

Amended by R.2005 d.112, effective April 4, 2005.
See: 36 N.J.R. 4625(a), 37 N.J.R. 1075(a).

In (b), inserted "or she" preceding "may accept" in the second sentence.

11:15-1.10 Service organizations

(a) Except with the approval of the Commissioner, no service organization or its employees, officers, or directors shall be an employee, officer, or director of, or have either a direct or indirect financial interest in, an administrator, and no administrator or its employees, officers, or directors shall be an employee, officer, or director of, or have either a direct or indirect financial interest in, a service company.

(b) The service contract shall include a clause that, "unless the Commissioner otherwise permits, the service organization shall handle to their conclusion all claims and other obligations incurred during the contract period."

11:15-1.11 Misrepresentation or unfair acts or practices prohibited

No person shall make a material misrepresentation or omission of a material fact in connection with the solicitation of a membership in a group or engage, with respect to membership in or the business and affairs of a group, in any activities of the type prohibited by N.J.S.A. 17:29B-4 and the regulations of the Department of Insurance promulgated thereunder when engaged in by persons engaged in the business of insurance.

11:15-1.12 Investments

Funds not needed for current obligations may be invested by the trustees in accordance with N.J.S.A. 17:24-1 et seq.

11:15-1.13 Rates and reporting of rates

(a) For the first five years of its existence, except as otherwise approved by the Commissioner, each group shall maintain information in accord with the uniform classification system, uniform experience rating plan, and manual rules filed with the Commissioner.

(b) Contributions to the group shall be determined by applying its rates and rules to each member.

11:15-1.14 Refunds

(a) Any monies for a fund year in excess of the amount necessary to fund all obligations for that fund year may be declared to be refundable by the trustees not less than 12 months after the end of the fund year.

(b) Each applicant for membership in the group shall be given a written description of the refund plan at the time of application for membership. Each member shall be given a written description of any changes in the refund plan prior to its being put into effect. A refund for any fund year shall be paid only in proportion to participation in the group for the fund year. Payment of a refund based on a previous

fund year shall not be contingent on continued membership in the group after that fund year.

11:15-1.15 Contribution payment; reserves

(a) The group shall establish to the satisfaction of the Commissioner a contribution payment plan.

(b) The group shall establish and maintain actuarially appropriate loss reserves, which shall include reserves for: (1) known claims and expenses associated therewith; and (2) claims incurred but not reported and expenses associated therewith.

(c) The group shall establish and maintain bad debt reserves based on the historical experience of the group.

11:15-1.16 Deficits

(a) If the assets of a group are at any time insufficient to enable the group to discharge its legal liabilities and other obligations and to maintain the reserves required of it under the Act and these regulations, it shall forthwith make up the deficiency or levy an assessment upon its members for the amount needed to make up the deficiency.

(b) In the event of a deficiency in any fund year, such deficiency shall be made up immediately.

(c) If the group fails to assess its members or to otherwise make up such deficit within 30 days, the Commissioner shall order it to do so.

(d) If the group fails to make the required assessment of its members within 30 days after the Commissioner orders it to do so, or if the deficiency is not fully made up within 60 days after the date on which such assessment is made, or within such longer period of time as may be specified by the Commissioner, the group shall be deemed to fall within the condition in N.J.S.A. 34:15-77.1c.

Amended by R.1989 d.585, effective November 20, 1989.
See: 21 N.J.R. 1817(a), 21 N.J.R. 3668(a).
Correction to N.J.S.A. cite in (d).

11:15-1.17 Revocation of certificate of approval

(a) After notice and opportunity for a hearing as in a contested case (N.J.S.A. 52:14B-9), the Commissioner may revoke a group's certificate of approval if it is found that:

1. There has been deterioration of the financial condition of the group to such an extent that such deterioration would have an adverse affect on the ability of the group to pay expected losses;
2. The group has failed to pay any regulatory fee or assessment, or special fund contribution imposed upon it;
3. The group has failed to comply with any of the provisions of the Act, any regulations promulgated thereunder, or with any lawful order of the Commissioner within the time prescribed;

4. Any certificate of approval that was issued to the group was obtained by fraud;

5. There was a material misrepresentation in the application for the certificate of approval; or

6. The group or its administrator has misappropriated, converted, illegally withheld or refused to pay over, upon proper demand, any monies that belong to a member, an employee of a member, or a person otherwise entitled thereto and that have been entrusted to the group or its administrator.

11:15-1.18 Public record

Any document filed with the Commissioner pursuant to the Act or these regulations shall be deemed a public record and available for inspection at the New Jersey Department of Insurance during usual business hours.

SUBCHAPTER 2. JOINT INSURANCE FUNDS FOR LOCAL GOVERNMENTAL UNITS PROVIDING PROPERTY AND LIABILITY COVERAGES

11:15-2.1 Purpose and scope

(a) N.J.S.A. 40A:10-36 et seq. authorizes two or more local units of government to join together to establish a joint insurance fund for the purpose of insuring against liability, property damage, workers' compensation, and loss or theft of money or securities, providing blanket bond coverage, the sole purpose of insuring against bodily injury and property damage claims arising from environmental impairment liability and legal representation therefor to the extent and for coverage approved by the Commissioner, and insuring against loss from liability associated with sick leave payment for service connected disability as provided by N.J.S.A. 18A:30-2.1. A fund may also provide its members with safety and loss control programs and may jointly purchase, on behalf of its membership, safety and loss control services, training equipment and apparatus, in connection with the provision of the coverages set forth above. This subchapter provides rules for the establishment, operation, oversight, modification and dissolution of such funds.

(b) No local unit of government shall join together with any local unit or units to act as a joint insurance fund except as authorized by the Commissioner in accordance with the provisions of N.J.S.A. 40A:10-36 et seq. and this subchapter.

(c) Except as otherwise specifically provided, all of the requirements of this subchapter shall apply to any joint insurance fund formed to insure against liability, property damage, loss or theft of money or securities, providing blanket bond coverage, or workers' compensation, or for the sole purpose of insuring against bodily injury and property damage claims arising from environmental impairment liability and legal representation therefor.

Amended by R.1991 d.16, effective January 7, 1991.

See: 22 N.J.R. 16(a), 23 N.J.R. 112(a).

Amended definition of "actuary".

Amended by R.1995 d.408, effective August 7, 1995.

See: 26 N.J.R. 2725(a), 26 N.J.R. 3592(a), 27 N.J.R. 2938(a).

Amended (a) to allow funds to provide members with safety and loss control programs and services; Added (c) regarding applicability of this subchapter.

Amended by R.1999 d.350, effective October 18, 1999.

See: 31 N.J.R. 2125(b), 31 N.J.R. 3091(a).

In (a) and (c), inserted references to insuring against loss or theft of money securities and providing blanket bond coverage.

Amended by R.2005 d.112, effective April 4, 2005.

See: 36 N.J.R. 4625(a), 37 N.J.R. 1075(a).

In (a), deleted "and for" preceding "the sole purpose" and inserted "and insuring against loss from liability associated with sick leave payment for service connected disability as provided by N.J.S.A. 18A:30-2.1" in the first sentence.

11:15-2.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"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 a Member 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" means a person, partnership, corporation or other legal entity engaged by the joint insurance fund commissioners or executive committee, as defined herein, to act as executive director to carry out the policies established by the joint insurance fund commissioners or executive committee and to 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.

"Automobile and equipment liability" means liability resulting from the use or 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.

"Blanket bond coverage" means coverage of certain county or municipal officers and employees for faithful performance and discharge of their duties as provided under N.J.S.A. 40A:5-34.1.

"Chairman" means the chairman of the fund commission, elected by the commission pursuant to N.J.S.A. 40A:10-37.

"Commissioner" means the Commissioner of the Department of Banking and Insurance.

“Department” means the New Jersey Department of Banking and Insurance.

“Employers’ 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 therefrom 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.

“Environmental impairment liability fund” means a joint insurance fund formed for the sole purpose of insuring against bodily injury and property damage claims arising from environmental liability and legal representation therefor to the extent and for coverages set forth in this subchapter.

“Excess carrier” means an insurer that provides excess insurance or reinsurance to a fund.

“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 such coverage in this State pursuant to law, covering losses in excess of an amount established between the joint insurance fund and the insurer up to the limits of coverage set forth in the insurance contract on a specific per occurrence, or per accident, or annual aggregate basis.

“Executive committee” means the committee of insurance fund commissioners, as provided in N.J.S.A. 40A:10-36 et seq.

“Fiscal year” or “fund year” means the calendar year January 1 through December 31.

“General liability” means any and all liability which may be insured under the laws of the State of New Jersey, excluding workers’ compensation and employers’ liability.

“Hazardous financial condition” means that, based on its present or reasonably anticipated financial condition, a fund, although not yet financially impaired or insolvent, is unlikely to be able:

1. To meet obligations to claimants with respect to known claims and reasonably anticipated claims; or
2. To pay other obligations in the normal course of business.

“Indemnity and trust agreement” means a written contract signed by the members of the joint insurance fund 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 fund.

“Insolvent fund” means 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” means 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” means 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” means 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” or “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 liability, property damage, and workers’ compensation, or for the sole purpose of insuring against bodily injury and property damage claims arising from environmental impairment liability and legal representation therefor, to the extent and for coverages approved by the Commissioner pursuant to the authority of N.J.S.A. 40A:10-36 et seq. and this subchapter.

“Joint insurance fund commissioners” means local unit representatives chosen to represent those units in the fund, as provided in N.J.S.A. 40A:10-36 et seq.

“Lead agency” means a member of the joint insurance fund responsible for the custody and maintenance of the assets of the fund and such other duties as may be designated by the joint insurance fund commissioners. The duties performed by a lead agency may include duties that may be performed by an administrator or servicing organization.

“Local unit of government” or “local unit” means 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:10-51), any contracting unit as defined in N.J.S.A. 40A:11-2 or boards of education of certain school districts, to the extent permitted pursuant to N.J.S.A. 40A:10-52 through 57.

“Net current surplus” or “surplus” means that amount of monies in a trust account established pursuant to N.J.A.C. 11:15-2.6(b)10 that is in excess of all costs, earned investment income, refunds made pursuant to N.J.A.C. 11:15-2.21, 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.

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

“Property damage” means any loss or damage, however caused, on property, motor vehicles, equipment or apparatus owned by the local unit or owned by or under the control of any of its departments, boards, agencies, commissions, or other entities which the local unit may provide coverage for under N.J.S.A. 40A:10-2.

“Secretary” means the secretary of the fund commission elected by the commission pursuant to N.J.S.A. 40A:10-37.

“Servicing organization” means an individual, partnership, association or corporation, other than the administrator, that has contracted with the fund to provide, on the fund’s behalf, any function as designated by the fund 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 fund’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 fund for excess insurance or reinsurance from an insurer, member assessment and fee development, report preparation pursuant to N.J.S.A. 40A:10-36 et seq. and this subchapter, and such other duties as designated by the fund.

“Unpaid claims” or “unpaid losses” means 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 law” means the provisions of N.J.S.A. 34:15-7 et seq.

Amended by R.1989 d.507, effective September 18, 1989.

See: 21 N.J.R. 3051(b), 21 N.J.R. 3017(a).

Definitions for “Fiscal year”, “Intertrust fund transfer”, “Interyear fund transfer”, “Net current surplus”, and “Unpaid claims” added. Amended by R.1991 d.16, effective January 7, 1991.

See: 22 N.J.R. 16(a), 23 N.J.R. 112(a).

Amended definitions of “actuary”, “indemnity and trust agreement”, “local unit of government” and “property damage”; added “automobile and equipment liability” and deleted “motor vehicular and equipment liability”.

Amended by R.1995 d.408, effective August 7, 1995.

See: 26 N.J.R. 2725(a), 26 N.J.R. 3592(a), 27 N.J.R. 2938(a).

Added definitions for “Chairman”, “Environmental impairment liability fund”, “Producer” and “Secretary” and amend “Administrator”, “Excess insurance”, “Executive committee”, “Indemnity and trust agreement”, “Joint insurance fund”, “Joint insurance fund commissioners”, “Lead agency”, “Local unit of government”, “Net current surplus”, “Servicing organization”, “Unpaid claims” and “Workers’ compensation law”.

Amended by R.1996 d.534, effective November 18, 1996.

See: 28 N.J.R. 4027(a), 28 N.J.R. 4877(a).

Amended by R.1999 d.350, effective October 18, 1999.

See: 31 N.J.R. 2125(b), 31 N.J.R. 3091(a).

Inserted “Blanket bond coverage”.

Amended by R.2005 d.112, effective April 4, 2005.

See: 36 N.J.R. 4625(a), 37 N.J.R. 1075(a).

In “Actuary”, substituted “a Member” for “an associate” preceding “in good standing of the American Academy of Actuaries”; in “Commissioner”, inserted “the Department of” preceding “Banking and Insurance”.

11:15-2.3 Agreement to join joint insurance fund; duration

(a) Pursuant to N.J.S.A. 40A:10-36, the governing body of any local unit of government may by resolution agree to join together with any other local unit or units to establish a joint insurance fund as defined in this subchapter. The resolution shall provide for execution of a written agreement specifically providing for acceptance of the fund’s bylaws as approved and adopted pursuant to N.J.S.A. 40A:10-39. The agreement shall specify the extent of the local unit’s participation in the fund with respect to the types of insurance coverage to be provided by the fund and shall include the duration of fund membership, which in no event shall exceed three years, pursuant to N.J.S.A. 40A:11-15(6). The agreement shall also specify that the fund members have never defaulted on claims if self-insured and have not been cancelled for nonpayment of insurance premiums for a period of at least two years prior to application.

(b) A joint insurance fund formed pursuant to N.J.S.A. 40A:10-36 et seq. and this subchapter shall have the power to insure, contract or provide for any insurable interest of the member solely for the purposes set forth in N.J.A.C. 11:15-2.1(a).

(c) Members may renew their participation by the execution of a new agreement to rejoin the joint insurance fund. If the existing resolution did not specify the duration of fund membership, the member shall affirm the new membership agreement by resolution. If the existing resolution specified the duration for fund membership, the member shall either amend the existing resolution, or adopt a new resolution, as appropriate, to authorize the continued participation in the joint insurance fund prior to the execution of the new membership agreement. In lieu of filing with the Department and the Department of Community Affairs copies of the new resolution and new indemnity and trust agreement referred to in N.J.A.C. 11:15-2.6(b)10 for each member’s renewal of membership, the fund shall file a notice with the Department which sets forth the members that have renewed membership and the respective durations of such membership, as well as the members that have not rejoined the fund.

(d) For purposes of N.J.S.A. 40A:10-52, the governing body of any municipality and the board of education of the local school district operating within that municipality may, subject to N.J.S.A. 40A:10-52, by resolution, agree to join together for purposes of insuring coverages as set forth in that statute, provided that the district is not part of a limited purpose regional school district, an all purpose regional school district, or a consolidated school district. All purpose regional school districts, consolidated school districts, limited purpose regional school districts, the board of education of local school districts which are part of a limited purpose regional school district as described above, and county vocational school districts and the board of education of local school districts within a county vocational school district, may otherwise agree to join together with one or more constituent municipalities for the purposes of insuring coverages as described in and in accordance with N.J.S.A. 40A:10-53 to 57, as applicable. The board of education of a local or regional school district, consolidated school district or county vocational school district may not otherwise join with any municipality to form a fund pursuant to N.J.S.A. 40A:10-36 et seq. for the purpose of insuring coverages of the kinds set forth in N.J.S.A. 40A:10-52 to 57, except pursuant to this subsection. Notwithstanding any other provision to the contrary, no board of education, except the board of education of county vocational school districts, may join together with a municipality or other local unit for the purpose of providing contributory or non-contributory group health insurance or term life insurance, or both, to employees or their dependents, or both, as otherwise permitted pursuant to N.J.S.A. 40A:10-36 et seq.

Amended by R.1991 d.16, effective January 7, 1991.
See: 22 N.J.R. 16(a), 23 N.J.R. 112(a).

Changes reflect current practice and changes in applicable statutes.
Amended by R.1995 d.408, effective August 7, 1995.
See: 26 N.J.R. 2725(a), 26 N.J.R. 3592(a), 27 N.J.R. 2938(a).

Amended existing text and redesignated section as (a) and (b); and added (c).

Amended by R.1999 d.350, effective October 18, 1999.
See: 31 N.J.R. 2125(b), 31 N.J.R. 3091(a).

In (a), deleted references to ordinances throughout.
Amended by R.2005 d.112, effective April 4, 2005.
See: 36 N.J.R. 4625(a), 37 N.J.R. 1075(a).

Added a new (b); recodified former (b) as (c) and deleted "ordinance or" preceding "resolution" throughout; recodified former (c) as (d) and substituted "N.J.S.A. 40A:10-52, by resolution, agree to join together" for "N.J.S.A. 40A:10-52, by ordinance or resolution, as the case may be, agree to join together" in the first sentence.

11:15-2.4 General requirements

(a) Every joint insurance fund 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.), regulations (including, but not limited to, N.J.A.C. 5:34), the various statutes authorizing the investment of public funds, including but not limited to, N.J.S.A. 40A:10-10(b), 40A:10-38, 17:12B-241 and 17:16I-1 et seq., and in the case of a joint insurance fund providing environmental impairment liability coverage, the "Local Bond Law" (N.J.S.A.

40A:2-1 et seq.), but shall not be subject to the debt limitation set forth in N.J.S.A. 40A:2-6.

(b) All monies, assessments, funds and other assets of a joint insurance fund shall be under the exclusive control of its board of insurance fund commissioners or executive committee, as applicable.

(c) A joint insurance fund 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.

(d) Each joint insurance fund shall utilize as its fiscal year, the calendar year, January 1 through December 31.

(e) Each joint insurance fund shall adopt a resolution designating a public depository or depositories for its monies pursuant to N.J.S.A. 40A:5-14. Such resolution shall also designate a person to be custodian of funds for the joint insurance fund and shall authorize the custodian to invest the temporarily free balances of any claim/trust 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, or to the extent the fund is comprised of entities other than municipalities, possess the appropriate professional credentials required by the Department of Community Affairs pursuant to the "Local Fiscal Affairs Law" (N.J.S.A. 40A:5-1 et seq.). The custodian shall report to the fund commissioners at least quarterly on investment and interest income.

(f) The joint insurance fund commissioners shall annually prepare in November of each year the proposed budget for the fund's subsequent fiscal year. The budget shall identify the proposed items and amounts of expenditure for its operations in the aggregate and allocated by member, 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 trust accounts maintained by the joint insurance fund. 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.

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

2. Not later than December 31 of each year, the joint insurance fund commissioners, or the executive committee

thereof, shall adopt by majority vote the budget for the fund's operations for the subsequent fiscal year.

3. An adopted budget may be amended by majority vote of the membership of the joint insurance fund commissioners, or executive committee thereof.

4. A copy of each adopted budget shall be filed with the governing body of each participating local unit, the Commissioner and the Commissioner of the Department of Community Affairs within 30 days of its adoption, including a certification by an actuary that the budget is actuarially sound with respect to funding for the claim or loss retention fund accounts.

5. A copy of any amendment to a fund budget shall be filed quarterly with the governing body of each participating local unit.

6. A copy of any amendment to a fund budget shall be filed with the Commissioner and the Commissioner of the Department of Community Affairs within 30 days of the adoption of any budget amendment which either singly or cumulatively with other adopted budget amendments changes the total budget five percent from the original budget or the latest filed amended budget.

(g) All books, records, files, documents and equipment of the joint insurance fund are the property of the fund, except as provided at N.J.A.C. 11:15-2.22(e), and shall be retained by the secretary of the fund or fund administrator at the discretion of the fund commissioners or executive committee.

1. All claims information for a particular fund year and all financial information shall be retained for a period not less than the longer of either: