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Assembly
California Legislature
ASSEMBLY COMMITTEE ON INSURANCE
LISA CALDERON, CHAIR
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Assembly Insurance Committee
Oversight Hearing

The California FAIR Plan

Wednesday, May 28, 2025
9:30am
State Capitol, Room 437

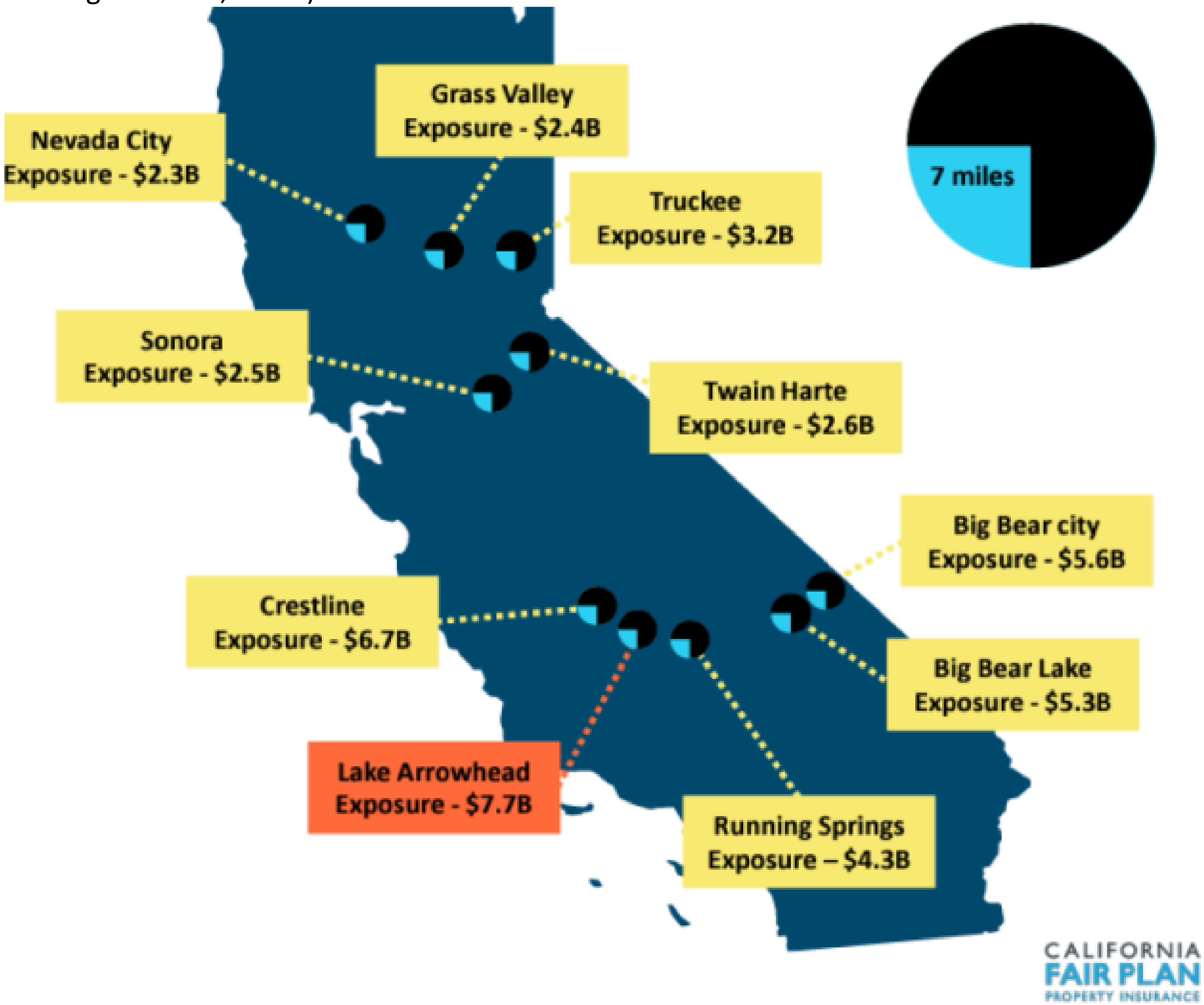
Introduction

January, 7, 2025, Pacific Palisades and Eaton on fire. FAIR Plan exposure: about $4 billion in Pacific Palisades and about $775 million in Eaton. Previous exposure maps provided to the Assembly Insurance Committee by the FAIR Plan never showed Pacific Palisades as high concentration. Between March, 2024 and December, 2024, FAIR Plan growth in this area grew so much that Pacific Palisades now made the map. (See below) The fires took off in one of the most highly concentrated areas of FAIR Plan policyholders. This was a worst-case scenario.

This oversight hearing of the California FAIR Plan will be very different than the previous oversight hearings. The hearing last year provided a grizzly update about the increased exposure of the FAIR Plan but fortunately extreme disasters took a pause and the FAIR Plan was still in a "fair" state early last year. This is no longer the case following January 7th. The FAIR Plan pivoted quickly to recovery efforts, which means paying claims. But this also brought to light whether or not the FAIR Plan would need to assess its members to pay claims. An action not contemplated or needed for over 30 years. We now know the end to this worst-case scenario, on February 11, 2025, the FAIR Plan needed to assess.

This hearing will evaluate the current and future state of the FAIR plan, post Pacific Palisades and Eaton Fires.

(The map below was the last map shared during the Assembly Insurance Committee oversight hearing in March, 2024.)



(Below is the map that was heavily publicized following the Palisades and Eaton fires which brought attention to the financial exposure of the FAIR Plan. SOURCE: The FAIR Plan)

What is the California FAIR Plan?

The California FAIR Plan – "Fair Access to Insurance Requirements" – is an "association" of all insurance companies licensed by the California Department of Insurance (CDI) that provides basic property and casualty insurance in California. It was created in 1968, following urban disturbances, notably the Watts Riots in Los Angeles.

What is the purpose of the California FAIR Plan?

"To assure stability……
To assure the availability……
To encourage maximum use…..
To provide for equitable distribution among admitted insurers of the responsibility for insuring qualified property for which basic property insurance cannot be obtained through the normal insurance market." (CA Ins. Code 10090)

Simply stated, the purpose of the FAIR Plan is to be the "insurer of last resort" for "basic" property insurance in the event of a market failure. At inception, that was essentially urban commercial property. Ultimately, it has expanded to include homeowners' insurance anywhere in the state, provided that the insurance "cannot be obtained" in the normal manner in the market. At origination, the FAIR Plan was not intended to compete with the admitted market but that point is now debatable.

The FAIR Plan was established to ensure that urban property owners, mostly businesses, would have "fair access" to the property insurance necessary to continue to operate in a market that insurers viewed as too risky to cover. That risk evaluation resulted in a substantial market withdrawal by insurers from the urban property market. Despite its initial creation as an urban/business "insurer of last resort," the FAIR Plan expanded to provide coverage in "designated" brush fire regions of the state. It operated fairly well in this manner until the mid-1990's, when, as a consequence of the genuine homeowners' insurance crisis that followed the Northridge earthquake in 1994, the entire state was designated as the appropriate FAIR Plan coverage region.

FAIR Plan Policies & Rates

"Rates for the FAIR Plan shall not be excessive, inadequate, or unfairly discriminatory, and shall be actuarially sound so that premiums are adequate to cover expected losses, expenses and taxes, and shall reflect investment income of the plan." (CA Ins. Code 10100.2)

FAIR Plan policies are capped at $3.3 million for residential properties and $20 million per structure (up to $100 million) for commercial properties. These caps were increased by the Insurance Commissioner in 2020 for residential and 2023 for commercial. Commercial went from $8.4 million per location in 2021, to $20 million per location in 2023, to $20 million per structure subsequently in 2023 (but finalized in 2024).

FAIR Plan commercial policies can cover homeowners associations, condo associations, farms, and businesses.

By statute, the FAIR Plan policy is not as broad as traditional homeowners' policies, it is nonetheless a fully sound and guaranteed policy that satisfies lenders' security requirements and protects the property against the primary risk factor faced by homeowners, which is [wild]fire. Other coverages are readily available in the market (typically through the purchase of a "difference-in-conditions" or "DIC" policy), which provide wraparound coverage that, coupled with a FAIR Plan policy, results in the same protection provided by a standard homeowner's policy. Because the FAIR Plan's role is to provide coverage when the regular market won't, it is not necessarily the role of the FAIR Plan to provide DIC policies when there is a healthy market for those policies.

CDI, over the last 5 years, has attempted to address homeowners having to seek a DIC in addition to a FAIR Plan policy, by requiring the FAIR Plan to expand the coverage it offers beyond just fire insurance. CDI would like the FAIR Plan to offer additional homeowners coverage including but not limited to: theft, on-property liability, water damage, and snow damage. The last 5 years has been consumed by back and forth litigation between CDI and the FAIR Plan. In late 2023, a Los Angeles Superior Court Judge ruled (again) in favor of CDI, that the Insurance Commissioner does have the authority to order the FAIR Plan to expand what it offers for coverage. The FAIR Plan appealed the latest ruling in February 2024, so the back and forth litigation continues.

Historically, the FAIR Plan is stereotyped as having rates 3 times as much, if not more, than the admitted market but recently the rates of the FAIR Plan have come under scrutiny as being equal to or in some cases less than the admitted market. As stated above, the FAIR Plan was not created to compete with the admitted market. Similar to arguments made by the admitted market, obstacles that the FAIR Plan faces to achieve rate adequacy stems from the inability to include the cost of reinsurance or catastrophe modeling in the rate filings.

FAIR Plan Market Activity

According to the FAIR Plan, as of March 2025 (FAIR Plan updates quarterly on their website), the FAIR Plan's total exposure in California is $599 billion, reflecting a 31 % increase since September 2024 and a 259% increase since September 2021.

As of March, 2025, the FAIR Plan's policies in force reached 573, 739, a 23% increase since September 2024 and a 139% increase since September 2021.

Homeowners are required to conduct a diligent search of the private market for new coverage before resorting to the FAIR Plan. After receiving a non-renewal notice, some homeowners will find coverage from the admitted market in the course of that diligent search. However, where there are significant increases in FAIR Plan policy counts, it is a sound assumption that there has been an increase in the number of non-renewal notices sent to homeowners.

The Sustainable Insurance Strategy (SIS) and FAIR Plan Modernization Plan

On September 21, 2023, Governor Newsom issued an Executive Order that directed the Insurance Commissioner to "take prompt regulatory action to strengthen and stabilize California's marketplace for homeowner's insurance and commercial property insurance, and to consider whether the recent sudden deterioration of the private insurance market presents facts that support emergency regulatory action."

A part of the executive order included: to maintain the solvency of the FAIR Plan to protect its policyholders and promote long-term resiliency in the face of climate change, including identifying mechanisms to reduce its share of the overall market in underserved areas and move its customers into the admitted insurance market.

The Insurance Commissioner responded promptly by announcing the SIS. Provisions of the SIS specific to the FAIR Plan include:

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

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

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

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

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

On July 26, 2024, the Insurance Commissioner announced as part of the SIS, the FAIR Plan Modernization Plan. This plan was negotiated and agreed upon between CDI and the FAIR Plan via a binding stipulation. Within 30 days of July 26, FAIR Plan agreed to submit a new Plan of Operation that addressed the following:

- Expand Coverage: Establishing a new "high-value" commercial coverage option with limits up to $20 million per building, with a total maximum limit of $100 million per location.

- Create a financial formula in case the FAIR Plan needs to assess. Under the agreement, when all FAIR Plan reserve funds are exhausted and reinsurance and catastrophic bonds have been triggered, insurance companies will be required to pay half the cost of losses up to $2 billion in total FAIR Plan claims — $1 billion for residential claims and $1 billion for commercial claims. The other half could be recouped from policyholders — only with the prior approval of the Insurance Commissioner.

- Improved Transparency: Requiring increased public reporting on FAIR Plan activity and customer service metrics which includes posting data on the number of residential and commercial policies written in high-wildfire risk areas and progress reports on claims-handling practices and customer service. The data must be shared with the Insurance Commissioner, the Governor, and State Legislature as well as publicly posted on its Internet website.

FAIR Plan Assessment

As the number of FAIR Plan policyholders grow, so does the threat of the FAIR Plan assessing the admitted market. A factor that contributed to many insurers from pressing pause or restricting new business (or leaving entirely) in California. As it works right now, if there is a catastrophic event in an area where the FAIR Plan is heavily concentrated, and if the FAIR Plan is unable to pay claims, with prior approval from the Insurance Commissioner, the FAIR Plan has the ability to assess the admitted market. The admitted market is the financial backstop to the FAIR Plan in case of an "emergency." The amount of the assessment is based on the insurer's market share with a 2 year look back. From 1968 to today, the FAIR Plan has assessed three times.

Between 1993 and 1995 for about $260 million total. Notably due to the Northridge earthquake. Hence, when solutions encourage FAIR Plan policyholder growth, the admitted market is likely not thrilled. It should be noted that the FAIR Plan inherits the riskiest properties, those that were presumably non-renewed by the admitted market.

On February 11, 2025, the announcement many had been dreading became a reality. Due to FAIR Plan exposure and damage caused by the Pacific Palisades and Eaton fires, the FAIR Plan requested and received approval to assess its member companies for $1 billion. The FAIR Plan needed financial assistance in order to meet their obligations which includes the promise to pay claims. Some would argue, to salvage the health of California's insurance market, the timing of the Insurance Commissioner's FAIR Plan Modernization Plan in July 2024 couldn't have come at a better time considering the January 7th disasters. The FAIR Plan Modernization Plan allows FAIR Plan member insurers to potentially recoup part of the $1 billion assessment from non-FAIR Plan policyholders. If approved by the Insurance Commissioner, recoupments would show as a temporary supplemental fee to policyholders and could be recouped over a 24 month period.

Whether or not FAIR Plan member companies can pass on a temporary supplemental fee to their policyholders is currently being litigated.

FAIR Plan Residential and Commercial Clearinghouse Programs

A significant provision of the SIS is depopulating the FAIR Plan through the clearinghouse programs.

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

The commercial clearinghouse program was established via legislation in 2023, which requires the FAIR Plan to develop and implement a commercial clearinghouse program on or before, July 1, 2024, identical to the residential clearinghouse program.

It has become apparent that the FAIR Plan clearinghouse programs are not working as intended. The Legislature created these programs but provided little to no direction on how to implement and left it in the hands of the FAIR Plan. A major factor is the agent/broker relationship with their customers. While on its face many would think providing a list of FAIR Plan policyholders would be grounds for a feeding frenzy of new business; the insurance world doesn't work like this. Complex factors come into play such as stealing a client or the fact those that are in FAIR Plan were already denied by the admitted market hence the reason they are in the FAIR Plan.

The FAIR Plan Governing Committee

The FAIR Plan is administered by a Governing Committee, and subject to the supervision of the Insurance Commissioner. The Governing Committee consists of nine voting insurers, and four non-voting members appointed by the Governor, which includes one representative of insurance agents, one representative of insurance brokers, one representative of the public, and one representative of surplus line brokers. The purpose of the Governing Committee is to ensure the requirements laid out in California Insurance Code 10090 are followed (referenced above). Legislation (signed by the Governor), or by rule, regulation or administrative determination by the Insurance Commissioner requires the FAIR Plan Governing Committee to amends its plan of operation.

Recent Legislative Actions Impacting the FAIR Plan

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

AB 3012 (Daly & Wood) Chapter 258, Statutes of 2020, directs the Fair Plan to implement a clearinghouse program whereby property insurers will be provided information about FAIR Plan policies, for the purpose of encouraging those insurers to offer regular private insurance to FAIR Plan policyholders.

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

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

Pending Legislation

AB 69 (Calderon) This bill requires a broker of record to determine if a FAIR Plan policy can be moved to the voluntary market before the FAIR Plan policy is renewed. Pending on the Assembly Floor.

AB 226 (Calderon & Alvarez) This bill creates the FAIR Plan Stabilization Act, which authorizes the California Infrastructure and Economic Development Bank, upon the request of the California Fair Access to Insurance Requirements Plan to issue bonds to finance the costs of claims, to increase liquidity, and claims-paying capacity of the FAIR Plan, and to refund bonds previously issued for that purpose. Pending in Senate Business and Professions Committee.

AB 234 (Calderon) This bill requires the Speaker of the Assembly and the Chairperson of the Senate Committee on Rules to serve as nonvoting, ex officio members of the governing committee, and would authorize each to name a designee to serve in their place. Pending in the Senate Insurance Committee.

AB 290 (Bauer-Kahan) This bill requires the FAIR Plan to accept automatic payments for policyholder premiums and provides a policyholder with a 10-day grace period to pay an outstanding installment premium. Pending before Senate Rules.

SB 525 (Jones) expands “basic property insurance” offered through the FAIR Plan to include manufactured homes insurance that is comparable to basic property insurance sold for residential dwellings. Pending on the Senate Floor.

Conclusion

It’s important to share as parties consider and evaluate the future of the FAIR Plan, points that the FAIR Plan continuously shares with this committee which include:

- The FAIR Plan is not a state agency and not state or taxpayer funded.
- The FAIR Plan is a not for profit.
- The FAIR Plan is not subject to Proposition 103.
- The FAIR Plan accepts properties regardless of wildfire exposure.
- The FAIR Plan is funded primarily through the policies it sells to customer.

These points are important to remember and consider moving forward to determine whether the “new normal” of the FAIR Plan is working as the Legislature expected. To be “fair” the FAIR Plan has worked as expected since 1968 but over the last 2 years (most notably-State Farm pause/withdraw 2 year anniversary just passed) the FAIR Plan continues to grow with no signs of depopulation in sight. Is the California FAIR Plan still just a temporary safety net or are we fooling ourselves when this is stated?