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

Form #3

Do Not Mark In This Box

FILED

2004 AUG 26 P 1:23

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

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

CITE AUTHORITY: WV 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: ___

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.

Charles E. Jones Jr.

Authorized Signature

SCANNED

$6.40

STATE OF WE[illegible]ST 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

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

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: August 27, 2004

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (*Agency Name, Address & Phone No.*) Board of Risk and Insurance Management
90 MacCorkle Avenue, SW Suite 203
South Charleston, WV 25303

(304) 766-2646

LEGISLATIVE RULE TITLE: Title 115 Series 2

Public Entities Insurance Program

1. Authorizing statute(s) citation W. Va. Code §§29-12-5(a), 29-12-14

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

   July 23, 2004

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

   Faxed proposed rule to: County Commissioner's Association
   WV Municipal League
   WV Association of Counties
   Bureau of Senior Services

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

   August 23, 2004 4:00 p.m.

   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)

August 27, 2004

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

Mr. Charles E. Jones, Executive Director
90 MacCorkle Ave., SW Suite 203
South Charleston, WV 25303

Phone: (304) 766-2646 x100

Fax: (304) 766-2653

cjones@wvadmin.gov

g. **<u>IF DIFFERENT</u> 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)

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.

      N/A

b. Date of hearing or comment period:

____

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

____

d. Attach findings and determinations and reasons:

Attached ____

Pocahontas County Commission

JOEL S. CALLISON
President

RETA J. GRIFFITH
Commissioner

JAMES W. CARPENTER
Commissioner

PATRICIA D. DUNBRACK
Clerk

August 18, 2004

Board of Risk & Insurance Management
90 MacCorkle Avenue, SW Suite 203
South Charleston, WV 25303
Attn: Jeffrey Van Gilder, General Counsel

Dear Mr. Gilder:

The Pocahontas County Commission would like to take this opportunity to comment on the Board of Risk & Insurance Management Legislative rules that are being proposed. BRIM was created and designed to provide insurance to entities that could not get insurance in the private sector, if these proposed rules are adopted then counties and other entities could be cancelled and no longer eligible for insurance and may not be able to get insurance anywhere. This would leave counties with their original problem that BRIM was created to solve. BRIM is not private insurance and will probably never be profitable or break even, but its purpose is to help support those entities of government who are unable to meet the requirements of the private sector insurance market.

In government we are considered "deep pockets" to many plaintiffs and until there is some type of disincentive to sue government or caps are imposed on lawsuits, this trend will only continue. We understand the need to increase premiums and although we find it difficult to pay the premiums, we are appreciative of the insurance coverage. Pocahontas County has tried to reduce the amount of liability for our county offices but the tone of litigation in this country has made the process far acceptable to the general public as a way to get rich quick. Therefore many file lawsuits whether founded or not just to see if they can get a settlement.

As County Commissioners we are very concerned about the effective these proposed rule changes will have for our county. But we do not always have the authority that the private sector has for controlling the behavior of other elected officials or even employees. The Board of Risk & Insurance Management needs to continue being available to all government entities that pay their premiums. Please reconsider these rules and help counties and other entities protect themselves.

Sincerely,

Joel S. Callison

Joel S. Callison, President
Pocahontas County Commission

cc: WV County Commissioner's Association

County Commissioners' Association of West Virginia
CCAWV
County Commissioners' Association of West Virginia
County Government Works

2309 Washington Street, East
Charleston, West Virginia 25311
E-mail ccawv@citynet.net (304) 345-4639 Fax (304) 346-3512

RECEIVED
AUG 23 2004
Board of Risk
Insurance Management

August 19, 2004

Jeffrey Van Gilder, General Counsel
Board of Risk & Insurance Management
90 MacCorkle Avenue, SW Suite 203
South Charleston, WV 25303

RE: Proposed BRIM Legislative Rules Title Number 115

Dear Mr. Van Gilder:

The County Commissioners' Association has some concerns regarding the above stated legislative rule changes. We would appreciate your consideration of the following items:

- It appears that BRIM is trying to become a private insurance agency. Did the legislature not establish BRIM as an affordable avenue for political agencies to utilize?

- Section 4.1--the "service fee" being discussed sounds very similar to administrative expenses that have been utilized by PEIA that have helped put them above normal expenses. Is the 8% of annual premium being used to cover the cost of a budget that has been reduced by the legislature? If so, the counties should not be responsible for covering that loss. Sounds like an unfunded mandate.

- Section 6.1a--Claiming airports and their authorities as ineligible may be too vague. Does this mean that these facilities are no longer covered? If there is a fire to a building resulting in damage for example, should it not be covered by BRIM because it is a county owned building and has been insured in the past?

- Section 8.1.c--Could you define substantial increase or loss?

- Section 8.1.c1--Crime is already excluded in the policy. Why change the rule?

- Section 8.1.c2--Reckless or willful acts by employees or officers. What about other elected officials? Commissioners can not be responsible for the other elected official's actions. Please explain reckless acts in more detail.

- Section 8.1.c3—Any increase in hazard needs to be defined further.

- Section 8.1.c4--If the county is cancelled for having a high loss ratio, where are they going to get insurance? Private carriers will not provide insurance for these counties. The BRIM was created and designed to provide insurance to entities that could not get insurance in the private sector, if BRIM cancels them where are they going to get their insurance? There could be counties out there left with no coverage.

- Section 8.1.c5--Violations of building codes and regulations-Some counties do not meet the standards due to funding and the age of the courthouses. The Courthouse Facilities Authority has reports on all 55 counties and the improvements that need to be made to each. Can BRIM use these reports against the counties? How many claims in the counties really derive from safety issues within the courthouse?

- Section 8.1.d--The County Commissioners' Association would like a copy of the terms and conditions discussed here.

- Section 8.1.e--Define no longer qualifies.

Thank you for opportunity to express our concerns.

If you have any questions, please feel free to contact our office at 345-4639.

Sincerely,

Vivian Parsons

Vivian Parsons
Executive Director

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

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.

FILED

TITLE 115
LEGISLATIVE RULES
STATE BOARD OF RISK AND INSURANCE MANAGEMENT

2004 AUG 26 P 1:23

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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 and Non-renewal Provisions.

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

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

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.

Pocahontas County Commission

JOEL S. CALLISON
President

RETA J. GRIFFITH
Commissioner

JAMES W. CARPENTER
Commissioner

PATRICIA D. DUNBRACK
Clerk

August 18, 2004

RECEIVED

AUG 2 3 2004

Board of Risk
Insurance Management

Board of Risk & Insurance Management
90 MacCorkle Avenue, SW Suite 203
South Charleston, WV 25303
Attn: Jeffrey Van Gilder, General Counsel

Dear Mr. Gilder:

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Sincerely,

Joel S. Callison

Joel S. Callison, President
Pocahontas County Commission

cc: WV County Commissioner's Association

900-C Tenth Avenue • Marlinton, WV 24954 • (304) 799-6063 • Fax (304) 799-6947 • pocahontascc@sunlitsurf.com

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
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www.state.wv.us/brim

August 25, 2004

Joel S. Callison, President
Pocahontas County Commission
900-C Tenth Avenue
Marlinton, WV 24954

Re: Proposed BRIM Legislative Rule

Dear Mr. Callison:

Your August 18, 2004 letter, with comments regarding the changes BRIM proposes to our Series 2 rule, was received in our office on August 23, 2004, the last day comments could be accepted. We appreciate and understand your interest and concern in our proposed changes to the existing rule; however, we believe these changes are appropriate and necessary at this time.

Your letter will be added to our file for future reference.

Sincerely,

C.E. Jones Jr

Charles E. Jones, Jr.
Executive Director

CEJ/cjs

County Commissioners' Association of West Virginia
CCAWV
County Government Works
2309 Washington Street, East
Charleston, West Virginia 25311
E-mail ccawv@citynet.net (304) 345-4639 Fax (304) 346-3512

RECEIVED
AUG 23 2004
Board of Risk
Insurance Management

August 19, 2004

Jeffrey Van Gilder, General Counsel
Board of Risk & Insurance Management
90 MacCorkle Avenue, SW Suite 203
South Charleston, WV 25303

RE: Proposed BRIM Legislative Rules Title Number 115

Dear Mr. Van Gilder:

The County Commissioners' Association has some concerns regarding the above stated legislative rule changes. We would appreciate your consideration of the following items:

- It appears that BRIM is trying to become a private insurance agency. Did the legislature not establish BRIM as an affordable avenue for political agencies to utilize?

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Thank you for opportunity to express our concerns.

If you have any questions, please feel free to contact our office at 345-4639.

Sincerely,

Vivian Parsons

Vivian Parsons
Executive Director

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

August 25, 2004

Vivian Parsons
Executive Director
County Commissioners' Association of WV
2309 Washington Street, East
Charleston, WV 25311

Re: Proposed BRIM Legislative Rule

Dear Ms. Parsons:

Your August 19, 2004 letter, with comments regarding the changes BRIM proposes to our Series 2 rule, was received in our office on August 23, 2004, the last day comments could be accepted. We appreciate and understand your interest and concern in our proposed changes to the existing rule; however, we believe these changes are appropriate and necessary at this time.

Your letter will be added to our file for future reference.

Sincerely,

C.E. Jones Jr.

Charles E. Jones, Jr.
Executive Director

CEJ/cjs