

ACCESS TO PROPERTY INSURANCE IN AREAS SUSCEPTIBLE TO NATURAL DISASTERS

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FOREWORD

This study concerning access to property insurance in areas susceptible to natural disasters was prepared in response to House Resolution No. 434, adopted during the 1987 legislative session.

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Chapter 1

INTRODUCTION

House Resolution No. 434

House Resolution No. 434, adopted during the 1987 Regular Session of the Hawaii State Legislature, requests the Legislative Reference Bureau to study the extent to which basic property insurance is unavailable to residents in Hawaii because of the location of their properties in areas susceptible to natural disasters or because of the location, age, or dilapidated condition of their dwellings.

The Resolution further requests an assessment of whether this unavailability of property insurance, upon examination, warrants the adoption by the State of a remedial measure, and a review of the strengths and weaknesses of plans which are possible remedial measures. The Resolution describes two possible plans to be considered, a FAIR (Fair Access to Insurance Requirements) Plan and a JUP (Joint Underwriting Plan). A copy of House Resolution No. 434 is included as Appendix A.

The Scope of the Study

This study will first provide a very broad overview of basic insurance definitions and principles, property insurance, and flood insurance. A basic understanding of these aspects is assumed in the study's remaining discussion.

This study will then discuss the unavailability of property insurance, as affecting residents in Hawaii whose properties are located in areas with a high exposure to the hazard of volcanic lava flow, and the inadequacy of insurance to cover the losses experienced by residents from extensive water damage from Hurricane Iwa in 1982 and the heavy rains on New Year's Eve, December 31, 1987. The study focuses on the insurance concerns of persons owning or leasing residential properties, although much of the discussion can also apply to owners and tenants of business properties.

This study also describes the FAIR plans and the JUPs which are in operation in other states, examines the experiences of these states, and describes the elements of a plan which should be included in such a program for Hawaii if a plan is adopted.

Finally, this study will present public policy considerations for assessing whether the described situation of limited availability of property insurance is best addressed by adoption of a plan.

Chapter 2

DEFINITIONS AND PRINCIPLES OF INSURANCE

Operation of Insurance

Insurance may be defined as "a financial arrangement which redistributes the costs of unexpected losses" and also as "a legal contract whereby the insurer agrees to compensate the insured party for losses."¹ For an insurance system to redistribute the costs of losses, the insurer collects a premium from each participant. In exchange for payment of the premium, each participant receives a promise from the insurer to be compensated in the event of a loss. In most insurance systems only a small percentage of insured participants actually experience losses. Thus, an insurance system redistributes the costs of losses from those who experience losses to all participants who paid premiums.²

The insurance contract, called a policy, creates rights and corresponding obligations for the contracting parties. The insured has the right to collect from the insurer compensation for losses, in accordance with the policy's terms, and the obligation to pay premiums and comply with the insurer's other conditions in order to maintain the right to compensation. Correspondingly, the insurer has the obligation to compensate for the insured's losses and the right to receive premiums and specify conditions for participation in the insurance system.³

Individuals purchase policies to participate in the insurance system because by doing so, they transfer their risks to the insurer. In the context of insurance, risk may be defined as "the uncertainty associated with an exposure to loss." Loss exposure may be defined as "the possibility of loss resulting from a specified peril," wherein loss means "a reduction of economic value" and peril means "a condition causing loss."⁴ Insured parties do not have to be uncertain about bearing the financial burdens of large losses because the insurer will pay for these losses in accordance with their policies; hence, the insured parties transfer their uncertainty, i.e., their risks, to the insurer.⁵

While insured parties minimize their risks by transferring them to the insurer, the insurer minimizes risk by aggregating the insured parties' risks into separate risk pools.⁶ In a mathematical context, risk means "the variability in possible outcomes of an event based on chance." The degree of risk refers to "the accuracy with which an event based on chance can be predicted." As the degree of risk increases, the predictive accuracy declines.⁷

Pooling the risks of many participants increases the predictability of losses. A mathematical principal called the law of large numbers explains how this relation works. In respect to insurance, this law states that the greater the number of exposure units in a pool, the more likely will the actual loss experience approximate the mathematical prediction of losses for the pool as a whole. In terms of both uncertainty and variability of outcome, risk is reduced by pooling exposure units because the law of large numbers allows the insurer to make a relatively accurate prediction of losses.⁸

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A relatively accurate prediction of losses is essential to the insurer for determining the premium to charge members of an insurance pool. The premium is determined as a share of the expected losses, operational expenses, and a reasonable margin for contingencies and profit.⁹ The share of expected losses in a premium may be calculated as the average loss per exposure unit, the estimated total losses divided by the total number of exposure units in the pool.¹⁰

The insurer aggregates in each insurance pool exposure units which are reasonably similar and face identical perils. By doing so, the insurer further reduces risk and also reduces adverse selection. Risk is reduced because the similarity of the exposure units and the covered perils effects a more narrow range of potential aggregate losses, which, in mathematical terms, means a lower degree of variance for the aggregate risk.¹¹

Adverse selection refers to the tendency of persons with relatively greater exposure to loss to seek insurance protection.¹² To reduce adverse selection, the insurer must make insurance attractive to persons with relatively lower exposure to loss. In any pool, the units with lower exposure pay a premium which, because it is based on the average loss which includes units with higher exposure, is more than they would have to pay if segregated into a risk pool of their own. Units with lower exposure would be more willing to purchase insurance at a premium which closely approximates their own expected loss. When a pool is narrowly defined by the similarity of exposure units and covered perils, the range of the members' expected losses is more narrow so that the average expected loss is relatively closer to the expected loss of each member, including those with lower exposure.¹³

If the disparity between the average expected loss and the expected losses of units with low exposure is substantial, those units with low exposure may drop out of the pool because they find alternative means of protection cheaper than insurance. As those units drop out, a pool will consist mostly of units with high exposure, requiring the premium to be raised to reflect the higher average expected loss and placing pressure on the remaining units with low exposure to also drop out. Ultimately, the insurance system will not be economical to operate because the premium, which also covers operational expenses, will be too high relative to the expected losses of even members with high exposure.¹⁴

There is, however, a limit to the extent that exposure units can be segregated. As distinctions between pools of risks are drawn more finely, these pools contain smaller numbers of exposure units, and the law of large numbers cannot operate as well. Insurers try to achieve a balance between pooling small groups to reduce variance and adverse selection and pooling large groups for the law of large numbers to work.¹⁵

The insurer reduces risk by pooling the risks of many similar units facing the same perils, but this only holds true if the risks are uncorrelated. An insurance pool is expected to experience several losses over a period of time, but only a small percentage of the pool suffers losses at any one time when the risks are uncorrelated.¹⁶ The insurer can accumulate small premiums from each member and have enough funds at any one time to pay for those losses which do occur.¹⁷ In contrast, if risks were highly correlated, all members would experience loss at one time. If so, the insurer

would have to maintain a large reserve, and the premium needed to cover this reserve may exceed the cost for a member to maintain a reserve to cover one's own expected loss.¹⁸

Property Insurance

Homeowners policies compile many important coverages related to property into one convenient package and are the primary form of insurance for owners of private residences, tenants residing in rented premises, and condominium unit owners.¹⁹ The business owners policy is similar to the provisions of the homeowners policies and is available to small businesses, including small apartments and office buildings. Other insurance packages are available to business which are larger or have particular insurance needs.²⁰

Homeowners policies cover the following main areas of exposure:

- (1) Loss and damage to the dwelling and other structures on the premises;
- (2) Loss and damage to most personal property at the described premises and with some qualification, anywhere in the world;
- (3) Loss of use, specifically temporary additional living expenses necessary to maintain the household's normal standard of living when the dwelling is rendered uninhabitable by damage;
- (4) Legal liability for bodily injury to other persons and others' property negligently caused by the insured or upon the insured's property; and
- (5) Medical payments to compensate for injuries to other persons without a finding of legal liability.²¹

Separate coverage is also available, although not as common, for each of these areas of exposure.

Homeowners policies are classified according to the perils which are covered for the first two areas of exposure. Some types of policies provide "named perils" coverage. The "basic form" policy insures against specific perils listed in the policy with numerous exclusions. The "broad form" policy covers several additional perils in addition to those perils listed in the "basic form" policy and less exclusions. The tenant homeowners policy and the condominium owners policy normally provide "named perils" coverage for personal property and improvements to the residence.²²

Two other types of policies provide "all risk" coverage. The "special form" policy insures against all risks of physical loss to the dwelling, except those specifically excluded, and against named perils for personal property. The "comprehensive form" policy provides coverage against all risks of physical loss to both the dwelling and personal property, unless the risks are specifically excluded.²³

DEFINITIONS AND PRINCIPLES OF INSURANCE

Understandably, the premium is correspondingly higher for policies with greater coverage. The most popular homeowners policy is the "special form" policy because it provides comprehensive coverage for the dwelling, usually the insured's largest asset.²⁴

All homeowners policies include coverage for the following perils: fire and lightning, explosion, windstorm and hail, smoke, vehicle and aircraft, riot and civil commotion, vandalism and malicious mischief, theft, and glass breakage. Exclusions for all policies are extensive, but the major ones include: flood, water backing up through sewers and drains, earth movement including earthquakes and landslides, war and nuclear damage, normal wear and tear, and mechanical breakdown.²⁵ For a higher premium, coverage can be added for earthquakes and for flood.

The National Flood Insurance Program

The Federal Emergency Management Agency ("FEMA") currently administers the National Flood Insurance Program ("Program") which makes subsidized flood insurance available to property owners and residents in participating communities. Communities qualify to participate in the Program by adopting and enforcing satisfactory land-control and land-use ordinances for reducing identified flood hazards.²⁶ All counties in the State of Hawaii are participating in the Program; therefore, any property owner or resident in the State can purchase flood insurance.²⁷

Flood insurance policies are sold by private insurance agents and are provided by the Program directly or by private insurers under the "Write Your Own" Program. The "Write Your Own" Program authorizes private insurers to provide federal flood insurance as a rider to their homeowners policies or as separate contracts. The Program reimburses participating private insurers for losses which exceed the premiums and income from the investment of these premiums.²⁸ The table in Appendix B displays for each island the number of flood insurance policies in effect, the total amount of coverage, and the total amount of premium paid.

In participating communities, basic flood insurance coverage can be purchased at subsidized premium rates, known as chargeable rates, regardless of the particular flood hazard. Different chargeable rates apply to residential units, residential contents, commercial units, and commercial contents with set limits on the amounts of coverage available.²⁹

Additional coverage is available at actuarially determined rates with set limits on the amounts of coverage available at these rates.³⁰ The total coverage available is the combined amounts of coverage available under the chargeable and actuarial rates.

The actuarial rates which are charged for insuring a certain building and its contents depend on the building's location and construction. Based on historical and hydrologic data, areas subject to flooding are divided into zones which indicate the levels of exposure to the hazard of flood. Actuarial rates for buildings in higher risk flood zones are more expensive than for buildings in lower risk flood zones.³¹ Furthermore, buildings within flood

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hazard zones which conform to county building codes usually receive lower insurance rates than nonconforming buildings.³²

Flood insurance covers losses resulting from flood, defined as "a general and temporary condition of partial or complete inundation of normally dry land areas," from the overflow of inland or tidal waters, the unusual and rapid accumulation or runoff of surface waters from any source, mudslides caused by accumulation of waters, and unusual erosion caused by waves or currents of water exceeding normal levels.³³ In addition to various standard exclusions, the policies do not cover losses caused by rain, snow, sleet, hail or water spray, freezing, thawing, the weight of ice or water or any condition solely related to the described premises or losses which are substantially confined to the described premises or properties immediately adjacent thereto.³⁴

Chapter 3

INSURANCE DIFFICULTIES IN AREAS PRONE TO NATURAL DISASTERS

Natural Disasters Generally

Insurability of Natural Disasters

Insurers have generally encountered difficulties in insuring natural disasters. A natural disaster usually affects whole areas at one time. Consequently, the risks of persons living in certain areas are correlated for losses from a particular type of natural disaster. Furthermore, adverse selection occurs because the demand for insurance coverage against that type of natural disaster is usually concentrated in these areas. As another problem, the infrequency of a natural disaster yields limited statistical data for determining its probabilities and expected losses.¹

These problems entail extra costs in insurance which are difficult to figure into premiums. In the 1890's and 1920's, many insurance companies which sold flood insurance went bankrupt due to severe flooding in the areas where the demand for coverage was concentrated. Consequently, other companies were discouraged from insuring against flood, and thereafter, flood insurance was not available until the National Flood Insurance Program began in 1968.²

Currently, insurance companies which offer coverage against earthquakes are facing the difficulties described. Recognizing these difficulties, an organization has formed in the industry to propose federal legislation to create a federal earthquake insurance program. The program is being designed to provide residential property insurance for direct losses caused by earthquakes and also volcanic eruptions. The program is also expected to offer reinsurance to insurers for excess losses, resulting from an earthquake or volcanic eruption, in many lines of coverage, including fire, theft, and homeowners policies.³

Hazard Assessment

An area's susceptibility to a natural disaster can be viewed as that area's exposure to the hazard of that natural disaster. Evaluation of hazard exposure involves studying an area's natural conditions in order to assess that area's likelihood of being affected by a particular natural disaster. The evaluation is generally based on the postulate that probable similar future occurrences will most likely follow past patterns.⁴

Evaluation of hazard exposure differs from the evaluation of risk which focuses on the likelihood of loss of life and property in the given area. Consequently, risk increases as areas exposed to a hazard become cultivated, populated, or otherwise developed. Even areas with low exposure to a hazard may be classified as having a high degree of risk if they are densely populated.⁵

The Hazard of Lava Flow

Locations of High Exposure

The island of Hawaii, the Big Island, has higher exposure than the other islands of the State to hazards related to volcanic activity due to its active volcanoes. Appendix C displays a volcanic hazards map which indicates the relative levels of exposure to volcanic hazards for different areas of the Big Island.

Difficulties with Insurance Coverage

Since 1983, lava has repeatedly flowed from vents of the Kilauea volcano into the southeastern coastline region of the Big Island which has exposure levels of E and F for volcanic hazards flow (see Appendix C). The lava has covered major parts of residential communities in the Kapa'ahu and Kalapana areas in that zone. Approximately 64 homes have been destroyed.⁶

No more than 25% of the destroyed homes were covered by property insurance.⁷ Since this area was not well developed, several homes were roughly constructed and would not have qualified for property insurance. The following is a description of the Royal Gardens division which was covered extensively by lava:

Royal Gardens was created in the 1960s, a subdivision with no water lines, no power lines, no phones. Its roads run from the coast up the side of Kilauea's east flank, and are crossed by streets at regular intervals, a meshed network.

There were only about 50 residences on the 1,500 Royal Gardens lots, and some of those were in the form of trailers and rough shelters rather than traditional homes.⁸

For those homes which were covered by property insurance, there was some question about whether destruction by the lava flow itself was a covered peril. One position put forth was that "homeowners with fire insurance should be covered for their losses as long as the house itself caught fire before the lava hit. If the house is destroyed by the lava itself, the destruction is considered an 'act of God' and may not be covered."⁹ The Hawaii Insurers Council set forth its position that a lava flow is a fire and that the homeowners policies issued by its members "will cover any fire damage to their (the policyholders') insured dwellings resulting from the lava flow."¹⁰ Since the Council's members issue more than 90% of the property insurance in the State, its position applies to most policies.

Although property policies cover destruction from lava flow, insurers were refusing to continue existing policies and to issue new policies in the affected area. The situation was the focus of discussion between State Representative Andrew Levin, several affected homeowners, and Robert Grantham, the representative member of the Council. From this discussion, the Hawaii Insurers Council established its position that its members in good faith will not cancel or refuse to renew existing policies. What difficulty remains is that new policies are not available for properties in the affected

area. The persons affected are new buyers, new builders, residents who did not previously purchase insurance, and residents who previously obtained insurance from insurance companies which no longer exist.¹¹

The Hazard of Flood

Locations of High Exposure

Flood Insurance Rate Maps indicate the relative levels of exposure to flood hazards for different areas of the State based on past flooding patterns and other hydrologic data. Areas subject to flood, called flood plains, are divided into zones indicating the levels of exposure. "V" zones are mainly coastal areas, such as Hilo and Oahu's North Shore, where exposure to tsunamis and flooding is highest. "A" zones are high exposure areas just inland of "V" zones or near rivers and streams, including all of Waikiki and the area along side the Ala Wai Canal. "B" and "C" zones have the lowest exposures within flood plains and include most of metropolitan Honolulu, except areas along streams and coasts.¹² "D" zones are areas located near flood channels built to control inland water runoffs. Since most "D" zones have no extensive storm histories, their exposure to flood hazards is not as predictable but is expected to be low.¹³

Difficulties with Insurance Coverage

Hurricane Iwa

Hurricane Iwa hit the State on November 23, 1982. High velocity hurricane winds caused damage in all areas of the State. The swells and high surf generated by Iwa caused extensive wave damage to the southwest coast of Kauai, from Poipu Beach to Kekaha, and to the western coast of Oahu, in the Makaha and Nanakuli areas.¹⁴

Homeowners insurance covers damage from wind action and those rainfall losses which result directly from wind action, for example, rain damage to the contents inside a dwelling which sustained roof damage from the wind.¹⁵ Many residents, however, did not have homeowners insurance coverage. Red Cross estimates suggest that only 30% of 3,310 homeowners who had sought assistance had insurance coverage on their homes.¹⁶

Losses from wind damage are covered by homeowners insurance but losses from wave damage are only covered by federal flood insurance which must be purchased separately. According to FEMA estimates, between 300 to 500 active flood insurance policies were in effect on Kauai and between 3,500 to 4,000 policies were in effect on Oahu before Hurricane Iwa struck.¹⁷

Although a well-developed stretch of Kauai's south shore was heavily damaged, only 29 flood damage insurance claims from Kauai were filed by December, 1982 with little expectation of many more thereafter. From Oahu, 35 claims were filed during that time span.¹⁸ As one possible explanation for the low number of claims, property owners may prefer to argue that hurricane losses resulted from the high winds rather than from the waves. "This makes claimants eligible for reimbursement of homeowners insurance

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policies that have lower deductibles, higher rates of coverage, and quicker paybacks than do flood insurance policies."¹⁹

Furthermore, much of the losses caused by wave damage were not recovered under flood insurance because many affected dwellings were not covered by flood insurance. The following is a description of the situation:

It is known that a substantial number of the residents of tsunami zones in Hawaii are unaware of the vulnerability of these locations and thus do not purchase insurance. In fact, many coastal residents who consulted existing insurance maps found that their properties were located outside designated flood hazard zones. Unfortunately, such maps proved to be poor indicators of risk from Hurricane Iwa's flood. On the day after the storm, aerial damage assessment teams detected evidence of flood damage 200 to 300 ft beyond the inland boundaries of hazard areas shown on current flood insurance maps of Poipu and adjacent communities.²⁰

From this description, it is evident that "the flood impact resulting from Hurricane Iwa was far greater than what could be expected by consulting the Flood Insurance Rate Map."²¹ The Map does not represent hazards of Hurricane Iwa type events because there is little documentation of them on which the Map can be based. Instead, the Map is a better representation of historical flooding as caused by tsunamis, heavy rainfalls and high surf.²²

Rainstorm on New Year's Eve, December 31, 1987

On New Year's Eve, December 31, 1987, an unusually heavy surge of rain during the evening hours created high levels of flooding, landslides, and debris flows which caused extensive damage to many properties in certain residential areas of Oahu. In the "Coconut Grove" area of Kailua, more than 300 homes received up to five feet of flood water originating primarily from storm waters collecting in Kawainui Marsh which came over the levee separating the Marsh from the residential area. In Waimanalo, the heavy downpour caused severe erosion in the upland farm areas and up to four feet of flooding from the combined run-off from the upper watershed and local rainfall. In the upper portions of East Honolulu's residential valleys, heavy debris-laden flood flows surged downward causing major damage to residential properties and public drainage systems and streets.²³

The rainstorm caused different forms of flood damage, all of which are covered by flood insurance only. Although nearly a thousand residential properties experienced one or more forms of flood damage,²⁴ approximately sixty-five flood insurance claims,²⁵ were filed. This low number of claims indicates that many of the affected homes were not covered by flood insurance.

Several factors contributed to the low number of flood insurance policies in effect in the damaged areas. First, flooding effects extended beyond the high risk areas indicated on the Flood Insurance Rate Map for Oahu; therefore, many residents would not have realized the flood hazard by referring to the Map itself.²⁶

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Furthermore, the East Honolulu residential valleys severely affected by the storm, specifically, Hahaione, Kuliouou and Niu Valleys, are identified as "D" zones on the Map. Since the level of exposure in "D" zones is undetermined, most residents in this zone type are just as unlikely to perceive a threat from flood and to purchase the protection of flood insurance. The current Map also does not show the recent development in those valleys; for example, many homes were flooded on streets which were not shown on the Map.²⁷

Other Hazards

The Insurance Commissioner does not know of any other difficulties extensively experienced with insurance due to an area's exposure to the hazard of a natural disaster.²⁸ Unavailability of insurance has been a problem in areas of other states which are highly exposed to such natural hazards as windstorms and brushfires. These hazards have not yet created an insurance problem in Hawaii.

The Insurance Commissioner has conducted a survey of residents in the State who are unable to obtain homeowners insurance. As of this writing, the results of this survey are still pending; therefore, it is not known whether this survey differentiates among the reasons for the unavailability of homeowners insurance.

Other Areas Experiencing Difficulty in Obtaining Insurance

Other sections of the east and southeastern rural region of the Big Island may not be imminently threatened by the recent lava flow; however, several residents in these areas have reported that they find it difficult or impossible to obtain property insurance. As was described with respect to the Royal Gardens subdivision, these other remote areas of the Big Island also have no water lines, no power lines, and no telephones. Instead of county roads, private roads are the means of travel in these areas.²⁹ Residents of other rural areas in the State may also find it difficult to obtain property insurance.

Several insurance companies hesitate to provide property insurance in these areas which are not connected to county fire and police services.³⁰ In the absence of these services, these areas have a high exposure to the possibility of losses from fire and theft. In many cases, property insurance is available only at very high premiums which are unaffordable to most residents of these areas.

Insurance companies which are based in the State are more willing than other insurance companies to provide property insurance for reasonable premiums in these areas and will consider applications for insurance from these areas on an individual basis. On an application for property insurance, a locally based insurance company's affirmative decision on coverage would depend to a large extent on the residence's structural and maintenance conditions, including solar cells in good working order and an adequate water reserve. However, insurance against theft may not be provided.³¹

Chapter 4

RESIDUAL MARKET MECHANISMS IN OTHER STATES

Fair Access to Insurance Requirements (FAIR) Plans

Purpose

Fair Access to Insurance Requirements ("FAIR") plans "are vehicles for providing property insurance to the residual market for which insurance might not otherwise be available."¹ FAIR plans make available insurance against direct losses from fire, extended coverage, vandalism, and malicious mischief. Extended coverage means coverage against the perils of windstorm, hail, explosion, riot, civil commotion, aircraft, vehicle, and smoke.²

FAIR plans give property owners "fair access to insurance based solely on the structural soundness of their property."³ Insurance coverage under a FAIR plan cannot be denied on the basis of environmental hazards which are "beyond the control of the property owners,"⁴ including an area's high crime rate, riot potential, or high level of exposure to a natural hazard.⁵

History

Because of frequent riots and civil disorders in the mid-1960's, inner-city property owners found it difficult or impossible to obtain property insurance during that time. Congress was concerned that "the lack of such insurance coverage accelerates the deterioration of these areas by discouraging private investment and restricting the availability of credit to repair and improve property therein, and this deterioration poses a serious threat to the national economy."⁶

Consequently, Congress passed the Urban Property Protection and Reinsurance Act of 1968, Public Law 90-448. Under this Act, insurers could purchase federal riot reinsurance against excess losses from riots and civil disorders. In order to qualify for the reinsurance program, insurers were required to participate in federally approved FAIR plans adopted by their respective states.⁷

In 1983, Congress terminated the federal riot reinsurance program because only a small number of insurers were buying reinsurance.⁸ The majority of states have continued the operation of their FAIR plans. Currently 28 states have FAIR plans in operation.

Participation by the Insurance Industry

For 25 FAIR plans, legislation in each respective state requires plan participation by all insurance companies that write property insurance in that state.⁹ The legislation usually provides that an insurance company's authority to provide property insurance in that state is conditioned upon the company's participation in that state's FAIR plan.¹⁰ Three FAIR plans make membership voluntary. See Appendix D-1 for a table of FAIR plans with mandatory and voluntary membership.

Participation in a FAIR plan consists of sharing the profits and losses of the plan, most often net losses. Each participating insurance company is assessed an amount of the net losses in proportion to the amount of insurance written by that company in the state for a specified period.¹¹ In six states, credit against a member's plan assessment is given for the company's voluntary writings of policies which would have otherwise been provided by the respective FAIR plan.¹²

Plan Operation

Most FAIR plans have adopted bylaws and are overseen by governing committees. See Appendix D-2 for a general description of each plan's governing committee. The plans are also subject to varying degrees of control by their respective states' insurance departments.¹³

How policies are issued under a FAIR plan depends on whether the plan operates through a servicing carrier or as a syndicate. The servicing carrier method of operation was common in the early 1970's when plans began their operations.¹⁴ Only seven plans currently use this method while 21 plans operate as syndicates.¹⁵

Under the servicing carrier method of operation, a plan generally reviews the applications for insurance and forwards qualified applications to one or more members insurance companies, usually just one designated company. The member insurance company receiving the applications, which is the servicing carrier, writes the policies on risks covered by the plan and receives a fee from the plan for its services. The servicing carrier keeps records of its income and expenses from policies which it wrote for the plan. The plan assesses all member companies for their respective shares of the net loss incurred by the servicing carrier from the plan's policies.¹⁶

The servicing carrier method of operation has been largely replaced by the syndicate method. The syndicate method developed "in response to a need for greater efficiency and more centralized control over plan operations."¹⁷ Under the syndicate method, the plan itself provides the policies as the agent of its members. The plan screens the applications, writes the policies, collects premiums, processes policyholders' claims, and performs all administrative functions. The plan assesses all member companies for their respective shares of the net loss incurred by the plan.¹⁸

Perils Covered

Fire, extended coverage, and vandalism and malicious mischief are the common options of coverage which FAIR plans offer and policyholders can choose to pay for. The plans' policies generally cover only direct losses resulting from the named perils and do not include losses from theft, indirect losses such as loss of use, nor coverage for personal liability. However, ten FAIR plans also provide one or more of the standardized homeowners policies.¹⁹ Several plans also offer optional coverage for crime, such as theft, and for various other perils for which insurance is not readily available in their jurisdictions.²⁰ Appendix D-3 shows what coverages are available under each state's FAIR plan.

Areas Eligible Under the Plans

As Appendix D-3 also shows, most states make insurance under their FAIR plans available statewide. Four states make insurance by their respective FAIR plans available only to specific geographic areas in their jurisdictions. In Washington²¹ and Indiana,²² the eligible areas are designated urban areas. In Louisiana, policies under its plan are available in areas outside the zone eligible for insurance under the state's windstorm plan.²³ In California, the insurance commissioner designates urban and brush areas which are eligible for coverage under the FAIR plan, and the commissioner may expand or contract the designated areas in response to the availability of insurance in the voluntary market.²⁴

Even when its insurance is available statewide, a FAIR plan may provide the majority of its policies within specific areas of its state. In particular, the FAIR plans operating in Connecticut,²⁵ Ohio,²⁶ and North Carolina²⁷ have indicated that the majority of their businesses comes from urban areas, especially where there is a heavy concentration of tenant-occupied properties. The FAIR plan in North Carolina also provides many policies to "rural areas where there is a prevalence of arson."²⁸

Conditions for Coverage

FAIR plans cannot refuse to provide insurance on the basis of environmental hazards, but coverage can be denied if basic fire safety standards or other specific conditions are not satisfied by an applicant's property. Most FAIR plans deny coverage if any of the following substandard conditions exist: vacancy susceptible to trespass, poor physical conditions, including unrepaired damage from fire or other peril, poor housekeeping causing high exposure to fire hazards, occupancy violating a law or public policy, and in some states, any structure not built in conformance to governing building and safety codes.²⁹ Furthermore, many plans do not provide coverage to properties used for farming and manufacturing and to mobile homes.³⁰

Inspection of Premises

In order to assess the conditions of properties, FAIR plans generally make routine inspections of properties being considered for new coverage or renewal of existing policies. If a property fails to meet the plan's standards, the property owner is notified of the results and is given a period of time to make repairs in order to qualify. If the building has minor deficiencies, the policy may be issued with a premium surcharge which applies to all properties in similar condition.³¹

Limits on Insurance Liability

All FAIR plans place a maximum limit on the amount of insurance which can be purchased to cover a building and its contents. As displayed in Appendix D-4, each plan has specified liability limits for habitational buildings and contents, and for commercial buildings, depending on the construction, and contents.³²

Premium Rates

Many FAIR plans use the premium rates used in the voluntary market and provided by rating bureaus which calculate the rates on a statistical basis. As shown in Appendix D-5, several plans add varying surcharges depending on the building's use. As mentioned, FAIR plans generally add surcharges for minor deficiencies within the control of the insured party.³³

Common Problems

Since FAIR plans provide property insurance to the residual market, they are subject to business cycles caused by the voluntary market. When the voluntary market tightens in a state, the volume of applications received and policies issued rises under the state's FAIR plan. When a "soft market" exists in the private industry, the FAIR plan's volume is steady and may decrease. FAIR plans must be prepared for the often rapid "acceleration and volume upward and downward" in their business and make appropriate business decisions to minimize strain on their resources.³⁴

As another aspect of providing insurance to the residual market, FAIR plans provide "a dumping ground for all marginal or undesirable hazards. High-risk classifications such as bars, bowling alleys, and restaurants are forced into the plan because insurers refuse to cover them outside the plan."³⁵ Given the high risk populations which FAIR plans serve, a good majority of plans, not surprisingly, incurs large underwriting losses. Appendix E shows the earned premium amounts and underwriting results for each plan in the years from 1982 to 1986.

With underwriting losses due to the nature of their business, FAIR plans are concerned with controlling unnecessary loss experience, especially cases of arson-related insurance fraud known as "arson-for-profit." As a residual market mechanism, FAIR plans provide insurance to most applications and are limited in their abilities to assess properties and their owners or occupants.³⁶ Arson-for-profit occurs when policyholders overinsure their properties, often located in economically depressed areas, and criminally profit by setting fire to their properties and collecting the full amounts of their policies.³⁷ Several FAIR plans have taken various measures to minimize the occurrence of arson-for-profit, for example, by providing coverage based on the actual cash value of the property, improving investigation of arson fires, and supporting community measures to curb and identify arson incidences.³⁸ Furthermore, most FAIR plans apply a shorter time of notice for policy cancellation when certain exceptions occur, including evidence of owner or occupant incendiarism.³⁹

Beach and Windstorm Plans

Properties in the beach areas of southern coastal and gulf states, known as the "hurricane belt," have especially high exposure to losses due to windstorm. Many property owners in these areas were unable to obtain insurance in the voluntary market against windstorm as well as other perils. To provide access to property insurance in these areas, seven states with areas located in the hurricane belt have enacted legislation for the formation of insurance pooling plans which function in a manner similar to FAIR

plans.⁴⁰ In six of these states, participation in the respective state's plan is required for insurance companies doing business in that state. Five plans operate as syndicates while two plans operate through service carriers.⁴¹ See Appendix F for a table of the seven beach and windstorm plans.

In all plans, coverage is available only to designated coastal areas in the respective states. The plans generally provide coverage against fire and extended coverage, with two plans also offering the options to insure against vandalism and malicious mischief. Two other plans only offer insurance against windstorm and hail while another adds hurricanes to these two perils.⁴²

The plans make routine inspections and deny coverage for certain unacceptable property conditions as similarly described for FAIR plans. All plans have coverage limits for the different types of buildings and contents. As a distinguishing feature from FAIR plans, beach and windstorm plans generally safeguard against short-term adverse selection by refusing to accept applications when potential storm damage is imminent.⁴³ In contrast to the low percentage of FAIR plans with this provision, most beach and windstorm plans provide credit against members' plan assessments with respect to their voluntary writings of policies in the designated coastal areas.⁴⁴

Joint Underwriting Plans

A Joint Underwriting Plan or Joint Underwriting Association ("JUP" or "JUA") is another mechanism to provide access to affordable insurance to a residual market by a mandatory pooling of insurers doing business in that state. In five states (Florida, Hawaii, Michigan, Missouri, and New Jersey) a JUP provides access to automobile insurance to high risk motorists who do not qualify for coverage in the voluntary market.⁴⁵ Ten states (Florida, Kansas, Massachusetts, Minnesota, New Hampshire, New York, Pennsylvania, South Carolina, Texas, and Wisconsin) have JUAs in operation to provide access to medical malpractice insurance.⁴⁶ Several states have formed JUAs to provide access to liability insurance to other high risk businesses such as day care centers.⁴⁷

JUPs generally operate in a manner similar to FAIR plans operating through servicing carriers. To establish a JUP, a state's legislation would require all insurance companies which write policies of a specified nature to participate in that state's JUP as a condition of doing business in that state. A limited number of members perform the functions of service carrier, including the writing of policies, collection of premiums, and the processing of policyholders' claims. Based upon the insurance company's share of the specific voluntary market, each member is assessed a share of the underwriting results from the service carriers' policies issued for the JUP.⁴⁸

There does not appear at this time to be any state which has established a JUP to provide access to property insurance.⁴⁹ To provide the same type of mechanism as a JUP for property insurance, several states utilize FAIR plans operated through servicing carriers.

One noticeable difference between the operation of a JUP and a FAIR plan using the servicing carrier method is that a JUP is often established as a mechanism within the state's insurance department and administered directly

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by the state's insurance commissioner. In some states, the state insurance commissioner is empowered by state legislation to activate a JUP if the commissioner determines that insurance is unavailable for a given line of insurance.⁵⁰

In contrast, a FAIR plan is generally established by legislation as an entity within the insurance industry and subject to the approval and supervision, but not the direct administration, of the state's insurance commissioner. In at least one state, the legislation which governs the state's FAIR plan also authorizes the state's insurance commissioner to establish a JUP "if at any time the commissioner determines that the (FAIR) facility is not adequately fulfilling its stated (legislative) purpose."⁵¹ Such a provision indicates that a FAIR plan generally operates, to a large extent, outside the direct control of the insurance commissioner, while the JUP, on the other hand, operates at the direction of the state's insurance regulators.

Chapter 5

CONSIDERATIONS FOR A PLAN TO PROVIDE INSURANCE ACCESS IN HAWAII

Suggested Measures for a Plan

Legislation

Since the FAIR plan is the common means employed by other states to provide access to property insurance, a FAIR plan, if directed by the Legislature, can be developed by assessing the provisions of other states' plans in relation to the specific needs for insurance access in the State. However, before a plan is established, consideration should be given to the adverse effects that can be expected. These adverse effects are described in the next part of this chapter.

The usual pattern in establishing a FAIR plan in a state is to enact legislation establishing the plan, requiring the participation of all insurers doing business in the state, subjecting the plan to the approval and supervision of the state's insurance commissioner, and outlining the plan's structure and procedures. These provisions are relatively similar in all states with mandatory FAIR plans.

As the focus of this study, residents of areas highly exposed to hazards comprise the primary population for which access to property insurance is to be provided. Most plans offer coverage statewide; however, one plan, the California FAIR Plan, has focused its coverage on areas highly exposed to the hazard of brush fire and on urban areas. Since the California FAIR plan has been operating with underwriting profits in recent years, its plan may be a worthy model for developing a plan for the State, should the legislature desire one. A copy of the California statute establishing the FAIR Plan and a copy of the Plan's plan of operation are provided in Appendices G and H, respectively.

In particular, the California Plan has several features which seem to minimize the problems which FAIR plans generally encounter as residual market mechanisms. First, policies under the California FAIR Plan are available only "in those geographic or urban areas designated by the commissioner,"¹ specifically, within cities and designated brush fire areas.² In this respect, the California Plan is designed to provide insurance to persons residing in known areas of high fire exposure. The Plan's limited areas of coverage may reduce the potential volume fluctuations and the number of applications for properties for which insurance was denied in the voluntary market not for environmental reasons but for their conditions or other reasons not within the legislative intent of the Plan.

For policies purchased in the brush fire areas, a specific brush surcharge is included in each premium and is determined by many factors, for example, "the distance the highly inflammable native brush is cleared from the structure."³ Therefore, the Plan's premiums, to some extent, more closely approximate the actual costs of insuring the higher brush fire exposures and result in better underwriting results.

The California FAIR Plan is also one of the few which give credit on members' plan assessments for the policies which they respectively write within the Plan's designated areas.⁴ This provision furthers one of the legislative purposes of the FAIR Plan, which is "to encourage maximum use, in obtaining basic property insurance, of the normal insurance market provided by admitted insurers and licensed surplus line brokers."⁵ Essentially a FAIR plan works best in its role as a residual market mechanism when its structure and operation minimize its share of the insurance market,⁶ and the described provisions of the California FAIR Plan seem focused in that direction.

A plan for the State should provide "basic property insurance," which is described in both the legislation and plan of operation for the California FAIR Plan as providing coverage for the following:

...perils insured under the standard fire policy and extended coverage endorsement and vandalism and malicious mischief and such other insurance coverages as may be added with respect to such property (in the designated locations) by the industry placement facility with the approval of the commissioner or by the commissioner, but shall not include insurance on automobile or farm risks.⁷

With this definition of "basic property insurance," either the plan or the insurance commissioner can add other optional property coverages which the voluntary market is refusing to provide in the designated areas.

Operation

While most FAIR plans operate as syndicates and provide policies directly, a plan for the State could initially use the servicing carrier method of operation. In this way, the plan can begin operating without the additional time and expense to establish procedures of its own for issuing and servicing policies. Once in operation, the plan can switch to operating as a syndicate if the demand for the plan's services can be better served with this method.

A plan for the State should include measures for loss control. For instance, the plan should adhere to the principle of limiting coverage to the actual cash value of the property. This measure will reduce the incentive to engage in "arson-for-profit." Furthermore, the State's plan can follow the example of windstorm and beach plans and safeguard against short-term adverse selection by refusing to accept applications when a potential natural hazards is imminent.

In addition, the State's plan must develop a cost-effective method of making property inspections. For small-scale FAIR plans which write a large number of policies in rural areas, inspection by the insurance agents provides the practical means of assessing the conditions of properties.⁸

Public Policy Considerations

Subsidization by Other Policyholders

Member companies of a residual market mechanism share the costs generated by the mechanism, including the underwriting losses and administrative and operational expenses. Ultimately, "these costs are passed along to the member companies' policyholders through their property insurance premiums. Therefore, the property owner not insured by the FAIR plan subsidizes the losses to the properties insured by the FAIR plan."⁹

Similarly, insured motorists subsidize motorists who must purchase no-fault insurance from the JUP under the division of motor vehicle insurance. However, access to motor vehicle insurance is important because no-fault insurance coverage of a motor vehicle is mandatory in this State for the operation of that motor vehicle.¹⁰ In contrast, purchase of property insurance is not a legal requirement for the ownership of a home or other property, although financial institutions may require it as a condition for mortgage loans.

Furthermore, motor vehicle insurance benefits the public generally, because it indemnifies persons for losses for which the owner or operator of an insured vehicle is legally liable. Since most FAIR plans only cover direct losses from specific perils, the benefit of involuntary insurance would accrue only to policyholders of the insured property. Subsidization of property insurance may be difficult to justify when the subsidized population was on notice to an area's high exposure to a hazard and nevertheless chose the option of living in that area for other reasons. Subsidization allows these residents to transfer the risks of their selection to an insurer albeit an involuntary one.

Expected Increase in Risk for Areas Highly Exposed to Hazards

Since property insurance coverage is often a condition of mortgage loans, the unavailability of insurance coverage for properties within an area presents an obstacle to construction within that area. In fact, the concept of FAIR plans was first developed as a means of removing this obstacle which was discouraging renovation in urban areas.¹¹

Consequently, one expected effect of a FAIR plan, or other residual market mechanism, is the facilitation of development through new construction within an area where construction was hampered by the unavailability of insurance. However, development in an area may not be desirable if it increases risk in that area. As previously explained, risk increases when an area exposed to a hazard becomes more densely populated or otherwise developed.¹² T. M. Banta, the manager of the California FAIR Plan Association, gives a good description of how a residual or involuntary market mechanism can, by removing an obstacle to construction, increase risk in an area exposed to a hazard:

While an involuntary market makes insurance available to present structures in an environmentally distressed area, which can be considered a problem solved, it also can promote construction of

CONSIDERATIONS FOR A PLAN TO PROVIDE INSURANCE ACCESS IN HAWAII

new structures that would otherwise not and should not be constructed in such hazardous area. A free market would restrict such construction since required insurance to back construction loans would be difficult to obtain at affordable rates.

If insurance is available through an involuntary market and therefore protection is afforded to lenders, a potential minor catastrophe can be built into a potential major catastrophe due to extensive new construction in the environmentally distressed area.¹³

The Civil Defense Division of Hawaii's Department of Defense has previously expressed its disapproval of legislation which may increase risk by providing access to insurance in areas highly exposed to a hazard:

The passage of this bill would require the State to indirectly encourage insurance companies to underwrite some form of insurance for all residents without regard to their location of residence. With this provision of insurability, individuals would possibly be encouraged to build their homes in high threat areas. From a public safety standpoint, people should not be encouraged to build in such areas.¹⁴

Clearly, the expected increase in risk by greater development potential is an effect which cannot be ignored in creating access to insurance for areas with high exposure to hazards. The ultimate policy determination which the Legislature must make in this area is whether the need to protect and possibly encourage residential development in areas known to be susceptible to natural hazards is as important an objective as encouraging the redevelopment of blighted urban areas, or providing access to motor vehicle insurance which is required by law.

Chapter 6

FINDINGS AND RECOMMENDATIONS

Findings

1. Natural disasters are perils which are difficult to insure.

A natural disaster usually affects whole areas at one time. Because of this tendency, a natural disaster presents correlated risks and the likelihood of adverse selection. Furthermore, because a natural disaster occurs infrequently, its probability of occurrence and expected losses are difficult to predict with accuracy. The effect on access to insurance by these difficulties has led to the establishment of the National Flood Insurance Program and a study for a possible federal earthquake and reinsurance program.

2. Residents living in areas affected by the recent lava flows are now not able to purchase property insurance, but those who obtained coverage in the past are able to maintain it.

The Hawaii Insurers Council has clarified that the insurance policies of its members do cover the losses directly caused by the lava flow. As a good faith agreement, its members will not cancel or refuse to renew existing insurance policies. However, property owners are currently unable to purchase new policies for their properties in the affected areas. Only a small number of property owners had insurance policies on their properties before the lava flows entered their areas.

3. Most residents' property insurance did not cover property damage caused by flooding from Hurricane Iwa and the 1987 New Year's Eve rainstorm.

A large majority of residents whose properties were damaged by flooding did not have flood insurance coverage on their properties. One reason for this was that the Flood Insurance Rate Maps do not indicate the affected properties' exposures to the hazard of flooding from such sources as hurricanes and extremely heavy rainfall.

4. In rural areas in the Big Island's southwestern region and other locations within the State, property owners have limited access to property insurance.

Many insurance companies are reluctant to provide property insurance to properties in those areas which do not have county fire and police services and are, therefore, highly exposed to the threats of fire and theft. Locally based insurance companies may provide property insurance at a reasonable premium for a property in these areas if the residence's structural and maintenance conditions are satisfactory.

FINDINGS AND RECOMMENDATIONS

5. A FAIR plan is the common residual market mechanism for providing access to property insurance.

Most states with FAIR plans make plan participation mandatory for all insurance companies doing business in their respective jurisdictions. Each member of a FAIR plan is assessed a share of the plan's underwriting losses upon the basis of that member's share of the voluntary market. A FAIR plan operates either as a syndicate or through a servicing carrier.

A JUP is similar to a FAIR plan operating through a servicing carrier except that a JUP is directly administered by the respective state's insurance commissioner. A JUP is usually established to provide access to liability insurance. There does not appear to be any state which has established a JUP to provide access to property insurance.

6. Other policyholders indirectly subsidize persons insured by a residual market mechanism, and this effect is an important policy consideration.

Since all insurance companies doing business in a state are required to participate in the state's FAIR plan and each pay a share of the plan's underwriting losses, the insurance companies pass on their shares of the plan's losses to their policyholders as a cost of business. As another type of residual market mechanism, a JUP also causes subsidization to occur; however, this effect may be justified by the public policy reasons for establishing a JUP, such as the fact that people are required by law to have motor vehicle insurance for any car they own.

7. Development by increased construction is expected to occur in areas which are highly exposed to hazards and in which access to property insurance is provided by a FAIR plan.

Since construction loans often require property insurance on the mortgaged property, access to property insurance is likely to promote construction. However, increased construction may not be desirable in areas of high exposure to hazards because the risk of property loss increases when these areas are developed. This effect is a significant public policy consideration in assessing the consequences of establishing a FAIR plan to provide access to property insurance in areas highly exposed to hazards.

Recommendations

1. A request for revision of the Flood Insurance Rate Maps should be submitted to FEMA.

The current Flood Insurance Rate Maps do not reflect the hazards of hurricanes such as Iwa or extremely heavy rainfalls such as on New Year's Eve, December 31, 1987. FEMA should be encouraged to study these other types of flood events which have occurred in the State and revise the Maps to reflect these types of flooding hazards. If the Maps provide a better indication of the various flooding hazards, residents can make a better assessment of their properties' level of exposure to flooding in deciding whether to purchase flood insurance.

2. In considering the implementation of a residual market mechanism, the need to provide access to property insurance must be weighed against the important public policy considerations.

The public policy considerations are the residual market mechanism's effects of subsidization and increased risk from expected development in areas highly exposed to hazards. "A FAIR plan (or other residual market mechanism) should not be considered unless it is apparent the balance of problems solved will outweigh the problems created by the plan."¹ In other words, the Legislature should not direct the establishment of a FAIR plan or JUP unless it believes that the benefits of making insurance available or more affordable to persons living in areas highly susceptible to natural disasters outweigh the disadvantages of:

- (1) Having all other policyholders subsidize these purchases; and
- (2) Possibly encouraging even more development in these areas--which can lead to even greater damage in the future.

If the benefits of a plan are found to outweigh the problems, a plan should be implemented with the elements described in Chapter 5. In summary, such a plan should involve mandatory participation of insurers, designate specific areas where coverage is available, provide credit for insurers' voluntary writings, provide basic property insurance to which other coverages can be added, charge premiums with a surcharge to reflect the increased risks, and begin operation through a servicing carrier.

3. Attention and support should be directed at the ongoing study of a possible federal earthquake and reinsurance program.

Since the contemplated federal law would provide insurance coverage for volcanic eruptions, this federal level mechanism would eliminate the unavailability of property insurance experienced by Hawaii citizens who own property or reside in areas highly exposed to volcanic hazards. The establishment of a federal program would, therefore, solve the State's primary deficiency of accessible property insurance, and the State's implementation of a residual market mechanism would only duplicate this federal solution. Consequently, consideration of a FAIR plan for the State should include monitoring the measures being proposed at the federal level.

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CHAPTER 6

1. Letter from T. M. Banta, Manager, California FAIR Plan Association, to Samuel B. K. Chang, September 15, 1988.

CHAPTER 5

1. Calif. Insurance Code, Sec. 10091.
2. Letter from T. M. Banta, Manager, California FAIR Plan Association, to Samuel B. K. Chang, September 15, 1988.
3. Ibid.
4. National Committee on Property Insurance, Compendium of State Property Insurance Plans, Section on the California FAIR Plan Association.
5. Calif. Insurance Code, Sec. 10090.
6. "LeComte Calls for 'Depopulation' of State FAIR Plans," National Underwriter: Property & Casualty/Employee Benefits ed., May 25, 1987, p. 69.
7. Calif. Insurance Code, Sec. 10091.
8. "FAIR Plan Heads Stress Need for Loss Control," National Underwriter: Property & Casualty/Employee Benefits ed., December 6, 1985, p. 42.
9. Letter from Tom Roeder, Manager, Wisconsin Insurance Plan, to Samuel B. K. Chang, September 9, 1988.
10. Hawaii Rev. Stat., sec. 431:10C-104.
11. Glenn L. Wood and others, Personal Risk Management and Insurance, Volume I (3rd ed.; Malvern, Pennsylvania: American Institute for Property and Liability Underwriters, 1984), p. 226.

Appendix A

HOUSE RESOLUTION NO. 434, FOURTEENTH LEGISLATURE,
1987 REGULAR SESSION, STATE OF HAWAII

HOUSE OF REPRESENTATIVES
FOURTEENTH LEGISLATURE, 1987
STATE OF HAWAII

H.R. NO. 434

HOUSE RESOLUTION

REQUESTING A STUDY OF METHODS FOR PROVIDING INSURANCE TO HAWAII
RESIDENTS LOCATED IN AREAS SUSCEPTIBLE TO NATURAL
DISASTERS AND VANDALISM.

WHEREAS, there are residents of Hawaii who, because their
property is located in areas which are susceptible to natural
disasters, are not able to obtain basic property insurance; and

WHEREAS, there are residents of Hawaii who, due to the
location, age, or dilapidated condition of their dwellings, are
not able to obtain basic property insurance; and

WHEREAS, the Legislature requires more information on the
availability problem described above; and

WHEREAS, there are two mechanisms, a FAIR (Fair Access to
Insurance Requirements) Plan and JUP (Joint Underwriting Plan)
which may be established to provide insurance coverage for
those persons described above who find property insurance
unavailable; and

WHEREAS, the Legislature requires a comparison of these
two plans for relief, and recommendations as to which plan, if
either, would be able to provide relief to the above-mentioned
persons; now, therefore,

BE IT RESOLVED, by the House of Representatives of the
Fourteenth Legislature of the State of Hawaii, Regular Session
of 1987, the Senate concurring, that the Legislative Reference
Bureau is requested to conduct a study which would include the
identification of the nature and extent of this unavailability
problem for the specific people mentioned, a determination as
to whether the problem justifies government intervention, and a
comparison of the relative strengths and weaknesses of the FAIR
plan and Joint Underwriting Plan in addressing this problem; and

Page 2

H. R. NO. 434

BE IT FURTHER RESOLVED, that the study be submitted to the Legislature prior to the convening of the Regular Session of 1988; and

BE IT FURTHER RESOLVED, that a certified copy of this resolution be sent to the Legislative Reference Bureau.

OFFERED BY:

Al Kern
Ortiz Friend

Appendix B

NATIONAL FLOOD INSURANCE COVERAGE IN HAWAII

<u>Island</u>	<u>Number of Policies in Effect</u>		<u>Total Coverage</u>	<u>Total Premiums</u>
	<u>Residential</u>	<u>Commercial</u>		
Hawaii	79	477	\$ 55,598,300	\$1,045,222
Oahu	2,929	671	408,028,500	1,438,951
Kauai	165	582	91,649,600	293,623
Maui	1,035	656	200,540,000	760,800

Provided by Brom Hunt, Marketing Representative, West Regional Office,
National Flood Insurance Program, Petaluma, CA.

Appendix C

ZONES OF OVERALL RELATIVE RISK FROM VOLCANIC HAZARDS

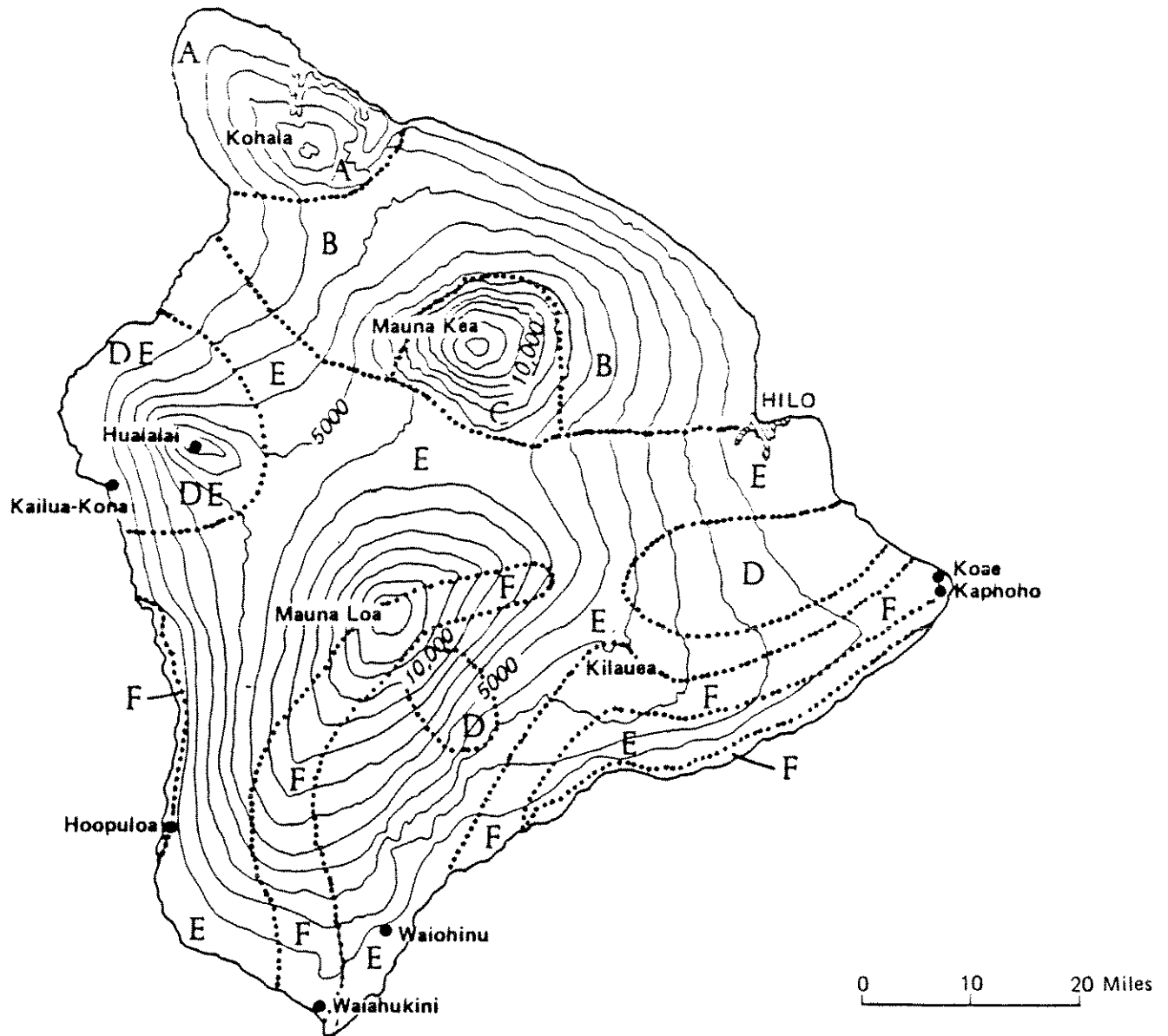


Figure 12-8. Zones of overall relative risk from volcanic hazards. *A* represents the least risk, while *F* is the probable highest. Adapted from Mullineaux and Peterson, *Volcanic Hazards on the Island of Hawaii*, U.S.G.S. Open-file report 74-239, 1974.

Source: Kal V. Steinbrugge, *Earthquakes, Volcanoes, and Tsunamis: An Anatomy of Hazards* (New York: Skandia America Group, 1982), p. 271.

Appendix D

FAIR PLAN OPERATION IN OTHER STATES

Source: National Committee on Property Insurance, Compendium of State Property Insurance Plans (Boston, 1987), Summary of State Property Plans Operations.

Footnotes on last page of Appendix.

Appendix D-1

MEMBERSHIP AND EXPIRATION DATE OF LEGISLATION

Summary of State Property Plans Operations Section 1

	MEMBERSHIP		Type of Pool (a)	EXPIRATION DATE OF LEGISLATION (b)	
	Voluntary	Mandatory		Expires Following Date	No Date Specified
California	-	X	S	-	X
Connecticut	-	X	S	-	X (1)
Delaware	-	X	S	-	X
District of Columbia	-	X	S	-	X
Georgia	-	X	S	12/31/90	-
Illinois	-	X	S	-	X
Indiana	X (1)	-	MSC	-	-
Iowa	X (1)	-	S	9/30/88	-
Kansas	X (1)	-	SSC	-	X
Kentucky	-	X	SSC	-	X
Louisiana	-	X	SSC	-	(1)
Maryland	-	X	S	6/30/88	-
Massachusetts	-	X	S	-	X
Michigan	-	X	S	-	X
Minnesota	-	X	S	-	X
Missouri	-	X	S	-	X
New Jersey	-	X	S	-	X
New Mexico	-	X	SSC	6/30/93	-
New York	-	X	S	12/31/90	-
North Carolina	-	X	S	-	X
Ohio	-	X	S	-	X
Oregon	-	X	SSC	-	X
Pennsylvania	-	X	S	-	X
Rhode Island	-	X	S	-	X (1)
Virginia	-	X	S	-	X
Washington	-	X	SSC	10/31/88	-
West Virginia	-	X	S	-	X
Wisconsin	-	X	S	-	X

FOOTNOTES:

- (a) S= Syndicate
SSC= Single Servicing Carrier
MSC= Multiple Servicing Carrier

(b) In "voluntary" Plans membership is voluntary and termination is not set by legislation.

(Revised 10/87)

Appendix D-2

GOVERNING COMMITTEE

Summary of State Property Plans Operations
Section 10

GOVERNING COMMITTEE									
MEMBERSHIP				STATUS OF MEMBERSHIP (e)				TERM OF OFFICE	
Industry	Public	Agent		Industry	Public	Agent		Industry	Public
California	9	1	3	E:V	A:NV	A:NV		1	Indef.
Connecticut	7 (1)	-	-	E:V	-	-		1	-
Delaware	9	-	-	E:V	-	-		1	-
District of Columbia	10	5	-	E:V	E:V	-		Indef.	Indef.
Georgia	8	4	-	E:V	A:V	-		1	1
Illinois	5	4	-	2E:V;3A:V	A:V	-		1	1
Indiana	8	-	-	5A:V;3E:V	-	-		1	-
Iowa	6	-	-	1E:V;5A:V	-	-		1	-
Kansas	7	-	2	E:V	-	E:V		1	1
Kentucky	6	-	1	A:V	-	A:V		Indef.	Indef.
Louisiana	7	-	-	4E:V;3A:V	-	-		1	-
Maryland	10	5	-	E:V	A:V	-		1	1
Massachusetts	10	6	2	E:V	A:V	A:V		1	1
Michigan	10	6	2	E:V	2E:V;4A:V	A:V		1	1
Minnesota	5	4	-	E:V	A:V	-		2	2
Missouri	11	-	2	10E:V;1A:V	-	A:V		Indef.	Indef.
New Jersey	12	6	3	10E:V;2A:V	A:V	A:NV		1	1
New Mexico	7	-	2	E:V	-	A:NV		1	1
New York	10	-	3	E:V	-	A:V		1	1
North Carolina	10	3	2	E:V	E:V	A:V		1	1
Ohio	8	3	1	E:V	A:V	A:V		1	2
Oregon	5	4	-	E:V	A:V (1)	-		3	3
Pennsylvania	7	-	-	E:V	-	-		1	1
Rhode Island	10	6	2	E:V	A:V	A:NV		1	1
Virginia	11	2	2	E:V	A:V	A:V		1	1
Washington	6	3	3	2E:V;4A:V (1)	A:V	A:NV		1	Indef.
West Virginia	6	-	1	A:V	-	A:V		1	1
Wisconsin	8	5	2	E:V	A:V	A:V		1	1

FOOTNOTES:

(e) Key to Status of Membership: E= Elected V= Voting
A= Appointed NV= Not Voting

(Revised 10/87)

Appendix D-3

ELIGIBLE AREAS AND COVERAGE PROVIDED

Summary of State Property Plans Operations Section 2						
ELIGIBLE AREAS			COVERAGE PROVIDED			
Statewide	Specific Geographic Areas	Other	Fire, E.C. & V. & M.M.	Crime	H.O.	Sprinkler Leakage Other
California	-	(1)	X	-	-	X (1)
Connecticut	-	-	X	-	-	X (1)
Delaware	-	-	X	-	-	-
District of Columbia	-	-	X	-	-	-
Georgia	X (1)	-	X	-	-	X (1)
Illinois	-	-	X (1)	-	X (1)	-
Indiana	X	-	X	-	-	-
Iowa	-	-	X	-	-	-
Kansas	-	-	X	-	-	-
Kentucky	(1)	-	X	-	(1)	-
Louisiana	-	-	X	-	X (1)	-
Maryland	X	-	X	-	X (1)	-
Massachusetts	-	-	X	-	X (1)	-
Michigan	X	-	X	X	X	-
Minnesota	-	-	X	-	(1)	-
Missouri	X	-	X	X	-	-
New Jersey	X	-	X	X	-	-
New Mexico	X	-	X	-	-	-
New York	X	-	X	-	-	(1)
North Carolina	X (1)	-	X	X	-	(1)
Ohio	X	-	X	X (1)	X	X (1)
Oregon	X	-	X	-	-	-
Pennsylvania	X	-	X	-	-	-
Rhode Island	X	-	X	-	X (1)	-
Virginia	X	-	X	-	-	-
Washington	-	-	X	-	-	-
West Virginia	X	-	X	-	-	X (1)
Wisconsin	X	-	X	X	X (1)	-

(Revised 10/87)

Appendix D-4 LIABILITY LIMITS

Summary of State Property Plans Operations
Section 4

LIABILITY LIMITS (\$ 0 0 0)

HABITATIONAL	BUILDINGS	COMMERCIAL				Additional Specifications
		Buildings	Contents	Fire Resistant	Ordinary Masonry	Frame

California		\$1,500 aggregate liability per risk	\$250	\$400	\$250	\$200	None
Connecticut		\$250 (1)	\$25 (1)	10	150	150	(1)
District of Columbia		150	150	150	150	150	None
Georgia		250	100	1,000	1,000	1,000	(1)
Illinois		100	100	500	500	500	None
Indiana		100	100	500	500	500	None
Iowa		100	100	1,000	1,000	1,000	None
Kansas		100	100	500	500	500	None
Kentucky		150	150	1,000 (1)	1,000 (1)	1,000 (1)	(1)
Louisiana		150	150	1,000	1,000	1,000	None
Maine		200	200	1,500/1,000*	1,000/750*	750/500*	(1)
Massachusetts		1,000 (1)	1,000 (1)	1,000	1,000	1,000	None
Michigan		100 (1)	100	1,500	1,500	1,500	None
Minnesota		1,500	100	1,500	1,000	1,000	None
Missouri		100	25	1,000	600	400	None
New Jersey		250	250/150*	1,000/1,000*	1,000/500*	500/250*	None
New Mexico		250/150*	100	1,200	400	200	None
New York		300	25	1,200	400	200	None
North Carolina		1,500	1,500 aggregate liability per risk	1,500	1,500	1,500	None
Ohio		1,500	1,500	1,500	1,500	1,500	None
Oregon		200 (1)	250 (1)	250 (1)	250 (1)	250 (1)	(1)
Pennsylvania		100	100	500/750*	500/250*	250/125*	(1)
Rhode Island		100	100	500	250	250	(1)
Virginia		100	100	1,000	1,000	1,000	None
Washington		1,000	1,500 aggregate liability per risk	1,000	1,000	1,000	(1)
West Virginia		75	25	100/200*	200/100*	100/50*	None
Wisconsin		100	100	500	500	500	None

FOOTNOTES:
* Protected/Unprotected
+ Considered on a combined basis with the building limit.
(Revised 10/61)

Appendix D-5

FAIR PLAN RATE SCHEDULE

<u>State</u>	<u>Same as Bureau Rates</u>	<u>Surcharge Applied to Bureau Rates*</u>	<u>Other</u>
California	X	X	--
Connecticut	--	X	--
Delaware	--	X	--
District of Columbia	X	--	--
Georgia	X	--	--
Illinois	--	--	X
Indiana	X	--	--
Iowa	--	X	--
Kansas	--	--	X
Kentucky	--	--	X
Louisiana	X	--	--
Maryland	X	--	--
Massachusetts	X	--	--
Michigan	X	--	--
Minnesota	X	X	--
Missouri	--	X	--
New Jersey	X	--	--
New Mexico	X	--	--
New York	--	X	--
North Carolina	X	--	--
Ohio	X	--	--
Oregon	X	X	--
Pennsylvania	X	--	--
Rhode Island	X	--	--
Virginia	--	X	--
Washington	X	--	--
West Virginia	X	--	--
Wisconsin	--	X	--

*Not including surcharges for minor property deficiencies within the control of the policyholder.

Footnotes for Appendix D

Appendix D-1

Expiration Date of Legislation

Connecticut: The plan expires after federal legislation expires, upon the insurance commissioner's determination, after consultation with the insurance industry, that the program is no longer needed.

Louisiana: The plan expires 30 days after the close of the regular session of the 1989 Louisiana Legislature.

Rhode Island: The plan shall not terminate without the written consent of the commissioner.

Appendix D-2

Governing Committee

Connecticut: This number includes one ex-officio, nonvoting member.

Oregon: One of the four public members must be an insurance agent.

Washington: Of the four members who are appointed and voting, one member is a servicing carrier.

Appendix D-3

Eligible Areas

California: The plan covers urban and brush areas designated by the insurance commissioner. He may expand or contract areas according to the availability of insurance in the voluntary market.

Georgia: Insurance against losses from fire, extended coverage, vandalism, and malicious mischief are eligible statewide. Windstorm and hail coverage is available only in the windstorm and hail area.

Kentucky: Eligibility is limited to areas with fire protection class ratings 1 through 10.

Louisiana: Public schools are eligible statewide.

North Carolina: Statewide except for areas eligible for coverage by the Beach Plan.

Coverage Provided

California: Earthquake insurance is available for one- to four-unit dwellings by the Earthquake Assumption Endorsement.

Connecticut: Insurance for public liability to a maximum of \$50,000 is available on 1-family, 2-family, 3-family, and seasonal dwellings.

Georgia: Windstorm and hail insurance is available only in the windstorm and hail area.

Illinois: The "broad form" policy, the policy for renters or owners of cooperative apartments, and the policy for owners of older structures are offered. Coverage is not provided on scheduled personal property. Maximum dwelling coverage is \$100,000.

Kentucky: The plan provides the broad form policy and the policy for owners of older structures in Class 1 through 10.

Louisiana: The policy for owners of older structures is available.

Maryland: Homeowners program provides limited coverage with the policy for owners of older structures.

Massachusetts: The plan offers the "broad form" policy, the "special form" policy, the "comprehensive form" policy, the policy for renters or owners of cooperative apartments, and the policy for owners of condominium apartments. Coverage is not provided on scheduled personal property.

Minnesota: Homeowners coverage has been offered since November, 1980.

New York: Coverage is provided for time element.

North Carolina: Additional extended coverage and Optional Perils Coverage are provided.

Appendix D-3 (cont.)

Ohio: Crime insurance was available since October 1, 1987. Mine subsidence insurance is available in 37 counties, reinsured by the Ohio Mine Subsidence Insurance Underwriting Association (OMSIUA). Coverage is restricted to one- to four-family dwellings.

Rhode Island: Same homeowners coverage is provided as described for Massachusetts. There is a cap of \$250,000 on dwelling coverage.

West Virginia: Coal mine subsidence coverage is offered in certain counties. This coverage is reinsured by the West Virginia Mine Subsidence Fund.

Wisconsin: Homeowners coverage is offered on an actual cash value basis subject to a \$100 dwelling deductible and a \$250 theft deductible (theft coverage amounts limited to \$5,000). Properties valued at less than \$15,000 are not eligible.

Appendix D-4

Liability Limits

Connecticut: There is also \$50,000 Public Liability on 1-family, 2-family, 3-family and seasonal dwellings. Commercial contents limits may be doubled if sole occupancy.

Delaware: Maximum aggregate (buildings and contents combined) liability per location is \$300,000. For vacant or unoccupied property the liability limit on buildings is reduced by one-third. (For instance, if the limit on an occupied building were \$150,000, then the limit on an unoccupied building would be \$100,000.)

Georgia: Limits in excess of these up to \$1.5 million are individually considered by the Underwriting Subcommittee of the full board of directors.

Kentucky: Protected Classes 9 and 10 (\$250,000 maximum).

Louisiana: The contents for H.O.-8 is set at 50% of the coverage on the building. FAIR Plan will accept 100% of public school liability.

Massachusetts: Maximum allowed on H.O. is \$1,000. Total limit is the sum of Coverage A (dwelling), C (contents), and D (additional living expenses). Maximum amount for buildings and contents is \$1,500,000 for multiple interest policies.

Michigan: Liability limits for homeowners: No limit--must insure up to 80% of replacement cost.

New Jersey: Commercial contents liability may be doubled for sole occupancy.

Oregon: The mercantile limit is \$500,000. The manufacturing limit is \$100,000. Higher limits may be approved by the Board of Directors.

Pennsylvania: Maximum liability per location, buildings, and contents combined is \$1.5 million. Commercial contents may be doubled if sole occupancy.

Rhode Island: Homeowners limits of liability for dwellings only is \$250,000.

West Virginia: Maximum liability per location, buildings, and contents combined, shall not exceed the maximum limit of \$300,000 per location.

Appendix E

EARNED PREMIUM AND UNDERWRITING RESULTS OF FAIR PLANS

FAIR Plan	1982		1983		1984		1985		1986	
	Earned Premium	Under-writing Results	Earned Premium	Under-writing Results	Earned Premium	Under-writing Results	Earned Premium	Under-writing Results	Earned Premium	Under-writing Results
California	28,147	(312)	27,294	2,219	26,619	1,732	30,342	4,100	42,099	10,637
Connecticut	3,083	(1,333)	2,561	(320)	2,309	(1,208)	2,861	(1,719)	5,283	584
Delaware	399	(164)	357	(5)	342	(63)	359	(41)	535	94
District of Columbia	2,189	(593)	1,754	(58)	1,465	44	1,540	(191)	1,863	538
Georgia	1,039	(331)	965	(215)	971	(129)	1,199	(271)	2,270	(578)
Illinois	12,523	(7,028)	9,345	(2,739)	6,968	(2,530)	5,790	(1,436)	6,506	(2,750)
Indiana	774	(760)	683	(119)	609	(310)	637	(159)	765	(471)
Iowa	260	(124)	211	(143)	206	(75)	229	(28)	408	(88)
Kansas	1,910	(1,763)	1,810	(525)	1,835	(184)	2,287	(618)	3,574	41
Kentucky	1,654	(847)	1,604	(39)	1,833	(381)	3,635	(503)	8,661	(4,828)
Maryland	2,504	(493)	2,355	(270)	2,154	259	2,419	(119)	4,708	1,654
Massachusetts	23,359	(2,282)	21,357	530	19,580	370	21,880	4,419	30,366	1,043
Michigan	24,112	(21,727)	24,079	(26,910)	25,241	(28,821)	31,755	(24,829)	49,564	(20,625)
Minnesota	419	(608)	480	(355)	358	(367)	602	(23)	979	8
Missouri	5,302	(1,592)	4,972	362	4,641	(966)	5,192	(490)	8,411	1,327
New Jersey	14,580	(9,237)	13,091	(6,898)	11,162	(6,023)	14,101	(6,124)	27,199	(2,997)
New Mexico	352	69	368	(17)	404	25	714	(256)	1,613	(484)
New York	29,120	(2,892)	23,793	(3,546)	22,271	(4,139)	27,498	(1,673)	54,025	10,815
Ohio	4,439	(1,331)	3,907	(885)	3,649	(479)	3,575	(583)	5,077	(348)
Oregon	701	(221)	628	(31)	538	171	578	(172)	1,194	(183)
Pennsylvania	11,867	(3,609)	10,614	(1,685)	10,037	(712)	11,384	(2,005)	16,104	2,218
Rhode Island	2,640	(1,794)	2,327	(1,088)	2,164	(806)	2,365	(2,291)	3,245	(1,094)
Virginia	2,424	(872)	2,491	(773)	2,411	(725)	3,494	580	4,778	(169)
Washington	318	(144)	247	111	215	38	234	(157)	475	(189)
West Virginia					N O T A V A I L A B L E					
Wisconsin	1,804	(1,907)	2,059	(1,313)	1,808	(1,056)	1,787	(851)	2,993	107
FAIR & BEACH PLANS										
Louisiana	4,678	2,161	4,038	1,493	3,522	977	4,051	(466)	5,494	2,287
North Carolina	4,348	1,538	4,424	1,560	4,385	(4,483)	6,083	1,962	11,002	7,501

Source: National Committee on Property Insurance, FAIR and Beach Plan Underwriting Results and Market Penetration Report (Based on the Experience for Residual Market Plan Year 1986) (Boston, 1987).

Appendix F

BEACH PLAN OPERATION IN OTHER STATES

	Membership		Type of Pool (a)	Expiration Date of Legislation (b)		Eligible Areas		
	<u>Voluntary</u>	<u>Mandatory</u>		<u>Expires Following Date</u>	<u>No Date Specified</u>	<u>Statewide</u>	<u>Specific Geographic Areas</u>	<u>Other</u>
Alabama	X	--	S	--	--	--	X	--
Florida	--	X	S	--	X	--	X	--
Louisiana	--	X	SSC	--	(1)	--	X	--
Mississippi	--	X	SSC	--	X	--	X	--
North Carolina	--	X	S	--	X	--	X	--
South Carolina	--	X	S	--	X	--	X	--
Texas (2)	--	X	S	--	X	--	X	--

FOOTNOTES:

(1) Expires 30 days after the close of the 1989 Louisiana Legislature.

(2) The information presented has not been verified by the Texas Catastrophe Property Insurance Association since 1984 and is not believed to be current.

(a) S = Syndicate
SSC = Single Servicing Carrier

(b) In "voluntary" Plans membership is voluntary and termination is not set by Legislation.

Source: National Committee on Property Insurance, Compendium of State Property Insurance Plans (Boston, 1987), Summary of Beach Plans Operations.

Appendix G

§ 10080

BASIC PROPERTY INSURANCE

§ 10080. Statement of premiums received: Action for penalty

The corporation may bring action to recover such penalty, with costs, in any court of competent jurisdiction.

Enacted 1935.

Prior Law:

(a) Former CC § 453c, as added by Stats 1905 ch 422 § 1 p 572.

(b) Stats 1875-76 ch 472 § 3 p 690, as amended by Stats 1897 ch 168 § 1 p 223.

CHAPTER 9

Basic Property Insurance Inspection and Placement Plan

[Added by Stats 1968 ch 574 § 1, effective July 15, 1968.]

§ 10090. Purposes of chapter

§ 10091. Definitions

§ 10092. Chapter not applicable

§ 10093. Inspection of property

§ 10094. California FAIR Plan Association

§ 10094.2. Credit for insuring risks in brush hazard areas

§ 10095. Plan of operation

§ 10096. Administrative and judicial review

§ 10097. Immunity from liability: Confidentiality of documents

§ 10098. Acceptance of risks required

§ 10099. Federal reinsurance program

§ 10100. Reports concerning risks insured

§ 10100.1. Distribution of risks

Cross References:

Modification of insurer's right to cancel policy covering property within Fair Plan area: § 2074.7.

Collateral References:

Cal Jur 2d Insurance § 433.

§ 10090. Purposes of chapter

The purposes of this chapter are to do all of the following:

(a) To assure stability in the property insurance market for property located in the State of California.

(b) To assure the availability of basic property insurance as defined by this chapter.

(c) To encourage maximum use, in obtaining basic property insurance, of the normal insurance market provided by admitted insurers and licensed surplus line brokers.

(d) To provide for the equitable distribution among admitted insurers of the responsibility for insuring qualified property for which basic property insurance cannot be obtained through the normal insurance

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INSPECTION AND PLACEMENT PLAN

§ 10091

market by the establishment of a FAIR Plan (fair access to insurance requirements), an industry placement facility and a joint reinsurance association.

Added Stats 1968 ch 574 § 1, effective July 15, 1968; Amended Stats 1969 ch 649 § 1, effective July 31, 1969.

Amendments:

1969 Amendment: (1) Deleted "residential" before "property located" in subd (a); and (2) added "and licensed surplus line brokers" in subd (c).

Collateral References:

Law Review Articles:

Riot insurance-state remedial legislation, 20 Hast LJ 1263.

§ 10091. Definitions (See amended section in following supplement part.)

Unless the provision or context otherwise requires, the following definitions shall govern the construction of this chapter:

(a) "Association" means a joint reinsurance association (the California FAIR Plan Association) consisting of all insurers licensed to write and engaged in writing in this state on a direct basis, basic property insurance and crime insurance, or any component thereof in multi-peril policies.

(b) "Commissioner" means the Insurance Commissioner of this state.

(c) "Basic property insurance" means insurance against direct loss to real or tangible personal property at a fixed location in those geographic or urban areas designated by the commissioner, from perils insured under the standard fire policy and extended coverage endorsement and vandalism and malicious mischief and such other insurance coverages as may be added with respect to such property by the industry placement facility with the approval of the commissioner or by the commissioner, but shall not include insurance on automobile or farm risks.

(d) "Inspection bureau" means the fire insurance rating organization designated by the industry placement facility with the approval of the commissioner to make inspections to determine the condition of the properties for which basic property insurance is sought and to perform such other duties as may be authorized by the industry placement facility.

(e) "Industry placement facility," or "facility," means the organization formed by insurers licensed to write and engaged in writing basic property insurance within this state to assist persons in securing basic property insurance and to formulate and administer a program for the equitable apportionment among such insurers of such basic property insurance.

(f) "Premiums written" means gross direct premiums charged with

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Source: California Insurance Code, ch. 9 (Deerings California Codes)

respect to property in this state on all policies of basic property insurance and the basic property insurance premium components of all multiperil policies, less return premiums, dividends paid or credited to policyholders, or the unused or unabsorbed portions of premium deposits.

(g) "Insurer" means any person who undertakes to indemnify another against loss, damage, or liability arising from a contingent or unknown event, and shall include reciprocals and interinsurance exchanges.

Added Stats 1968 ch 574 § 1, effective July 15, 1968; Amended Stats 1969 ch 649 § 2, effective July 31, 1969; Stats 1970 ch 633 § 1; Stats 1971 ch 415 § 1, effective July 29, 1971.

Amendments:

1969 Amendment: (1) Deleted "homeowners or other dwelling" before "multiperil" in subd (a); (2) substituted "in those geographic or urban areas designated by the commissioner" for "used as a dwelling" after "fixed location" and "or farm risks" for " , farm, commercial, and manufacturing risks" in subd (c); (3) substituted "persons" for "dwelling owners and occupants" after "state to assist" in subd (e); (4) amended subd (f) by (a) deleting "dwelling" after "with respect to"; and (b) substituting "all" for "homeowners and other dwelling" after "components of"; and (5) added subd (g).

1970 Amendment: Substituted "who undertakes to indemnify another against loss, damage, or liability arising from a contingent or unknown event" for "or organization as specified in Section 826 of this code" in subd (g).

1971 Amendment: Amended subd (a) by adding (1) "(the California FAIR Plan Association)"; and (2) "and crime insurance,".

Cross References:

Modification of insurer's right to cancel policy containing basic property insurance: § 2074.7.

§ 10092. Chapter not applicable

This chapter shall not apply to county mutual fire insurers nor to fraternal fire insurers.

Added Stats 1968 ch 574 § 1, effective July 15, 1968.

§ 10093. Inspection of property

(a) Any person having an insurable interest in real or tangible personal property who, after diligent effort, has been unable to obtain basic property insurance through normal channels from an admitted insurer or a licensed surplus line broker, shall be entitled upon application to the facility to an inspection of the property by representatives of the inspection bureau. Such inability to obtain such insurance after diligent effort through normal channels may, in the discretion of the association, be demonstrated by a signed general statement to that effect on a form prescribed by the association.

(b) The manner and scope of the inspection and the form of the inspection report shall be prescribed by the facility with the approval

of the commissioner. The inspection shall include, but need not be limited to, pertinent structural and occupancy features as well as the general condition of the building and surrounding structures. A representative photograph of the property may be taken as part of the inspection.

(c) Promptly after the request for inspection is received, an inspection shall be made and an inspection report filed with the company or companies designated by the facility. A copy of the completed inspection report shall be sent to the facility and to the applicant upon request.

Added Stats 1968 ch 574 § 1, effective July 15, 1968; Amended Stats 1969 ch 649 § 3, effective July 31, 1969; Stats 1970 ch 633 § 2.

Amendments:

1969 Amendment: Amended subd (a) by (1) deleting "at a fixed location used as a dwelling" after "personal property"; and (2) adding "or a licensed surplus line broker".

1970 Amendment: Added the second sentence in subd (a).

Cross References:

Insurable interest: §§ 280 et seq.

§ 10094. California FAIR Plan Association

Within 30 days after the effective date of this chapter, with the approval of the commissioner, all insurers licensed to write and engaged in writing in this state, on a direct basis, basic property insurance or any component thereof in multiperil policies, shall establish an industry placement facility, the California FAIR Plan Association, to formulate and administer a program for the equitable apportionment among such insurers of basic property insurance which may be afforded persons having an interest in real or tangible personal property who, after diligent effort (as specified in subdivision (a) of section 10093), are unable to procure such insurance through normal channels from an admitted insurer or a surplus line broker. Each such insurer, as a condition of its authority to transact such kinds of insurance in this state, shall participate in such industry placement facility program in accordance with rules to be established by a governing committee consisting of nine insurers elected annually in the manner to be provided in the program. The governing committee shall, in addition, have 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 to be appointed by the Governor. The governing committee may establish separate classifications of written premiums for the purpose of equitable distribution but shall not include premiums from automobile or farm risks. The program may also provide, with the approval of the commissioner, for assessment of all members in amounts

sufficient to operate the facility, and may establish maximum limits of liability to be placed through the program, reasonable underwriting standards for determining insurability of a risk, and commission to be paid to the licensed producer designated by the applicant.

Added Stats 1968 ch 574 § 1, effective July 15, 1968; Amended Stats 1969 ch 649 § 4, effective July 31, 1969; Stats 1970 ch 633 § 3; Stats 1971 ch 415 § 2, effective July 29, 1971.

Amendments:

1969 Amendment: (1) Amended the first sentence by (a) deleting "homeowners or other dwelling" after "component thereof in"; (b) deleting "at a fixed location used as a dwelling" after "tangible personal property"; and (c) adding "or a surplus line broker" after "an admitted insurer"; (2) substituted "nine" for "five" after "consisting of" in the second sentence; (3) added the third sentence; and (4) substituted "or farm risks" for ", farm, commercial, or manufacturing risks" in the fourth sentence.

1970 Amendment: Added (1) "(as specified in subdivision (a) of Section 10093)," in the first sentence; and (2) ", one representative of surplus line brokers," in the third sentence.

1971 Amendment: Added "the California FAIR Plan Association," in the first sentence.

Cross References:

Committee to serve as governing committee of Riot and Civil Disorders Insurance Association: § 13050.

Collateral References:

Law Review Articles:

Riot insurance-state remedial legislation. 20 *Hast LJ* 1263.

§ 10094.2. Credit for insuring risks in brush hazard areas

The facility shall, pursuant to regulations adopted by the commissioner, provide for a method whereby insurers who voluntarily write basic property insurance on risks located in areas designated as brush hazard areas by the Pacific Fire Rating Bureau will, to that extent, be proportionately relieved of the liability to participate in a plan adopted pursuant to this chapter. Nothing in this chapter shall preclude adoption of a plan or plans to allow proportionate credit for voluntary writings in other areas or for other classes of insurance.

Added Stats 1969 ch 649 § 5, effective July 31, 1969, ch 1237 § 1.

§ 10095. Plan of operation

(a) Within 30 days following the effective date of this chapter, the association shall submit to the commissioner, for his review, a proposed plan of operation, consistent with the provisions of this chapter, creating an association consisting of all insurers licensed to write and engaged in writing in this state, on a direct basis, basic property insurance or any component thereof in homeowners or other dwelling multiperil policies. Every such insurer shall be a member of

the association and shall remain a member as a condition of its authority to transact such kinds of insurance in this state.

(b) The proposed plan shall authorize the association to assume and cede reinsurance on risks written by insurers in conformity with the program.

(c) Under the plan, each insurer shall participate in the writings, expenses, profits and losses of the association in the proportion that its premiums written during the second preceding calendar year bear to the aggregate premiums written by all insurers in the program, excluding that portion of the premiums written attributable to the operation of the association.

(d) The plan shall provide for administration by a governing committee under rules to be adopted by it with the approval of the commissioner. Voting on administrative questions of the association and facility shall be weighted in accordance with each insurer's premiums written during the second preceding calendar year as disclosed in the reports filed by the insurer with the commissioner.

(e) The plan shall provide for a plan to encourage persons to secure basic property insurance through normal channels from an admitted insurer or a licensed surplus line broker by informing such persons what steps they must take in order to secure such insurance through normal channels.

(f) The plan shall be subject to the approval of the commissioner and shall go into effect upon the tentative approval of the commissioner. The commissioner may, at any time, withdraw his tentative approval or he may, at any time after he has given his final approval revoke such approval if he feels it is necessary to carry out the purposes of the chapter. The withdrawal or revocation of such approval shall not affect the validity of any policies executed prior to the date of such withdrawal. If the commissioner disapproves or withdraws or revokes his approval to all or any part of the plan of operation, the association shall within 30 days, submit for review an appropriately revised plan or part thereof, and, if the association fails to do so, or if the revised plan so filed is unacceptable, the commissioner shall promulgate such a plan of operation or part thereof as he may deem necessary to carry out the purpose of this chapter.

(g) The association may, on its own initiative or at the request of the commissioner, amend the plan of operation, subject to approval by the commissioner, who shall have supervision of the inspection bureau, the facility and the association. The commissioner or any person designated by him, shall have the power of visitation of and examination into the operation and free access to all the books, records, files, papers, and documents that relate to operation of the facility and association, and may summon, qualify and examine as

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witnesses all persons having knowledge of such operations including officers, agents or employees thereof.

Added Stats 1968 ch 574 § 1, effective July 15, 1968; Amended Stats 1972 ch 743 § 1.

Amendments:

1972 Amendment: (1) Added subd (e); and (2) redesignated former subds (e) and (f) to be subds (f) and (g).

Collateral References:

Law Review Articles:

Review of Selected 1972 Code Legislation. 4 Pacific LJ 531.

§ 10096. Administrative and judicial review

(1) Any applicant or affected insurer shall have the right of appeal from any act or decision of either the facility or the association to the governing committee. A decision of the committee may be appealed to the commissioner within 30 days after such decision. Upon such appeal the commissioner may make any order to implement the purposes of the chapter and the plan.

(2) All orders or decisions of the commissioner made pursuant to this chapter shall be subject to judicial review.

Added Stats 1968 ch 574 § 1, effective July 15, 1968.

SUGGESTED FORM

Petition for Writ of Mandate—To Compel Insurance Commissioner To Assist Party Having Insurable Interest in Real Property To Obtain Basic Property Insurance

[Title of Court and Cause]

1. Petitioner resides at _____ *[address]*, in the City of _____, County of _____, State of California.

2. Respondent is the Insurance Commissioner of the State of California and is empowered, pursuant to Section 10090 of the Insurance Code of the State of California, to assure the availability of basic property insurance within the State of California.

3. Petitioner is the owner of the following real property located at _____ *[address]*, in the City of _____, County of _____, State of California, and described as follows: _____ *[set forth legal description]*.

4. From _____, 19____, to _____, 19____, petitioner sought through diligent effort to obtain basic property insurance for the aforementioned property through normal channels from the following _____ *[admitted insurers or licensed surplus line brokers]*; _____ Petitioner was unable through his diligent efforts to secure basic property insurance from the aforementioned _____ *[admitted insurers or licensed surplus line brokers]*.

5. On _____, 19____, as prescribed by Section 10093 of the Insurance Code of the State of California, petitioner applied to _____ *[industry placement facility]* for an inspection of his property by representatives of _____ *[inspection bureau]*. A copy of petitioner's application is attached, marked Exhibit " _____" and by reference made part hereof.

6. _____ *[Set forth details of inspection]*.

7. On _____, 19____, the representatives of _____ *[inspection bureau]* filed their report with _____ *[insurance company or companies]* designated by _____ *[indus-*

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try placement facility]. _____ *[Set forth pertinent details from report recommending a denial of basic property insurance to petitioner and specify reasons for such denial]*. A copy of the report is attached, marked Exhibit " _____" and by reference made part hereof.

8. On _____, 19____, as a result of the recommendations of _____ *[inspection bureau]*, _____ *[industry placement facility]* recommended that petitioner was not eligible for basic property insurance.

9. Petitioner is informed and believes and thereon alleges that the recommendations of _____ *[inspection bureau]* are incorrect in the following particulars: _____

10. _____ *[If applicable, set forth further facts supporting allegations set forth in Paragraph 9]*.

11. On _____, 19____, petitioner appealed the decision of _____ *[industry placement facility]* to _____ *[governing committee]* as prescribed by Section 10096 of the Insurance Code of the State of California.

12. _____ *[Set forth administrative procedures utilized by governing committee in acting on petitioner's appeal]*. On _____, 19____, _____ *[governing committee]* accepted the recommendations of _____ *[industry placement facility]*.

13. On _____, 19____, as prescribed by Section 10096 of the Insurance Code of the State of California, petitioner appealed to respondent Commissioner from the decision of _____ *[governing committee]*. _____ *[Set forth administrative procedures utilized by respondent in acting on petitioner's appeal]*. On _____, 19____, respondent upheld the decision of _____ *[governing committee]*.

Respondent's order upholding the decision of _____ *[governing committee]* was based on the following findings of fact: _____

14. Respondent erred in upholding the decision of _____ *[governing committee]* for the following reasons: _____

15. _____ *[If applicable, set forth further allegations, as prescribed by Section 1094.5 of the Code of Civil Procedure, supporting an abuse of discretion by respondent, or that the findings of respondent are not supported by the evidence or as the case may be]*.

16. Petitioner has exhausted all available administrative remedies required to be pursued by him prior to the filing of this petition.

17. Petitioner does not have a plain, speedy, and adequate remedy in the ordinary course of law in that _____

Wherefore, petitioner prays that there be issued against respondent a writ of mandate, a copy of which is attached hereto, such writ being made returnable within some brief period compelling respondent to rescind the decision of _____ *[governing committee]* and to order _____ *[industry placement facility]* to assist petitioner in securing basic property insurance for his aforementioned property, or show cause why respondent should not do so.

Dated _____, 19____.

[Signature]

[For verification, see form set out under CCP § 446.]

Points and Authorities:

§ 10097. Immunity from liability; Confidentiality of documents

There shall be no liability on the part of, and no cause of action of any nature shall arise against the insurers, the inspection bureau, the facility, the association, the governing committee, their agents or employees, or the commissioner or his authorized representatives, with respect to any inspections required to be undertaken by this chapter or for any acts or omissions in connection therewith, or for

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any statements made in any reports and communications concerning the insurability of the property, or in the findings required by the provisions of this chapter, or at the hearings conducted in connection therewith. The reports and communications of the inspection bureau, the facility, the association, and the records of the governing committee shall not be considered public documents.

Added Stats 1968 ch 574 § 1, effective July 15, 1968.

§ 10098. Acceptance of risks required

Acceptance of risks assigned under this chapter and performance of any act required by this chapter is a condition of the right to continue to hold a certificate of authority to transact insurance business in this state. All insurers, on and after the effective date of this chapter, by continuing to hold a certificate of authority to transact insurance business shall be deemed to have consented to the responsibilities imposed by this chapter.

Added Stats 1968 ch 574 § 1, effective July 15, 1968.

§ 10099. Federal reinsurance program

In addition to any powers conferred upon him by this or any other law, the commissioner is authorized to do all things necessary to enable the State of California and any insurer participating in any program approved by the commissioner to fully participate in any federal program of reinsurance which may be hereafter enacted for purposes similar to the purposes of this chapter.

Added Stats 1968 ch 574 § 1, effective July 15, 1968.

§ 10100. Reports concerning risks insured

The commissioner may require such reports from insurers concerning risks insured under any program approved pursuant to this chapter as he shall deem necessary to effect the purposes of this chapter.

Added Stats 1968 ch 574 § 1, effective July 15, 1968.

§ 10100.1. Distribution of risks

The facility, subject to the approval of the Insurance Commissioner, may provide for the equitable distribution of risks provided for in this chapter by means of assignment to individual members of such facility or by a pool or association of insurers participating in such facility.

Added Stats 1968 ch 574 § 1, effective July 15, 1968.

§ 10091. Definitions

Unless the provision or context otherwise requires, the following definitions shall govern the construction of this chapter:

(a) "Association," "industry placement facility," or "facility," means a joint reinsurance association (the California FAIR Plan Association), formed by insurers licensed to write and engaged in writing basic property insurance within this state to assist persons in securing basic property insurance and to formulate and administer a program for the equitable apportionment among such insurers of such basic property insurance.

(b) "Commissioner" means the Insurance Commissioner of this state.

(c) "Basic property insurance" means insurance against direct loss to real or tangible personal property at a fixed location in those geographic or urban areas designated by the commissioner, from perils insured under the standard fire policy and extended coverage endorsement and vandalism and malicious mischief and such other insurance coverages as may be added with respect to such property by the industry placement facility with the approval of the commissioner or by the commissioner, but shall not include insurance on automobile or farm risks.

(d) "Inspection bureau" means the organization or organizations designated by the association with the approval of the commissioner to make inspections to determine the condition of the properties for which basic property insurance is sought and to perform such other duties as may be authorized by the association.

(e) "Premiums written" means gross direct premiums charged with respect to property in this state on all policies of basic property insurance and the basic property insurance premium components of all multiperil policies, less return premiums, dividends paid or credited to policyholders, or the unused or unabsorbed portions of premium deposits.

(f) "Insurer" means any person who undertakes to indemnify another against loss, damage, or liability arising from a contingent or unknown event, and shall include reciprocals and interinsurance exchanges.

Amended Stats 1980 ch 125 § 1, effective May 23, 1980.

Amendments:

1980 Amendment: (1) Substituted subd (a) for former subd (a); (2) amended subd (d) by substituting (a) "organization or organizations designated by the association" for "fire insurance rating organization designated by the industry placement facility"; and (b) "association" for "industry placement facility" at the end of the subdivision; (3) deleted former subd (e); and (4) redesignated former subds (f) and (g) to be subds (e) and (f).

Appendix H

CALIFORNIA FAIR PLAN ASSOCIATION

The California FAIR Plan (hereinafter referred to as the Plan) has been formulated by the insurance industry for the purpose of making certain Property Insurance available to responsible applicants who have been unable to secure such insurance in the normal insurance market.

DIVISION I - Property Insurance Plan

Section I - Purposes of Plan

The purposes of the Plan are:

- A. to make available, subject to the conditions hereinafter stated, Basic Property Insurance and Essential Property Insurance;
- B. to establish a FAIR Plan (Fair Access to Insurance Requirements), and to provide for the equitable distribution and placement of risks among Insurers in the manner and subject to the conditions hereinafter stated; and
- C. to conform with the applicable provisions of the Urban Property Protection and Reinsurance Act of 1968 and California Insurance Code, Chapter 9, Part 1, Division 2.

Section II - Effective Date

The Plan shall become effective as of July 24, 1968.

Section III - Definitions

- A. "Insurer" means any insurance company or other organization which is authorized to write and is engaged in writing property insurance business, on a direct basis, in this State.
- B. 1. "Basic Property Insurance" means insurance against direct loss to real or tangible personal property at a fixed location in those geographic or urban areas designated by the Commissioner, from perils insured under the standard fire policy and extended coverage endorsement and vandalism and malicious mischief and such other insurance coverages as may be added with respect to such property by the Placement Facility with the approval of the Commissioner or by the Commissioner, but shall not include insurance on automobile or farm. Earthquake insurance shall be available on one to four family residences that are otherwise eligible for fire insurance coverage in the Plan. The coverage shall be available through the use of the earthquake damage assumption endorsement recommended by the Insurance Services Office.
- 2. "Essential Property Insurance" means insurance against direct loss to property, including builders risks, as defined and limited in standard fire policies and extended coverage endorsement thereon, as approved by the Commissioner, and insurance for such types, classes, and locations of property against the perils of vandalism, malicious mischief, burglary, or theft, as the Secretary by rule shall designate. Such insurance shall not include automobile insurance and shall not include insurance on such types of manufacturing risks as may be excluded by the Commissioner.

C. "Industry Placement Facility" (herein referred to as the Placement Facility) means the organization formed for the following purposes:

1. to formulate and administer the Plan;
2. upon request by or on behalf of any property owner requesting an inspection under the Plan, to distribute the risks involved equitably among the Insurers with which it is doing business; and
3. to place insurance up to the full insurable value of the risk to be insured with one or more Insurers with which it is doing business, except to the extent that deductibles, percentage participation clauses, and other underwriting devices are employed to meet special problems of insurability.

D. "Inspection Bureau" means the organization designated by the Placement Facility with the approval of the Commissioner to make inspections to determine the condition of the properties for which Basic Property Insurance is sought and to perform such other duties as may be authorized by the Placement Facility.

E. "Urban Area" includes any municipality or other political subdivision of this State, subject to population or other limitations defined in rules and regulations of the Secretary, and such additional areas as may be designated by the Commissioner.

F. "Geographical Area" means any area designated by the Committee with the approval of the Commissioner.

G. "Premiums Written" means gross direct premiums charged with respect to property in this State on all policies of Basic Property Insurance and of Essential Property Insurance and their premium components of all multiperil policies, less return premiums, dividends paid or credited to policyholders, or the unused or unabsorbed portions of premium deposits.

H. "Commissioner" means the Insurance Commissioner of the State of California.

I. "Secretary" means the Secretary of the United States Department of Housing and Urban Development.

J. "Plan" where used in this Division is applicable only to this Division except where otherwise provided.

Section IV - FAIR Plan - Inspections and Reports

A. Any person having an insurable interest in real or tangible personal property in the State of California within the area covered under the Plan shall be entitled upon written or oral request therefor to the Placement Facility, to a prompt inspection of the property by the Inspection Facility without cost.

B. The manner and scope of the inspections of FAIR Plan business shall be prescribed by the Placement Facility with the approval of the Commissioner.

C. An inspection report shall be made for each property inspected. The report shall cover pertinent structural and occupancy features as well as the general condition of the building and surrounding structures. A representative photograph of the property may be taken during the inspection.

D. The inspector shall have no authority to advise whether any Insurer will provide the coverage.

E. After the inspection a copy of the completed inspection report, and any photograph indicating the pertinent features of building, construction, maintenance, occupancy and surrounding property shall be sent to the designated insurer or to the Placement Facility promptly and in any event within five days after the report is completed. The report shall include a description of any conditions for which charges or surcharges may be imposed. A copy of the inspection report shall be made available to the applicant or his agent upon request.

Section V - Procedure After Inspection

A. The Placement Facility shall, within three business days after receipt of the inspection report and request, complete an action report, advising that:

1. the risk is acceptable and if surcharged, the improvements necessary before it will provide coverage at an unsurcharged rate;
2. the risk will be acceptable if the improvements noted in the action report are made by the applicant and confirmed by reinspection; or
3. the risk is not acceptable for the reasons stated in the action report.

B. If the risk is accepted, the Placement Facility shall deliver the policy or binder to the applicant upon payment to the Placement Facility of the premium.

C. In the event a risk is declined because it fails to meet reasonable underwriting standards, the Placement Facility shall notify the applicant and shall include a copy of the inspection report and the action report. Reasonable underwriting standards shall include, but not be limited to, the following:

1. physical condition of the property, such as its construction, heating, wiring, evidence of previous fires or general deterioration;
2. its present use or housekeeping, such as vacancy, overcrowding, storage of rubbish or flammable materials; or
3. other specific characteristics of ownership, condition, occupancy, or maintenance which are violative of public policy and result in unreasonable exposures to loss.

Neighborhood or area location or any environmental hazard beyond the control of the property owner shall not be deemed to be acceptable criteria for declining a risk.

D. In the event the risk is conditionally declined because the property does not meet reasonable underwriting standards but can be improved to meet such standards, the Placement Facility shall promptly advise the applicant

what improvements noted in the action report should be made to the property, and the notification and advices to the applicant shall include a copy of the inspection report and the action report. Upon completion of the improvements by the applicant or property owner, the Placement Facility, when so notified, will have the property promptly reinspected.

E. If the inspection of the property reveals that there are one or more substandard conditions, surcharges may be imposed in conformity with any applicable substandard rating plan.

Section VI - California FAIR Plan Association - Placement and Distribution

A. The California FAIR Plan Association (herein referred to as the Association) is hereby created consisting of all Insurers.

B. The Association shall be authorized:

1. to write and issue policies of insurance as provided in this Plan on behalf of its Insurers; the respective liabilities of the Insurers shall be several and not joint, except as provided in Section XVII of this Plan, and each such Insurer shall be considered to be a direct insurer for its share in such writings, such share to be determined for each Insurer pursuant to the provisions of Paragraphs D and E of this Section VI and other pertinent provisions of the Plan.

2. to assume and cede reinsurance on behalf of its Insurers;

3. to arrange for determination and collection of premium charges and disbursement of return premiums, commissions and return commissions, and

4. to direct and control the investigation, adjustment, defense, and payment of the losses and claims arising under the policies of insurance issued pursuant to this Plan.

C. The maximum limit of liability which may be placed through this Plan is \$1,500,000 at one location; provided, however, that higher limits of liability may be placed through the Plan if the limit of liability is specifically approved by a majority of the Governing Committee present and voting. "Location" means each noncommunicating building or structure which is separately rated by the local insurance rating authority. As to risks beyond this limit, the Placement Facility shall endeavor to place the balance of the risk.

D. Each insurer shall participate in the writings, expenses, profits and losses of this Division in the same proportion as its Premiums Written bear to aggregate Premiums Written by all Insurers in the Plan except as modified in Paragraph E. of this Section VI and in Section XVII.

E. Insurers who voluntarily write Basic Property Insurance on risks located in areas designated as brush hazard areas by the Pacific Fire Rating Bureau will, to that extent, be proportionately relieved of the liability to participate in the Plan.

F. A group of Insurers under the same management or ownership shall have the option of designating an Insurer from within the group to assume all obligations on behalf of the entire group.

Section VII - Standard Policy Coverage

All policies issued shall be for Basic Property Insurance or Essential Property Insurance on standard policy forms and shall be issued for a term of one year.

Section VIII - Cancellation

A. No policy or binder issued under this Plan shall be cancelled except:

1. for cause which would have been grounds for non-acceptance of the risk under the Plan had such cause been known to the Placement Facility at the time of acceptance;
2. for nonpayment of premium; or
3. with the approval of the Governing Committee.

Notice of Cancellation, together with a statement of the reason therefor, shall be sent to the insured, accompanied by a statement that the insured has a right of appeal as hereinafter provided.

B. Notice of cancellation of policies on risks eligible for Plan inspection or coverage, sent by the Placement Facility or by any Insurer participating in the Plan shall be sent to the insured not less than thirty days in advance of the effective date of cancellation, together with information concerning Facility placement procedures; provided, however, that this Paragraph B shall be inapplicable in cases of nonpayment of premiums, evidence of incendiarism, or evidence of material misrepresentation.

C. The provisions of Paragraph B immediately above shall also be applicable to notice to non-renewal of such policies.

Section IX - Right of Appeal

Any applicant or Insurer shall have the right of appeal to the Governing Committee. A decision of the Committee may be appealed to the Commissioner within thirty days from the action or decision of the Committee. Each denial of insurance shall be accompanied by a statement that the applicant has the right of appeal to the Governing Committee and the Commissioner and setting forth the procedures to be followed for such appeal.

Section X - Commission

Commission, under the Plan shall be determined by the Governing Committee, and shall be paid to the licensed producer designated by the applicant.

Section XI - Administration

A. This Plan shall be administered by a Governing Committee (herein referred to as the Committee) of the Placement Facility, subject to the supervision of the Commissioner, and operated by a Manager appointed by the Committee.

B. The Committee shall consist of nine voting Insurers, which shall be elected as follows:

one from the American Insurance Association
one from the American Mutual Insurance Alliance
one from the National Association of Independent Insurers
one from all other stock Insurers
one from all other non-stock Insurers
four at large

Not less than four of the members of the Committee shall be California domiciled companies.

The Committee shall, in addition, have as non-voting members one representative of insurance agents, one representative of insurance brokers, one representative of the public, one representative of surplus line brokers and each to be appointed by the Governor of the State of California.

Not more than one participating Insurer in a group under the same management or ownership shall serve on the Committee at the same time. Representatives on the Committee shall serve for a period of one year or until successors are elected.

C. The Chairman of the Committee shall appoint a Nominating Committee consisting of not less than three voting members who shall place in nomination the voting Insurers for election at the annual meeting. If nominations are made at the annual meeting for voting Insurers other than those nominations made by the Nominating Committee, such nominations shall designate the category of voting Insurers as indicated in Paragraph B of this Section.

D. Voting for election to the Committee at the annual meeting will be on a weighted basis in accordance with Premiums Written as defined in Division I, Section III, Paragraph G.

Section XII - Annual and Special Meetings

A. There shall be an annual meeting of Insurers on a date fixed by the Committee for the purpose of electing the members of the Committee in the manner prescribed in Section XI and for the purpose of conducting such other items of business as may be properly brought before it.

B. A special meeting of the Insurers may be called at such time and place designated by the Committee; or upon the written request to the Committee of any ten Insurers, not more than one of which may be in a group under the same management or ownership.

C. Twenty days notice of such annual or special meetings shall be given in writing by the Committee to Insurers. A majority of Insurers, on a weighted basis as specified in Paragraph E, Section XII, in person or by proxy, will constitute a quorum. Voting by written proxy shall be permitted. Notice of any meeting shall be accompanied by an Agenda for such meeting.

D. Any matter, including amendment of this Plan, may be proposed and voted upon by mail, provided such procedure is unanimously authorized by the members of the Committee present and voting at any meeting of the Committee. If so approved by the Committee, notice of any proposal shall be mailed to the Insurer not less than twenty days prior to the final date fixed by the Committee for voting thereon.

E. At any regular or special meeting at which a vote of the Insurers is or may be required on any proposal, including amendment to this Plan, or any vote of the Insurers which may be taken by mail on any proposal, such votes shall be cast and counted on a weighted basis in accordance with each Insurer's Premiums Written as used to determine its participation in the Association. A proposal shall become effective when approved by at least two-thirds of the votes cast on such weighted basis.

F. Any amendment of the Plan shall be subject to approval by the Commissioner.

Section XIII - Duties of the Committee

A. The Committee shall meet as often as may be required to perform the general duties of administration of the Plan, or on the call of the Commissioner. A majority of the voting members of the Committee shall constitute a quorum.

B. The Committee shall be empowered to appoint a Manager and such other personnel as may be necessary, who shall serve at the pleasure of the Committee; and to budget expenses, levy assessments, disburse funds, and perform all other duties provided herein or necessary or incidental to the proper administration of the Plan. The adoption of or substantive changes in pension plans or employee benefit programs, shall be subject to approval of Insurers.

C. The Committee shall be further empowered to modify or amend any provision of this Plan as required by legislation, or by rule, regulation or administrative determination by the Secretary or Commissioner.

D. Annually, the Manager shall prepare an operating budget which shall be subject to approval of the Committee. Such budget shall be furnished to the Insurers after approval. Any contemplated expenditures in excess of or not included in the annual budget, shall require prior approval by the Committee.

E. The Committee shall furnish to all Insurers, to the Commissioner, and to the Secretary a written report on operations annually in such form and detail as the Committee may determine.

F. The Committee shall require periodic reports from the Inspection Facility, and shall furnish copies of such reports to the Commissioner and to the Secretary.

G. The Committee shall make every effort to obtain the full cooperation of all California producers licensed to write property lines, in connection with the operations of the Placement Facility and of the Plan.

Section XIV - Indemnification

A. The Association shall indemnify (a) every director, Governing Committee member, member of any other committee or any subcommittee, officer, and employee of the Association, and his heirs, executors, and administrators, and (b) every insurer member of the Association, both as a member or by reason of such insurer having one or more of its representatives or employees serving in any of the capacities or positions specified in clause (a) hereinabove; against all judgments, fines, amounts paid in settlement, reasonable costs and expenses including attorney fees, and any other liabilities that may be incurred as a result of any claim, action, suit, or proceeding, whether civil, criminal, administrative or other, prosecuted or threatened to be prosecuted for or on

account of any act performed or omitted or obligation entered into, if done or omitted in good faith and without intent to defraud, and in connection with the administration, management, or conduct of the Association or its affairs.

B. Such indemnification shall be provided whether or not such person or insurer holds office in the Association at the time such claim, action, suit or proceeding is begun, prosecuted, or threatened, and whether or not the liability indemnified against was incurred or the act or omission occurred prior to the adoption of this Section.

The adjudication or termination or any such claim, action, suit, or proceeding by judgment, settlement, conviction, or plea of nolo contendere or its equivalent, shall not be deemed to create a presumption that such person or insurer did not act in good faith or acted with intent to defraud. If any such claim, action, suit or proceeding is compromised or settled, this must be done with the approval of the Governing Committee of the Association.

C. Any such person or insurer shall be conclusively entitled to rely upon an opinion of legal counsel for the Association; and if the act or omission involved was reasonably done in reliance upon such an opinion, such person or insurer shall be entitled to the indemnification provided for by this Section. Such person or insurer shall also be entitled to indemnification hereunder if his or its defense to the claim, action, suit or proceeding has been wholly successful, whether on the merits or otherwise.

D. The right of indemnification hereunder shall not be exclusive of other rights such person or insurer may have.

E. In each instance in which a question of indemnification hereunder arises, determination in the first instance of the right to indemnification hereunder, and of the time and manner of payment thereof, shall be made by the Governing Committee. In the event that a majority of the members of the Governing Committee are seeking indemnification hereunder as a result of the same occurrence, such determination in the first instance shall be made by vote of the membership of the Association taken on a weighted basis as provided in this California FAIR Plan.

Nothing contained in this Paragraph E is intended to make an adverse determination finally binding upon the person or insurer seeking indemnity under this Section, or to preclude any such person or insurer from appealing an adverse determination against him or it, or from instituting legal proceedings to enforce a right of indemnification under this Section.

F. The indemnification provided for in this Section shall be deemed to be an expense of the Association to which all of the members of the Association shall contribute in the proportion that each member participates according to law in the writings, expenses, profits and losses of the Association.

Section XV - Public Education

All Insurers agree to undertake a continuing public education program, in cooperation with producers and others, to assure that the Plan received adequate public attention.

Section XVI - Termination of the Plan

Any obligations incurred by the Association shall not be impaired by the termination of the Plan and such Association shall be continued for the purpose of performing such obligations.

Section XVII - Insolvency

In the event any Insurer fails, by reason of insolvency, to pay its proportionate part of any expense or loss, the insolvent Insurer's proportionate part of such expense or loss shall be paid by the remaining Insurers, each of whom shall contribute to such payment in the same proportion as specified in Sections VI D. and E. of this Plan. In calculating each Insurer's proportionate share of the unpaid expense or loss, premium writings and voluntary brush writings of the insolvent Insurer shall be excluded.

The Association shall be subrogated to the rights of the remaining Insurers in any liquidation proceeding involving the insolvent Insurer, and shall have full authority on behalf to the remaining Insurers to exercise such rights in any action or proceeding.

Should the Association recover any or all of the unpaid assessment of the insolvent Insurer, such assessment or any portion thereof shall be credited and paid back to the remaining Insurers in the same proportion as utilized in calculating each remaining Insurer's contribution to paying the unpaid loss or expense.

If the Association elects to make a distribution of funds to its Insurers, no amount which would otherwise be distributed under the Plan of Operation shall be distributed to an insolvent Insurer, or to its liquidator, receiver, conservator or statutory successor, until any and all financial obligations of such insolvent Insurer to the Association have been satisfied. Such distribution amounts shall be applied as a set-off against said financial obligation to the extent necessary to satisfy said obligation. Any balance remaining shall thereafter be remitted to the insolvent Insurer, or to its liquidator, receiver, conservator or statutory successor.

Section XVIII - Citation to the Commissioner

Failure of any member to comply with this Plan of Operation or with any rules prescribed thereunder by the Governing Committee or to pay any assessment levied within 30 days after notice thereof shall be grounds for Citation of such member to the Commissioner.