WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION

Form #2

Do Not Mark In This Box

FILED

2004 JUL 23 P 4: 14

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: State Board of Risk and Insurance Management TITLE NUMBER: 115

RULE TYPE: Legislative CITE AUTHORITY: W. Va. Code §§29-12-5(a), 29-12-14

AMENDMENT TO AN EXISTING RULE: YES X NO ____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2

TITLE OF RULE BEING AMENDED: Public Entities Insurance Program

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ____

TITLE OF RULE BEING PROPOSED: ____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON August 23, 2004 AT 4:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Board of Risk and Insurance Management

90 MacCorkle Ave., SW Suite 203

South Charleston, WV 25303

Attn: Jeffrey VanGilder, General Counsel

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Heather A. Connolly for Acting Cabinet Secretary

Charles E. Jones Jr.

Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

$4.40

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
BOARD OF RISK AND INSURANCE MANAGEMENT

90 MACCORKLE AVENUE SW, SUITE 203
SOUTH CHARLESTON, WV 25303

BOB WISE
GOVERNOR

(304) 766-2646 ADMINISTRATION
(304) 766-2653 FAX
(800) 345-4669 TOLL FREE WV
www.state.wv.us/brim

July 23, 2004

Via Hand-Delivery

The Honorable Joe Manchin, III
Secretary of State
Building 1, Suite 157K
1900 Kanawha Boulevard, East
Charleston, WV 25305

Re: Legislative Rules

Dear Secretary Manchin,

I am enclosing an original and one copy of the documents listed below for filing. The proposed rules are being filed in regard to the Public Entities Insurance Program. I will provide a copy of the enclosed documents to the Legislative Rule Making Review Committee once they are marked filed by your office.

The documents enclosed consist of the following:

1. Notice of Comment Period on a Proposed Rule,
2. Statement of Circumstance and Brief Summary,
3. Proposed Rules, and
4. Fiscal Note for Proposed Rules.

Thank you very much for your assistance. If you have any questions, or need any additional information, please do not hesitate to give me a call.

Sincerely,

Charles E. Jones, Jr.
Executive Director

CEJ/msd

Enclosures

Cc: John T. Poffenbarger, Acting Cabinet Secretary
Donna M. Lipscomb, Executive Coordinator

STATE OF WEST VIRGINIA
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Title 115
Legislative Rule
State Board of Risk and Insurance Management

Series 2
Public Entities Insurance Program

CONSENT TO FILING

I, John T. Poffenbarger, Acting Cabinet Secretary to the Department of Administration, do hereby consent to the filing of Title 115, Series 2, titled "Public Entities Insurance Program."

7-22-04
Date

Heather A. Connolly
for John T. Poffenbarger, Acting Cabinet Secretary
Department of Administration

115 CSR 2

TITLE 115
STATE BOARD OF RISK AND INSURANCE MANAGEMENT

SERIES 2
PUBLIC ENTITIES INSURANCE PROGRAM

BRIEF SUMMARY OF PROPOSED RULE

The purpose of this proposed rule is to amend the existing rule by establishing specific underwriting criteria and administrative procedures for the termination of participation in the public entities insurance program by political subdivisions, charitable or public service organizations or emergency medical service agencies. Participation may be terminated by either cancellation of the existing coverage or nonrenewal of the coverage. The proposed rule provides that notice shall be given to the entity of the reasons for the termination and the aggrieved entity has the right to an administrative hearing pursuant to rules promulgated by the State Board of Risk and Insurance Management. bly calculated to inform the insured

115 CSR 2

TITLE 115
STATE BOARD OF RISK AND INSURANCE MANAGEMENT

SERIES 2
PUBLIC ENTITIES INSURANCE PROGRAM

STATEMENT OF CIRCUMSTANCES REQUIRING THIS RULE

In 1986, the West Virginia Legislature determined that a need existed for the State Board of Risk and Insurance Management to make liability and property insurance available to political subdivisions and charitable or public service organizations. The Legislature authorized the Board to make insurance available to such "public" entities. The program is widely known as the Senate Bill 3 Program. Subsequently, the Legislature expanded the types of entities eligible to participate in the program to include critical access hospitals and emergency medical services agencies.

In 2004, the Legislature in Senate Bill 596 clarified the language in W. Va. Code § 29-12-5(b) (2) that the Board "may, but is not required to provide" such insurance to public entities under its Senate Bill 3 Program. Since 1999, the unfunded liability of the Senate Bill 3 program has been growing. Premium rate increases, deductibles and other underwriting measures have been taken in an attempt to improve the financial condition of the Senate Bill 3 program. Additional measures are needed. In order to stabilize the Senate Bill 3 program and in the interests of all entities in the insurance pool, it is necessary that those public entities not paying premiums in a timely manner or those that present a substantial increased risk of loss or exposure to the insurance pool not be permitted to continue to participate in participation in the state-manage Senate Bill 3 insurance program.

The proposed amendment lists the specific criteria upon which the Board may terminate an insured public entity's coverage (participation) in the Senate Bill 3 Program. The criteria are substantially similar to the grounds authorized for commercial insurers offering insurance to political subdivisions pursuant to W. Va. Code § 29-12A-17(a). The rule also provides for advance notice to the entity of the determination to terminate coverage and provides the aggrieved public entity the opportunity to contest the determination in an administrative hearing.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 115 Series 2 Public Entities Insurance Program

Type of Rule: X Legislative ______ Interpretive ______ Procedural

Agency: State Board of Risk and Insurance Management

Address: 90 MacCorkle Avenue, SW

Suite 203

South Charleston, WV 25303

1. Effect of Proposed rule:

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	$5,000		$5,000	$5,000	$5,000
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:
   The total cost allows for any expense that may be incurred by an entity's request for appeal.

3. Objectives of These Rules:

4. Explanation of Overall Economic Impact of Proposed Rule:

   A. Economic Impact on State Government:

      None

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

      We do not anticipate any impact to entities leaving the program as commercial coverage is available.

   C. Economic Impact on Citizens/Public at Large.

      None

Date: 7/23/04

Signature of Agency Head or Authorized Representative:

Charles E. Jones, Jr.

TITLE 115
LEGISLATIVE RULES
STATE BOARD OF RISK AND INSURANCE MANAGEMENT

SERIES 2
PUBLIC ENTITIES INSURANCE PROGRAM

§115-2-1. General.

1.1. Scope. -- This rule establishes the procedures for implementing and administering the public entities insurance program as established by W. Va. Code §§29-12-5(b) and 29-12A-1 et seq. The purpose of the program is to provide liability insurance coverage and property insurance coverage ~~for~~ to eligible and qualified political subdivisions, charitable or public service organizations and emergency medical service agencies.

1.2. Authority. -- W. Va. Code §§29-12-5(a), 29-12-14.

1.3. Filing Date. -- ~~April 16, 2004~~

1.4. Effective Date. -- ~~April 30, 2004~~

§115-2-2. Definitions.

2.1. "Board" means the state board of risk and insurance management.

2.2. "Entity" means the political subdivisions, charitable or public service organizations and emergency medical service agencies requesting or obtaining liability or property insurance.

2.3. "Agent" means a resident property and casualty agent currently licensed as such by the ~~West Virginia~~ state insurance commissioner.

2.4. "Information packet" means the questionnaire, survey, or any other underwriting data that may be requested by the board and furnished to the entity or agent.

2.5. "Fee agreement" means the document and/or agreement provided to the entity or agent for the purpose of paying the agent a service fee.

2.6. "Service fee" means the data acquisition cost and/or commission which shall be no greater than eight percent of the annual earned premium charged to the entity.

§115-2-3. Designation of Agent of Record.

3.1. Each entity which seeks to procure liability and/or property insurance through the board shall use a resident licensed property and casualty insurance agent pursuant to W.Va. Code §33-12-1 et seq.

3.2. The insured entity shall designate an agent of record in writing to the board either by signed letter or signed fee agreement.

3.3. Failure by an entity to comply with the requirements of subdivisions 3.1 or 3.2 will result in non-acceptance of an entity or non-renewal of an entity in the public entities insurance program.

3.4. Upon designation of an agent of record, the board shall furnish an information packet to the agent. The entity seeking insurance and its agent of record are jointly responsible for submitting the information packet completed in a manner acceptable to the board.

3.5. The board may refer to the state insurance commissioner for disciplinary action any agent of record for failure to satisfactorily complete the information packet.

3.6. The board may request the entity designate another agent of record if its agent fails to satisfactorily complete the information packet.

§115-2-4. Service Fee.

4.1. The board shall include an amount designated as a service fee in the insurance premium charged to the entity. These moneys may be used to defray administrative expenses incurred as a result of the acquisition of underwriting data by the board. These moneys may be forfeited to the board to defray expenses incurred by the board as a result of the submission by the entity and/or agent of record of information and data not completed in a manner acceptable to the board.

4.2. The service fee cost is an amount equal to eight percent of the annual earned premium charged the entity for insurance coverage.

§115-2-5. Commission of Agent of Record.

5.1. The amount of commission or fee of the agent of record is a matter to be resolved between the entity and its agent.

5.2. The commission of the agent of record shall not exceed eight percent of the earned annual premium.

§115-2-6. Ineligible Classes.

6.1. The following classes of entities have been determined by the board to be ineligible for coverage under W. Va. Code §29-12-5(b):

6.1.a.

(1) Hospitals - except those owned and operated by political subdivisions already insured with the state program, or critical access hospitals as specified in W.Va. Code §29-12-5(b);

(2) Airports and airport authorities.

(3) Churches and religious organizations.

(5) Country clubs.

(6) Homeowners associations.

(7) Lobbying organizations.

(8) Political organizations.

(9) Any "for profit" organizations, except emergency medical service agencies as specified in W.Va. Code §29-12-5(b).

6.2. If any entity or entities in the classes in subdivision 6.1 of this section is insured in the public entity insurance program, the board shall renew them; however, the board shall not accept any entity or entities in said ineligible classes after February 1, 1988.

§115-2-7. Rates and Coverages.

The board shall determine and establish rates, rate programs, deductibles, and coverages as needed.

§115-2-8. Cancellation <u>and Non-renewal</u> Provisions.

8.1. ~~The board may cancel any entity that fails to pay its premium within thirty (30) days of the premium due date.~~ <u>The board may cancel an entity's insurance coverage for any of the following reasons:</u>

<u>8.1.a. Failure to make a premium payment within thirty (30) days of the premium due date;</u>

8.1.b. Fraud or substantial misrepresentation by the insured or a representative of the insured in the procurement of the insurance coverage, continuing the insurance coverage or in presenting a claim under the insurance coverage;

8.1.c. Substantial increase in the risk of loss to which the insurance program is exposed under the policy, including, but not limited to, the following:

8.1.c.1. The conviction of the insured or a representative of the insured of any crime having as one of its necessary elements an act increasing any hazard insured against;

8.1.c.2. Discovery of willful or reckless acts or omissions on the part of the any officer, employee or volunteer of the insured which substantially increases any hazard insured against;

8.1.c.3. The occurrence of a change in the risk which substantially increases any hazard insured against after insurance coverage has been issued or renewed;

8.1.c.4. The entity has a loss ratio exceeding one hundred percent in at least three of the past five years in the program; or

8.1.c.5. A violation of any local fire, health, safety, building or construction regulation or ordinance with respect to any insured property or the occupancy thereof which substantially increases any hazard insured against;

8.1.d. The insured entity violates any of the material terms or conditions of the insurance coverage or the insurance program; or

8.1.e. The entity no longer qualifies for participation in the public entity insurance programs administered by the board.

8.2. ~~The board shall give an entity a thirty (30) days notice of cancellation for non-payment of premium~~ The board shall give an entity at least a thirty (30) day notice of cancellation of coverage by written notice to the insured by certified mail, return receipt requested. The notice shall comply with the requirements of section 8.4 of these rules.

8.3. The board shall renew an insurance coverage, unless at least sixty (60) days prior to the date of the expiration provided in the certificate of coverage, a notice of intention not to renew the insurance coverage beyond the expiration date is made to the entity by written notice sent certified mail, return receipt requested. The notice shall comply with section 8.4 of these rules. This provision shall not apply if the entity is insured elsewhere, has accepted replacement coverage, or has requested or agreed to the nonrenewal.

8.4. In every instance in which insurance coverage is cancelled or is not renewed as provided in this rule, the board shall cite within the written notice of the action the allowable reason or reasons in section 8.1 for which the actions was taken and shall state with specificity the circumstances giving rise to the allowable reason cited. The notice of the action shall further state that the entity has a right to appeal the determination pursuant to section 8.6, and the right to be represented by counsel during such appeal.

8.5. Upon cancellation of a policy, the agent shall refund commissions on the return premium to the board at the same rate at which such commissions were paid.

8.6. Any entity that has been cancelled or nonrenewed, may appeal the decision to the board for an administrative hearing as provided in hearing rules promulgated by the board within fifteen (15) calendar days of receipt of such notice of cancellation or nonrenewal. The petition for appeal shall be in writing and shall otherwise conform to the hearing procedures promulgated by the Board.