Date of Hearing: April 3, 2024

ASSEMBLY COMMITTEE ON INSURANCE
Lisa Calderon, Chair
AB 2260 (Calderon) – As Amended March 11, 2024

SUBJECT: California FAIR Plan Association: reporting

SUMMARY: Requires the California Fair Access to Insurance Requirements (FAIR) Plan to provide specified information to the Insurance Commissioner, Senate Committee on Insurance and the Assembly Committee on Insurance. Specifically, **this bill**:

1) Specifies that the following information must be included:

   a) Residential policy counts, exposures, and total premium for the dwelling policies insured by ZIP Code and county, reported at the end of each quarter of each year;

   b) Commercial policy counts, exposures, and total premium by ZIP Code and county, reported at the end of each quarter of each year;

   c) Progress reports of clearinghouse programs; and,

   d) Progress reports on recommendations in improving its customer service, claims handling practices, financial standards, and business operations.

2) Provides that the FAIR Plan must provide the information by July 1, 2025 and quarterly, thereafter until December 31, 2027.

3) Requires the FAIR Plan to post the information on its public internet website.

EXISTING LAW:

1) 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. (Insurance (Ins.) Code, Section 10090)

2) 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)

3) Requires the FAIR Plan to develop and implement a residential clearinghouse program and a commercial clearinghouse program. (Ins. Code, Section 10095)

FISCAL EFFECT: Unknown

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 growth 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. A goal of AB 2260 is to increase transparency. As the FAIR Plan continues to grow so does the spotlight. The Insurance Commissioner, the Legislature, and the public should be provided relevant information that is helpful to collectively navigate the insurance crisis. The FAIR Plan is an important piece of the overall insurance market.

2) *Background*: The California FAIR Plan – "Fair Access to Insurance Requirements" – is an "association" of all insurance companies licensed by the California Department of Insurance (CDI) that provides basic property and casualty 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. At origination, the FAIR Plan was not intended to compete with the admitted market but that point is now debatable.

   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.

   FAIR Plan policies are capped at $3.3 million for residential properties and $20 million per structure for commercial properties. (Please note the $20 million per structure is still in the process of being implemented.) These caps were increased by the Insurance Commissioner in 2020 for residential and 2023 for commercial. Commercial went from $8.4 million per location in 2021, to $20 million per location in 2023, to $20 million per structure subsequently in 2023.

   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 [wild]fire. Other coverages are readily available in the market (typically through the purchase of a "difference-in-conditions" or "DIC" policy), which provide 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 necessarily the role of the FAIR Plan to provide DIC policies when there is a healthy market for those policies.

According to the FAIR Plan, they have more than 350,000 policies in force, a 22% increase in 2023. The FAIR Plan receives nearly 1,000 applications a day, as well as 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 Sustainable Insurance Strategy (SIS) and the FAIR Plan*: On September 21, 2023, Governor Newsom issued an Executive Order that directed the Insurance Commissioner to "take prompt regulatory action to strengthen and stabilize California's marketplace for homeowners insurance and commercial property insurance, and to consider whether the recent sudden deterioration of the private insurance market presents facts that support emergency regulatory action."

   A part of the executive order included: to maintain the solvency of the FAIR Plan to protect its policyholders and promote long-term resiliency in the face of climate change, including identifying mechanisms to reduce its share of the overall market in underserved areas and move its customers into the admitted insurance market. The Insurance Commissioner responded promptly by announcing the SIS. Provisions of the SIS specific to the FAIR Plan include:

   - Transitioning homeowners and businesses from the FAIR Plan back into the normal insurance market with commitments from insurance companies to cover all parts of California by writing no less than 85% of their statewide market share in high wildfire risk communities;

   - Giving FAIR Plan policyholders who comply with the new Safer from Wildfires regulation first priority for transition to the normal market;

   - Directing the FAIR Plan to further expand commercial coverage to $20 million per building to close insurance gaps for homeowners associations and condominium developments to help meet the state's housing goals and to provide required coverage to other large businesses in the state;

   - Increasing data reporting by the FAIR Plan to the Department, Legislature, and Governor to monitor progress toward reducing its policyholders; and,

   - Ordering changes to the FAIR Plan to prevent it from going bankrupt in the case of an extraordinary catastrophic event, including building its reserves and financial safeguards.

4) *FAIR Plan Residential and Commercial Clearinghouse Programs:* A significant provision of the SIS is depopulating the FAIR Plan through the clearinghouse programs.

   The FAIR Plan residential clearinghouse program was created in 2021. Statute places the responsibility on the FAIR Plan to develop the clearinghouse program with these goals: reduce the concentration of policies and push the use of the regular insurance market; lower the quantity of policies in the FAIR Plan; and provide the insurers the ability to take on additional business. The intent of the program is to get FAIR Plan policyholders back into the admitted market. The policies in the clearinghouse are initially limited to the admitted market for the first 30 days, at which point nonadmitted insurers may also participate by offering a homeowners policy to someone in the FAIR Plan. The commercial clearinghouse program was established via legislation (noted below) in 2023, which requires the FAIR Plan to develop and implement a commercial clearinghouse program on or before, July 1, 2024, identical to the residential clearinghouse program.

Although the programs are new, the purpose and success of them are now under a microscope. The question of whether the residential clearinghouse program is up and running as intended is challenging to gauge. While the FAIR Plan has until July of this year to develop the commercial clearinghouse program, further oversight is necessary to examine whether these programs are successfully moving FAIR Plan policyholders back into the admitted market.

5) *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.

6) *Recent Update:* The FAIR Plan on March 22, 2024 announced the creation of the "Key Statistics and Data" page on the FAIR Plan website. "**Key Statistics and Data**" According to the FAIR Plan, the new page will provide information on a quarterly basis about the geographical distribution and expansion of FAIR Plan exposure, as well as the accelerating rate of growth in FAIR Plan Policies in Force.

7) *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.

8) *Related legislation*: AB 1844 (Calderon) This bill would require the Speaker of the Assembly and the Chairperson of the Senate Committee on Rules to serve as nonvoting, ex officio

members of the governing committee, and would authorize each to name a designee to serve in their place. Pending before the Assembly Insurance Committee.

9) *Recommended committee amendments*: To encourage the continuous depopulation of the FAIR Plan, the committee recommends the following addition: "Prior to the renewal of a policy of insurance that has been placed in the Fair Plan, the broker of record shall determine whether the policy can be moved to a voluntary market insurance company. For purposes of this section "determine" means the broker of record utilizing their knowledge of the voluntary market for property insurance gained from actively placing or attempting to place the same or similar types of insurance."

   Technical recommendation: On page 5, in line 15, strike out "reviews to the department's", strike out line 16 and insert: reviews.

REGISTERED SUPPORT / OPPOSITION:

Support

Insurance Commissioner Ricardo Lara / California Department of Insurance

Opposition

None on file

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