

Date of Hearing: April 3, 2024

ASSEMBLY COMMITTEE ON INSURANCE  
Lisa Calderon, Chair  
AB 1844 (Calderon) – As Introduced January 16, 2024

**SUBJECT:** California FAIR Plan Association governing committee

**SUMMARY:** Allows the Speaker of the Assembly and the Chairperson of the Senate Committee on Rules to serve as nonvoting, ex officio members of the Fair Access to Insurance Requirements (FAIR) Plan Governing Committee, and would authorize each to name a designee to serve in their place.

**EXISTING LAW:**

- 1) Specifies that the Governing Committee includes nine insurers, as well as, as nonvoting members, one representative of insurance agents, one representative of insurance brokers, one representative of surplus line brokers, and one representative of the public, each appointed by the Governor. (Insurance (Ins.) Code, Section 10094)
- 2) Allows the FAIR Plan, with approval from the Insurance Commissioner, to assess all members in amounts sufficient to operate the facility. (Ins. Code, Section 10094)
- 3) States that the FAIR Plan was established to assure stability, to assure the availability, to encourage maximum use, to provide for equitable distribution among admitted insurers of the responsibility for insuring qualified property for which basic property insurance cannot be obtained through the normal insurance market. (Ins. Code, Section 10090)
- 4) Specifies that rates for the FAIR Plan shall not be excessive, inadequate, or unfairly discriminatory, and shall be actuarially sound so that premiums are adequate to cover expected losses, expenses and taxes, and shall reflect investment income of the plan. (Ins. Code, Section 10100.2)

**FISCAL EFFECT:** None

**COMMENTS:**

- 1) *Purpose:* The Assembly Insurance Committee held two oversight hearings on the California FAIR Plan in the past year. These hearings highlighted the role, purpose, and obstacles of the FAIR Plan. Under the current climate of the California insurance market, the FAIR Plan is under pressure as the “take-all” insurer of last resort. AB 1844 increases transparency by adding two additional nonvoting members to the governing committee, similar to the California Earthquake Authority (CEA).
- 2) *Background:* The FAIR Plan is an “association” of all licensed insurance companies by the California Department of Insurance (CDI) that provides basic property insurance in California. It was created in 1968, following urban disturbances, notably the Watts Riots in Los Angeles.

Simply stated, the purpose of the FAIR Plan is to be the “insurer of last resort” for “basic” property insurance in the event of a market failure. At inception, that was essentially urban commercial property. Ultimately, it has expanded to include homeowners’ insurance anywhere in the state, provided that the insurance “cannot be obtained” in the normal manner in the market. The FAIR Plan is not intended to compete with the voluntary market.

The FAIR Plan was established to ensure that urban property owners, mostly businesses, would have “fair access” to the property insurance necessary to continue to operate in a market that insurers viewed as too risky to cover. That risk evaluation resulted in a substantial market withdrawal by insurers from the urban property market. Despite its initial creation as an urban/business “insurer of last resort,” the FAIR Plan expanded to provide coverage in “designated” brush fire regions of the state. It operated fairly well in this manner until the mid-1990’s, when, as a consequence of the genuine homeowners’ insurance crisis that followed the Northridge earthquake in 1994, the entire state was designated as the appropriate FAIR Plan coverage region.

By statute, the FAIR Plan policy is not as broad as traditional homeowners’ policies, it is nonetheless a fully sound and guaranteed policy that satisfies lenders’ security requirements and protects the property against the primary risk factor faced by homeowners, which is fire. Other coverages are readily available in the market (typically through the purchase of a “difference-in-conditions” or “DIC” policy), which provides wraparound coverage that, coupled with a FAIR Plan policy, results in the same protection provided by a standard homeowner’s policy. Because the FAIR plan’s role is to provide coverage when the regular market won’t, it is not the role of the FAIR Plan to provide DIC policies when there is a healthy market for those policies.

According to the FAIR Plan, the association has more than 350,000 policies in force, a 22% increase in 2023. Right now, which is not typical, the FAIR Plan receives nearly 1,000 applications a day, as well registered agents, brokers, and other contacts increased from 9,000 to over 54,000. The FAIR Plan’s risk exposure is \$311 billion as of December 2023, which is up from \$50 billion in 2018.

- 3) *The FAIR Plan Governing Committee:* The FAIR Plan is administered by a Governing Committee, and subject to the supervision of the Insurance Commissioner. The Governing Committee consists of nine voting insurers, and four non-voting members appointed by the Governor, which includes one representative of insurance agents, one representative of insurance brokers, one representative of the public, and one representative of surplus line brokers. The purpose of the Governing Committee is to ensure the requirements laid out in California Insurance Code 10090 are followed (referenced under existing law). Legislation (signed by the Governor), or by rule, regulation or administrative determination by the Insurance Commissioner requires the FAIR Plan Governing Committee to amend its plan of operation.

Point of reference is the CEA, which is governed by a three-member governing board consisting of the Governor, the Treasurer, and the Insurance Commissioner, each of whom may name designees to serve as board members in their place. The Speaker of the Assembly and the Chairperson of the Senate Committee on Rules serve as nonvoting, ex officio members of the board, and may name designees to serve in their place.

4) *FAIR Plan Transformation:* In the last five years, primarily in response to catastrophic wildfires and admitted market withdrawal, legislation and actions taken by CDI has resulted in the FAIR Plan going through a complete transformation. To summarize, these actions include:

- Increasing FAIR Plan residential limits to \$3.3 million;
- Increasing FAIR Plan commercial limits to \$8.4 million per location, to \$20 million per location to the \$20 million per structure (which is still being implemented);
- Potential expansion and requirement to offer homeowners a more comprehensive coverage aka HO-3 light policy (pending litigation);
- Expanding commercial coverage to farms, ranches and other agricultural businesses;
- Developing residential and commercial clearinghouse programs; and,
- Implementing “Safer from Wildfire” discounts to FAIR Plan policyholders.

5) *Previous legislation:* AB 3012 (Daly & Wood) Chapter 258, Statutes of 2020, directs the Fair Plan to implement a clearinghouse program whereby property insurers will be provided information about FAIR Plan policies, for the purpose of encouraging those insurers to offer regular private insurance to FAIR Plan policyholders.

SB 505 (Rubio) Chapter 180, Statutes of 2023, requires, by July 1, 2024, FAIR Plan to establish a clearinghouse program for commercial insurance policies.

6) *Related legislation:* AB 2260 (Calderon) This bill would require the FAIR Plan, until December 31, 2027, to quarterly provide specified information about policies and clearinghouse program progress to the relevant policy committees of the Legislature and to post the information on the association’s public internet website. Pending before the Assembly Insurance Committee.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

Insurance Commissioner Ricardo Lara / California Department of Insurance

##### **Opposition**

None on file

**Analysis Prepared by:** Kathleen O'Malley / INS. / (916) 319-2086