Date of Hearing: March 5, 2025

ASSEMBLY COMMITTEE ON INSURANCE
Lisa Calderon, Chair
AB 226 (Calderon & Alvarez) – As Introduced January 9, 2025

SUBJECT: California FAIR Plan Association

SUMMARY: Establishes the FAIR Plan Stabilization Act, which authorizes the California Infrastructure and Economic Development Bank (IBank), upon the request of the California Fair Access to Insurance Requirements Plan (FAIR Plan), to issue bonds to finance the costs of claims, to increase liquidity, and claims-paying capacity of the FAIR Plan, and to refund bonds previously issued for that purpose. Specifically, **this bill**:

1) Requires the FAIR Plan, with the approval of the Insurance Commissioner, to assess all member insurers to pay all loan payments and the costs and expenses relating to a loan agreement with IBank, as well as to assess all member insurers to repay a line of credit and its related costs and expenses.

2) Specifies that financing the costs of claims and increasing liquidity and claims-paying capacity upon the request of the FAIR Plan are in the public interest and eligible for financing by IBank.

3) Authorizes IBank to issue taxable or tax-exempt bonds to finance the costs of claims or to increase liquidity and the FAIR Plan's claims-paying capacity and to refund bonds previously issued for that purpose. Authorizes IBank to loan the proceeds of bonds to the FAIR Plan and specifies that bond proceeds may also be used to fund necessary reserves, capitalized interest, credit or liquidity enhancement costs, and costs of issuance.

4) Clarifies that IBank shall not have authority over any matter subject to the approval of the Insurance Commissioner but that IBank has the right to enforce all obligations of the FAIR Plan under the agreements relating to bonds issued.

5) Authorizes the FAIR Plan to:

   a) Request that IBank issue bonds to finance all or any portion of the costs of claims or to increase liquidity and claims-paying capacity.

   b) Enter into loan agreements with IBank.

   c) Enter into line of credit agreements with one or more institutional lenders or one or more broker-dealers for the purpose of financing the costs of claims or to increase liquidity and claims paying capacity and to refund lines of credit previously incurred for that purpose.

   d) Secure those loan agreements or line of credit agreements by a pledge of, and the grant of a lien and security interest in, collateral, including premiums, revenues, and receivables.

   e) Enter into any other agreement or take any other action necessary or convenient to the execution and delivery of loan agreements or line of credit agreements.

6) 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 authors, "California's insurance crisis is forcing families and condo developers into the overburdened FAIR Plan, risking market collapse if a major disaster strikes. AB 226 stabilizes the FAIR Plan by allowing bonds to spread costs over time, preventing sudden insurer assessments that could spike premiums or bankrupt small companies. This urgent fix protects homeowners, keeps condo construction moving, and safeguards our insurance market from catastrophic failure—ensuring affordable coverage remains available when Californians need it most."

2) *A new and necessary financial tool for the FAIR Plan:* This measure allows the FAIR Plan to utilize the IBank for the purpose of enhancing solvency, by issuing bonds. It is a sound assumption that if this measure was already enacted prior to the most recent Southern California wildfires, the FAIR Plan would have had the ability to utilize these financial tools. These tools would only be used following a large and costly catastrophe where the FAIR Plan needs additional resources for claims paying capacity, like the one the FAIR Plan just faced.

Under existing law, as well as in the FAIR Plan's Plan of Operation, the FAIR Plan determines 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.

3) *No longer a Looming Fear of an Assessment, but a Reality:* As it works right now, if there is a catastrophic event in an area where the FAIR Plan is heavily concentrated, and if 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 2024, the FAIR Plan had assessed twice, between 1993 and 1995 for about $260 million total, due to the Northridge earthquake.

   Unfortunately, on February 11, 2025, due to FAIR Plan exposure in the Los Angeles wildfire area and the amount of damage incurred, the FAIR Plan for the first time in 30 years sought approval to assess their member insurers. The Insurance Commissioner approved the FAIR Plan to assess $1 billion from their membership. Historically, member insurers did not pass on this assessment to policyholders, but recently, the Insurance Commissioner announced the ability for member insurers to recoup a portion of an assessment from policyholders. Perhaps with additional financial tools provided under this measure, the burden on insurers and ultimately policyholders could be lessened.

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 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 in coverage for residential properties and $20 million per structure for commercial properties. 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 bond's debt service payment schedule. AB 226 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 thus 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 and Urgency*:

A substantially similar measure was heard in this committee last year and received no "no" votes. Considering the recent wildfires, this measure is even more important to move forward quickly.

AB 2996 (Alvarez) Would have authorized the IBank, upon the request of the California Fair FAIR Plan to issue bonds to finance the costs of claims, to increase liquidity, and claims-paying capacity of the FAIR Plan, and to refund bonds previously issued for that purpose. (Died on the Senate Inactive File)

REGISTERED SUPPORT / OPPOSITION:

Support

American Property Casualty Insurance Association
Boma California
California Apartment Association
California Association of Community Managers
California Association of Realtors
California Association of Winegrape Growers
California Building Industry Association
California Business Properties Association
California Farm Bureau Federation
California Mortgage Bankers Association
City of Riverside
County of Monterey, Board of Supervisors
Habitat for Humanity California
Independent Insurance Agents & Brokers of California, INC.
Institute of Real Estate Management (IREM)

Insurance Commissioner Ricardo Lara / California Department of Insurance
Los Angeles County Business Federation (BIZ-FED)
Naiop of California
New California Coalition
Orange County Business Council
Orange County Taxpayers Association
Personal Insurance Federation of California
Southern California Leadership Council
Spur
The Two Hundred

Opposition

None on file.

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