the event of termination or insolvency; and*

6. *Any other provisions that may be considered by the members or the commissioner to be necessary or desirable for the operation of the pool;*

c. *A copy of the articles of incorporation;*

d. *A copy of the bylaws of the proposed pool;*

e. *A copy of the form or forms to be used for the member agreement, which must set forth at a minimum the rights, privileges and obligations of the member and the terms, coverages, limits and deductibles of the plan;*

f. *A copy of the proposed policy form or forms, which are not subject to prior approval by the Commissioner;*

g. *Designation of the initial or interim board, at least a majority of which must be pool members, and the administrator, together with pertinent biographical information for each member of the board and for the administrator or the principal officers of the corporation serving as administrator;*

h. *The address within West Virginia where the books and records of the pool will be maintained at all times;*

i. *A confirmation of a fidelity bond covering the administrator and its employees in an amount sufficient to protect the pool against the misappropriation or misuse of any monies or securities;*

j. *A projection of administrative expenses for the first year of operation in a dollar amount and as a percentage of the estimated annual contributions;*

k. *Proof of payment of contributions by members into a depository account of an amount between \$250,000 and \$500,000 that, in the commissioner's discretion, constitutes sufficient capital; and*

l. *A composite listing of the estimated annual gross contributions which may, in addition to cash contributions, be made up of proceeds from the sale of certificates of participation in the premium stream of the pool, to be developed by each organizing member of the pool individually and in the aggregate for the pool. Contributions must be based on reasonable assumptions and certified by an actuary as to the sufficiency of the contributions.*

m. *The authorization given in paragraph 3, subdivision a and paragraph 2, subdivision b of this subsection and in subdivision l of this subsection to issue certificates of participation as a means of providing capital for the pool, establishing adequate reserves and purchasing reinsurance is limited to those political subdivisions that are authorized to issue public debt pursuant to other applicable law.*

B. The West Virginia Municipal League – Letter dated June 12, 2003

The West Virginia Municipal League (“League”) also submitted comments directly by letter from Lisa Dooley, Executive Director, dated June 12, 2003 and received on June 18, 2003. On behalf of the League, Ms. Dooley comments that the League supports the amendments requested by League counsel Dennis R. Vaughan that would authorize certificates of participation to be used as a method of capitalization for the insurance pool.

Ms. Dooley goes on to state that the League opposes changes to other non-Insurance Commissioner rules “which would have the effect of limiting the free flow of insurance commerce between various programs, especially if there is a negative affect on the Municipal League’s ability to establish and/or maintain an effective property casualty insurance pool. . . . It would be inconsistent for the Legislature to encourage and approve municipal pooling while, at the same time, approving legislative rules from other state agencies that might have the unintended affect of limiting our opportunity to create a successful alternative to current insurance options available for West Virginia municipalities.”

In response to the League’s initial comments, please see responses to the comments from Dennis R. Vaughan, Jr., above. The last portion of the League’s comments is not addressed to the Insurance Commissioner in connection with the current proposed rule, therefore the Commissioner will not respond to these comments.

VAUGHAN LAW FIRM
Attorneys and Counsellors at Law

DENNIS R. VAUGHAN, JR.

WEST VIRGINIA MUNICIPAL LEAGUE CENTER
2020 KANAWHA BOULEVARD, EAST
CHARLESTON, WEST VIRGINIA 25311

TELEPHONE (304) 342-3900
TELECOPY (304) 344-2386

June 13, 2003

Mary Jane Pickens, Associate Counsel
West Virginia Insurance Commission
P. O. Box 50540
Charleston, WV 25305-0540

RE: 114 CSR 65

Dear Ms. Pickens:

Enclosed herewith you will find a proposed set of rules entitled "114 CSR 65, West Virginia Legislative Rule West Virginia Insurance Commission, Series 65," one set of which has black-lined changes suggested by the West Virginia Municipal League (herein the "League") and second set removes the black lining reflecting the same amendments suggested by the League.

These changes or amendments reflect the material discussed at our meeting held at your office on June 10, 2003, and as noted to you, reflect what we at the League feel are essential modifications to the Rule currently under consideration for adoption by your office and with these suggested changes will result in insurance pools more properly and adequately funded.

As was noted, there are only three ways municipalities are able to raise the necessary capital to adequately capitalize the proposed pools:

1. Ask the cities to contribute (in addition to their premium payment!).
2. Ask the state to appropriate cash, security, a guarantee or both (not likely in the current budget environment.)
3. Use public finance instruments (like certificates of participation being proposed in the amended rules.)

Again, as General Counsel to the League, I request and urge that your office accept and adopt these proposed changes and additions.

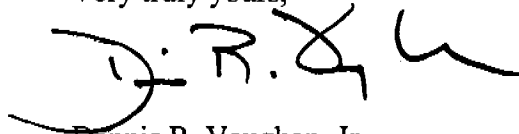
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JUN 16 2003

LEGAL DIVISION
W.VA. INS. DEPT.

Should you have any further questions or comments please do not hesitate to contact the undersigned at your convenience.

Very truly yours,

A handwritten signature in black ink, appearing to read "D.R. Vaughan, Jr.", with a large, sweeping flourish at the end.

Dennis R. Vaughan, Jr.
General Counsel
West Virginia Municipal League

DRVJr:ec

Enclosures

CC: Frank Baer, III
Lisa Dooley, WVML
Hon. Jon Amores

114 CSR 65

WEST VIRGINIA LEGISLATIVE RULE

WEST VIRGINIA INSURANCE COMMISSIONER

SERIES 65

Section

- 114-65-1. General.
- 114-65-2. Definitions.
- 114-65-3. Establishment of Pools Authorized.
- 114-65-4. Criteria for Establishing and Maintaining Self-Insurance Pools.
- 114-65-5. Authorization of Pools.
- 114-65-6. Filing Rates and Forms.
- 114-65-7. Investments.

**TITLE 114
WEST VIRGINIA LEGISLATIVE RULE**

WEST VIRGINIA INSURANCE COMMISSIONER

**SERIES 65
SELF-INSURANCE POOLS FOR POLITICAL SUBDIVISIONS**

§ 114-65-1. General.

1.1. Authority. -- This rule is promulgated pursuant to the authority granted by West Virginia Code §§29-12A-16(g), 29-12A-17(d), and 33-2-10.

1.2. Scope -- This rule sets forth the procedural requirements for the creation and regulatory oversight of self-insurance pools.

1.3. Filing Date. --

1.4. Effective Date. --

§ 114-65-2. Definitions.

2.1. "Administrator" means the individual, partnership corporation or other entity authorized to serve as a representative of a pool and its members in carrying out the policies of the board of directors and managing the pool's activities.

2.2. "Board" means the board of directors of a pool.

2.2. "Commissioner" means the commissioner of insurance.

2.3. "Contribution" means the amount of payments required of each member in order to fund the pool's obligations under the plan.

2.4. "Liability" means an obligation arising from claims for damages in civil actions for injury, death, or loss to persons or property allegedly cause by an act or omission of the political subdivision or any of its employees.

2.4. "Member" means a political subdivision which has entered into a member agreement and thereby becomes a pool member.

2.5. "Member agreement" means the written agreement executed between each member and the pool which sets forth the conditions of membership in the pool, the obligations, if any, of each member to the other members and the terms, coverages, limits, and deductibles of the plan.

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2.6. "Plan" means the plan of self-insurance offered by the pool to its members as specifically designated in the member agreement.

2.7. "Political subdivision" means any county commission, municipality and county board of education; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; any instrumentality supported in most part by municipalities; any public body charged by law with the performance of a government function and whose jurisdiction is coextensive with one or more counties cities or towns; a combined city-county health department created pursuant to article two, chapter sixteen of the West Virginia Code; public service districts; and other instrumentalities including, but not limited to, volunteer fire departments and emergency service organizations as recognized by an appropriate public body and authorized by law to perform a government function. "Political subdivision" does not include hospitals of a political subdivision and their employees.

2.8. "Pool" means an entity organized by two or more political subdivisions for the purpose of providing joint or cooperative action relating to their financial and administrative resources and providing risk management and liability insurance coverage for pool members and their employees for damages in civil actions for injury, death, or loss to persons or property allegedly cause by an act or omission of the political subdivision or any of its employees.

§114-65 -3. Establishment of Pools Authorized.

3.1. Regardless of whether a political subdivision secures a policy or policies of liability insurance, establishes and maintains a self-insurance program, or enters into an agreement for the joint administration of a self-insurance program, the political subdivision may, pursuant to a written agreement and to the extent that it considers necessary, join with one or more political subdivisions in establishing and maintaining a joint self-insurance pool to provide for the payment of judgments, settlement of claims, expenses, loss, or damages that arise, or are claimed to have arisen, from an act or omission of the political subdivision or any of its employees.

3.2. Two or more political subdivisions may establish and maintain a joint risk-management program, including but not limited to the employment of a risk manager or managers and consultants, for the purpose of preventing and reducing the risks covered by insurance, self-insurance, or a self-insurance pool.

3.3. A joint self-insurance pool is not an insurance company. Its operation does not constitute doing an insurance business and it is not subject to the insurance laws of this State unless otherwise specifically stated herein.

**Insurance Commissioner
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§114-65-4. Criteria for Establishing and Maintaining Self-Insurance Pools.

4.1. Before a pool may begin to offer coverage to members, the following must be filed with the commissioner:

a. A copy of a financial plan which must set forth:

1. The insurance coverages to be offered by the pool, applicable deductible levels, and the maximum level of claims to be self-insured against;
2. The amount of cash reserves as are necessary, in the exercise of sound and prudent actuarial judgment, to cover potential pool members and employee liability, expense, loss, and damage which cash reserves may be funded by the issuance of certificates of participation by the pool and its members and re-insurance; and
3. The amount of aggregate excess insurance or reinsurance coverage to be purchased in the event that the pool's resources are exhausted in a given fiscal period;

b. A copy of a plan of management which describes the governing authority of the pool, which must be a board of directors, and provides the following with regard to the board:

1. The manner in which member contributions to the pool will be determined;
2. The methods for maintaining reserves, levying and collecting assessments for deficiencies, the financing of cash reserves and re-insurance and disposing of surplus;
3. The basis upon which new members may be admitted to, and existing members may leave or have membership terminated by the pool;
4. The identification of funds and reserves by exposure areas;
5. The manner in which the pool will be administered in the event of termination or insolvency; and

Insurance Commissioner
Legislative Rule
Title 114, Series 65

6. Any other provisions that may be considered by the members or the commissioner to be necessary or desirable for the operation of the pool;

- c. A copy of the articles of incorporation;
- d. A copy of the bylaws of the proposed pool;
- e. A copy of the form or forms to be used for the member agreement, which must set forth the rights, privileges and obligations of the member and the terms, coverages, limits and deductibles of the plan;
- f. Designation of the initial or interim board, at least a majority of which must be pool members, and the administrator, together with pertinent biographical information for each member of the board and for the administrator or the principal officers of the corporation serving as administrator;
- g. The address within West Virginia where the books and records of the pool will be maintained at all times;
- h. A confirmation of a fidelity bond covering the administrator and its employees in an amount sufficient to protect the pool against the misappropriation or misuse of any monies or securities;
- i. A projection of administrative expenses for the first year of operation in a dollar amount and as a percentage of the estimated annual contributions;
- j. Proof of payment of contributions by members into a depository - account an amount between \$250,000 and \$500,000 that, in the commissioner's discretion, constitutes sufficient capital; and
- k. A composite listing of the estimated annual gross contributions which may, in addition to cash contributions, be made up of proceeds from the sale of certificates of participation in the premium stream of the pool to be developed by each organizing member of the pool individually and in the aggregate for the pool. Contributions must be based on reasonable assumptions and certified by an actuary as to the sufficiency of the contributions.

4.2. Any subsequent revisions to documents filed with the commissioner pursuant to subsection 4.1 of this section must also be filed with the commissioner.

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4.3. Member agreements must, at a minimum, disclose the following:

- a. The coverages provided;
- b. The period of the coverage;
- c. The amount of any deductible per claim and in the aggregate;
- d. The maximum amount of coverage to be borne by the pool;
- e. The contribution amount and dates payment are due for the member;
- f. The basis upon which each member's contribution is determined and under what circumstances additional assessments of the members may be made;
- g. The circumstances under which a member's participation in the pool may be terminated, including for non payment of contributions or assessments;
- h. A description of the excess coverage for the pool as to its coverage per occurrence, coverage per occurrence per person, if appropriate, and in the aggregate;
- i. The pool's obligations to provide a defense for the member in the event of a claim; and
- j. A prominent disclosure notice that must be signed by a duly authorized officer of the member, which must use the following or substantially-similar language:

“The pool is not protected by any West Virginia insurance guaranty association against default due to insolvency. In the event of insolvency, members and persons filing claims against members may be unable to collect any amount owed to them by the pool regardless of the terms of this member agreement. In the event that the pool is in a deficit position, a member may be liable for any and all unpaid claims against the member.”

4.4. The costs of funding the pool may be allocated among the funds or accounts of the pool members on the basis of their relative exposure and loss

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experience. A pool member is not liable for any amount in excess of amounts payable pursuant to terms of the member agreement for participation in the pool.

4.5. The board's responsibilities include, but are not limited to, retaining control of all monies collected and directing the disbursement of such monies; levying upon the members additional assessments in proportionate amounts when needed to supplement the pool's surplus and to assure payment of its obligations; actively collecting delinquent accounts resulting from past due contributions of members and taking appropriate action to declare a delinquent member ineligible for coverage from the pool until such time as the delinquency and cost of collection have been fully recovered; and adopting its own rules and procedures as it considers necessary for the efficient and actuarially sound operation of the pool, provided the rules and procedures are consistent with this rule.

4.6. Any surplus accumulated within a pool's fiscal year, as determined from the annual audited financial statement, may be declared refundable by the board, provided that the refund has been certified by an actuary. Notwithstanding the foregoing, no distribution of the surplus funds may be made earlier than twenty-four months after the end of the fiscal year for which a surplus was declared.

§114-65-5. Authorization of Pools.

5.1. After review of the documents and information described in section four of this rule, the commissioner may notify the pool that its operation is authorized if he or she determines that the pool meets the criteria set forth in this rule. The commissioner must authorize or decline to authorize the establishment of a pool within 60 days of submission of all documents or information required by this rule. Failure to disapprove the establishment of a pool within such period will be considered approval to establish the pool consistent with the documents and information filed.

5.2. Every pool authorized by the commissioner must file with the commissioner and distribute to pool members on or before March thirty-first of each year an audited statement of its financial condition and business for the year ending December thirty-first of the preceding calendar year. The financial statement must be audited by an independent certified public accountant and verified by the signature and oath of the pool's authorized representative. If a pool fails to file the audited financial statement required by this subsection, the commissioner may have the audit performed. If the audit is performed by the commissioner's staff, it will be at the expense of the pool and all working papers will be confidential and not open for public inspection until the audit is final.

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Title 114, Series 65

5.3. The commissioner is authorized to monitor as he or she considers necessary the financial solvency of pools to ensure that the pool's liabilities for claims, present and contingent, and other expenses are at no time greater than its assets. If a pool is found by the commissioner to be in a deficit condition based upon the pool's filing required by subsection 5.2 of this section or upon the commissioner's own audit, the pool must file a financial plan acceptable to the commissioner to correct the deficit condition. The commissioner may take appropriate regulatory action whenever in his or her judgment a pool is insolvent or otherwise financially impaired, which may include the withdrawal of the authorization to operate the pool.

5.4. Information regarding the portion of reserves of a pool established to satisfy a specific claim or cause of action is confidential and is not subject to discovery.

5.5. A pool may voluntarily dissolve after presentation to and approval by the commissioner of a plan of dissolution. The plan must provide for the payment of all incurred losses and expenses of the fund and its members, including all incurred but not reported losses, as certified by an actuary, to the extent of the pool's assets. No assets of the pool may be used for any other purpose until payment of all such losses and expenses is provided for. Subject to approval of the commissioner, a pool may merge with another pool if the resulting pool assumes in full all obligations of the merging pools.

5.6. If the commissioner determines that a pool is not in compliance with this rule or with any applicable statute, rule or order of the commissioner, he or she must notify the board of the pool in writing with a description of the non-compliance and a date by which the non-compliance must be corrected or by which a plan for correcting the non-compliance must be filed. If the non-compliance is thereafter not corrected, the commissioner may, after notice and a hearing, withdraw the authorization of approval of the pool or assess a monetary penalty, or both.

§ 114-65-6. Filing Rates and Forms.

A pool must file with the commissioner proposed rates and forms at the time it seeks authorization to provide coverage to its members. Pool rates may not be excessive, inadequate or unfairly discriminatory. Any subsequent changes to rates and forms must also be filed with the commissioner, with the proposed effective date of the changes and all information upon which the pool supports the filings. The pool's rates and forms are not subject to prior approval by the commissioner, however the commissioner may take appropriate regulatory action if he or she determines that the rates or forms are at any time not in compliance with this rule or other applicable law.

§ 114-65-7. Investments.

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7.1. The commissioner may review, in his or her discretion, the investment portfolio of the pool to determine its financial soundness.

114 CSR 65

WEST VIRGINIA LEGISLATIVE RULE

WEST VIRGINIA INSURANCE COMMISSIONER

SERIES 65

Section

- 114-65-1. General.
- 114-65-2. Definitions.
- 114-65-3. Establishment of Pools Authorized.
- 114-65-4. Criteria for Establishing and Maintaining Self-Insurance Pools.
- 114-65-5. Authorization of Pools.
- 114-65-6. Filing Rates and Forms.
- 114-65-7. Investments.

TITLE 114
WEST VIRGINIA LEGISLATIVE RULE
WEST VIRGINIA INSURANCE COMMISSIONER
SERIES 65
SELF-INSURANCE POOLS FOR POLITICAL SUBDIVISIONS

FILED

2003 JUL 29 P 2: 46

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§ 114-65-1. General.

1.1. Authority. -- This rule is promulgated pursuant to the authority granted by West Virginia Code §§29-12A-16(g), 29-12A-17(d), and 33-2-10.

1.2. Scope -- This rule sets forth the procedural requirements for the creation and regulatory oversight of self-insurance pools.

1.3. Filing Date. --

1.4. Effective Date. --

§ 114-65-2. Definitions.

2.1. "Administrator" means the individual, partnership corporation or other entity authorized to serve as a representative of a pool and its members in carrying out the policies of the board of directors and managing the pool's activities.

2.2. "Board" means the board of directors of a pool.

2.2. "Commissioner" means the commissioner of insurance.

2.3. "Contribution" means the amount of payments required of each member in order to fund the pool's obligations under the plan.

2.4. "Liability" means an obligation arising from claims for damages in civil actions for injury, death, or loss to persons or property allegedly cause by an act or omission of the political subdivision or any of its employees.

2.4. "Member" means a political subdivision which has entered into a member agreement and thereby becomes a pool member.

2.5. "Member agreement" means the written agreement executed between each member and the pool which sets forth the conditions of membership in the pool, the obligations, if any, of each member to the other members and the terms, coverages, limits, and deductibles of the plan.

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2.6. "Plan" means the plan of self-insurance offered by the pool to its members as specifically designated in the member agreement.

2.7. "Political subdivision" means any county commission, municipality and county board of education; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; any instrumentality supported in most part by municipalities; any public body charged by law with the performance of a government function and whose jurisdiction is coextensive with one or more counties cities or towns; a combined city-county health department created pursuant to article two, chapter sixteen of the West Virginia Code; public service districts; and other instrumentalities including, but not limited to, volunteer fire departments and emergency service organizations as recognized by an appropriate public body and authorized by law to perform a government function. "Political subdivision" does not include hospitals of a political subdivision and their employees.

2.8. "Pool" means an entity organized by two or more political subdivisions for the purpose of providing joint or cooperative action relating to their financial and administrative resources and providing risk management and liability insurance coverage for pool members and their employees for damages in civil actions for injury, death, or loss to persons or property allegedly cause by an act or omission of the political subdivision or any of its employees.

§114-65 -3. Establishment of Pools Authorized.

3.1. Regardless of whether a political subdivision secures a policy or policies of liability insurance, establishes and maintains a self-insurance program, or enters into an agreement for the joint administration of a self-insurance program, the political subdivision may, pursuant to a written agreement and to the extent that it considers necessary, join with one or more political subdivisions in establishing and maintaining a joint self-insurance pool to provide for the payment of judgments, settlement of claims, expenses, loss, or damages that arise, or are claimed to have arisen, from an act or omission of the political subdivision or any of its employees.

3.2. Two or more political subdivisions may establish and maintain a joint risk-management program, including but not limited to the employment of a risk manager or managers and consultants, for the purpose of preventing and reducing the risks covered by insurance, self-insurance, or a self-insurance pool.

3.3. A joint self-insurance pool is not an insurance company. Its operation does not constitute doing an insurance business and it is not subject to the insurance laws of this State unless otherwise specifically stated herein.

**Insurance Commissioner
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Title 114, Series 65**

§114-65-4. Criteria for Establishing and Maintaining Self-Insurance Pools.

4.1. Before a pool may begin to offer coverage to members, the following must be filed with the commissioner:

a. A copy of a financial plan which must set forth:

1. The insurance coverages to be offered by the pool, applicable deductible levels, and the maximum level of claims to be self-insured against;
2. The amount of cash reserves as are necessary, in the exercise of sound and prudent actuarial judgment, to cover potential pool members and employee liability, expense, loss, and damage which cash reserves may be funded by the issuance of certificates of participation by the pool and its members and re-insurance; and
3. The amount of aggregate excess insurance or reinsurance coverage to be purchased in the event that the pool's resources are exhausted in a given fiscal period;

b. A copy of a plan of management which describes the governing authority of the pool, which must be a board of directors, and provides the following with regard to the board:

1. The manner in which member contributions to the pool will be determined;
2. The methods for maintaining reserves, levying and collecting assessments for deficiencies, the financing of cash reserves and re-insurance and disposing of surplus;
3. The basis upon which new members may be admitted to, and existing members may leave or have membership terminated by the pool;
4. The identification of funds and reserves by exposure areas;
5. The manner in which the pool will be administered in the event of termination or insolvency; and

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6. Any other provisions that may be considered by the members or the commissioner to be necessary or desirable for the operation of the pool;

- c. A copy of the articles of incorporation;
- d. A copy of the bylaws of the proposed pool;
- e. A copy of the form or forms to be used for the member agreement, which must set forth the rights, privileges and obligations of the member and the terms, coverages, limits and deductibles of the plan;
- f. Designation of the initial or interim board, at least a majority of which must be pool members, and the administrator, together with pertinent biographical information for each member of the board and for the administrator or the principal officers of the corporation serving as administrator;
- g. The address within West Virginia where the books and records of the pool will be maintained at all times;
- h. A confirmation of a fidelity bond covering the administrator and its employees in an amount sufficient to protect the pool against the misappropriation or misuse of any monies or securities;
- i. A projection of administrative expenses for the first year of operation in a dollar amount and as a percentage of the estimated annual contributions;
- j. Proof of payment of contributions by members into a depository – account an amount between \$250,000 and \$500,000 that, in the commissioner's discretion, constitutes sufficient capital; and
- k. A composite listing of the estimated annual gross contributions which may, in addition to cash contributions, be made up of proceeds from the sale of certificates of participation in the premium stream of the pool to be developed by each organizing member of the pool individually and in the aggregate for the pool. Contributions must be based on reasonable assumptions and certified by an actuary as to the sufficiency of the contributions.

4.2. Any subsequent revisions to documents filed with the commissioner pursuant to subsection 4.1 of this section must also be filed with the commissioner.

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- 4.3. Member agreements must, at a minimum, disclose the following:
- a. The coverages provided;
 - b. The period of the coverage;
 - c. The amount of any deductible per claim and in the aggregate;
 - d. The maximum amount of coverage to be borne by the pool;
 - e. The contribution amount and dates payment are due for the member;
 - f. The basis upon which each member's contribution is determined and under what circumstances additional assessments of the members may be made;
 - g. The circumstances under which a member's participation in the pool may be terminated, including for non payment of contributions or assessments;
 - h. A description of the excess coverage for the pool as to its coverage per occurrence, coverage per occurrence per person, if appropriate, and in the aggregate;
 - i. The pool's obligations to provide a defense for the member in the event of a claim; and
 - j. A prominent disclosure notice that must be signed by a duly authorized officer of the member, which must use the following or substantially-similar language:

“The pool is not protected by any West Virginia insurance guaranty association against default due to insolvency. In the event of insolvency, members and persons filing claims against members may be unable to collect any amount owed to them by the pool regardless of the terms of this member agreement. In the event that the pool is in a deficit position, a member may be liable for any and all unpaid claims against the member.”

- 4.4. The costs of funding the pool may be allocated among the funds or accounts of the pool members on the basis of their relative exposure and loss

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experience. A pool member is not liable for any amount in excess of amounts payable pursuant to terms of the member agreement for participation in the pool.

4.5. The board's responsibilities include, but are not limited to, retaining control of all monies collected and directing the disbursement of such monies; levying upon the members additional assessments in proportionate amounts when needed to supplement the pool's surplus and to assure payment of its obligations; actively collecting delinquent accounts resulting from past due contributions of members and taking appropriate action to declare a delinquent member ineligible for coverage from the pool until such time as the delinquency and cost of collection have been fully recovered; and adopting its own rules and procedures as it considers necessary for the efficient and actuarially sound operation of the pool, provided the rules and procedures are consistent with this rule.

4.6. Any surplus accumulated within a pool's fiscal year, as determined from the annual audited financial statement, may be declared refundable by the board, provided that the refund has been certified by an actuary. Notwithstanding the foregoing, no distribution of the surplus funds may be made earlier than twenty-four months after the end of the fiscal year for which a surplus was declared.

§114-65-5. Authorization of Pools.

5.1. After review of the documents and information described in section four of this rule, the commissioner may notify the pool that its operation is authorized if he or she determines that the pool meets the criteria set forth in this rule. The commissioner must authorize or decline to authorize the establishment of a pool within 60 days of submission of all documents or information required by this rule. Failure to disapprove the establishment of a pool within such period will be considered approval to establish the pool consistent with the documents and information filed.

5.2. Every pool authorized by the commissioner must file with the commissioner and distribute to pool members on or before March thirty-first of each year an audited statement of its financial condition and business for the year ending December thirty-first of the preceding calendar year. The financial statement must be audited by an independent certified public accountant and verified by the signature and oath of the pool's authorized representative. If a pool fails to file the audited financial statement required by this subsection, the commissioner may have the audit performed. If the audit is performed by the commissioner's staff, it will be at the expense of the pool and all working papers will be confidential and not open for public inspection until the audit is final.

Insurance Commissioner
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5.3. The commissioner is authorized to monitor as he or she considers necessary the financial solvency of pools to ensure that the pool's liabilities for claims, present and contingent, and other expenses are at no time greater than its assets. If a pool is found by the commissioner to be in a deficit condition based upon the pool's filing required by subsection 5.2 of this section or upon the commissioner's own audit, the pool must file a financial plan acceptable to the commissioner to correct the deficit condition. The commissioner may take appropriate regulatory action whenever in his or her judgment a pool is insolvent or otherwise financially impaired, which may include the withdrawal of the authorization to operate the pool.

5.4. Information regarding the portion of reserves of a pool established to satisfy a specific claim or cause of action is confidential and is not subject to discovery.

5.5. A pool may voluntarily dissolve after presentation to and approval by the commissioner of a plan of dissolution. The plan must provide for the payment of all incurred losses and expenses of the fund and its members, including all incurred but not reported losses, as certified by an actuary, to the extent of the pool's assets. No assets of the pool may be used for any other purpose until payment of all such losses and expenses is provided for. Subject to approval of the commissioner, a pool may merge with another pool if the resulting pool assumes in full all obligations of the merging pools.

5.6. If the commissioner determines that a pool is not in compliance with this rule or with any applicable statute, rule or order of the commissioner, he or she must notify the board of the pool in writing with a description of the non-compliance and a date by which the non-compliance must be corrected or by which a plan for correcting the non-compliance must be filed. If the non-compliance is thereafter not corrected, the commissioner may, after notice and a hearing, withdraw the authorization of approval of the pool or assess a monetary penalty, or both.

§ 114-65-6. Filing Rates and Forms.

A pool must file with the commissioner proposed rates and forms at the time it seeks authorization to provide coverage to its members. Pool rates may not be excessive, inadequate or unfairly discriminatory. Any subsequent changes to rates and forms must also be filed with the commissioner, with the proposed effective date of the changes and all information upon which the pool supports the filings. The pool's rates and forms are not subject to prior approval by the commissioner, however the commissioner may take appropriate regulatory action if he or she determines that the rates or forms are at any time not in compliance with this rule or other applicable law.

§ 114-65-7. Investments.

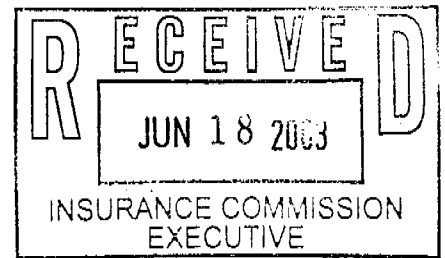
**Insurance Commissioner
Legislative Rule
Title 114, Series 65**

7.1. The commissioner may review, in his or her discretion, the investment portfolio of the pool to determine its financial soundness.

✓ Copy: mgp
6/18/03



June 12, 2003



MAYOR RAYMOND PEAK
President, Hurricane
COUNCILOR DAVID KATES
Vice President
Clarksburg
MAYOR JAMES HERRICK
Secretary
New Martinsville

Ms. Jane Cline, Insurance Commissioner
WV Insurance Commission
P. O. Box 50541
Charleston, WV 25305-0541

MAYOR EMMETT PUGH, III
Treasurer
Beckley
MAYOR TERRY GREAVER
Clarksburg
MAYOR CATON HILL, JR.
Philippi
MAYOR JOE TIMMS
Bridgeport

Re: Insurance Department Rules and Regulations for Governing Municipal Pooling
(114 CSR 65 - West Virginia Legislative Rule)

MAYOR JIMMY COLOMBO
Parkersburg
MAYOR TONY PAESANO
Martinsburg
MAYOR NICK SPARACHANE
Wheeling

Dear Commissioner Cline:

MAYOR NICK FANTASIA
Fairmont
MAYOR JAY GOLDMAN
Charleston
MAYOR JIM KNORR
Buckhannon
MAYOR RICHARD MILAM
St. Albans

Please accept this letter as comments on behalf of the Municipal League regarding the above mentioned reference. I would like to compliment you and your staff on an excellent job in promulgating the Rules for adoption by the Legislature on the Municipal Insurance Pooling in West Virginia.

MAYOR ROY GUTHRIE
Ripley
MAYOR BILL RITCHIE
Ravenswood
MAYOR GEORGE KAROS
Martinsburg
MAYOR DAVID FELINTON
Huntington
MAYOR DeETTA HUNTER
Lewisburg

Municipal League Counsel, Denny Vaughan, has submitted a WVML requested amendment to the proposed Rules dealing specifically with authorized methods of capitalization for the League's property and casualty insurance pool. I want to reiterate that the League supports the amendment and we appreciate your staff working with us on the issue.

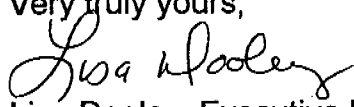
MAYOR ROBERT PERKINSON, JR.
Bluefield
MAYOR BARBARA HICKMAN
Oak Hill
MAYOR RON LIVELY
Princeton
MAYOR EDDIE LONG
Smithers
MAYOR DAVID NOHE
Vienna
MAYOR STANLEY ADKINS
Summersville
COUNCILOR TOM MAINELLA
Fairmont
COUNCILOR BOB DITTMAR
Ravenswood
COUNCILOR JAMES JARRELL
Whitesville
COUNCILOR JAMES MIRASOLA
Follansbee
COUNCILOR FRANK SCAFELLA
Morgantown
COUNCILOR ED ROEDERSHEIMER
Parkersburg

Finally, although not directly related to this set of Rules, I would like to go on record with a broad general statement that the Municipal League and its members categorically oppose any changes to other rules which would have the effect of limiting the free flow of insurance commerce between various programs- especially if there is a negative affect on the Municipal League's ability to establish and/or maintain an effective property casualty insurance pool. By passing House Bill 2003, the Legislature obviously supports the general concept of municipal pooling for insurance purposes. It would be inconsistent for the Legislature to encourage and approve municipal pooling while, at the same time, approving legislative rules from other state agencies that might have the unintended affect of limiting our opportunity to create a successful alternative to current insurance options available for West Virginia municipalities.

CLERK MARILYN MCDANIEL
Pt. Pleasant
CLERK JANICE JONES
Wheeling
CITY MANAGER DAVE MILLS
Ranson
MAYOR DEAN HARRIS
Immediate Past President
Weirton
Past Presidents
COUNCILOR JAMES HUNT
Clarksburg
MAYOR LYDIA MAIN
Masontown
MAYOR TERRY WILLIAMS
Spencer
MAYOR THOMAS ESPOSITO
Logan
MAYOR RITCHIE ROBB
South Charleston
MAYOR DAVE HAMILL
Ranson

Thanks again for your attention to these issues. We look forward to continuing to work with you and your staff on a successful launch of a property and casualty municipal pool in West Virginia. Please contact me with any questions, comments or concerns.

TREAS./RECORDER NANCY SHOBE
Parliamentarian, Buckhannon
COUNCILOR TOM FLYNN
Chaplain, Clarksburg
LISA DOOLEY

Very truly yours,

Lisa Dooley, Executive Director

RECEIVED

JUN 18 2003

LEGAL DIVISION
W.VA. INS. DEPT.

2020 Kanawha Boulevard East
Charleston, WV 25311
PH: 304-342-5564 * FAX: 304-342-5586
1-800-344-7702 * www.newwave.net/~wvml

Insurance Commissioner
Legislative Rule
Title 114, Series 65

SELF-INSURANCE POOLS FOR POLITICAL SUBDIVISIONS

TITLE 114, SERIES 65

BRIEF SUMMARY OF RULE

This rule will establish the criteria for the formation of a self-insurance pool by two or more political subdivisions. It will designate the documents and information that is required to be filed with the Insurance Commissioner in order to obtain the Commissioner's authorization to begin providing liability coverage to pool members. The rule further requires certain provisions to be included within member agreements and includes certain provisions, including financial filings with the Commissioner, intended to insure that the pool remains financially sound. The rule requires that rates for the pool not be excessive, inadequate or unfairly discriminatory. Rates and forms must be filed with the Commissioner, but prior approval is not needed.

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SELF-INSURANCE POOLS FOR POLITICAL SUBDIVISIONS

TITLE 114, SERIES 65

STATEMENT OF CIRCUMSTANCES

The West Virginia Legislature passed H.B.2003 on March 8, 2003. This bill clarified that any group of two or more political subdivisions may establish and maintain a self-insurance pool relative to their collective potential liability and that of their collective employees for damages in civil actions for injury, death or loss to persons or property allegedly caused by an act or omission of the political subdivision or any of its employees. The bill required the Insurance Commissioner to promulgate rules for legislative approval setting forth the criteria for establishing and maintaining self-insurance programs and pools for political subdivisions. The proposed rule sets forth these criteria; allows the Commissioner to authorize pools that are in compliance with the rule to begin providing coverage to pool members; provides further details as to the contents of member agreements; and contains certain provisions intended to insure the financial stability of the pools.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: SELF-INSURANCE POOLS FOR POLITICAL SUBDIVISIONS
Title 114, Series 65

Type of Rule: Legislative Interpretive Procedural

Agency: Insurance Commissioner

Address: Post Office Box 50540
1124 Smith Street, Greenbrooke Building
Charleston, West Virginia 25305-0540

=====

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	Increase	Decrease	Current	Next	Thereafter
ESTIMATED TOTAL COST	None	None	None	None	None
PERSONAL SERVICES	None	None	None	None	None
CURRENT EXPENSE	None	None	None	None	None
REPAIRS AND ALTERNATIONS	None	None	None	None	None
EQUIPMENT	None	None	None	None	None
OTHER	None	None	None	None	None

2. Explanation of above estimates:

The rule will have no additional fiscal impact upon state government because it is anticipated that the Commissioner can accomplish the review of any additional documentation with current staff and resources.

Rule Title: SELF-INSURANCE POOLS FOR POLITICAL SUBDIVISIONS
Title 114, Series 65

3. Objectives of these rules:

The objectives of this rule are to establish the criteria for the formation of a self-insurance pool by two or more political subdivisions. It will designate the documents and information that is required to be filed with the Insurance Commissioner in order to obtain the Commissioner's authorization to begin providing liability coverage to pool members. The rule further requires certain provisions to be included within member agreements and includes certain provisions, including financial filings with the Commissioner, intended to insure that the pool remains financially sound. The rule requires that rates for the pool not be excessive, inadequate or unfairly discriminatory. Rates and forms must be filed with the Commissioner, but prior approval is not needed.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None anticipated. The Insurance Commissioner's staff will be required to review information and documentation submitted by a pool in anticipation of issuing liability insurance coverage to pool members, but it is expected that the work can be done with existing agency employees and resources.

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

There could be a positive impact on political subdivisions which may be struggling to obtain liability coverage on the commercial market at an affordable rate, if the pools are able to establish lower rates while insuring the financial stability of the pool. It will also help citizens who may be injured due to the negligent acts or omissions of a political subdivision or its employees by insuring a source of coverage for claims.

C. Economic Impact on Citizens/Public at Large.

There should be no specific economic impact on the public other than that noted in B, above.

Date: July 29, 2003

Signature of Agency Head or Authorized Representative


Jane L. Cline, Insurance Commissioner

114 CSR 65

WEST VIRGINIA LEGISLATIVE RULE

WEST VIRGINIA INSURANCE COMMISSIONER

SERIES 65

SELF-INSURANCE POOLS FOR POLITICAL SUBDIVISIONS

Section

- 114-65-1. General.
- 114-65-2. Definitions.
- 114-65-3. Establishment of Pools Authorized.
- 114-65-4. Criteria for Establishing and Maintaining Self-Insurance Pools.
- 114-65-5. Authorization of Pools.
- 114-65-6. Investments.

TITLE 114
WEST VIRGINIA LEGISLATIVE RULE
WEST VIRGINIA INSURANCE COMMISSIONER
SERIES 65
SELF-INSURANCE POOLS FOR POLITICAL SUBDIVISIONS

§114-65-1. General.

1.1. Authority. -- This rule is promulgated pursuant to the authority granted by W. Va. Code §§29-12A-16(g) and 33-2-10.

1.2. Scope. -- This rule sets forth the procedural requirements for the creation and regulatory oversight of self-insurance pools.

1.3. Filing Date. --

1.4. Effective Date. --

§114-65-2. Definitions.

2.1. "Administrator" means the individual, partnership corporation or other entity authorized to serve as a representative of a pool and its members in carrying out the policies of the board of directors and managing the pool's activities.

2.2. "Board" means the board of directors of a pool.

2.2. "Commissioner" means the commissioner of insurance.

2.3. "Contribution" means the amount of payments required of each member in order to fund the pool's obligations under the plan.

2.4. "Liability" means an obligation arising from claims for damages in civil actions for injury, death, or loss to persons or property allegedly caused by an act or omission of the political subdivision or any of its employees.

2.4. "Member" means a political subdivision which has entered into a member agreement and thereby becomes a pool member.

2.5. "Member agreement" means the written agreement executed between each member and the pool which sets forth the conditions of membership in the pool, the obligations, if any, of each member to the other members and the terms, coverages, limits, and deductibles of the plan.

**Insurance Commissioner
Legislative Rule
Title 114, Series 65**

2.6. "Plan" means the plan of self-insurance offered by the pool to its members as specifically designated in the member agreement.

2.7. "Political subdivision" means any county commission, municipality and county board of education; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; any instrumentality supported in most part by municipalities; any public body charged by law with the performance of a government function and whose jurisdiction is coextensive with one or more counties cities or towns; a combined city-county health department created pursuant to article two, chapter sixteen of the West Virginia Code; public service districts; and other instrumentalities including, but not limited to, volunteer fire departments and emergency service organizations as recognized by an appropriate public body and authorized by law to perform a government function. "Political subdivision" does not include hospitals of a political subdivision and their employees.

2.8. "Pool" means a joint self-insurance pool organized by two or more political subdivisions for the purpose of providing joint or cooperative action relating to their financial and administrative resources and providing risk management and liability insurance coverage for pool members and their employees for damages in civil actions for injury, death, or loss to persons or property allegedly cause by an act or omission of the political subdivision or any of its employees.

§114-65-3. Establishment of Pools Authorized.

3.1. Regardless of whether a political subdivision secures a policy or policies of liability insurance, establishes and maintains a self-insurance program, or enters into an agreement for the joint administration of a self-insurance program, the political subdivision may, pursuant to a written agreement and to the extent that it considers necessary, join with one or more political subdivisions to purchase group insurance or to establish and maintain a joint self-insurance pool to provide for the payment of judgments, settlement of claims, expenses, loss, or damages that arise, or are claimed to have arisen, from an act or omission of the political subdivision or any of its employees.

3.2. Two or more political subdivisions may establish and maintain a joint risk-management program, including but not limited to the employment of a risk manager or managers and consultants, for the purpose of preventing and reducing the risks covered by insurance, self-insurance, or a self-insurance pool.

3.3. A joint self-insurance pool is not an insurance company. Its operation does not constitute doing an insurance business and it is not subject to the insurance laws of this State unless otherwise specifically stated herein.

**Insurance Commissioner
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Title 114, Series 65**

§114-65-4. Criteria for Establishing and Maintaining Self-Insurance Pools.

4.1. Before a pool may begin to offer coverage to members, the following must be filed with the commissioner:

a. A copy of a financial plan which must set forth:

1. The insurance coverages to be offered by the pool, applicable deductible levels, and the maximum level of claims to be self-insured against;

2. The pool's proposed rates, which should not be excessive, inadequate or unfairly discriminatory taking into account all underwriting, exposure and claims history when pricing any current or prospective pool members. A pool's rates are not subject to prior approval by the Commissioner, however appropriate regulatory action may be taken if he or she determines that the rates are not in compliance with this rule;

3. The amount of cash reserves as are necessary, in the exercise of sound and prudent actuarial judgment, to cover potential pool members and employee liability, expense, loss, and damage, which cash reserves may be funded by the issuance of certificates of participation by the pool and its members and reinsurance; and

4. The amount of aggregate excess insurance or reinsurance coverage to be purchased in the event that the pool's resources are exhausted in a given fiscal period;

b. A copy of a plan of management which describes the governing authority of the pool, which must be a board of directors, and provides the following with regard to the board:

1. The manner in which member contributions to the pool will be determined;

2. The methods for maintaining reserves, levying and collecting assessments for deficiencies, the financing of cash reserves and reinsurance, and disposing of surplus;

3. The basis upon which new members may be admitted to, and existing members may leave or have membership terminated by the pool;

4. The identification of funds and reserves by exposure areas;

5. The manner in which the pool will be administered in the event of

Insurance Commissioner
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termination or insolvency; and

6. Any other provisions that may be considered by the members or the commissioner to be necessary or desirable for the operation of the pool;

c. A copy of the articles of incorporation;

d. A copy of the bylaws of the proposed pool;

e. A copy of the form or forms to be used for the member agreement, which must set forth at a minimum the rights, privileges and obligations of the member and the terms, coverages, limits and deductibles of the plan;

f. A copy of the proposed policy form or forms, which are not subject to prior approval by the Commissioner;

g. Designation of the initial or interim board, at least a majority of which must be pool members, and the administrator, together with pertinent biographical information for each member of the board and for the administrator or the principal officers of the corporation serving as administrator;

h. The address within West Virginia where the books and records of the pool will be maintained at all times;

i. A confirmation of a fidelity bond covering the administrator and its employees in an amount sufficient to protect the pool against the misappropriation or misuse of any monies or securities;

j. A projection of administrative expenses for the first year of operation in a dollar amount and as a percentage of the estimated annual contributions;

k. Proof of payment of contributions by members into a depository account of an amount between \$250,000 and \$500,000 that, in the commissioner's discretion, constitutes sufficient capital; and

l. A composite listing of the estimated annual gross contributions which may, in addition to cash contributions, be made up of proceeds from the sale of certificates of participation in the premium stream of the pool, to be developed by each organizing member of the pool individually and in the aggregate for the pool. Contributions must be based on reasonable assumptions and certified by an actuary as to the sufficiency of the contributions.

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Title 114, Series 65

m. The authorization given in paragraph 3, subdivision a and paragraph 2, subdivision b of this subsection and in subdivision l of this subsection to issue certificates of participation as a means of providing capital for the pool, establishing adequate reserves and purchasing reinsurance is limited to those political subdivisions that are authorized to issue public debt pursuant to other applicable law.

4.2. Any subsequent revisions to documents filed with the commissioner pursuant to subsection 4.1 of this section must also be filed with the commissioner.

4.3. Member agreements must, at a minimum, disclose the following:

- a. The coverages provided;
- b. The period of the coverage;
- c. The amount of any deductible per claim and in the aggregate;
- d. The maximum amount of coverage to be borne by the pool;
- e. The contribution amount and dates payment are due for the member;
- f. The basis upon which each member's contribution is determined and under what circumstances additional assessments of the members may be made;
- g. The circumstances under which a member's participation in the pool may be terminated, including for non payment of contributions or assessments;
- h. A description of the excess coverage for the pool as to its coverage per occurrence, coverage per occurrence per person, if appropriate, and in the aggregate;
- i. The pool's obligations to provide a defense for the member in the event of a claim; and
- j. A prominent disclosure notice that must be signed by a duly authorized officer of the member, which must use the following or substantially similar language:

“The pool is not protected by any West Virginia insurance guaranty association against default due to insolvency. In the event of insolvency, members and persons filing claims against members may be unable to collect any amount owed to them by the pool regardless of the terms of this member

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agreement. In the event that the pool is in a deficit position, a member may be liable for any and all unpaid claims against the member.”

4.4. The costs of funding the pool may be allocated among the funds or accounts of the pool members on the basis of their relative exposure and loss experience. A pool member is not liable for any amount in excess of amounts payable pursuant to terms of the member agreement for participation in the pool.

4.5. The board must act diligently to limit the pool’s exposure on any loss on any one risk or hazard, and may designate as a guideline a percentage of the aggregate annual contributions to which such exposure should be limited.

4.6. The board’s responsibilities include, but are not limited to, retaining control of all monies collected and directing the disbursement of such monies; levying upon the members additional assessments in proportionate amounts when needed to supplement the pool’s surplus and to assure payment of its obligations; actively collecting delinquent accounts resulting from past due contributions of members and taking appropriate action to declare a delinquent member ineligible for coverage from the pool until such time as the delinquency and cost of collection have been fully recovered; and adopting its own rules and procedures as it considers necessary for the efficient and actuarially sound operation of the pool, provided the rules and procedures are consistent with this rule.

4.7. Any surplus accumulated within a pool’s fiscal year, as determined from the annual audited financial statement, may be declared refundable by the board, provided that the refund has been certified by an actuary. Notwithstanding the foregoing, no distribution of the surplus funds may be made earlier than twenty-four months after the end of the fiscal year for which a surplus was declared.

§114-65-5. Authorization of Pools.

5.1. After review of the documents and information described in section four of this rule, the commissioner may notify the pool that its operation is authorized if he or she determines that the pool meets the criteria set forth in this rule. The commissioner must authorize or decline to authorize the establishment of a pool within 60 days of submission of all documents or information required by this rule. Failure to disapprove the establishment of a pool within such period will be considered approval to establish the pool consistent with the documents and information filed.

5.2. Every pool authorized by the commissioner must file with the commissioner and distribute to pool members on or before March thirty-first of each year an audited statement of its financial condition and business for the year ending December thirty-first of the preceding

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calendar year. The financial statement must be audited by an independent certified public accountant and verified by the signature and oath of the pool's authorized representative. If a pool fails to file the audited financial statement required by this subsection, the commissioner may have the audit performed. If the audit is performed by the commissioner's staff, it will be at the expense of the pool and all working papers will be confidential and not open for public inspection until the audit is final.

5.3. The commissioner is authorized to monitor as he or she considers necessary the financial solvency of pools, which may include reviewing the pool's rates, to ensure that the pool's liabilities for claims, present and contingent, and other expenses are at no time greater than its assets. If a pool is found by the commissioner to be in a deficit condition based upon the pool's filing required by subsection 5.2 of this section or upon the commissioner's own audit, the pool must file a financial plan acceptable to the commissioner to correct the deficit condition. The commissioner may take appropriate regulatory action whenever in his or her judgment a pool is insolvent or otherwise financially impaired, which may include the withdrawal of the authorization to operate the pool.

5.4. Information regarding the portion of reserves of a pool established to satisfy a specific claim or cause of action is confidential and is not subject to discovery.

5.5. A pool may voluntarily dissolve after presentation to and approval by the commissioner of a plan of dissolution. The plan must provide for the payment of all incurred losses and expenses of the fund and its members, including all incurred but not reported losses, as certified by an actuary, to the extent of the pool's assets. No assets of the pool may be used for any other purpose until payment of all such losses and expenses is provided for. Subject to approval of the commissioner, a pool may merge with another pool if the resulting pool assumes in full all obligations of the merging pools.

5.6. If the commissioner determines that a pool is not in compliance with this rule or with any applicable statute, rule or order of the commissioner, he or she must notify the board of the pool in writing with a description of the non-compliance and a date by which the non-compliance must be corrected or by which a plan for correcting the non-compliance must be filed. If the non-compliance is thereafter not corrected, the commissioner may, after notice and a hearing, withdraw the authorization of approval of the pool or assess a monetary penalty, or both.

§114-65-6. Investments.

The commissioner may review, in his or her discretion, the investment portfolio of the pool to determine its financial soundness.