Date of Hearing: April 2, 2025

ASSEMBLY COMMITTEE ON INSURANCE
Lisa Calderon, Chair
AB 69 (Calderon) – As Introduced December 10, 2024

SUBJECT: FAIR Plan policy renewals

SUMMARY: Requires a broker of record to determine if a Fair Access to Insurance Requirements (FAIR) Plan policy can be moved to the voluntary market before the FAIR Plan policy is renewed.

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, 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:* According to the author, "Depopulation of California's FAIR Plan is a top priority. As the insurance market begins to stabilize we need to ensure a clear path is accessible for those policyholders who are candidates for the voluntary market, where insurance is more affordable and polices cover more. This measure adds an additional forethought to a broker of record prior to renewing any policyholders in the FAIR Plan."

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 from 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. Today, the FAIR Plan covers all parts of California.

FAIR Plan policies are capped at $3.3 million 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.

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, as of December 2024, the FAIR Plan's total policies in force stands at 516,313, reflecting an 11.1% increase since September 2024 and a 115% increase since September 2021. The FAIR Plan's total exposure is $529 billion, reflecting a 15.5% increase since September 2024 and a 217% increase since September 2021. Following the Palisades and Eaton fires, the FAIR Plan sought approval in February 2025, to assess their member companies. The FAIR Plan previously requested to assess in 1994. The FAIR Plan requested $1 billion from member companies to ensure solvency and claim paying capacity.

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 in order 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.

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 structure;

- 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) *Related Legislation:* AB 226 (Calderon & Alvarez) establishes the FAIR Plan Stabilization Act, which authorizes the California Infrastructure and Economic Development Bank (IBank), upon the request of the 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. Pending on the Assembly Floor.

   AB 234 (Calderon) requires 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 of the FAIR Plan, and would authorize each to name a designee to serve in their place. Pending before the Assembly Insurance Committee.

   SB 525 (Jones) expands "basic property insurance" offered through the FAIR Plan to include manufactured homes insurance that is comparable to basic property insurance sold for residential dwellings. Pending before the Senate Insurance Committee.

7) *Previous Legislation*: AB 1844 ((Calderon) 2024 Legislative Year) would have required 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. (Pulled from committee hearing by the Senate Insurance Committee)

   AB 2260 ((Calderon) 2024 Legislative Year) would have required the FAIR Plan, until December 31, 2027, to quarterly provide specified information about policies and clearinghouse program progress to the Insurance Commissioner, the Assembly Committee on Insurance, and the Senate Committee on Insurance, and to post the information on the association's public internet website. The bill would have also required the broker of record of an insurance policy that has been placed in the FAIR Plan to determine, prior to the renewal of the policy, whether the policy can be moved to a voluntary market insurance company. (Did not receive a hearing in the Senate Insurance Committee)

   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.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Realtors
California Building Industry Association
Community Associations Institute - California Legislative Action Committee
Independent Insurance Agents & Brokers of California, INC.
Surplus Line Association of California; The

Opposition

None on file.

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