Date of Hearing: April 25, 2024

ASSEMBLY COMMITTEE ON INSURANCE
Lisa Calderon, Chair
AB 2996 (Alvarez) – As Amended March 21, 2024

SUBJECT: California FAIR Plan Association

SUMMARY: Allows the California Fair Access to Insurance Requirements (FAIR) Plan to request the California Infrastructure and Economic Development Bank (IBank) to issue bonds on their behalf. Specifically, **this bill**:

1) Specifies that the FAIR Plan may request the issuance of bonds by the IBank to enhance the solvency of the FAIR Plan.

2) Provides that bonds issued do not constitute a debt or liability of the state or any political subdivision.

3) Contains an urgency clause.

EXISTING LAW:

1) States that the FAIR Plan was established to assure stability, to assure the availability, to encourage maximum use, and 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) 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)

4) Requires all members of the FAIR Plan to participate in the writings, expenses, profits, and losses of the FAIR Plan in the proportion that its premiums written during the second preceding calendar year bear to the aggregate premiums written by all insurers. (Ins Code, Section 10095)

5) Establishes the IBank within the Governor's Office of Business and Economic Development, which is under the direction of an executive director appointed by the Governor, and serves at the pleasure of the Governor, while subject to confirmation by the Senate. (Government Code, Section 63021)

FISCAL EFFECT: Unknown

COMMENTS:

1) *Purpose:* According to the author, "With countless admitted market insurers reducing their presence here or outright exiting the market, many homeowners have turned to the FAIR Plan for homeowners' insurance—an insurer of last resort. This has resulted in the FAIR Plan ballooning in size to a point beyond what it was created to handle, which puts it at risk of an assessment if we see a catastrophic event such as a widespread wildfire. Given the admitted market's role as a financial backstop for the FAIR Plan in the case of an assessment, an assessment could have a far-reaching impact on the already struggling admitted market. By allowing the I-Bank to issue bonds to support the financial stability of the FAIR Plan in the case of an assessment, AB 2996 increases the financial tools available to offset the increase in exposure the FAIR Plan has taken on in the previous couple of years."

2) *A new financial tool for the FAIR Plan:* This measure allows the FAIR Plan to utilize the IBank for the purposes of enhancing solvency, by issuing bonds. The FAIR Plan, while neutral on this measure, raised a number of concerns. While the measure has a long list of supporters, expectations need to be managed, as this bill alone will not solve the insurance availability or affordability crisis in California. If the FAIR Plan pulled the trigger (with prior approval from the Insurance Commissioner) to put together a proposal and attempt to issue bonds, how this would actually work under the framework of the FAIR Plan remains unclear. It is a sound assumption that the FAIR Plan would only use this financial tool if a large (and costly) catastrophe occurred in an area where the FAIR Plan is heavily concentrated and therefore runs out of capital to pay claims. Under existing law, as well as in the FAIR Plan's, Plan of Operation, if this occurs, the FAIR Plan would determine whether to seek approval from the Insurance Commissioner to assess their members (based on market share). Once approved and member insurers are notified, those members (insurers) must remit payment to the FAIR Plan within 30 days. The FAIR Plan would need immediate capital as to not delay paying claims to their policyholders. A concern with providing this new option to the FAIR Plan is that bonds are characterized as a slow moving financial tool. It could potentially take anywhere from 6-9 months to receive the funds from a sale which is counter intuitive to the immediate needs of the FAIR Plan. On the other hand, a benefit to this financial tool, if used, is a longer-term repayment plan, as well as the tax-exempt status. Should this measure move forward, the author should continue to work with the FAIR Plan on how this new authorization works under their framework. More specifically, the author may wish to consider a cap on bond issuance, as well as clarify the repayment mechanics.

3) *The Looming Fear of an Assessment:* As the number of FAIR Plan policyholders grow, so does the threat of the FAIR Plan assessing the admitted market. A factor that is likely contributing to many insurers from pressing pause or restricting new business (or leaving entirely) in California. As it works right now, <u>if</u> there is a catastrophic event in an area where the FAIR Plan is heavily concentrated, and <u>if</u> the FAIR Plan is unable to pay claims, with prior approval from the Insurance Commissioner, the FAIR Plan has the ability to assess the admitted market. The admitted market is the financial backstop to the FAIR Plan in case of an "emergency." The amount of the assessment is based on the insurer's market share with a two-year look back. From 1968 to today, the FAIR Plan has assessed twice, between 1993 and 1995 for about $260 million total, notably due to the Northridge earthquake.

According to the FAIR Plan, they have more than 375,000 policies in force as of March 2024, a 23% increase. The FAIR Plan receives nearly 1,000 applications a day, as well as registered agents, brokers, and other contacts increasing from 9,000 to over 54,000. The FAIR Plan's risk exposure is $329 billion as of March 2024, which is up from $50 billion in 2018. According to the FAIR Plan, as stated at an Assembly Insurance Committee oversight hearing, the association has sufficient funds to run the operation with about $200 million in reserves.

4) *The FAIR Plan:* 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.

   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.

5) *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.

6) *IBank:* The mission of the IBank is to provide financial assistance to support infrastructure and economic development in California. The IBank was created in 1994 to finance public infrastructure and private development that promote a healthy climate for jobs, and contribute to a strong economy. IBank has broad authority to issue tax-exempt and taxable revenue bonds, provide financing to public agencies, provide credit enhancements, acquire or lease facilities, and leverage State and Federal funds. When investors purchase bonds, they essentially lend money to the borrower (the FAIR Plan) through the issuer (IBank). In return for the bond proceeds, the borrower (the FAIR Plan) promises to pay the investors/bondholders the principal amount plus a specified rate of interest over the life of the bonds based on the bonds debt service payment schedule. AB 2996 carries no cap, so it is unclear what amount the FAIR Plan could or would want to request. The process is an all or nothing sale so if the FAIR Plan requested $5 billion, the market would need to purchase all $5 billion. Any proposal brought to the IBank would need to appeal to the market in order for it to sell.

7) *California Insurance Guarantee Association (CIGA):* The bonding authority in this measure is modeled after CIGA. However, a difference between CIGA and the FAIR Plan is that the FAIR Plan is entirely privately funded and receives no taxpayer or state funding. CIGA was created by legislation in 1969 as an association of insurers that makes payments to policyholders of property/casualty, workers' compensation, and "miscellaneous" insurers when a member insurance company becomes insolvent and is unable to do so. It is a statutory entity that depends on the establishing legislation for its existence and for a definition of the scope of its powers, duties and protections. All states have an insurance guarantee association, and most, including CIGA, are based on the National Association of Insurance Commissioners Model Act of 1969.

   CIGA is funded by premium surcharges upon applicable lines of insurance. CIGA issues no policies, collects no premiums, makes no profits, and assumes no contractual obligations to insureds. Generally speaking, CIGA accepts the assets and liabilities of companies and makes payments from the assets, earnings on investments, and assessments levied on member insurance companies. Since its inception, CIGA has never failed to pay a claim.

   CIGA is unique as a regulated entity, even among California's hybrid state/private entities such as the California Earthquake Authority and the State Compensation Insurance Fund, because by statute it is established by insurance companies as an involuntary association as a condition of those companies transacting insurance business in California, much like the FAIR Plan. The purpose of CIGA is to pay "covered claims" of member companies that have failed. CIGA's total liability for any single claim is $500,000, other than claims for workers' compensation, which are not limited. CIGA does not have to pay a claim if other insurance is available to pay the claim.

8) *Previous legislation*: AB 1816 (Daly) Chapter 833, Statutes of 2019, expands the regions of the state in which an insurer can accrue "writeout credits" FAIR Plan to include areas designated by CalFire as high or very high fire risk. Also, requires the FAIR Plan to periodically provide data regarding the use of writeout credits by insurers to the Legislature, Governor, and CDI.

   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 11 (Rubio) Chapter 128, Statues of 2021, authorizes the FAIR Plan to sell commercial coverage to farms.

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

9) *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 referral in Senate.

   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 Appropriations Committee.

10) *Double-referral*: This measure passed out of the Assembly Committee on Jobs, Economic Development, and the Economy on consent with a 7-0 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

Abundant Housing LA
Apartment Association of Greater Los Angeles
Bay Area Council
Boma California
California Apartment Association
California Association of Community Managers
California Association of Community Managers (CACM)
California Association of Realtors
California Association of Winegrape Growers
California Building Industry Association

California Building Industry Association (CBIA)
California Business Properties Association
California Business Roundtable
California Farm Bureau Federation
California Mortgage Bankers Association
Housing Action Coalition
Housing Trust Silicon Valley
Independent Insurance Agents & Brokers of California, INC.
Naiop of California, the Commercial Real Estate Development Association
Nfib
Orange County Business Council
Personal Insurance Federation of California
Southern California Leadership Council
Spur
The Institute of Real Estate Management
The Two Hundred
Yimby Action

Opposition

None on file.

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