

ACT 17

H.B. NO. 13-S

A Bill for an Act Relating to the Hawaii Hurricane Relief Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431P-1, Hawaii Revised Statutes, is amended:

1. By adding three new definitions to be appropriately inserted and to read as follows:

““Companion policy” means a policy of property insurance issued by a servicing facility in conjunction with a fund policy of hurricane property insurance that provides, at a minimum, coverage equivalent to a standard fire policy for the peril of fire and windstorm and, after considering all exclusions and endorsements, that provides insurance for wind related losses or damage created by a weather system that has not resulted in the declaration and definition of a hurricane watch or warning.

“Licensed property and casualty insurer” means:

- (1) Any insurer licensed to transact any one or more classes of insurance authorized in section 431:3-204 where premiums written within such authority are required to be reported in the “Exhibit of Premiums and Losses” for this State in the National Association of Insurance Commissioners fire and casualty annual statement convention blank that is required to be filed with the commissioner under section 431:3-302;
and
- (2) The Hawaii Property Insurance Association created in article 21 of chapter 431.

“Mortgage” means every transfer of an interest in real property, except fixtures, made as security for the performance of another act or subject to defeasance upon the payment of an obligation, whether the transfer is made in trust or otherwise.”

2. By amending the definition of “eligible property” to read as follows:

““Eligible property” means:

- (1) Real property of one to four units used for residential purposes and which is in insurable condition, and tangible personal property located therein or thereon, as provided in the plan of operation or any manual of rules and rates adopted under the plan of operation; [and]
- (2) Real property used for business, commercial, or industrial purposes which is in insurable condition, and which may include tangible personal property, located therein or thereon, as provided in the plan of operation or any manual of rules and rates adopted under the plan of operation[.];
- (3) Tangible personal property owned by an occupant of and located in or on real property of the types described in paragraph (1); provided that the owner of the tangible personal property does not own the real property in or on which the tangible personal property is located; and
- (4) Tangible personal property owned by an occupant of and located in or on real property of the types described in paragraph (2) at the discretion of the fund and as provided in the plan of operation or any manual of rules and rates adopted under the plan of operation; provided that the owner of the tangible personal property does not own the real property in or on which the tangible personal property is located.”

3. By amending the definition of “policy of hurricane property insurance” to read as follows:

““Policy of hurricane property insurance” means a policy or endorsement of insurance issued by the fund insuring only against damage or loss to eligible property caused by a covered event in excess of the deductible and up to:

- (1) \$750,000 per risk on real property of one to four units used for residential purposes and the personal property located therein or thereon; and [up to]
- (2) \$500,000 per risk on real and personal property used for business, commercial, or industrial purposes, subject to the limits defined by the plan of operation;

provided that this policy shall not include coverage for business interruption[.] and other similar coverages.”

SECTION 2. Section 431P-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In addition to the general powers under subsection (a), the fund shall have the specific power to:

- (1) Adopt and administer a plan of operation in accordance with section 431P-7, and a manual of rules and rates to provide persons having an insurable interest in eligible property with insurance coverage provided by the fund;
- (2) Authorize the provision of hurricane coverage by the fund for tangible personal property located in or on real property used for business,

- commercial, or industrial purposes and establish limits of liability for specific coverages within the range of authorized coverage;
- (3) Adopt actuarially sound rates based on reasonable assumptions relative to expectations of hurricane frequency and severity for all coverage provided under policies or endorsements issued by the fund. Rates adopted shall be subject to approval by the commissioner pursuant to article 14 of chapter 431. Rates adopted shall provide for classification of risks and shall include past and prospective losses and expense experience in this State;
 - (4) Adopt procedures, guidelines, and surcharges applicable to [hurricane] policies of hurricane property insurance issued in connection with an underlying property policy issued by an unauthorized insurer;
 - (5) Adopt any form of insurance policy necessary for providing policies of hurricane property insurance by the fund, with the approval of the commissioner;
 - (6) Issue [insurance] policies of hurricane property insurance and pay claims for coverage over the mandatory deductible;
 - (7) Require every licensed property and casualty insurer transacting direct property insurance business in this State to act as a servicing facility, and by contract with [such] that insurer authorize [such] the insurer to inspect eligible properties, service policies and policyholders of hurricane property insurance, provide claim services, and perform any other duties as authorized by the fund for applicants to the fund and those insured by it;
 - (8) (A) Assess [annually] all licensed property [or] and casualty insurers the amounts which, together with the other assets of the fund, are sufficient to meet all necessary obligations of the fund. The assessment shall be made on the insurer's gross direct written premiums for property and casualty insurance in [Hawaii] this State for the preceding calendar year. The rate of assessment in a year in which a covered event has not occurred shall be 3.75 per cent and shall not include the insurer's gross direct written premiums for motor vehicle insurance in [Hawaii;] this State; provided that following a covered event, the rate of assessment may be increased to an amount not to exceed five per cent and may include the insurer's gross direct written premiums for motor vehicle insurance in [Hawaii following a covered event.] this State. This increase shall remain in effect until such time as all claims and other obligations, including but not limited to bonds and notes, arising out of a covered event shall have been fully discharged. An insurer authorized to provide comparable coverage under section 431P-10(b) shall be assessed an amount that excludes gross direct written premiums for property insurance in [Hawaii.] this State. The assessment for a year in which a covered event has not occurred shall be collected quarterly during each calendar year.
 - (B) In the event of a loss from a covered event the fund, in addition to the [annual] assessment in subparagraph (A), shall assess those insurers which [wrote property insurance coverage] acted as servicing facilities during the year immediately preceding the year of the covered event [in proportion to each insurer's share of the total property premium during that year]. The total assessment shall be based on the proportion of the gross direct written premiums from companion policies together with the total fund

gross direct written premium from policies of hurricane property insurance of the insurers that acted as servicing facilities to the total gross direct written premium from policies of property insurance written by all licensed property and casualty insurers whether acting as servicing facilities or not, and including any other insurer acting as a servicing facility together with the total fund gross direct written premium from policies of hurricane property insurance during the year immediately preceding the year of the covered event. Premiums from policies of property insurance under this subparagraph for losses in excess of coverage provided by the fund's policies of hurricane property insurance shall be considered non-assessable premium for purposes of determining this assessment. However, in no event shall the total assessment exceed \$500,000,000 in the aggregate[;] and be less than an amount established by the board; provided that a separate assessment shall be made for each covered event. [An insurer authorized to provide comparable coverage under section 431P-10(b) shall be exempted from this subparagraph.] The total assessment shall be allocated to each servicing facility based on the amount of the fund's gross direct written premiums for policies of hurricane property insurance serviced by each servicing facility in proportion to the total amount of the fund's gross direct written premiums for policies of hurricane property insurance. Assessments made under this subparagraph and those under subparagraph (A) in a year in which a covered event has occurred are due from each insurer based on assessment procedures established by the fund together with its servicing facilities to meet its obligations to policyholders in a timely manner.

- (C) [Each insurer shall be notified of any assessment not later than thirty days before it is due.] The fund may exempt or [differ,] defer, in whole or in part, the assessment of any insurer if the assessment would cause the insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by this jurisdiction;
- (9) Develop a program of incentives to encourage insurers to provide policies of hurricane property insurance in the event the commissioner authorizes the provision of comparable insurance pursuant to section 431P-10(b)[;] which may include, but are not limited to, exemption of the insurer's gross direct written premium for property insurance from the [annual] assessment pursuant to [[paragraph[]] (8)(A)[.];
 - (10) Develop a credit [against the annual assessment] based on the difference between premiums written in 1993 and the premiums written in 1992 by each property insurer[;] against the assessment for gross direct written premiums written in 1993;
 - (11) Develop procedures regarding policies written by unauthorized insurers comparable to the assessments, surcharges, and other contributions made by insurers authorized to do business in this State;
 - (12) Accumulate reserves or funds, including the investment income thereon, to be used for paying expenses, making or repaying loans[,] or other obligations of the fund, and paying valid claims for covered events insured by the fund; [and]
 - (13) Collect and maintain statistical and other data as may be required by the commissioner[.];

- (14) Exempt mortgage transactions from payments of the special mortgage recording fee and provide for equitable assessment of the special mortgage recording fee, pursuant to rules adopted by the board. The adoption of or amendments to such rules shall be subject to chapter 91; and
- (15) Perform any and all acts reasonably necessary to carry out the purposes of this chapter.”

SECTION 3. Section 431P-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The fund shall adopt a plan of operation[,] and a manual of rules and rates necessary or suitable to ensure both the solvency and the reasonable and equitable administration of the fund. The adoption of or amendments to the plan of operation and manual of rules and rates shall not be subject to chapter 91, except that the policy forms for policies of hurricane property insurance shall be adopted pursuant to chapter 91.”

SECTION 4. Section 431P-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) For the purpose of ascertaining the fund’s condition or compliance with this chapter, the commissioner shall examine the accounts, records, documents, and transactions of the fund at least once every three years commencing at the time the fund starts issuing policies of hurricane property insurance or more often if the commissioner deems advisable. The fund shall pay all reasonable and actually incurred expenses of the examination in accordance with section 431:2-306(b)[.]; provided that a detailed estimate of the expenses to be incurred shall be approved by the board prior to the examination. In the event the actual expenses incurred are in excess of ten per cent of the estimate, the commissioner shall communicate in writing to the board the reason for the excess expenses.”

SECTION 5. Section 431P-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Policies issued by the fund shall provide a maximum aggregate coverage of up to \$750,000 per risk on real property of one to four units used for residential purposes and \$500,000 per risk for real property used for business, commercial, [and] or industrial purposes and shall provide for a mandatory deductible. The deductible amount for residential [personal] property policies shall be the greater of \$1,000 or one per cent of the insured value or the greater of \$2,000 or two per cent of the insured value; provided that the board may establish higher deductible limits. The deductible amount for commercial property policies shall be the greater of \$5,000 or five per cent of the insured value or an amount equivalent to all the other [peril] perils deductibles¹ of the [underlying policy of property insurance;] companion policy; provided that the board may establish higher deductible limits.”

SECTION 6. Section 431P-16, Hawaii Revised Statutes, is amended to read as follows:

“[[]§431P-16[]] Establishment of [hurricane reserve] trust [fund.] funds. (a) [There is created in the treasury of the State the hurricane reserve trust fund to be administered by the Hawaii hurricane relief fund, into which shall be deposited] The fund shall establish outside the state treasury a hurricane reserve trust

fund and any other trust fund necessary to carry out the purposes of this chapter. Moneys deposited in the hurricane reserve trust fund or any other trust fund shall be held by the fund, as trustee, in a depository as defined in section 38-1 or according to a similar arrangement at the discretion of the board. These moneys may be invested and reinvested in accordance with the plan of operation. Disbursements from the trust funds shall not be subject to chapter 103D and shall be made in accordance with procedures adopted by the board.

(b) The hurricane reserve trust fund shall receive deposits of the special mortgage recording fee established by this chapter. The special mortgage recording fee shall be imposed on each mortgage and each amendment to a mortgage which increases the principal amount of the secured debt which is recorded in the bureau of conveyances of the State under chapter 502 or filed with the assistant registrar of the land court of the State under chapter 501.

The special mortgage recording fee shall be [in] an amount equal to one-tenth of one per cent of the stated principal amount of the debt secured by the mortgage or, in the case of an amendment of refinancing of a mortgage, an amount equal to one-tenth of one per cent of the amount of the increase of the stated principal amount of the debt[.], if any.

The special mortgage recording fee shall be in addition to any applicable fees under chapter 501 or 502. The special [fees] mortgage recording fee shall be collected by [escrow depositories licensed under chapter 449, or financial institutions authorized to engage in the escrow business, or persons and companies permitted to engage in limited escrow transactions under section 449-3. The special mortgage recording fees shall be collected prior to recordation of the mortgage with] the bureau of conveyances or the assistant registrar of the land court of the State and shall be deposited into the hurricane reserve trust fund. [The bureau of conveyances and the assistant registrar of the land court may also collect and transmit any special fees for deposit into the hurricane reserve trust fund.

(b) (c) The [[Hawaii hurricane relief]] fund shall implement the [annual assessment] assessments of all [licensed] property and casualty insurers as authorized by section 431P-5(b)(8)(A) and (B) and the proceeds from the assessments shall be deposited into the hurricane reserve trust fund.

(c) (d) If the [[Hawaii hurricane relief]] fund offers to issue policies of hurricane property insurance, the premiums for [such] the policies shall be deposited into the hurricane reserve trust fund.

(d) (e) Should the moneys in the hurricane reserve trust fund be insufficient to pay claims arising out of a covered event, the [[Hawaii hurricane relief]] fund is authorized to levy a surcharge not to exceed seven and one-half per cent a year on premiums charged for [policies issued by all licensed property and casualty insurers.] all property and casualty insurance policies issued for risks insured in this State. These moneys may be used for purposes as directed by the board, including but not limited to the payment of [debt service] interest and principal on [a contract of financial reinsurance.] reinsurance or other similar financial arrangements and bonds or notes issued pursuant to this chapter. The formula to calculate the amount and period of the surcharge and the procedures and methodology for payment of claims during periods of insufficiency of moneys for such purpose shall be provided in the plan of operation. The amount and reason for any surcharge made pursuant to this subsection shall be separately stated on any billing sent to an insured. The surcharge shall not be considered premiums for any other purpose, including the computation of gross premium tax or the determination of agents' commissions.

(f) Any proceeds, experience refunds, or other return funds under reinsurance or other similar financial arrangements shall be deposited into the hurricane reserve trust fund.

[(e)] (g) Any proceeds from loans or other moneys from the federal government, any proceeds from bonds or notes issued pursuant to this [Act] chapter loaned by the director [of finance] to the Hawaii hurricane relief fund, and [such] other moneys as the State may make available from time to time shall be deposited into the hurricane reserve trust fund.

[(f)] (h) Moneys in the hurricane reserve trust fund shall be expended by the [[Hawaii hurricane relief[]] fund and used solely for the purposes of this chapter.

[(g)] (i) Upon dissolution of the [[Hawaii hurricane relief[]] fund, the net moneys [of] in the hurricane reserve trust fund shall revert to the state general fund[.], after any payments by the fund on behalf of licensed property and casualty insurers or the State that are required to be made pursuant to any federal disaster insurance program enacted to provide insurance or reinsurance for hurricane risks. In the event such moneys are paid on behalf of licensed property and casualty insurers, payment shall be made in proportion to the premiums from policies of hurricane property insurance serviced by the insurers in the twelve months prior to dissolution of the fund.”

SECTION 7. Section 10 of Act 339, Session Laws of Hawaii 1993, is amended by amending subsection (d) to read as follows:

“(d) The director of finance is authorized to issue reimbursable general obligation bonds in the principal amount of \$200,000,000, or so much thereof as may be requested and deemed necessary by the commissioner for the purposes of the Hawaii hurricane relief fund, and the same sum is appropriated for fiscal [year 1993–1994] years 1994–1995, 1995–1996, and 1996–1997 for deposit into the hurricane reserve trust fund. The commissioner, upon the commissioner’s determination that it is advisable to transfer funds from the hurricane reserve trust fund, shall reimburse the state general fund for payment of debt service on reimbursable general obligation bonds authorized and issued under this section.”

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

(Approved June 29, 1995.)

Note

1. Prior to amendment “deductible” appeared here.