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

Form #4

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

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 RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

Charles E. Jones Jr.

Authorized Signature

Robin L. Ferguson

84.00

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.

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, t~~The board shall furnish an information packet to the entity's agent of record~~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~~who fails to satisfactorily complete the information packet.

3.6. The board may ~~request~~ ask the entity to 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)~~a. 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)~~b. Airports and airport authorities.

~~(3)~~c. Churches and religious organizations.

~~(5)~~d. Country clubs.

~~(6)~~e. Homeowners associations.

~~(7)~~f. Lobbying organizations.

~~(8)~~g. Political organizations.

~~(9)~~h. 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~~listed in ~~the classes in subdivision~~subsection 6.1 of this section is insured in the public entity insurance program, the board shall renew ~~them~~its coverage; 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 Nonrenewal 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. The entity's failure to make a premium payment within thirty (30) days of the premium due date;

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

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

8.1.c.1. The conviction of the entity or a representative of the entity 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 any officer, employee or volunteer of the entity 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. The entity's 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 entity violates any of the material terms or conditions of the insurance coverage or the public entity 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 entity 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 entity's insurance coverage, unless at least sixty (60) days prior to the date of the expiration provided in the certificate of coverage, the board provides the entity with a written notice, by certified mail, return receipt requested, of its intention not to renew the insurance coverage beyond the expiration date. The notice shall comply with section 8.4 of these rules unless 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, the board shall cite within the written notice of the action the reason or reasons set forth in section 8.1 of this rule for which the action was taken and shall state with specificity the circumstances giving rise to the board's action. The notice shall further state that the entity has a right to appeal the determination pursuant to section 8.6 of this rule, and the right to be represented by counsel during such appeal as specified in the fee agreement.

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

8.6. Any entity whose coverage has been cancelled or nonrenewed, may appeal the decision to the board by filing a written petition for appeal, conforming to the procedural rules promulgated by the board within fifteen (15) calendar days of receipt of the notice of cancellation or nonrenewal.

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

Phone Number: 304-766-2646 Email: www.state.wv.us/brim

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

None

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	2005 Increase/Decrease (use "-")	2006 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	5,000.00	5,000.00	5,000.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Equipment			
Other			
2. Estimated Total Revenues			

Rule Title: Title 115 Series 2 Public Entities Insurance Program

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

The total cost allows for any expense that may be incurred by an entity's request for appeal.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

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

Date: November 3, 2004

Signature of Agency Head or Authorized Representative

Charles E. Jones Jr.

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
OFFICE OF THE CABINET SECRETARY

JOE MANCHIN III
GOVERNOR

ROBERT W. FERGUSON, JR.
CABINET SECRETARY

FILED
2005 JAN 20 A 9:03
OFFICE WEST VIRGINIA
SECRETARY OF STATE

January 19, 2005

Via Hand-Delivery

The Honorable Betty Ireland
Secretary of State
Building 1, Suite 157K
1900 Kanawha Boulevard, East
Charleston, WV 25305

**Re: Public Entities Insurance Program, 115CSR2
Legislative Rules**

Dear Secretary Ireland,

I am enclosing the original and ten copies of the "Notice of Rule Modification of a Proposed Rule" regarding the Board of Risk and Insurance Management's Public Entities Insurance Program. These rules contain modifications requested at the Legislative Rule-Making interim meeting. The Department of Administration has agreed to the modifications. It is my understanding that your office will maintain the original in your files. Once the ten copies have been stamped filed I will provide the copies to the Legislative Rule-Making office.

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,

Donna M. Lipscomb
Executive Coordinator

DMP:dp
Enclosures
cc: Debra Graham, Counsel for Legislative Rule-Making