

**MERCER COUNTY INSURANCE FUND COMMISSION**  
**RULES AND REGULATIONS**

## **MERCER COUNTY INSURANCE FUND COMMISSION**

**640 South Broad Street  
Trenton, NJ 08650-0068**

### **Rules and Regulations Adopted 2/3/14**

**WHEREAS:** Article 3 of NJSA 40A:10-1 et seq. permits the county to establish an insurance commission so that the county and the local units associated with the county can achieve cost savings through the joint purchase or self-funding of these insurance: and

**WHEREAS:** On November 14, 2013 the Chosen Freeholders of the County of MERCER created an Insurance Commission:

**WHEREAS:** Article 3 of NJSA 40A:10-1 et seq. provides that the Insurance Commissioners are authorized to adopt rules and regulations for the operation of the insurance commission.

**NOW THEREFORE,** the Commissioners hereby adopt the following rules and regulations;

### **ARTICLE I - DEFINITIONS**

All terms used herein shall have the meaning consistent with the statutes and regulation then in effect. The definitions herein are for convenience.

**"ACTUARY"** means 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 loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries and who has seven years recent experience in loss reserving.

**"ACTUARY"** in the case of health insurance means a fellow in good standing of the Society of Actuaries or the Casualty Actuarial Society with at least three (3) years recent experience in health insurance pricing and reserving. Actuary in the case of life insurance means a fellow in good standing of the Society of Actuaries with at least three (3) years recent experience in life insurance pricing and reserving.

**"ADMINISTRATOR"** means a person, partnership, corporation or other legal entity engaged by the Commission to act as Executive Director to carry out the policies established by the Commissioners and to otherwise administer and provide day-to-day management of the Commission.

**“ALLOCATED CLAIMS EXPENSE”** means attorneys’ fees, expert witness fees (i.e. engineering, physicians, etc.), medical reports, professional photographers’ fees, police reports and other similar expenses. The exact definition of “allocated claims expense” or similar terms for any line of insurance coverage shall be the definition in the insurance policy issued by the Commission.

**“COMMISSION”** means the MERCER COUNTY INSURANCE FUND COMMISSION (hereinafter referred to as the Commission)

**“COMMISSION YEAR”** means the Commission’s fiscal year of January 1, 2014 through December 31, 2014.

**“COUNTY”** means the County of Mercer.

**“EMPLOYER’S LIABILITY”** means the legal liability of a public employer to pay damages because of bodily injury or death by accident or disease at any time resulting there from sustained by an employee arising out of and in the course of his employment by the public employer, which is not covered by a workers’ compensation law. The exact definition of “Employer’s Liability” or similar terms shall be the definition used in the insurance policy issued by the Commission.

**“EXCESS INSURANCE”** means insurance 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 or from any other entity authorized to provide said coverage in this state pursuant to law, covering losses in excess of an amount set forth in insurance contracts on a specific occurrence, or per accident or annual aggregate basis.

**“GENERAL LIABILITY”** means any and all liability which may be insured under the laws of the State of New Jersey, excluding workers’ compensation, and employer’s liability. The exact definition of a “general liability” or similar terms is the definition used in the insurance policy issued by the Commission.

**“HEALTH INSURANCE”** means health insurance as defined pursuant to N.J.S.A. 17B: 17-4; service benefits as provided by health service corporations, hospital service corporations or medical service corporations authorized to do business in this state, including basic health care services and/or supplemental health care services provided by health maintenance organizations, or dental care services provided by dental plan organizations and dental service corporations.

**“INCURRED CLAIMS”** means claims which occur during a Commission year including claims reported or paid during a later period. The exact definition of “incurred claims” or any similar term is the definition used in the excess insurance or reinsurance policy purchased by the Commission.

**“INDEMNITY AND TRUST AGREEMENT”** means a written contract signed by and duly adopted by the members of the Commission under which each agrees to jointly and

severally assume and discharge the liabilities of each and every party to such agreement arising from their participation in the Commission. The agreement shall specify the extent of the member's participation in the Commission with respect to the types of coverage to be provided by the Commission and shall include the duration of Commission membership which shall not exceed three years. The agreement shall also specify that the member has never defaulted on claims if self-insured and has not been canceled for non-payment of insurance premiums for a period of at least two years prior to application to the Commission.

**"LIFE INSURANCE"** means life insurance as defined pursuant to N.J.S.A. 17B:117-3

**"MANUAL PREMIUM"** means the premium computed according to the Experience Rating Plan provided for in the New Jersey Worker's Compensation and Employer's Liability Insurance Manual on file with the Commissioner and similar insurance industry rating plans for other lines of coverage.

**"MOTOR VEHICULAR AND EQUIPMENT LIABILITY"** means liability resulting from the use or operation of motor vehicles, equipment or apparatus owned by or controlled by the members or owned by or under the control of any subdivision thereof including its departments, boards, agencies or commissions. The exact definition of "motor vehicular and equipment liability" or any similar terms shall be the definition of the insurance policy issued by the Commission.

**"OCCURRENCE"** means a single event. The exact definition of "occurrence" or any similar term shall be the definition used in the insurance policy issued by the Commission.

**"PRODUCER"** means any person engaged in the business of an insurance agent, insurance broker, or insurance consultant as defined in N.J.S.A. 17:22 A-1 et seq.

**"PROPERTY DAMAGE"** means any loss or damage, however caused, to property including monies and securities, motor vehicles, equipment or apparatus owned by the member or owned by or under the control of any of its departments, boards, agencies, commissions, or other entities which the membership may provide coverage for. The exact definition of "property damage" or similar terms shall be the definition in the insurance policy issued by the Commission.

**"QUALIFIED LOCAL UNIT"** means the any entity governed by a board appointed by the County Executive or County Board of Freeholders as the case may be including but not limited to a county college, technical school, library, or county authority.

**"SERVICING ORGANIZATION"** means an individual, partnership, association, or corporation, other than the administrator, that has contracted with the Commission to provide, on the Commission's behalf, any function as designated by the Commissioners including, but not limited to, actuarial services, claims administration, cost containment services, loss prevention/safety engineering services, legal services, auditing services, financial services, compilation and maintenance of the Commission's underwriting file,

coordination and preparation of coverage documents, risk selection and pricing, excess insurance or reinsurance producer services, which include producer negotiations on behalf of the Commission for excess insurance or reinsurance from an insurer, member assessment and fee development, report preparation and such other duties as designated by the Commission.

**“SURPLUS”** means that amount of monies in a trust account that is in excess of all costs, earned investment income, refunds, incurred losses and loss adjustment expenses and incurred but not reported reserves including the associated loss adjustment expenses attributed to the Commission net of any recoverable per occurrence or aggregate excess insurance or reinsurance for a particular year.

**“WORKERS’ COMPENSATION”** means the provisions of N.J.S.A. 34:15-7 et seq.

## **ARTICLE II - MEMBERSHIP**

### **MEMBERSHIP APPLICATIONS:**

1. The governing body of a qualified local unit shall by resolution, agree to join the Commission. The resolution shall provide for execution of a written agreement specifically providing for acceptance of the Commission’s rules and regulations as approved and adopted by the Commissioners. The resolution shall also provide for the execution of an Indemnity and Trust agreement as defined in Article I.
2. Any qualified local unit seeking membership shall also submit an application for membership to the Commission on a form acceptable to the Commissioners. The application shall include the executed Indemnity and Trust agreement and the resolution required under Subsection 1 above.
3. An application may be approved by a majority vote of the Commissioners based on the following criteria:
  - a. The applicant’s claims history shows safety performance consistent with the Commission’s objectives and the applicant’s physical location and makeup indicates a prospective likelihood of satisfactory future claim performance.
  - b. The Commission has the administrative capability to absorb additional memberships without undue inconvenience or strain.
4. If a non-member is not approved for membership, the Commission shall set forth in writing the reasons for disapproval and send the reasons for disapproval to the non-member. The Commission shall retain a copy of all membership application disapproval’s for five years.

### **Membership Renewals:**

1. Members may renew their participation by execution of a new resolution to join the Commission ninety (90) days prior to the expiration of the term.
2. The Commissioners must act upon any renewal application no later than forty five (45) days prior to the expiration of the term period. Otherwise, the renewal application is automatically approved.
3. In order to deny a renewal application, the Commissioners shall find by majority vote that the applicant has failed to fulfill its responsibilities as a member or no longer meets the Commission's risk management or underwriting standards or other reasons approved by the Commissioners as reasons for termination.
4. If a member's renewal application is rejected, the Commission shall comply with the termination provisions as outlined below.
5. Non-renewal of a Commission member does not relieve the member of responsibility for claims incurred during its period of membership.

### **Termination and/or Withdrawal of Commission Members**

1. A member must remain in the Commission for the full term of membership unless earlier terminated by the Commissioners for non-payment of assessments or continued non-compliance after receiving written notice to comply with the Commission's rules and regulations, risk management or underwriting standards, or other reasons approved by the Commissioners as reasons for termination. However, a member shall not be deemed terminated until the Commission gives by registered mail to the member a written notice of its intention to terminate the member in thirty (30) days
2. A member that does not desire to continue as a member after the expiration of its membership term shall give written notice to the Commission of its intent ninety (90) days before the expiration of the term period.
3. A member that has been terminated or does not continue as a member of the Commission shall remain jointly and severally liable for claims incurred by the Commission and its members during the period of its membership, including, but not limited to being subject to and liable for supplemental assessments.

## ARTICLE III – ORGANIZATION

### **Commissioners:**

1. The (officer or the Board of Chosen Freeholders having the power to make appointments) shall appoint three officials of the County, to serve as Insurance Commissioners. The (officer or body having the power to make appointments) of member local units other than the county shall appoint one official, who may be a member of the governing body, to serve as a non-voting insurance commissioner.
2. The commissioners shall hold office for 2 years or for the remainder of their term of office as officials, whichever shall be less, and until their successors shall have been duly appointed and qualified. Vacancies in the office of Insurance Commissioners caused by any reason other than expiration of term as an official shall be filled for the unexpired term. Vacancies in the position of secretary shall be filled in the manner of the original appointment.
3. The Commissioners shall serve without compensation.
4. The Commissioners are hereby required, authorized and empowered to operate the Commission in accordance with these rules and regulations and appropriate state laws and regulations in the interests of the total membership of the Commission. The Commissioners shall have the following powers and authority:
  - a. Employ necessary clerical assistants, whose compensation shall be fixed and paid by the governing body of the local unit in the same manner as is that of other employees of the local unit;
  - b. Invest the funds and all additions and accretions thereto in compliance with New Jersey laws and regulations, as they shall deem best suited for the purposes of this article;
  - c. Adopt rules and regulations for the control and investment of the funds;
  - d. Keep on hand at all times sufficient money, or have the same invested in such securities as can be immediately sold for cash, for the payment of losses to any buildings or property of the local unit or of a county college which participates in the Commission pursuant to P.L. 1988, c. 144 (C. 18A:64A-25.40 et al.) or of a county vocational school which participates in the commission pursuant to P.L. 1988, c. 143 (C. 18A:18B-8 et al.), or liability resulting from the operation of publicly owned motor vehicles, equipment or apparatus;
  - e. Fix reasonable rates of premium for all insurance carried by the insurance Commission and shall affect all insurance in the insurance Commission or

with any insurance company or companies authorized to do business in this State;

- f. Premiums for insurance, whether carried in the Commission insurance fund or placed with insurance companies, shall be paid to the Commission by the board, commission, department, committee or officer having charge or control of the property insured;
- g. All insurance upon property owned or controlled by the county, or any of its departments, boards, agencies or commissions, or by a participating local unit including, but not limited to a board of education of a participating county vocational school or by a board of trustees of a participating county college shall be placed and effected by the Commissioners;
- h. Each commissioner shall have one vote.

#### **Officers:**

1. As soon as possible after the beginning of each Commission year, the Commissioners shall meet to elect the following officers of the Commission from its own membership. Commission officers shall serve until January 1st of the following year, or until a successor is duly elected and qualified.
  - a. **Chairperson:** The Chairperson shall preside at all meetings of the Commissioners and shall perform such other duties provided for in these rules and regulations and the laws and regulations of the State of New Jersey.
  - b. **Vice-Chairperson:** The Vice-Chairperson shall serve as Acting Chairperson in the absence of the Chairperson, and shall perform such other duties as provided for in these rules and regulations and the laws and regulations of the state of New Jersey.
2. In the event of a vacancy in any of the officer positions caused by other than the expiration of the term of office, the Board of Chosen Freeholders shall appoint a commissioner to fill the vacancy for the unexpired term.
3. Any officer can be removed with cause at any time by the Board of Chosen Freeholders by resolution.



**Secretary:**

1. The Board of Chosen Freeholders shall appoint a person to serve as secretary to the Insurance Commission. The salary of the secretary shall be set by resolution, as authorized by the Commission.
2. The Secretary shall:
  - a. Coordinate the Commission's meeting agenda, minutes, elections, contracts, and maintain the Commission's official records and office.
  - b. Perform such other duties as provided for by the Commissioners, these rules and regulations, and the laws and regulations of the State of New Jersey.

**Commission Professionals:**

As soon as possible after the beginning of each year, the Commissioners shall meet and select persons to serve in the following professional positions. No professional nor any employee, officer or director, or beneficial owner thereof, shall be a Commissioner. All professionals shall be retained pursuant to the "Local Public Contracts Law."

1. **Treasurer:**

The Treasurer shall be a Certified County Finance Officer and have the following duties and responsibilities:

- a. Custodian of the Commission's assets and shall maintain the various trust funds.
- b. Approval of all receipts, disbursements, and financial records.
- c. Draft the cash management plan and invest all balances.
- d. Ascertain availability of sufficient unencumbered funds in any account to fully pay all charges or commitments prior to any payment or commitment.
- e. The treasurer shall perform such other duties as provided for by the Commissioners, these rules and regulations and in the laws and regulations of the State of New Jersey.
- f. The treasurer shall be covered by a fidelity bond protecting the Commission's assets in a form and amount to be determined annually by the commissioners. Said bond to be paid for by the Commission.

2. **Executive Director/Administrator:**

- a. The Administrator shall serve as Executive Director of the Commission and shall be a licensed New Jersey Insurance Producer who shall be experienced in risk management matters and self-funded entities.
- b. The Administrator shall have the following duties and responsibilities:
  - i) Carry out the policies established by the commissioners and to otherwise supervise the management of the Commission.
  - ii) Advise the commissioners on risk management matters and shall prepare a draft Risk Management Plan.
  - iii) Prepare the Commission's budget, compile and bill assessments.
  - iv) Maintain underwriting files, secure insurance and excess insurance as authorized by the Commission and prepare new members submissions for review of the commissioners.
  - v) Prepare draft requests for proposals for services to be provided by servicing organizations and monitor the performance of the service companies.
  - vi) Prepare filing required by state regulations.
  - vii) Coordinate in conjunction with the Commission's secretary the meeting agenda, minutes, elections, contracts, and maintain the Commission's official records and office.
  - viii) Maintain the Commission's general ledger, accounts payable and accounts receivable function.
  - ix) Perform such other duties as provided for by the Commissioners, these rules and regulations, and the laws and regulations of the State of New Jersey.
- c. The Administrator shall assume overall executive responsibility for the operations of the Commission except that the Administrator shall not be responsible for the errors and omissions of any other servicing organization except as to generally monitor the compliance of said organization with the directives of the Commissioners, its Service Provider contract, or the applicable statutes and regulations as to the form and timeliness of said undertaking. For example, the Executive Director shall be responsible to verify the issuance of excess or

reinsurance policies, and the timely receipt of said policies by the Commission.

- d. The Administrator shall be bonded in a form and amount acceptable to the Commissioner. The Administrator shall also be covered by Errors and Omissions insurance, said coverage is to be paid by the Commission.

3. **Auditor:**

The auditor shall be an independent Certified Public Accountant (CPA) or a registered municipal accountant (RMA) who has evidenced the ability and experience to properly examine an insurance commission. The auditor shall conduct the annual audit of the Commission and shall perform such other duties as provided for by the Commissioners, these rules and regulations and the laws and regulations of the State of New Jersey.

4. **Attorney:**

- a. The Commission attorney shall be admitted to the New Jersey Bar and shall provide advice to the Commission on legal matters such as advising the commissioners of their obligations and responsibilities under Article 3 of NJSA 40A:10-1 et seq , these rules and regulations and other pertinent law such as the Open Public Meetings Act.
- b. The attorney shall have the following responsibilities:
  - i) The attorney shall advise the Commission as to the appropriateness of claim settlements recommended by the Claims Administrator.
  - ii) The attorney shall advise the commissioners on the selection of counsel to represent the Commission Members in the defense of claims. The Commission attorney may also provide representation concerning incidental aspects of claim matters such as motions where it is more expeditious, cost effective or otherwise to do so. However, the attorney or any member of the attorney's law firm shall not defend claims which are the responsibility of the Commission without the authorization of the Commissioners.
  - iii) The attorney shall perform such other duties as provided for by the Commissioners, these rules and regulations and the laws and regulations of the State of New Jersey.

5. **Actuary:**

The actuary shall certify the actuarial soundness of the Commission and shall report to the Commissioners in a manner and at such times established by them, and shall provide such actuarial reports as required by the Department. The actuary shall certify claim reserves, reserves for "Incurred but Not Reported" (IBNR) losses, and unearned assessments and shall comment on the adequacy of the budget.

6. All Commission professionals shall be retained on a contractual basis which shall be approved by the Commissioners.
7. Commission Professionals shall be compensated for their services pursuant to written fee guidelines submitted annually and approved by a majority of the Commissioners. The written fee schedule shall be part of the official contract.

**Servicing Organizations:**

1. The Commission may contract to have the following services performed:
  - a. Actuarial services
  - b. Claims Administration
  - c. Cost containment services
  - d. Loss prevention/safety engineering services
  - e. Legal services
  - f. Auditing services
  - g. Financial services
  - h. Compilation and maintenance of the Commission's underwriting file
  - i. Coordination and preparation of coverage documents
  - j. Risk selection and pricing
  - k. Excess insurance or reinsurance producer services
  - l. Member assessment and fee development
  - m. Report preparation
  - n. Other duties as designated by the Commission
2. The Commission may at its option contract for these services from different servicing organizations.
3. a.) No servicing organization of the Commission or their employees, officers or directors shall have either a direct or indirect financial interest in the administrator of the Commission or be an employee, officer or director of the administrator unless notice of such interest has been provided to the Commissioners and members.

- b.) No administrator of the Commission, or their employees, officers or directors shall be an employee, officer or director of, or have either a direct or indirect financial interest in, a servicing organization of the Commission, or the insurance producer that may be appointed by that Commission unless notice of such interest has been provided to the Commissioners and members.
- c.) Any employee, officer or director of the administrator or servicing organization shall disclose to the Commissioners, any direct or indirect financial interest such employee, officer or director has in any other administrator, servicing organization or insurance producer.
4. Each service contract shall include a clause stating “unless the Commissioners otherwise permit, the servicing organization shall handle to its conclusion all claims and other obligations incurred during the contract period.”
5. Each Servicing Organization shall provide a surety bond and Errors and Omissions coverage if required by law, in a form and amount acceptable to the Commissioner.
6. All officers, employees and agents, including the Administrator and Servicing Organization of the Commission, on the final day of their contract or employment shall surrender and deliver to their successors all accounts, funds, property, records, books and any other material relating to their contract or employment, or if no successor has been designated, delivery shall be made to the Administrator or Commission Chairperson.

#### **Indemnification of Officers and Employees:**

1. The Administrator, Claims Service Provider(s), Producer, Risk Management Consultant(s) and such others as are required by regulation to do so, shall provide Errors and Omissions coverage in a form satisfactory to the Commissioner. The Commissioners may also require other professionals to provide evidence of Errors and Omissions coverage, and any other coverage as a requirement of their contract.
2. Except to the extent covered by Errors and Omissions insurance as may be required, as set forth above, the Commission shall indemnify and defend any past, present or future Commissioner, and may indemnify such other officials or professionals or service providers as the Commissioners determine, for claims arising from an act or omission of such Commissioner, official or employee within the scope of the performance of such individual's duties as Commissioner, officials, professional or employee within the scope of the performance of such individual's duties as Commissioner, official, professional or employee. Such indemnification shall include reasonable cost and expenses incurred in defending such claims. Nothing contained herein shall require the Commission to pay punitive damages or exemplary damages or damages arising

from the commission of a crime by such an individual and the Commission shall not be required to provide for the defense or indemnification of such an individual when the act or omission which caused the injury was the result of actual fraud, malice, gross negligence or willful misconduct of such individual or in the event of a claim against such an individual by the State of New Jersey or if such Commissioner, official, professional or employee is either covered, or required to be covered by errors and Omissions liability insurance. The determination as to whether an individual's conduct falls within any of the above exceptions shall be made by the Commissioners. Nothing herein contained is intended to shield omission or wrongdoing which would not customarily be covered by Errors and Omissions insurance if same had been required of said employee or appointed official.

3. A present, past or future Commissioner, official, professional or employee of the Commission shall not be entitled to a defense or indemnification from the Commission unless:
  - a. Within ten (10) calendar days of the time he or she is served with the summons, complaint, process, notice or pleading, he or she delivers the original or exact copy to the Commission Chairman with a copy to the Commission attorney, together with a request that the Commission provide for his or her defense; and
  - b. In the event the Commission provides a defense or indemnification, he or she cooperates in the preparation and presentation of the defense with the attorney selected to defend the case; and
  - c. Except in those instances where a conflict of interest exists, as determined by an attorney selected by the Commission to handle such matters, the past, present or future Commissioner, official, professional or employee shall agree that the Commission and its counsel shall have exclusive control over the handling of the litigation.
4. The foregoing right of indemnification shall not be exclusive of any other rights to which any Commissioner, official, professional or employee may be entitled as a matter of law or which may be lawfully granted to him or her; and the right to indemnification hereby granted by this Commission shall be in addition to and not in restriction or limitation of any other privilege or power which the Commission may lawfully exercise with respect to the indemnification or reimbursement of a Commissioner, official, professional or employee; except that in no event shall a Commissioner, official, professional or employee receive compensation in excess of the full amount of a claim and reasonable costs and expense incurred in defending such claim.

5. Expenses incurred by any Commissioner, official, professional or employee in defending an action, suit or proceeding may be paid by the Commission in advance of final determination of such action, suit or proceeding as authorized by the Commission in a specific case upon receipt of an undertaking by or on behalf of such member or officer to repay such amount in the event of an ultimate determination that his or her conduct was such as to fall outside the scope of coverage under this indemnification provision.

#### **Advisory Committees:**

1. From time to time, the Commission Chairperson may establish advisory committees and may appoint any individual to serve on these committees.

2. Loss Prevention Committee:

- a. Membership: Each member shall appoint one of its management employees to serve as the safety coordinator, for the member. The safety coordinator shall serve as the representative of the member on the Commission's Safety Committee. The member shall also designate a management employee to serve as alternate safety coordinator whenever the safety coordinator is unable to serve. The safety coordinator and the alternate shall serve at the pleasure of the member and shall perform those duties specified in the Commission's Loss Control Program.

- b. The Commission's safety committee shall consist of the Commission's safety director and the safety coordinator from each member. The alternate safety coordinator from each member may also attend meetings of the safety committee.

- c. At the beginning of each Commission year the safety committee shall select a chairperson to preside over meetings of the committee.

- d. Duties: The safety committee shall meet at least quarterly and shall have the following duties or responsibilities.

- i) Confer with the Commission's safety director to develop a comprehensive safety and loss control program.

- ii) Monitor all accident trends and frequency of accident in order to identify problem areas and local unit activities and programs requiring more frequent loss control surveys and evaluations.

- iii) Assist in the development of a safety educational program that will include visual aids, equipment, etc.

iv) Make recommendations to the Commission for policies that will implement a comprehensive safety and loss control program for the Commission and the member local units.

v) Perform such other duties that are assigned by the Commission Commissioners or required by law.

#### **Risk Managers:**

1. The Commission shall appoint an Insurance Producer as a Risk Management Consultant who shall not be a Commissioner.

2. The Risk Management Consultant's specific responsibilities shall include, but not be limited to:

a.) Evaluation of the member's exposures.

b.) Explanation of the various coverages available from the Commission and assisting the member in the selection of proper coverage.

c.) Preparation of applications, statements of values, etc. required by the Commission.

d.) Review of the member's assessment and assisting in the preparation of the local unit's insurance budget.

e.) Assisting in the claims settlement process.

f.) Review of losses and engineering reports and providing assistance to the member's safety committee.

3. The Risk Management Consultant(s) shall be appointed in conformance with the Public Contracts Law.

### **ARTICLE IV - OPERATION OF THE COMMISSION**

#### **General Operation:**

1. The Commission shall be subject to and operate in compliance with the provisions of the Local Fiscal Affairs Law (N.J.S.A. 40A:5-1 et seq.), the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) and regulations (including but not limited to N.J.A.C. 5:34) and the various statutes authorizing the investment of public funds..



2. The Commission shall be considered a local unit for purposes of the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) and shall be governed by the provisions of that law in the purchase of any goods, materials, supplies and services.
3. The Commission shall be operated with sufficient aggregate financial strength and liquidity to assure that all obligations will be promptly met. The Commission shall prepare a financial statement on a form acceptable to the Commissioners showing the financial ability of the Commission to meet its obligations.
4. All monies, assessments, funds and other assets of the Commission shall be under the exclusive control of the Commissioners.
6. The Commission shall adopt a resolution designating a public depository or depositories for its monies pursuant to N.J.S.A. 40A:5-14. The resolution shall also designate a person to be custodian of funds for the Commission and shall authorize the custodian to invest temporarily free balances of any claim or administrative accounts periodically as authorized by law. The custodian of funds shall possess a Certified Municipal Finance Officer certificate issued pursuant to N.J.S.A. 40A:9-140.2. The custodian shall quarterly report to the Commissioners on investment and interest income.
6. All books, records, files, documents and equipment of the insurance Commission are the property of the Commission and shall be retained by the Commission Administrator at the discretion of the Commissioners in accordance with a record retention program adopted by the Commission. All books, records, files and documents of the Commission shall be retained for not less than five years. The Commission shall also retain claims information

#### **Risk Management Plan:**

The Commissioners shall prepare or cause to be prepared, a Risk Management Plan for the Commission including all information detailed in N.J.A.C. 11:15-2.6(e) and or 11:15-3.6(d) as appropriate. The Risk Management Plan shall be adopted and approved by resolution of the Commissioners.

#### **Financial Statement and Reports:**

1. The Commissioners shall provide its members with periodic reports covering the activities and status of the Commission for the reporting period. The reports shall be made at least quarterly, and may be made more frequently at the direction of the Commissioners, and shall include, but not be limited to, the minutes, the Administrator's report, the Treasurer's report, and a summation of

Commission activity, including comments on previously reported claims and newly reported claims, and any other information required by the Commissioners. The Treasurer's report shall include budget status, account balances, claims information, investment status, earnings and the costs of making investments.

2. A sworn annual report in a form prescribed by the Commissioners shall be prepared by the Commission, and be made available to each Commission member not later than one hundred eighty (180) days after the end of each Commission year. The report shall be accompanied by an annual audited statement of the financial condition of the Commission prepared by the Auditor, and performed in accordance with generally accepted accounting principles.

### **Coverages:**

The Commission may offer coverage to its members for the following purposes:

1. To insure against any loss or damage however caused to any property, motor vehicles, equipment or apparatus owned by it, or owned by or under the control of any of its departments, boards, agencies or commissions;
2. To insure against liability resulting from the use or operation of motor vehicles, equipment or apparatus owned by or controlled by it, or owned by or under the control of any of its departments, boards, agencies or commissions;
3. To insure against liability for its negligence and that of its officers, employees and servants, whether or not compensated or part-time, who are authorized to perform any act or services, but not including an independent contractor within the limitations of the "New Jersey Tort Claims Act" (N.J.S.59:1-1 et seq.);
4. To insure against any loss or damage from liability as established by chapter 15 of Title 34 of the Revised Statutes;
5. To provide contributory or noncontributory self-funded, or partially self-funded, health benefits to employees or their dependents, or both, in accordance with rules and regulations of the Director of the Division of Local Government Services in the Department of Community Affairs. The establishment and operation of a Commission to provide health benefits by a local unit prior to the effective date of P.L.2000, c.126 (C.52:13H-21 et al.) is hereby validated; however, any such health benefits Commission shall comply with all rules and regulations promulgated by the director pursuant to this subsection.

### **Services:**

The Commission may also provide its members with safety and loss control programs and may jointly purchase or lease, on behalf of its membership, safety and loss control services, training, equipment and apparatus, in connection with the provision of the coverage set forth above.

## **ARTICLE V - MEETINGS AND RULES OF ORDER**

### **1. Annual Organization Meeting:**

On or before January 15<sup>th</sup> the beginning of the Commission year, the Commissioners shall meet to elect officers and to appoint professionals and servicing organizations and conduct such other business as is necessary. The time and place for the meeting shall be established by the Chairperson, and the Secretary shall send written notice to the clerks of participating local units at least two (2) weeks in advance.

### **2. Business Meetings:**

The Commissioners shall establish an annual schedule of meetings to conduct the business of the Commission.

### **3. Special Meetings:**

The Chairperson or two (2) Commissioners may call a special meeting by notifying the Commission's Secretary at least three (3) days in advance. The Secretary shall notify the Commissioners by telephone.

### **4. Quorum:**

The quorum for a meeting of Commissioners shall be a majority of the regular Commissioners.

### **5. Conduct Of Meetings:**

- a. All meetings of the Commission shall be subject to the rules and regulations of the Open Public Meetings Act. (N.J.S.A. 10:4-6 et.seq.)
- b. Unless otherwise provided in these rules and regulations, 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. The Secretary shall cause written minutes to be maintained of all Commission meetings, and shall cause the minutes to be made available to the Commissioner upon request. In addition, the Secretary shall tape record open sessions for clarity in preparing the minutes. Said meeting tape shall be maintained for 180 days or until the meeting minutes are approved, whichever occurs first. There shall be no tape recording of closed session meetings.

## **6. Amendments to the Rules and Regulations**

- a. Any commissioner may propose an amendment to the bylaws by filing the proposed amendment in writing with the Secretary.
  - b. Upon receipt of a proposed amendment, the Secretary shall notify the Chairperson who shall schedule a hearing to be held not more than forty-five (45) days from the date the amendment was filed. The Secretary shall notify in writing all Commissioners of the hearing date and shall send all Commissioners and members a copy of the proposed amendment. Notice shall be given to the Freeholder Director and County Administrator.
3. The amendment may be adopted by the commissioners upon the completion of the hearing.

## **ARTICLE VI - BUDGETS**

A. On or before November 15 of each year, the Commission shall prepare the budget for the upcoming fiscal year. The budget shall identify the proposed items and amounts of expenditure for its operations, the anticipated amounts and sources of assessments and other income to be received during the fiscal year and the status of the self insurance or loss retention accounts. The budget shall be prepared on a basis that does not recognize investment income or discounting of claim reserves, but recognizes all anticipated or forecasted losses and administrative expenses associated with that fiscal year.

B. A copy of the Commission's proposed budget shall be made available to each member at least two (2) weeks prior to the time scheduled for its adoption. No budget shall be adopted until a hearing has been held in accordance with N.J.S.A. 40A:4-1 et. seq. giving all members the opportunity to present comments or objections.

C. Not later than December 1st of each year the Commissioners shall adopt by majority vote the budget for the Commission's operation for the coming fiscal year.

E. An adopted budget may be amended by majority vote of Commissioners.

## **ARTICLE VII - ASSESSMENTS**

### **Annual Assessment**

1. In November of each year, the Executive Director/Administrator shall compute each member's assessments for the upcoming Commission year, which shall consist of an amount allocated for the administrative account plus specific assessment to establish and/or replenish the claim or loss retention trust fund account for each type of coverage provided by the Commission and in which such member participates.

2. The annual assessment of each participating local unit shall be its pro rata share of the Commission's budget for the upcoming year for each line of coverage provided to the member.

3. The calculation of pro rata shares shall be based on each member's manual premium by Commission year for that line of coverage. To the extent possible, the Commission shall use experience modification formulas in computing manual premiums. Unless otherwise approved by the Commissioners, the assessment for Worker's Compensation and Employer's Liability shall be based upon the experience rating plan provided for in the New Jersey Worker's Compensation and Employer's Liability Insurance Manual on file with the Commissioner of Banking and Insurance. The Commissioners may also adopt a capping formula which limits the increase in any member's assessment to the Commission-wide average increase plus a percentage established by the Commissioners.

4. The total amount of each member's annual assessment shall be certified by majority vote of the Commissioners to the governing body of each participating local unit at least one (1) month prior to the beginning of the next fiscal year.

5. The annual assessment shall be paid to the Commission in installments, to be determined by the Commissioners.

6. The Treasurer shall deposit each member's assessment into the appropriate accounts, including the administrative account and the claim or loss retention Trust Fund account.

7. If a member joins the Commission or elects to participate in a line of coverage after the start of the Commission year, such member's assessments and supplemental assessments shall be reduced in proportion to that part of the year which had elapsed.

#### **Supplemental Assessments:**

1. The Commissioners shall by majority vote levy upon the member local units additional assessments wherever needed to supplement the Commission's claim, loss retention or administrative accounts to assure the payment of the Commission's obligations.

a. All supplemental assessments shall be charged to the members by applicable Commission year, and shall be apportioned by that year's assessments for that line of coverage.

b. All members shall be given at least thirty (30) days advance written notice of the Commission's intention to charge an additional assessment.

c. Members shall have thirty (30) days to pay the Commission from the due date established by the Commissioners at the time any supplemental assessment is adopted. Whenever possible, the due date shall be no sooner than the beginning of the Commission's next fiscal year.

#### **Insolvency And/Or Bankruptcy Of Commission Members:**

The insolvency or bankruptcy of a member does not release the Commission, or any other member, of joint and several liability for the payment of any claim incurred by the member during the period of its membership, including, but not limited to, being subject to and liable for supplemental assessments.

#### **ARTICLE VIII - REFUNDS**

- A. Any monies for a Commission 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 Commission.
- B. A refund for any fiscal year shall be paid only in proportion to the member's participation in the Commission for such year. Payment of a refund shall not be contingent on the member's continued membership in the Commission.

- C. The Commission may apply a refund to any arrearage owed by the member to the Commission. Otherwise, at the option of the member, the refund may be retained by the Commission and applied towards the member's next annual assessment.

## **ARTICLE IX - TRUST FUND ACCOUNTS, INVESTMENTS AND DISBURSEMENTS**

### **Establishment of Trust Fund Accounts**

1. By resolution, the Commission shall designate a public depository or depositories for its monies pursuant to N.J.S.A. 40A:5-14. The resolution shall also designate a person to be custodian of funds for the Commission and shall authorize the custodian to invest temporarily free balances of any claim or administrative accounts periodically as authorized by law. The custodian shall report to the commission quarterly on interest and interest/income
2. The Commission shall establish a separate Trust Fund Account from which monies shall be disbursed solely for the payment of claims, allocated claim expenses and excess insurance or reinsurance premiums designated as the Claims or Loss Retention Fund Account.
  - a. 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 approval of the commissioners.
  - b. The Commission shall maintain accounting records allocating all income, disbursements, and assets in the Claims account by line of coverage and by Commission year. Accounting records for closed Commission year(s) shall be allocated by member. Accounting records for loss fund contingency or excess loss contingency shall also be allocated by member.
3. The Commission shall also establish an administrative account which shall be utilized for payment of the Commission's general operating expenses, loss prevention activities, data processing services, and general legal expenses. The Commission shall maintain accounting records for the administrative account per 2(b) above.

### **Investments**

1. The balance of any account shall be invested to obtain the maximum interest return practical. All investments shall be in accordance with the Commission's cash management plan and consistent with the statutes and rules governing the investment of public funds by local governments and pursuant to N.J.S.A. 40A:10-10b.

2. The investment and interest income earned by the investment of the assets of each claim or loss retention account shall be credited to each account.
3. The investment and interest income earned by investment of the assets of the administrative account shall be credited to that account.

### **Disbursements**

1. Prior to any commitment or agreement requiring the expenditure of funds, the custodian of the Commission's assets shall certify as to the availability of sufficient unencumbered funds to fully pay all charges or commitments to be accepted.
2. All disbursements, payments of claims or expenditure of funds must be approved by a majority vote of the Commissioners.
3. Notwithstanding numbers 1 and 2 above, the Commission may provide for the expedient resolution of certain claims by designating the Commission's Administrator or service organization as a "certifying and approving officer" pursuant to N.J.S.A. 40A:5-17. The Commission may authorize the certifying and approving officer to approve for payment any specified claims in an amount not to exceed an amount approved by the Commissioner in the Plan of Risk Management. The Commission shall establish such other procedures and restrictions on the exercise of this authority as the Commission deems appropriate.
4. Upon approval, the certifying and approving officer shall certify the amount and particulars of such approved claims to the custodian of the Commission's assets, directing that a check for payment be prepared.
5. Each month, the certifying and approving officer shall 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 shall be reviewed and approved or rejected by vote of the Commissioners at their next regularly scheduled meeting. If any payment is not approved, appropriate action shall be taken.
6. All requests for payments must be accompanied by a detailed bill of items or demand, specifying particularly how the bill or demand is made up, with the 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 Commission having knowledge of the facts that the goods have been received by, or the services rendered to the Commission. In the case of claims or losses to be charged against any loss fund, the Commission's claims administrator shall certify as to the claims correctness and validity.



7. All claims shall be paid by check. The checks shall be signed by two persons so designated by the Commissioners. Payment of claims may be made by wire transfer.

8. All claims or other disbursements approved for payment by the Commission shall be recorded in a claims register maintained by the custodian of the Commission's assets.

#### **ARTICLE X - CONFLICT OF INTEREST**

- A. All officials or employees of a member local unit or any members of the family of such officials or employees shall comply with N.J.S.A. 40A: 22.1 et. seq. (The "Local Government Ethics Law").

#### **ARTICLE XI - VOLUNTARY DISSOLUTION OF THE COMMISSION**

- A. If the Commissioners deem it in the best interest of the members to dissolve the Commission, they shall by majority vote direct that a written Plan of Dissolution be prepared.
- B. The Plan of Dissolution must provide for the payment of all unexpired losses of the Commission and its members, including all incurred but not reported losses, as certified by an actuary, before any assets of the Commission or the trust fund accounts may be used for any other purpose.
- C. Upon completion of the plan, the Chairperson shall call a general meeting of all Commissioners who shall review the plan and make any appropriate amendments. By majority vote, the Commissioners may recommend to the County that the Commission be dissolved in accordance with the Plan of Dissolution.
- D. The MERCER County Board of Freeholders must by resolution vote to accept the Plan of Dissolution in order to dissolve the Commission.
- E. Such Plan of Dissolution shall contain a statement of the Commission's current financial condition computed both on a statutory basis and according to generally accepted accounting principles as attested to by an independent certified accountant.

## **ARTICLE XII - CLAIMS HANDLING PROCEDURE**

### **CLAIMS HANDLING PROCEDURE (HEALTH INSURANCE)**

- A. Compliance: The Commission shall comply with the requirements of N.J.S.A. 17B:30-13.1 and 13.2 and N.J.A.C. 11:2-17 and N.J.A.C. 11:15-3.22.
- B. Registration of Claims: Covered individuals shall submit claims to the Third Party Claims Administrator (TPA) retained by the Commission. Each covered employee shall have an identification card, which contains the name and telephone number of the TPA. Claim reporting forms shall be made available to each participant.
- C. Claims Response: Upon receipt of the initial notice of claim, the TPA shall process the information in the following manner:
  - 1. Validate that the person has coverage.
  - 2. Determine if claim is eligible.
  - 3. Calculate the amount payable based upon the plan or benefits deductible, coinsurance, any cost containment features in the plan, and coordination of benefits (COB) factors.
  - 4. Pay valid claims or issue notice of rejection.
  - 5. If a notice of rejection is issued, the reason for said rejection shall be stated thereon.
- D. Periodic Review of Pending Claims: All pending claims will be reviewed not less than monthly. The TPA shall submit a report to the Commission not less than quarterly.
- E. Approval of Payments: The Commission shall specify in the contract the TPA's claims payment authority.
- F. Confidentiality:
  - 1. The complaint handling procedure shall provide for the confidentiality of the claimant's identity as required by N.J.A.C. 11:15-3.22.; All Employee claims information is privileged and confidential and shall not be included as a part of any open public record.
  - 2. Commissioners and the officials of the member local unit shall not have access to any employee claim information which reveals the identity of any individual plan participant.
  - 3. All claims are to be filed, and all inquiries are to be handled, directly with the Third Party Administrator. All employees of the Third Party Administrator shall execute a non-disclosure statement to protect the identity of the plan participants.

3. If the plan participant is dissatisfied with the Executive Committee's determination, the plan participant may appeal this determination to the independent appeal organization designated by the Commission annually for a non-binding determination pursuant to fair, informal procedures adopted from time to time.
4. If the plan participant is dissatisfied with the determination of the independent appeal agency, the plan participant may exercise any remedies provided by law.

## **CLAIMS HANDLING (OTHER THAN HEALTH CLAIMS)**

### **Claims Reporting:**

Upon receipt of the initial notice of a claim, the member shall immediately forward the notice of claim and any other information available to the claims administrator and, where appropriate, to the Commission's attorney for initial contact, investigation, court actions or other appropriate response.

### **Registration Of Claims:**

Upon receipt of initial notice of claim, whether by service of process, notice of claim or petition or otherwise, the claims administrator shall cause each claim to be numbered, and to be included on a monthly report to the Executive Director. The monthly report shall set forth the name of the claimant, the nature of the claim, the type insurance coverage claimed against, and to the extent known, and an approximate estimate of the magnitude of the potential loss. This report shall be considered confidential.

### **Notice Of Request for Settlement Authority:**

Whenever an investigation discloses that the prompt, fair and equitable settlement of a claim is appropriate and possible, and such settlement exceeds the authority of the claims administrator, the claims administrator shall submit to the Commission administrator for review at a Commissioners meeting, a request for settlement authority. This notice shall be on forms approved by the Commissioners and shall set forth identifying information concerning the claim, recommendations where appropriate concerning the legal liability of the Commission, a summary of investigative work concerning the merits of the claim and the reasons underlying the recommended settlement authority.

### **Approval Of Payments And Settlements:**

Whenever the Commission shall make any payment or settlement of any claim, a notation thereof identifying the claim, and the amount paid shall be entered upon a ledger of claims paid.

#### **ARTICLE XIV - COMPLAINT HANDLING PROCEDURE**

- A. Whenever any interested party shall submit a complaint in writing to the Commission, the executive director/administrator, or any member of the Commission, a copy thereof shall be forthwith communicated to the Commissioners for consideration at its next regularly scheduled meeting.
- B. At said meeting the Commissioners shall consider the complaint, and by recorded vote take such action as might be appropriate.
- C. The complaining party, and the Commissioner from the local unit shall receive written notice of the Commissioners findings. The written notice to the complaining party, may where appropriate, include an opportunity for the complaining party to have a hearing concerning his/her complaint before the Commissioners.
- D. The shall keep a separate record of all complaints received and the disposition of same.
- E. If the complaining party is dissatisfied with the Commissioners decision, the complaining party may appeal this determination to the independent appeal organization or arbitrator designated by the Commission annually.
- F. If the complaining party is dissatisfied with the determination of the independent appeal agency or arbitrator, the complaining party may exercise any remedies provided by law.

#### **ARTICLE XV - OTHER CONDITIONS**

##### **Inspection And Audit:**

The Commission shall be permitted but not obligated to inspect, at any reasonable time, the workplaces and operations of each member 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 member or others, to determine or warrant that such workplaces, operations, are safe or healthful, or are in compliance with any law, rule or regulation.

The Commission shall be permitted to examine and audit the member'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 show or tend to show or verify the amount of remuneration or other premium basis, or relate to the subject matter of this agreement.

### **Notice Of Injury:**

When an injury occurs, written notice shall be given by or on behalf of the member to the Commission or any of its authorized agents as soon as practical. Such notice shall contain particulars sufficient to identify the member and also reasonably obtainable information respecting the time, place and circumstances of the injury, the names and addresses of the injured and of available witnesses.

### **Notice Of Claim Or Suit:**

If claim is made or formal petition or a suit or other proceedings are brought against the member, it shall immediately forward to the Commission every demand, notice, summons or other process received by the member or its representative.

### **Assistance And Cooperation Of The Participant:**

The member shall cooperate with the Commission and upon the Commission'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. The member shall not, except at its own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and other services at the time of injury as are required by the Workers' Compensation Law.

### **Action Against Commission:**

No action shall lie against the Commission unless, as a condition precedent thereto, the Member shall have fully complied with all the terms of this agreement, not until the amount of the member's obligation to pay shall have been finally determined either by judgment against the member after actual trial or by written agreement of the member, the claimant and the Commission. Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this agreement to the extent of the protection afforded by this agreement. Nothing contained in this agreement shall give any person or organization any right to join the Commission as a co-defendant in any action against the member to determine the member's liability.

Bankruptcy or insolvency of the member shall not relieve the Commission of any of its obligations.

### **Subrogation:**

In the event of any payment under the agreement, the Commission shall be subrogated to all rights of recovery therefore of the member and any person entitled to the benefits of this agreement against any person or organization and the Member shall execute and

deliver instruments and papers and do whatever else is necessary to secure such rights.  
The member shall do nothing after loss to prejudice such rights.

**Conformance With Statute:**

In the event any portion of these rules and regulations conflict with any statute or administrative regulation, the provision of any such statute or administrative regulation shall control to the extent it conflicts.

**THUS DONE, READ AND PASSED in my office in Mercer County, State of New Jersey.**

**COUNTY OF MERCER INSURANCE FUND COMMISSION**

BY:   
ANDREW A. MAIR, CHAIRMAN

ATTEST:   
ELIZABETH SCANNELLA, VICE CHAIRMAN

DATED: 2/3/14