



# **Somerset County Joint Insurance Fund**

## **BY-LAWS**



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**PREAMBLE**

Somerset County Joint Insurance Fund  
c/o New Jersey Risk Managers and Consultants, Inc.  
Post Office Box 367  
Somerville, New Jersey 08876

Bylaws Adopted: \_\_\_\_\_

**WHEREAS:** Public Law 1983, c.372 (*N.J.S.A. 40A: 10-36 et seq.*) permits local units to join together to form a joint insurance fund; and

**WHEREAS:** Said statute was designed to give local units an opportunity to use alternative risk management techniques, providing they are based on sound actuarial principles; and

**WHEREAS:** The local units annexed to this document contracted to study the feasibility of forming a joint insurance fund; and

**WHEREAS:** It has been concluded that the formation of a "Joint Insurance Fund" will result in significant savings in insurance cost as well as providing stability in coverage.

**NOW THEREFORE,** in consideration of the premises and in order to create said *fund* to be known as the Somerset County Joint Insurance Fund, hereinafter called "*Fund*", it is mutually understood and agreed as follows:

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## ARTICLE I. DEFINITIONS

For the purposes of these bylaws, unless the context requires otherwise, the following words and phrases shall have the meanings indicated. It is the intent of these bylaws to include herein the definitions set forth in *N.J.S.A. 40A: 10-36 et seq.* and *N.J.A.C 11:15-2.2 et seq.* and to have the definitions set forth herein be identical to and consistent with those statutory and regulatory definitions. To the extent that a definition for a word is changed or altered by subsequent legislation or regulation and is therefore inconsistent with the definition set forth herein, it is the intent of these bylaws that the statutory and/or regulatory definition take precedence over the definitions set forth herein.

Actuary - A person who is a fellow in good standing of the Casualty Actuarial Society with three years recent experience in loss reserving; an associate in good standing of the Casualty Actuarial Society with five years recent experience in loss reserving; or an associate in good standing of the American Academy of Actuaries who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries and who has seven years recent experience in loss reserving.

Administrator - A person, partnership, corporation or other legal entity engaged by the *fund* Commissioners or executive committee, as defined herein to act as executive director to carry out the policies established by the *fund* Commissioners or executive committee and otherwise administer and provide day-to-day management of the *joint insurance fund*. The administrator may also be the lead agency, an employee of the *fund*, a *fund* member or an independent contractor.

Allocated Claims Expense - Attorneys' fees, expert witness fees, (ie. engineering, physicians, etc.), medical reports, professional photographers' fees, police reports and other similar expenses. The exact definition of allocated claims expense or similar terms shall be the definition used in the excess insurance or reinsurance policy purchased by the *fund*.

Automobile and Equipment Liability - Liability resulting from the use of operation of motor vehicles, equipment or apparatus owned by or controlled by the local unit or owned by or under the control of any subdivisions thereof including its departments, boards, agencies, commissions or other entities which the local unit may provide coverage for under *N.J.S.A. 40A: 10-2*.

Bureau - The Compensation Rating & Inspection Bureau, 60 Park Place, Newark, NJ 07102.

Commissioner - The Commissioner of Banking and Insurance.

Department - The Department of Banking and Insurance.

Employee - One who works for a participant employer for salary or wages and/or as defined under *N.J.S.A. 34:15-43*, for purposes of workers' compensation and/or otherwise defined under *N.J.S.A. 59:1-3* or other appropriate statutes.

Employers' Liability - The legal liability of a public employer to pay damages because of bodily injury or death by accident or disease at any time resulting therefrom sustained by an employee arising out of and in the course of his or her employment by the employer, which is not covered

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<sup>1</sup> Set forth in the aforesaid statute or regulation

by a worker's compensation law. The exact definition of employer's liability or similar terms shall be the definition used in the applicable excess or reinsurance policy purchased by the *fund*.

Excess Carrier - An insurer that provides excess insurance or reinsurance to a *fund*.

Excess Insurance - Insurance or reinsurance purchased from an insurance company authorized or admitted in the State of New Jersey or deemed eligible by the Commissioner as a surplus lines insurer, covering losses in excess or an amount established between the *fund* and the insurer up to the limits of coverage set forth in the insurance contract on a specific occurrence, or per accident or annual aggregate basis.

Executive Committee - The committee of insurance *fund* Commissioners, as provided in P.L. 1983, c.372.

Fund - Somerset County Joint Insurance Fund.

Fund Year or Fiscal Year - The *fund* fiscal year will be January 1st through December 31st.

General Liability - Any and all liability which may be insured under the laws of the State of New Jersey for which an insurance *fund* may be established as authorized under *N.J.S.A. 40A:10-36, et seq.* excluding worker's compensation, employers' liability, and motor vehicular liability. The exact definition of general liability or any similar term shall be the definition used in the excess insurance or reinsurance policy purchased by the *fund*.

Incurred Claims - Claims arising from occurrences which occur during a *fund* year including claims reported or paid during a later period. The exact definition of incurred claims or any similar term shall be the definition used in the excess insurance or reinsurance policy purchased by the *fund*.

Indemnity and Trust Agreement - A written contract signed by and duly adopted by the participants of the *fund* under which each agrees to jointly and severally assume and discharge the liabilities of each and every party to such agreement arising from the participation in the *fund*.

1. The agreement shall also create a trust and govern the operation thereof under which monies shall be held by the *fund* Commissioners as fiduciaries for the benefit of *fund* claimants.
2. Where the *fund* shall provide for the retention on a self-insured basis of any or all of the risks or liabilities specified below, the agreement shall require and provide for the establishment of separate trust accounts from which monies shall be disbursed solely for the payment of claims, allocated claim expenses and excess insurance of reinsurance premiums for each such risk or liability:
  - workers' compensation and employers' liability
  - liability, other than motor vehicle
  - property damage, including automobile physical damage
  - automobile liability

Insolvent Fund - A *joint insurance fund* which has been determined by a court of competent jurisdiction to be unable to pay its outstanding lawful obligations as they mature in the regular

course of business, as may be shown either by an excess of its required reserves and other liabilities over its assets or by its not having sufficient assets to reinsure all of its outstanding liabilities after paying all accrued claims owed by it, or for which, or for the assets of which, a receiver or liquidator, however entitled, has been appointed by a court of competent jurisdiction and authority, after the effective date of this subchapter.

Insurer - Any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer or other person engaged in the business of insurance pursuant to Subtitle 3 of Title 17 of the Revised Statutes.

Intertrust Fund Transfer - An actual transfer of funds from one claim or loss retention *fund* account in a fiscal year to another account within the same fiscal year.

Interyear Fund Transfer- The transfer of funds from a claim or loss retention trust account for a fiscal year, to a claim or loss retention trust account of similar risk or liability for a different fiscal year.

Joint Insurance Fund - *Fund* means a group organized by two or more local units of government to establish an insurance fund for the purposes of insuring and/or self-insuring against property damage, general liability, vehicular and equipment liability, workers' compensation liability and employer's liability, approved by the Department pursuant to the authority of P.L. 1983, c.372 and this subchapter.

Joint Insurance Fund Commissioners - Local unit representatives chosen to represent those units in the *fund*, as provided in P.L. 1983, c.372.

Lead Agency - A member of the *joint insurance fund* responsible for performing or providing administrative or other services as may be designated by the *joint insurance fund* Commissioners.

Local Unit of Government or Local Unit - A county, municipality, county vocational school pursuant to *N.J.S.A.* 18A:18B-8 and 40A:10-50, county college pursuant to *N.J.S.A.* 18A:64A-25.40 and 40A: 10-5 1, local school district pursuant to *N.J.S.A.* 18A:9-1 -11 or any contracting unit as defined in *N.J.S.A.* 40A: 11-2.

Manual - The New Jersey Worker's Compensation and Employers Liability Insurance Manual as compiled by the bureau.

Manual Premium - The premium computed according to the mandatory merit-rating plan for worker's compensation and similar insurance industry rating plans for other lines of coverage.

Motor Vehicular and Equipment Liability - Liability resulting from the use or operation of motor vehicles, equipment or apparatus owned by or controlled by the participating unit of government, or owned by or under the control of any subdivision thereof including its departments, boards, agencies or commissions for which an insurance fund may be established as authorized under *N.J.S.A.* 40S: 10-36 *et seq.* The exact definition of motor vehicle and equipment liability or any similar term shall be the definition used in the excess insurance or reinsurance policy purchased by the *fund*.

Net Current Surplus or Surplus - Amount of monies in a trust account that is in excess of all costs, earned investment income, returned surplus, incurred losses and loss adjustment expenses and incurred but not reported reserves, including the associated loss adjustment expenses attributed to the *fund* net of any recoverable per occurrence or aggregate excess insurance or reinsurance for a particular year.

Occurrence - An incident, including continuous or repeated exposure to conditions which results in injury or damage neither expected nor intended from the standpoint of the participant within the *fund*. The exact definition of occurrence or any similar term shall be the definition used in the excess insurance or reinsurance, if any, purchased by the *fund* or in the adopted coverage manual if excess insurance is not in effect or does not apply.

Probable Net Cost- The estimated ultimate cost of claims incurred during a *fund* year plus the cost of allocated claims expense and other costs of operating the *fund* until all claims incurred during the *fund* year are settled. For purposes of computing the probable net cost, losses within the deductible of participating units of government, and future investment income on outstanding loss reserves held by the *fund* shall not be taken into consideration.

Probable Total Cost - The probable net cost plus the estimated ultimate cost of losses incurred within the deductible of participating units of government.

Property Damage - Any loss or damage, however caused, on property, motor vehicles, equipment or apparatus owned by the participating units of government or under the control of any of its departments, board, agency, or commissions for which an insurance *fund* may be established as authorized by *N.J.S.A.* 40A: 10-36.

Servicing Organization - An individual, partnership or corporation which provides services to the *fund* not provided by the administrator including but not limited to:

- claims adjusting
- claim administration
- safety engineering
- actuarial, including compilation of statistics and preparation of assessment, loss, and expense reports
- preparation of reports required pursuant to P.L. 1983 c.372 or any regulations and/or rules of the New Jersey Department of Banking and Insurance including but not limited to N.J.A. C 11:15-2
- development of member's assessments and fees

Unpaid Claims - Case reserves and reserves for incurred but not reported claims attributed to the *fund*, net of any recoverable per occurrence or aggregate excess insurance or reinsurance for a particular year.

Workers' Compensation Act - *N.J.S.A.*. 34:15-7 *et seq.* and the obligations thereunder which may be funded per NJ S.A. 40A: 10-3 6. The exact definition of workers' compensation or similar term shall be the definition in the excess or reinsurance policy purchased by the *fund*.



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## ARTICLE II. MEMBERSHIP

### 2.1 Agreement to Join the Fund:

- A. Pursuant to section I of P.L. 1983, c. 372, the governing body of a qualified local unit, including any contracting unit as defined in section 2 of P.L. 1971, c.198 (c 40A: 11-2) may by ordinance or resolution, agree to join the *fund*.
- B. The ordinance or resolution shall provide for execution of a written agreement specifically providing for acceptance of the *fund's* bylaws as approved and adopted pursuant to section 4 of the Act.
- C. The agreement shall specify the extent of the local unit(s) participation in the *fund* with respect to the types of insurance coverages to be provided by the *fund* and shall include the duration of the membership, which in no event, shall exceed three years pursuant to *N.J.S.A.* 40A: I 1- 15 (6). Participation in each type of coverage shall be separate and independent of each other type.
- D. The agreement shall include an executed Indemnity And Trust Agreement.
- E. All applications to the *fund* must also include a letter certifying that the local unit has never defaulted on claims if self-insured, and has not been canceled for nonpayment of insurance premiums for a period of at least two years prior to the application.

2.2 Initial Membership: Any local unit may be part of the *fund's* initial application of approval by the Commissioner of Banking and Insurance and the Department of Community Affairs, if it has agreed by ordinance or resolution to become an initial participant in the *fund* and to abide by the bylaws, safety and risk management procedures required by the *fund*, and has executed an Indemnity And Trust Agreement to the *fund*.

### 2.3 Subsequent Membership:

- A. Any local unit seeking membership after the *fund's* initial approval by the Commissioner of Banking and Insurance and the Department of Community Affairs shall submit an application for membership to the *fund* on a form approved by the Commissioner of Banking and Insurance. The application shall include an executed Indemnity And Trust Agreement and other documentation required under Section 2.1 above.
- B. The *fund* Commissioners may approve the application by two-thirds vote of the total membership, based on the following criteria:
  - 1) The applicant's five (5) year claim history shows safety performance consistent with the *fund's* objectives and the applicant's physical location and operations indicate a prospective likelihood of satisfactory future claim performance.
  - 2) A safety inspection and evaluation conducted by the *fund's* safety consultant at the expense of the applicant. The result should show that the applicant meets the *fund's* safety standards including, but not limited to, an evaluation of physical plant, personnel, and operating procedures.

- 3) The *fund* has the administrative capability to absorb additional participants without undue inconvenience or strain.
- C. When the application is approved by the *fund*, it shall be filed within 15 days with the Department of Banking and Insurance and the Department of Community Affairs, with appropriate amendments to the *fund's* bylaws, risk management plan, and budget.
- 2.4 Conditions of Membership: As a condition of initial and continued membership, each participant shall:
- A. Form a safety committee and actively participate in all *fund* sponsored safety programs, agree to follow safety programs, and all safety and risk management procedures required by the *fund*;
- B. Promptly comply with the bylaws, risk management plan, and other requirements of the *fund*;
- C. Promptly pay all assessments charged to it;
- D. Execute and comply with the Indemnity And Trust Agreement furnished as part of the initial and subsequent membership requirements; and
- E. Comply with the statutes and regulations governing *joint insurance funds*.
- 2.5 Membership Renewals. Termination or Withdrawal of Local Units:
- A. Members may renew their participation by execution of a new agreement to join the fund as provided for in 2.1 above, ninety (90) days prior to the expiration of the term period.
- B. The *fund* Commissioners (or Executive Committee) must act upon a renewal application no later than forty-five (45) days prior to the expiration of the term period. Otherwise, the renewal application is automatically approved.
- C. To deny a renewal application, the *fund* shall vote by majority vote that the applicant did not fulfill its responsibilities as a member or no longer meets the *fund's* underwriting, safety or risk management requirements.
- D. If a member's renewal application is rejected, the *fund* will follow the notification requirements contained in section 2.5F.
- E. Non-renewal of a or all claims *fund* participant does not relieve it of responsibility for all claims incurred during its period of membership, including losses, loss adjustment expenses and other expenses until all such claims are concluded.
- F. A participant must remain in the *fund* for the full term of membership unless earlier terminated by a two-thirds vote of the total membership for non-payment of assessments or continued non-compliance with these bylaws, risk management plan or other obligations set forth in section 2.4.

A participant shall not be terminated or non-renewed for any reason until:

- 1) The *fund* gives written notice (by registered mail) of its intention to terminate the participant in not less than thirty (30) days.
  - 2) Like notice shall be filed with the Department of Banking and Insurance and Department of Community Affairs, together with a certified statement that the notice provided for above has been given; and
  - 3) Thirty (30) days have elapsed after the filing required by 2 above.
- G. A participant of the fund that does not desire to continue as a member after the expiration of its membership term shall give written notice of its intent ninety (90) days before the expiration of the term. The *fund* shall immediately notify the Department of Banking and Insurance and the Department of Community Affairs that the member has given notice to leave the *fund*.
- H. A participant that has been terminated or does not continue as a participant of the *fund* shall remain jointly and severally liable for claims incurred by the *fund* during the period of its membership including, but not limited to being subject to and liable for supplemental assessments. It is understood and agreed that a separate and independent "trust fund" exists for each type of coverage offered or to be offered and that the liability of a participant exists only with respect to those "trust funds" and types of coverage in which it is a participant.
- I. The *fund* shall immediately notify the Department of Banking and Insurance and the Department of Community Affairs if the termination or withdrawal of a participant caused the *fund* to fall to meet any of the requirements of P.L. 1983, c. 3 72 or any other law or regulation of the State of New Jersey. Within fifteen (15) days of such notice, the *fund* shall advise the Department of Banking and Insurance of Insurance and the Department of Community Affairs of its plan to bring the *fund* into compliance.
- J. A *fund* member is not relieved of responsibility for any claims incurred during its period of participation in a type of coverage offered by the *fund* except through payment of those claims by the designated trust account for the *fund* or by the *fund* member.

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**ARTICLE III. ORGANIZATION****3.1 Commissioners:****A. Appointment:**

- 1) Commissioners: In the manner generally prescribed by law, each participating local unit shall appoint one (1) Commissioner to the *fund*. Each participant shall select either a member of its governing body, or one of its employees. Each local unit may also appoint an alternate *fund* Commissioner who shall be a member of the governing body or employee of the local unit.
- 2) Alternate: Each participant shall have the right to appoint one (1) alternate *fund* Commissioner to attend either regular or special meetings on behalf of the member in the absence of the *fund* Commissioner. The alternate Commissioner must be either an elected official or an employee of the appointing local unit.
- 3) Special Commissioner: If the number of participants is an even number, one (1) additional Commissioner will be appointed by a participant on a rotating basis. The special Commissioner shall be a member of the governing body or an employee of a participant, but does not have to be a member of the governing body or an employee of the appointing participant.

The participant's privilege to appoint the special Commissioner shall remain with that participant for one entire *fund* year.

**B. Terms of Office and Vacancy: (Commissioner, Special Commissioner and Alternate Commissioner)**

- 1) All terms of office shall expire on January 1st, or as set forth in subsection 2 and 3 below.
- 2) Commissioners who are members of the governing body of the local unit, shall hold office for two (2) years or for the remainder of their term of office, whichever shall be less. A special Commissioner shall hold office for one (1) year or for the remainder of his term of office as a member of the governing body of the participant, whichever shall be less.
- 3) Commissioners who are employees of the appointing participant shall hold office at the pleasure of the participant and can be removed by the participant at any time without cause.
- 4) In the event of a vacancy, the participant which appointed the Commissioner shall appoint a replacement for the unexpired term.
- 5) Commissioners shall serve without compensation.

**C. Responsibilities:**

- 1) The Commissioners are authorized and empowered to operate the *fund* in accordance with these bylaws and appropriate state laws and regulations.

- 2) Commissioners are authorized to terminate coverage of any participant, if the participant does not comply with the standard requirements established by the *fund*.
- 3) Each Commissioner shall have one vote.

### 3.2 Officers:

- A. As soon as possible after the beginning of each year, the Commissioners shall meet to elect the officers of the *fund* from their membership. *Fund* officers who are members of the governing body will serve until January 1st of the following year or until a successor is elected and qualified.

- 1) Chairperson: The individual elected as the Chairperson of the *fund* shall also serve as chairperson of the Executive Committee.

The Chairperson shall preside at the meetings of the Commissioners, and all meetings of the Executive Committee and shall perform such other duties provided for in these bylaws and the laws and regulations of the State of New Jersey.

- 2) Vice Chairperson: The individual elected as -Vice Chairperson of the *fund* shall also serve as Vice Chairperson of the Executive Committee.

The Vice Chairperson shall have the duties of the Chairperson when the Chairperson is absent from a meeting or is otherwise unavailable to act on behalf of the *fund* because of sickness, vacation, or absence from the State of New Jersey.

- 3) Secretary: The secretary shall be responsible for the minutes of meetings and the maintenance of all books, records, files and other documents of the *fund*, and perform such other duties as provided in these bylaws and the laws and regulations of the State of New Jersey.

- B. In the event of a vacancy in any of the officer positions caused by other than the expiration of the term of office, the Commissioners shall by majority vote fill the vacancy for the unexpired term.
- C. Any officer can be removed without cause at any time by a two-thirds vote of the total membership of the *fund* Commissioners. In this event, the full membership of *fund* Commissioners shall, by majority vote, fill the vacancy for the unexpired term.
- D. The Chairperson, Vice Chairperson, and the Secretary will serve without compensation.

### 3.3 Appointed Officials and/or Contract Professionals:

As soon as possible after the beginning of each year, the Commissioners shall meet and by majority vote of the Executive Committee and/or *fund* Commissioners shall select officials and/or contract professionals retained pursuant to the "Local Public Contracts Law" in the following positions. No person shall serve both as a Commissioner, and an employee or servicing agent of the *fund*.

- A. Contract Professionals:
- 1) Actuary: A person who is a fellow in good standing of the Casualty Actuarial Society with three years recent experience in loss reserving or an associate in good standing of the Casualty Actuarial Society with five years recent experience in loss reserving. The Actuary shall certify as to the actuarial soundness of the *fund* and shall report to the Commissioners/Executive Committee in a manner and at such times established by them. The Actuary shall certify loss reserves, reserves for "Incurred But Not Reported" (IBNR) losses and unearned assessments. He/she shall also compute the probable net cost for each *fund* year and shall review and comment on the adequacy of the budget and do such other services as required by N.J.S.A. 10-36 *et seq.*, N.J.A.C. 11: 15-2 and the *fund's* bylaws.
  - 2) Administrator:
    - a. The Administrator shall be experienced in risk management matters and shall not be a Commissioner of the *fund*.
    - b. Except with the approval of the Commissioner of Banking and Insurance, the administrator, its employees, officers or directors, shall not be an employee, officer or director of or have either a direct or indirect financial interest in a servicing organization.
    - c. The Administrator shall have the following duties and responsibilities:
      - i. Carry out the policies of the Commissioners to provide for the day-today management of the *fund*.
      - ii. Advise the Commissioners on risk management matters and prepare the risk management plan.
      - iii. Maintain underwriting data and, if required, assist the *fund* in the purchase of direct and/or excess insurance and/or reinsurance.
      - iv. Prepare proposal specifications for services such as, but not limited to, claims administration, safety engineering, and actuarial service, as determined by the *fund* Commissioners, from time to time.
      - v. Monitor the performance of service providers.
      - vi. Review and analyze statistics, work with and prepare the Actuary to calculate assessments and prepare claim and expense reports,
      - vii. Prepare a budget for approval by the Commissioners.
      - viii. Such other duties as provided for by the *fund* Commissioners, these bylaws, and the laws and regulations of the State of New Jersey.
    - d. The Administrator will help the *fund* purchase a fidelity bond protecting the *fund* in a form and amount annually acceptable to the Commissioner of Banking and Insurance. The Administrator shall also purchase errors and omissions coverage protecting the *fund* or obtain a waiver thereof in accordance with the statutes and regulations.

- 3) Auditor: The Auditor shall be an independent Certified Public Accountant (CPA) or a Registered Municipal Accountant (RMA), but shall not be a Commissioner. The Auditor shall conduct the annual audit of the *fund* and will perform such other duties as provided for by the *fund* Commissioners, these bylaws and the laws and regulations of the State of New Jersey.
- 4) Attorney:
  - a. The Attorney shall be admitted to the New Jersey Bar, but shall not be a *fund* Commissioner, and shall not be general counsel to any participant.
  - b. The *fund* Attorney shall have the following responsibilities:
    - i. Advise the *fund* on legal matters and the appropriateness of claim settlements recommended by the claims servicing organization. The *fund* Attorney will not defend any claim against an individual *fund* participant, which is the responsibility of the *fund*.
    - ii. Working with the service agent, insurer, and Administrator, the Attorney will advise the *Commissioners* on the selection of counsel to represent the *fund* in the defense of claims. Such defense counsel may represent one or more of the participants in other capacities.
    - iii. Perform such other duties as provided for by the *fund* Commissioners, these bylaws, and the laws and regulations of the State of New Jersey.
- 5) Custodian of Funds:
  - a. The Custodian shall be a municipal finance officer, or treasurer; with the following duties:
    - i. Act as Custodian of funds, assets and maintain financial control of the various "trust funds";
    - ii. Approve receipts, disbursements, and financial records;
    - iii. Prepare a Cash Management Plan which shall include the designation of depository institution(s) for the holding of *fund* monies and the *fund's* investment policy;
    - iv. Invest free balances of any claim/trust or administrative accounts periodically as authorized by law;
    - v. Report to the *fund* Commissioners at least quarterly on investment and interest income; and
    - vi. Perform such other duties as provided for by the *fund* Commissioners, these bylaws, and the laws and regulations of the State of New Jersey.
  - B. Appointed Officials:
    - 1) Service Agent: The *fund* shall appoint an agent in New Jersey, to receive service of process on behalf of the *fund*.

- 2) In the event of vacancy in any of the appointed official positions caused by other than the expiration of the term of office, the Commissioners shall by majority vote fill the vacancy for the unexpired term. In the event that any of the appointed officials is incapacitated, the Commissioners shall by majority vote, appoint an acting official.
- 3) Appointed agencies and officials will be compensated for their services pursuant to written fee contracts submitted annually and approved by a majority vote of the Commissioners. Appointed officials' fee guidelines will be part of their contract with the *fund*.

#### 3.4 Executive Committee:

- A. If the total number of local unit(s) exceeds seven (7), as soon as possible after the beginning of the year, the Commissioners shall meet and elect not more than five (5) Commissioners, who in addition to the Chairperson and Vice Chairperson, shall comprise the Executive Committee and shall elect a Secretary. During their term of office, the *Executive Committee* will exercise the full power and authority of the *fund*. The Secretary need not be a voting member of the Executive Committee.
- B. The Executive Committee will serve for a one-year period, unless their term as Commissioner expires prior to that time; or in the case of Executive Committee members who are elected officials, until their successors are elected and qualified.
- C. Vacancies on the Executive Committee caused by a reason other than the expiration of the term of office will be filled by a majority vote of the total membership of the *fund*.
- D. Any member of the Executive Committee may be removed for cause by a two-thirds vote of the total membership of the *fund*.
- E. As soon as possible after the beginning of the year, the *fund* Commissioners shall meet and elect not more than seven (7) individuals, each of whom shall be a *fund* Commissioner and none of whom shall be an Alternate *fund* Commissioner, to serve as Alternate Executive Committee members. The *fund* Commissioners shall determine the number of Alternate Executive Committee members to be chosen each year provided, however, that not more than seven (7) Alternates may be selected.

The election of Alternate Executive Committee members shall be separate from and independent of the election of the Executive Committee. The individuals (i.e., *fund* Commissioners) who receive the most votes shall be designated "Alternate No. 1," "Alternate No. 2," etc. and serve in that order in the event of the absence of an Executive Committee member(s). Any tie vote for Alternate Executive Committee members shall be resolved by a subsequent vote.

The provisions of sections 3.4(B) through 3.4(D) shall be applicable to Alternate members of the Executive Committee.

#### 3.5 Safety Committee:



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- A. Membership: The Commissioners shall be members of the safety committee. A Commissioner may appoint another employee or official of his or her local unit to act in his or her stead. The committee may also require additional members to join the committee.
- B. Organization: At the beginning of each *fund* year, the safety committee shall elect a chairperson, a vice chairperson, and a secretary.
- C. Duties: The safety committee shall meet at least quarterly and shall have the following duties and responsibilities:
- 1) Work with the safety engineering service organization retained by the *fund*, to develop a comprehensive safety and loss control program.
  - 2) Review all accident reports and monitor accident frequencies and trends.
  - 3) Coordinate annual safety inspections and identify locations requiring more.
  - 4) Help with safety education programs.
  - 5) Review the activities of each participant's safety committee. Notify the *fund* Commissioners if any participant is not conducting an active safety program.
  - 6) Send copies of minutes of the safety committee meetings to the Commissioner of each participant.
  - 7) Recommend to the *fund* Commissioners cancellation of coverage based upon failure to comply with safety inspection recommendations or failure to take corrective action where claim reports indicate such action is required; or the failure to comply with other suggestions and recommendations considered necessary to the continued viable existence of the *fund*.
  - 8) Perform such other duties as from time to time requested by the *fund* Commissioners, or required by state regulation.

### 3.6 Indemnification of Officers and Employees:

- A. The *fund* shall indemnify any past, present or future *fund* Commissioners, safety committee representatives, and employee of the *fund* for claims arising from an act or omission of such *fund* Commissioner, safety committee representative or employee of the *fund* within the scope of the performance of such individuals' duties as *fund* Commissioner, safety committee representative or employee of the *fund*. Such indemnification shall include reasonable cost and expenses incurred in defending such claims.

Nothing contained herein shall require the *fund* to pay punitive damages or exemplary damages, damages arising from the commission of a crime by such an individual, or damages resulting from actual fraud, actual malice, willful misconduct, or an intentional wrong.

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**ARTICLE IV. MEETINGS AND RULES OF ORDER****4.1 Meetings:**

- A. Annual Organization Meeting : By January 15th of each year, the Commissioners shall meet to elect the officers and the Executive Committee, appoint officials and conduct such other business as is necessary. The time and place for the meeting will be set by the Chairperson in accordance with Open Public Meetings Act, *N.J.S.A.* 10:4-8(d) except that notice shall also be provided to each *fund* Commissioner in addition to the person set forth in that statute.
- B. Business Meetings: The Commissioners (or Executive Committee) will set a schedule of meetings to conduct business of the *fund*.
- C. Special Meetings: The chairperson, or three (3) Executive Committee Commissioners may call a special meeting by notifying the secretary and providing adequate notice as set forth in *N.J.S.A.* 10:4-8(d) or 10:4-9(b).

**4.2 Conduct of Meeting:**

- A. All meetings of the *fund* shall be subject to the rules and regulations of the Open Public Meetings Act.
- B. Unless otherwise stated in these bylaws, or in the laws or regulations of the State of New Jersey, Robert's Rules of Order shall govern the conduct of all meetings.
- C. A majority of the total membership of the Commissioners or Executive Committee, as the case may be, is a quorum to transact business of the Commissioners or Executive Committee, respectively.

**4.3 Amendments to the Bylaws:**

- A. Any member may propose an amendment to the bylaws by filing the proposed amendment in writing with the Secretary.
- B. The Commissioners shall file with the Commissioner of Banking and Insurance for his approval a copy of any amendment to the bylaws of the *fund* upon approval, by resolution, of the governing bodies of three fourths of the *local* unit(s), or any amendment to the plan of risk management, upon adoption by the Commissioners.
- C. Upon receipt of the amendment, the Commissioner of Banking and Insurance shall notify the Department of Community Affairs and shall immediately provide Department of Community Affairs with a copy of the amendment. The Department of Community Affairs, or by his designation, the Director of the Division of Local Governmental Services in the Department of Community Affairs, must notify the Department of Banking and Insurance within twenty-five (25) working days of his approval or disapproval, failing which the amendment shall be deemed approved. Within thirty (30) days of receipt, the Department of Banking and Insurance must approve or disapprove any amendment to the bylaws. If the Commissioner of Banking and Insurance shall fail to either approve or disapprove within that thirty (30) day working period, the amendment shall be deemed approved.

- D. Within ninety (90) days after the effective date of any amendment to the bylaws, a member local unit which did not approve the amendment may withdraw from the fund provided that it shall remain liable for its share of any claim or expense incurred by the *fund* during its period of membership.

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**ARTICLE V. OPERATION OF THE FUND****5.1 General Operation:**

- A. The *fund* shall be subject to and operate in compliance with the provisions of the "Local Fiscal Affairs Law" (*N.J.S.A. 40A:5-4 et seq.*) and the various laws pertaining to the investment of public funds.
- B. The *fund* is considered a local unit for purposes of the "Local Public Contracts Law" (*NJ S.A. 40:A:11-1 et seq.*) and will follow the provisions of that law in the purchase of any goods, materials, supplies, and services.
- C. The *fund* will operate with sufficient aggregate financial strength and liquidity to promptly meet its obligations. The *fund* will prepare a financial statement on a form acceptable to the Commissioner of Banking and Insurance showing the financial ability of the *fund* to meet its obligations. The members may, upon majority vote, request that the Commissioner of Banking and Insurance order an examination of any *fund* member which the *fund* Commissioners or Executive Committee, in good faith believes may be in a financial condition detrimental to other *fund* members, or the public.
- D. The financial statement showing the financial strength and liquidity of the *fund* will be submitted to the Department of Banking and Insurance and Department of Community Affairs.
- E. Copies of the resolution(s) or ordinance and written Indemnity and Trust Agreement adopted by each participating local unit as specified by N.J.A.C. 11:15-2.3 will be submitted to the Department of Banking and Insurance and Department of Community Affairs as required.
- F. Designation of the *fund* Commissioners, Executive Committee, Chairman, Secretary and Custodian of Funds, will be submitted to the Department of Banking and Insurance and Department of Community Affairs on an annual basis.
- G. The designation and appointment of an agent in New Jersey to receive service of process on behalf of the *fund* including the address in New Jersey where the books and records of the *fund* will be maintained at all times.

**5.2 Risk Management Plan:**

- A. The *fund* Commissioners shall prepare or cause to be prepared a plan of risk management for the *fund*. The plan shall include, but not be limited to:
  - 1) The perils to be insured against.
  - 2) Limits of coverage, whether self-insured, direct insurance purchased from a commercial insurer, or reinsurance.
  - 3) The amount of risk to be retained by the *fund*.
  - 4) The amount of reserves to be established.

- 5) The proposed method of calculating assessments to be paid by each member of the *fund*.
  - 6) Procedures governing safety, loss adjustment, and legal defense. Coverage to be purchased from a commercial insurer if any.
  - 7) Reinsurance to be purchased, if any.
- B. The risk management plan and all amendments must be approved by the Commissioner of Banking and Insurance and the Commissioner of the Department of Community Affairs before such take place.

### 5.3 Servicing Organizations:

- A. The *fund* shall contract for, or employ competent personnel with ample facilities to provide the following services, which may include:
- 1) Claims administration;
  - 2) Loss prevention and safety engineering;
  - 3) Underwriting matters;

The *fund* may also contract to have the following services performed:

- 1) Actuarial Service - The actuarial service will include the Actuary reviewing the reserves, and procedures for the maintenance and administration of appropriate reserves in accordance with sound actuarial principles.
  - 2) Compilation of statistics and the preparation of assessments, loss and expense reports;
  - 3) Preparation of reports required pursuant to P.L. 1983 c.372 or any regulations and/or rules of New Jersey Department of Banking and Insurance including but not limited to *N.J.A.C. 11:15-2*.
  - 4) Development of members' assessments and fees.
- B. Except with the approval of the Commissioner of Banking and Insurance, no servicing organization or its employees, officers, or directors shall have either a direct or indirect financial interest in an Administrator, or be an employee, officer or director of an administrator.
- C. The *fund* may, at its option, contract for these services from different servicing organizations.
- D. Each service contract will include a clause stating "unless the Commissioner of Banking and Insurance otherwise permits, the servicing organization shall handle to their conclusion all claims and other obligations incurred during the contract period".

- E. Each servicing organization shall provide a surety bond and errors and omissions coverage in a form and amount acceptable to the Commissioner of Banking and Insurance.

#### 5.4 Financial Statement and Report :

- A. The *fund* shall provide its members, with periodic reports concerning the activities and status of the *fund* for the reporting period. Such reports shall be made at least quarterly and may be made more frequently at the discretion of the Executive Committee.
- B. An annual certified report in a form acceptable to the Commissioner of Banking and Insurance and the Department of Community Affairs shall be prepared by the *fund*, filed with the Department of Banking and Insurance and the Department of Community Affairs, and made available to each *fund* member on or before December 31 of each year. The report shall be accompanied by:
  - 1) An annual audited statement of the financial condition of the *fund* prepared by an independent certified public accountant and performed in accordance with generally accepted accounting principles, which shall include a statement of the organization of the *fund* indicating the persons who perform each function for the *fund* and the relationship and interdependency of each function, and including its balance sheet and receipts and disbursements for the preceding year.
  - 2) Reports of outstanding liabilities by line of coverage showing the number of claims, amounts paid to date and current reserves for unpaid losses, claims and unearned assessments as certified by an Actuary.
  - 3) A certification by the presiding officer of the Executive Committee that periodic reports were made to fund members in the form and manner required by regulation.
  - 4) Any material changes in information from that previously submitted.
  - 5) Such other information as may be requested by the Department of Banking and Insurance and the Department of Community Affairs from a particular *fund*.
- C. In addition to the reports required pursuant to (1) above, for the initial two fiscal years of a *fund*, a *fund* shall file with the Department of Banking and Insurance and the Department of Community Affairs quarterly unaudited statements of the financial condition of the *fund* in a form acceptable to the Commissioner of Banking and Insurance and the Department of Community Affairs within sixty (60) days after the end of each calendar quarter. After the initial two years, a *fund* shall file with the Department of Banking and Insurance and the Department of Community Affairs semiannual unaudited statements of the financial condition of the *fund* in a form acceptable to the Commissioner of Banking and Insurance and the Department of Community Affairs within sixty (60) days after end of each six-month period. The semi-annual report covering the six-month period ending December 31 immediately preceding. All statements filed pursuant to this subsection shall include the information set forth in (a) above, except that certification by a certified public accountant or the actuarial opinion statement shall not be required.

5.5 Coverages:

- A. The *fund* may offer any coverages to the participants allowed by statute. Each type of coverage will be separate and independent of each other. Coverages shall include but not be limited to:
- 1) worker's compensation and employer's liability
  - 2) general liability coverage including law enforcement
  - 3) motor vehicle liability
  - 4) property, damage (buildings, contents, equipment, and motor vehicles)
  - 5) school board legal liability and/or public official liability
  - 6) nurses medical malpractice
- B. With respect to worker's compensation, the provisions of N.J.A.C. 11: 15-2.6 (b) 12 will be provided for:
- 1) Benefit levels will equal those required by the Workers' Compensation Act, and provide for prompt payment of benefits.
  - 2) A minimum contribution from all participants of \$250,000 for the *fund's* first year of operation. Thereafter, a minimum of \$500,000, unless otherwise approved by the Commissioner of Banking and Insurance.
  - 3) Assessments will be based on the merit-rating plan filed with the Commissioner of Banking and Insurance.

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**ARTICLE VI. BUDGETS****6.1 Budget Preparation:**

- A. By November 15th of each year, the *fund* will prepare the budget for the upcoming fiscal year. The budget will identify proposed items and amounts of expenditure for its operations in the aggregate and allocated by member. Anticipated amounts and sources of assessments and other income, and the status of the self-insurance or loss retention accounts.
- B. The budget will be reviewed by an Actuary who will comment on its adequacy and recommend changes as appropriate.

**6.2 Budget Adoption:**

- A. By December 31st of each year, the *fund* Commissioners Or Executive Committee shall adopt the budget by majority vote of its members.
- B. A copy of the *fund's* proposed budget or any amendments there to will be sent to each participant at least two weeks prior to its adoption.

No budget or amendment will be adopted until a hearing has been held giving all participants the opportunity to comment.

- C. An adopted budget can be amended by majority vote of the *fund* Commissioners, or Executive Committee thereof.
- D. A copy of the adopted budget and any amendment, including a certification by an Actuary that the budget is actuarially sound with respect to funding for the claim or loss retention *fund* accounts, will be filed within thirty (30) days of its adoption with the governing body of each local unit, the Commissioner of Banking and Insurance, and the Commissioner of Community Affairs.



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**ARTICLE VII. ASSESSMENTS****7.1 Annual Assessment:**

- A. By November 15th of each year, the Actuary will compute the probable net cost of the upcoming *fund* year by line of coverage and for each prior year. The Actuary shall include all budget items in these computations.
- B. The annual assessment of each participant will be its pro rata share of the probable net cost for the upcoming year for each line of coverage as computed by the Actuary.
- C. The total amount of each participant's assessment will be certified by majority vote of the Executive Committee to the governing body of each participating local unit at least one (1) month prior to the beginning of the next fiscal year.
- D. The annual assessment due to the *fund* shall conform with N.J.A.C. 11:15-2.15(a).
  - 1) During the first year of operation of a joint insurance *fund* these contributions shall be paid in two equal installments, the first installment payable no later than January 15 and the second installment payable no later than May 15 or in any other manner that the Commissioner in his discretion may direct.
  - 2) Subsequent years' assessments pay be paid in such installments as shall be provided in the *fund's* bylaws provided, however, that the full assessment shall be paid by each member no later than August 1.
- E. In the event that any assessment is not paid within \_\_\_\_\_ of the due date set forth above, the local unit shall pay interest on the unpaid balance commencing on the tenth day after the due date. The interest rate shall be set annually by the *fund*. Commissioners or the Executive Committee, as the case may be, at the beginning of each year or at such other time as the *fund*. Commissioners or Executive Committee may determine.
- F. The Custodian of Funds will deposit each member's assessment into the appropriate accounts including the administrative account, and ' the claim or loss retention "trust fund" account by *fund* year for each type of coverage in which the member participates.
- G. If a *member* becomes a member of the *fund* or elects to participate in a line of coverage after the start of the *fund* year, such participant assessments and supplemental assessment will be reduced in proportion to that part of the year which had elapsed.

**7.2 Supplemental Assessments:**

- A. The *fund* Commissioners will, by majority vote of the total membership, levy upon the participant's additional assessments whenever needed or so ordered by the Commissioner of Banking and Insurance to supplement the *fund's* claim, loss retention, or administrative accounts to assure the payment of the *fund's* obligations.

- 1) Supplemental assessments will be charged to the participants by applicable *fund* year, and will be apportioned for each line of coverage, in which the member participates.
  - 2) All participants will be given thirty (30) days advance written notice of the *fund's* intention to charge an additional assessment. The *fund* will conduct a hearing before adopting the supplemental assessment.
  - 3) Participants will have sixty (60) days to pay the *fund* from the date the supplemental assessment is adopted.
- B. The *fund* will submit to the Commissioner of Banking and Insurance and the Commissioner of Community Affairs a report of the causes of the *fund's* insufficiency, the assessment necessary to replenish it, and the steps taken to prevent a recurrence of such circumstances.
- C. If the Actuary has cause to believe there will be a shortfall in any of the *fund's* accounts, he/she shall notify the *fund* at least 90 days prior to such anticipated shortfall. The *fund* shall implement the procedure set forth in section 7.2 or take such other action permissible by law to meet such shortfall.

### 7.3 Failure or Refusal to Provide Required Assessments:

Should any participant fail or refuse to pay its assessments or supplemental assessments, or should the *fund* fail to assess monies required to meet its obligations, the Chairperson or in the event of his or her failure to do so, the Custodian Of The Funds will notify the Commissioner of Banking and Insurance and the Commissioner of Community Affairs.

The *fund* Commissioners or Executive Committee shall take appropriate action when necessary to collect any contributions in default or arrears. Should the *fund* need to retain an attorney to assist it in the collection of any assessments, the defaulting participant shall be responsible for the cost of such attorney.

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**ARTICLE VIII. REFUNDS; INTERYEAR FUND TRANSFERS**

- 8.1 Any monies for a *fund* year in excess of the amount necessary to *fund* all obligations for that fiscal year as certified by an Actuary may be declared to be refundable by the *fund* not less than twenty-four (24) months after the end of the fiscal year.
- 8.2 The *fund* may seek approval from the Commissioner of Banking and Insurance and the Department of Community Affairs to make initial refund payments from a claims or loss retention *fund* account remaining from any year which has been completed at least twenty-four (24) months by submitting a written notification to the Department of Banking and Insurance and the Department of Community Affairs with accompanying documentation as set forth in this subsection, at least thirty (30) days prior to the proposed refund. If the Commissioner of Banking and Insurance and the Department of Community Affairs do not disapprove, in writing, the request to make a refund within the thirty (30) day period, the request shall be deemed approved. The Commissioner of Banking and Insurance and the Department of Community Affairs may also affirmatively approve the request prior to the expiration of the thirty (30) day period. The written notification shall be accompanied by appropriate documentation including, but not limited to, assessment, claims and expense detail; actuarial certification that the loss and loss expense reserves are adequate for the *fund* to have an overall surplus for that fiscal year; and such other information that the Commissioner of Banking and Insurance and the Department of Community Affairs may require. The initial and any subsequent refund for any year from a claim or loss retention trust account may be in any amount subject to the limitation that after the refund, the remaining net current surplus in the account from which the refund is made must equal or exceed the surplus retention requirement to be calculated as follows:
- A. *Fund* year paid losses shall be multiplied by the appropriate paid loss factor for the line of coverage and duration of maturity set forth in Exhibit E in the Appendix incorporated herein by reference;
  - B. *Fund* year unpaid claim reserves, excluding reserves for incurred but not reported claims, shall be multiplied by the appropriate unpaid claim factor for the line of coverage and duration of maturity set forth in Exhibit E in the Appendix incorporated herein by reference. Unpaid claim reserves, excluding reserves for incurred but not reported claims, shall be established at full value and not discounted.
  - C. The greater of the results from the calculation set forth in A. and B. above shall then be reduced by the amount of outstanding losses reported, including incurred but not reported claims, as certified by an Actuary. The result of this calculation, but not less than zero, shall be the surplus retention requirement for that *fund* year.
- 8.3 A full and final refund of net current surplus will not be allowed until all case reserves and all unpaid claim reserves are closed.
- 8.4 A refund for any fiscal year shall be paid only in proportion to the member's participation in the *fund* for such year. Payment of a refund on a previous year shall not be contingent on the member's continued membership in the *fund* after that year,
- 8.5 At the option of the member the refund may be retained by the *fund* and applied towards the member's next annual assessment.

- 8.6 A *fund* may seek approval from the Commissioner of Banking and Insurance and Department of Community Affairs to make inter year *fund* transfers from a claims or loss retention trust account from any year not sooner than twenty-four (24) months after the end of that year by submitting a written notification to the Department of Banking and Insurance and the Department of Community Affairs with appropriate documentation as set forth in 8.2. above at least thirty (30) days prior to the proposed transfer. If the Commissioner of Banking and Insurance and the Department of Community Affairs do not disapprove, in writing, the request within the thirty (30) day period, the request shall be deemed approved. The Commissioner of Banking and Insurance and Department of Community Affairs may also affirmatively approve the request prior to the expiration of the thirty (30) day period. The inter year *fund* transfer may be in any amount subject to the limitation that after the transfer, the remaining net current surplus in the account from which the transfer is made must equal or exceed the surplus retention requirement determined pursuant to 8.2. above for that account for the fiscal year. The membership for each fiscal year involving inter year *fund* transfers must be identical between fiscal years. The Commissioner of Banking and Insurance and Department of Community Affairs shall waive the identical membership requirement provided the *fund* demonstrates to the Department of Banking and Insurance and the Department of Community Affairs that it maintains records of each member's pro rata share of each claim or loss retention *fund* account, and that the transfer shall be made so that any potential dividend shall not be reduced for a member that did not participate in the year receiving the transfer.

**ARTICLE IX. EXCESS INSURANCE**

- 9.1 The *fund* shall maintain a contract or contracts of specific and aggregate excess insurance or reinsurance, unless otherwise provided by regulation.
- 9.2 No later than forty-five (45) days before the beginning of the fiscal year, the *fund* shall notify all members of changes in the coming year's excess insurance policies. The *fund* shall also notify the members of any changes in the policies, which occur during the year.
- 9.3 Certificates of excess insurance/reinsurance showing policy limits and other information shall be filed with each member and the Commissioner of Banking and Insurance and the Department of Community Affairs. Copies of all policies shall be provided to the members.

**ARTICLE X. INDIVIDUAL LOSS RESERVE FUNDS**

- 10.1 The *fund* shall require the participants to individually retain a specified amount of risk, potential liability or incurred loss as outlined in the risk management plan and/or operating procedures manual.
- 10.2 The participant shall provide for such liability or incurred loss:
- A. As a deductible to be charged to the operating expenses of the incurring Department or agency;
  - B. Through a separate item of appropriation for the loss year in its annual budget; or
  - C. Through the establishment of an insurance *fund* pursuant to *N.J.S.A. 40A:10-1 et seq.*
- 10.3 All claims will be adjusted by an approved claims servicing organization of the *fund*.

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**ARTICLE XI. TRUST ACCOUNTS, INVESTMENTS, & DISBURSEMENTS****11.1 Establishment of Trust Accounts:**

- A. A trust account will be set up for each type of insurance coverage offered by the *fund*. Each trust account will be separate of each other and may not be transferred to another trust account of the *fund*, except in accordance with N.J.A.C. 11:15-2.13 and 2.21.
- B. By resolution, the *fund* will designate public depositories for its monies pursuant to N.J.S.A. 40A:5-14.
- C. The *fund* shall set up a separate "trust fund" account from which monies shall be disbursed solely for the payment of claims, allocated claim expenses and excess insurance premiums for each line of coverage by *fund* year. Such accounts shall be designated as claims or loss retention *fund* accounts.
  - 1) Other than for claims, allocated claims expense, or excess insurance premiums, no transfers or withdrawals may be made from a claim or loss retention account without the prior written approval of the Commissioner of Banking and Insurance, or as otherwise permitted pursuant to N.J.A.C. 11:15-2.13.
- D. The *fund* shall also set up an administrative account to be utilized for payment of the *fund's* general operating expenses, loss prevention activities, data processing services, and general legal expenses. This account can include commingled contributions, subject to separate accounting of expenses by each type of coverage offered by the *fund*.

**11.2 Investments:** Investment shall be under direction of the Custodian of Funds according to the following:

- A. Account balances will be invested to obtain the maximum interest return practical. Investments will be in accordance with the *fund's* Cash Management Plan and consistent with the statutes and rules governing the investment of public funds by local governments re: N.J.S.A. 40A:10-10b.
- B. The investment and interest income earned by the investment of the assets of each claim or loss retention account will be credited to each such account.
- C. The investment and interest income earned by investment of the assets of the administrative account will be credited to that account.

**11.3 Disbursement :**

- A. Before any commitment or agreement to expend funds, the Custodian of Funds will certify the availability of funds to meet the commitment or agreement.
- B. All payments of monies must be approved by a majority vote of the *fund* Commissioners (or Executive Committee).
- C. Notwithstanding items A and B above, the *fund* may provide for the expeditious resolution of certain claims by designating the *fund's* Administrator or Claims Servicing Organization as a "certifying and approving officer" pursuant to

*N.J.S.A.* 40A:5-17. The *fund* may authorize the "certifying and approving officer" to approve for payment of any claims in an amount approved by the Commissioner of Banking and Insurance and the Department of Community Affairs in the Risk Management Plan.

- D. Upon approval, the certifying and approving officer shall certify the amount and particulars of such approved claims to the Custodian of Funds, directing that a check for payment be prepared.
- E. Each month, the certifying and approving officer will prepare a report of all claims approved since the last report, detailing the nature and the amount of the claim, the payee, the reasons supporting payment and any other pertinent information. This report will be reviewed and approved by the *fund* Commissioners (or Executive Committee) at the next regularly scheduled meeting.
- F. All requests for payment must be accompanied by a detailed bill of items or demand, specifying how the bill or demand is made up, with certification of the party claiming payment that it is correct, and shall be certified by an officer or duly designated agent or employee of the *fund*. In the case of claims or losses charged against any trust account, the *fund*'s Claims Servicing Organization will certify the claims correctness and validity.
- G. All claims will be paid by check. Checks will be signed by two persons designated by the *fund* Commissioners or Executive Committee.
- H. All claims or other disbursements approved for payment by the *fund* will be recorded in a claims register maintained by the Custodian of Funds.



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**ARTICLE XII. CONFLICT OF INTEREST**

- 12.1 No official or employee of a participant or any members of the family of such official or employee, or any business in which such official, employee or family member have a beneficial interest shall seek to obtain or participate in any contract entered into by the *fund* for administration, loss control, investment or depository services, insurance coverage, or any other service, commodity, or material without first fully disclosing in writing the nature of such interest, financial or otherwise, to the *fund* Commissioners to determine if the interest so disclosed constitutes an actual or potential conflict of such degree as to impair the ability of the officer, employee, family member or business to fully and impartially perform the duties required by the *fund*. If so, the officer, employee, family member or business will be prohibited from entering into such contract until the cause of such conflict is removed.
- 12.2 Any contract entered into between the *fund* and any individual, firm, corporation or agency which fails to disclose an actual or potential conflict situation shall be void.
- 12.3 There shall be no collusion or evidence of appearance of collusion, between any official or employee of the members or employees of the *fund* and any official or employee of any contractor, vendor, insurance company, bank, consultant, brokerage firm or any other profit making or non-profit firm attempting to solicit a contract with the *fund* or awarded a contract by the *fund*.
- 12.4 No Commissioner shall be an employee of the *fund*.

**ARTICLE XIII. VOLUNTARY DISSOLUTION OF THE FUND**

The *fund* may voluntarily dissolve or otherwise cease to do business, and distribute its assets to its members in accordance with the following requirements.

- 13.1 A majority of the *fund*'s members must vote in favor of a resolution to dissolve the *fund* and prepare a written plan of dissolution at a meeting duly called for such purposes.
- 13.2 The plan of dissolution shall provide for the payment of all unpaid losses of the *fund* and its members, including all incurred but not reported losses, as certified by the Actuary, before any assets of the *fund* or the trust fund accounts may be used for any other purposes.
- 13.3 Such plan of dissolution shall contain a statement of the *fund*'s current financial condition computed according to generally accepted accounting principles as attested to by an independent Certified Public Accountant.
- 13.4 The plan of dissolution, and such other information as may be required, shall be filed with and approved in writing by the Commissioner of Banking and Insurance and the Commissioner of the Department of Community Affairs.

**ARTICLE XIV. PROCEDURES GOVERNING LOSS ADJUSTMENT AND LEGAL FEES**

- 14.1 Registration of Claims: Upon receipt of initial notice of claim, whether by service of process, notice of claim or petition or otherwise, the Claims Servicing Organization shall cause each claim to be numbered, and to be included on a monthly report to the *fund* Commissioners (or Executive Committee). The monthly report shall set forth the name of the claimant, the nature of the claim, the type of insurance coverage claimed against, and to the extent known an approximate estimate of the amount of the potential loss.
- 14.2 Claims Response: Upon receipt of the initial notice of claim described above, and any other information available, the Claims Servicing Organization where appropriate, shall immediately forward the notice of claim to the *fund's* defense attorneys for initial contact, investigation, court action or other appropriate response.
- 14.3 Claims Acknowledgment and Initial Evaluation: Upon receipt of an assignment of claim handling, the Claims Servicing Organization, and where appropriate the defense attorneys, shall acknowledge receipt of the claims within thirty (30) days of receipt, submit a report giving their initial assessment of the merits and exposure represented by the claim and a summary of the actions taken to date in response to the claim.
- 14.4 Periodic Review of Claim Status: Each claim will be reviewed at intervals not greater than ninety (90) days as to their status. In particular, the *fund* Commissioners (or Executive Committee) will determine whether the investigation and defense of the claim is adequate, and the adequacy of the reserves set for the claim.
- 14.5 Notice of Settled Claims: Where permitted by the bylaws, and settlements have been concluded without action of the *fund* Commissioners (or Executive Committee), a complete report thereof as provided by the bylaws shall be furnished to the *fund* Commissioners (or Executive Committee).
- 14.6 Notice of Intended Settlement: Whenever an investigation indicates that prompt fair and equitable settlement of a claim is appropriate and possible, the Claims Servicing Organization shall submit to the *fund* Commissioner and Administrator for review at a *fund* Commissioners (or Executive Committee) meeting, a notice of recommended settlement. This notice shall be on forms approved by the *fund* Commissioners (or Executive Committee) and shall provide information about the claim, recommendations concerning the legal liability of the *fund*, a summary of investigative work concerning the merits of the claim, and the reasons underlying the recommended settlement.
- 14.7 Approval of Payments and Settlement: Whenever the *fund* makes any payment or settlement of any claim, a notation thereof identifying the claim, the amount paid and the reasons underlying the payment shall be approved by the *fund* Commissioners (or Executive Committee) and entered upon a ledger of claims paid.
- 14.8 Procedures Governing Legal Fees: The *fund* has established procedures to provide quality defense of claims and monitor the defense procedures and costs. These procedures include:
- A. A list of approved defense attorneys. The list will include attorneys with previous experience with workers' compensation and/or Title 59, and a fee structure considered to be reasonable shall be approved by the *fund* Commissioners or Executive Committee.

- B. The *fund* will monitor the activities of the defense attorneys. The *fund* Attorney may direct the amount of legal discovery in an effort to control costs. The Claims Servicing Organization, **in conjunction with the *Fund* Attorney**, will maintain control of all legal defense activity and experts.

**ARTICLE XV. COMPLAINT HANDLING PROCEDURE**

- 15.1 Whenever any interested party submits a complaint in writing to the *fund*, the Administrator, or any participant of the *fund*, a copy will be given promptly to the *fund* Commissioners (or Executive Committee) for consideration at its next regularly scheduled meeting.
- 15.2 At said meeting the *fund* Commissioners (or Executive Committee) shall consider the complaint, and by majority recorded vote take appropriate action.
- 15.3 The complaining party, and the *Commissioner* of the participant where the complaining party resides, if the complaining party is a resident of a participant shall receive written notice of the Commissioner's findings. The written notice to the complaining party may, where appropriate, include an opportunity for the complaining party to attend a meeting concerning the complaint before the *fund* Commissioners (or Executive Committee).
- 15.4 The *fund* shall keep a separate record of all complaints received and the disposition thereof.

**ARTICLE XVI. ARBITRATION**

- 16.1 Every controversy, dispute, difference, or claim between the *fund* and a local unit(s) of the *fund* shall be submitted to and settled by arbitration. This includes any dispute concerning whether insurance coverage may be owed by the *fund* to any employee, official, etc. of any local unit. Either the local unit or the *fund* must request arbitration for a given controversy within the applicable statute of limitations for such controversy. Such arbitration shall be conducted by a panel of three arbitrators, which shall consist of a *fund* Commissioner designated by the affected local unit(s) (which could include that unit's *fund* Commissioner), a *fund* Commissioner designated by the Executive Committee, and an individual, independent from and not affiliated with the *fund*, who shall be chosen by the aforesaid arbitrators from a list of individuals determined by the Executive Committee. The arbitration shall be conducted in accordance with procedures established by the Executive Committee. The arbitrator selected by the two *fund* Commissioner arbitrators shall be compensated for services in an amount mutually agreed to between the arbitrator and the Executive Committee. The local unit(s) and the *fund* shall bear their own costs in prosecuting/defending the arbitration and shall split the costs for the arbitrator(s) and the arbitration. Judgement upon the award rendered by majority vote of the panel may be entered in any court having jurisdiction thereof.

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**ARTICLE XVII. OTHER CONDITIONS**

- 17.1 Inspection and Audit: The *fund* shall be permitted but not obligated to inspect, at any reasonable time, the workplaces and operations of each participant covered by this agreement. Neither the right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the participant or others, to determine or warrant that such workplaces, operations, are safe or healthful, or are in compliance with any law rule or regulation or the bylaws.

The *fund* is permitted to examine and audit the participant's payroll records, general ledger, disbursements, vouchers, contracts, tax reports, and all other books, documents and records at any reasonable time as far as they might show or might tend to show or verify the amount of remuneration or other premium basis, that relate to the subject matter of this agreement.

- 17.2 Notice of Injury: When an injury occurs written notice shall be given by or on behalf of the participant to the *fund* or any of its authorized agents as soon as practicable. Such notice shall contain particulars sufficient to identify the participant and also reasonably obtainable information reflecting the time, place and circumstances of the injury, the names and addresses of the injured and of available witnesses. Such notice shall be consistent with the requirements imposed by law.

- 17.3 Notice of Claim or Suit: If claim is made or formal petition or a suit or other proceeding is brought against the participant, the participant shall immediately forward to the *fund* every demand, notice, summons or other process received by it or its representative.

- 17.4 Assistance and Cooperation of the Participant: The participant shall cooperate with the *fund*, and upon the *fund's* request shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits or proceedings.

- 17.5 Action Against the Fund: No action shall be against the *fund*, or trust account thereto, unless, as a condition precedent thereto, the participant shall have fully complied with all the terms of this agreement, nor until the amount of the participant's obligations to pay shall have been finally determined either by judgement against the participant after actual trial or by written agreement of the participant, the claimant, and the *fund*. Any person or organization or legal representative thereof who has secured such judgement or written agreement shall thereafter be entitled to recover under this agreement to the extent of the protection afforded under this agreement. Nothing contained in this agreement shall give any person or organization any right to join the *fund* as a party in any action against the participant to determine the participant's liability.

- 17.6 Subrogation: In the event of any payment under the agreement, the *fund* shall be subrogated to all rights of recovery therefore of the participant and any person entitled to the benefits of this agreement against any person or organization and the participant shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The participant shall do nothing after loss to prejudice such rights.

- 17.7 Conformance with Statute and Regulation: Since these provisions are based, in whole or in part, upon the applicable statutes and regulations of the State of New Jersey governing the *fund's* operations, in the event that the statute and/or regulations are altered such that they conflict with these bylaws or in any other way conflict with these bylaws, the provisions of the statute and the regulations shall control to the extent of such conflict.

These bylaws were approved by an appropriate resolution of the governing body of the Somerset County Joint Insurance Fund at its regularly schedule meeting held on \_\_\_\_\_, 2002, and a true copy of said Resolution has been forwarded to the Somerset County Joint Insurance Fund, c/o New Jersey Risk Managers and Consultants, Inc., Post Office Box 367, Somerville, New Jersey 08876.

Somerset County Joint Insurance Fund

By: \_\_\_\_\_