

ACT 106

H.B. NO. 1868

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 by adding a new definition to be appropriately inserted and to read as follows:

““Year immediately preceding the year of the covered event” means the twelve-month period ending on the last day of the calendar month immediately preceding the month in which a covered event occurs.”

SECTION 2. Section 431P-1, Hawaii Revised Statutes, is amended by amending the definitions of “eligible property” and “policy of hurricane property insurance” 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 which may include tangible personal property located therein or thereon[,] and other structures at the insured location, as provided in the plan of operation or any manual of rules and rates adopted under the plan of operation;
- (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)[;], 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; 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.

“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 other structures at the insured location, subject to the limits defined by the plan of operation or any manual of rules and rates adopted under the plan of operation; and
- (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[;] or any manual of rules and rates adopted under the plan of operation; provided that the board may designate an association of property owners or cooperative housing corporation to be a commercial risk;

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

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

“(h) The board may appoint, not subject to chapters 76 and 77, an executive director of the fund whose salary shall be set by the board. The board may employ, not subject to chapters 76 and 77, technical experts and officers, agents, and employees, permanent or temporary, as required. The board may also contract with persons, not subject to chapters 76, 77, and 78 when in the determination of the board, the services to be performed are unique and essential to the execution of the functions of the fund[; provided that no individual contract shall be for a period longer than two years per term].”

SECTION 4. 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 real property and 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 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 policies of hurricane property insurance and pay claims for coverage over the mandatory deductible[;] or other deductible provided in the plan of operation or any manual of rules and rates adopted under the plan of operation;
- (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 that insurer authorize 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 all licensed property 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 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 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 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) and which is providing hurricane property insurance in the State shall be assessed an amount that excludes gross direct written premiums for property insurance in 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 assessment in subparagraph (A), shall assess those insurers which acted as servicing facilities during the year immediately preceding the year of the covered event. 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] by any other insurer acting as a servicing facility, together with the total fund gross direct written premium from policies of hurricane property insurance, in each case, during the year immediately preceding the year of the covered event. Premiums from policies of property insurance [under this subparagraph] for hurricane 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 for a covered event 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. 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) The fund may exempt or 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;] in this State;

- (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 assessment pursuant to paragraph (8)(A);
- (10) Develop a credit 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;
- (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] maximum limits on or uniform reduction 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) Impose fines for each incident of nonpayment of amounts due to the fund under this chapter; provided that the fines shall not exceed twenty-five per cent of the amount then due; and
- (16) Perform any and all acts reasonably necessary to carry out the purposes of this chapter."

SECTION 5. Section 431P-11, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The fund shall renew any policy provided payment of the applicable renewal premium is received by the fund on or before the expiration date stated in the policy. The fund may nonrenew a policy on the grounds the property is no longer covered by [an underlying policy of property insurance.] a companion policy. The policy issued by the fund shall not provide coverage in the event that there is no [underlying policy of property insurance] companion policy at the time of loss. In such case, any unearned premiums shall be returned to the policyholder on a pro rata basis. Limits of coverage under a policy issued by the fund shall not exceed the limits of comparable coverages for fire and windstorm under the companion policy. The statute of limitations for actions under a policy of hurricane property insurance shall be one year."

SECTION 6. Section 431P-14, Hawaii Revised Statutes, is amended to read as follows:

"**[§431P-14] Immunity and limitation on liability.** There shall be no liability on the part of, and no cause of action of any nature shall arise against, any servicing facility[:] or its authorized insurance agents; the fund or its agents,

employees, or [its] board; the State; the commissioner; or the commissioner's representatives for any action taken by them in the performance of their powers and duties under this chapter; provided that this section shall not be construed to prohibit any exercise of the commissioner's power pursuant to this chapter or any other law or rule adopted pursuant to law[,] or chapters 661 and 662, [and] any other law to the contrary notwithstanding. Nothing in this chapter shall create an obligation, debt, claim, cause of action, claim for relief, charge, or any other liability of any kind whatsoever in favor of any person or entity without regard to whether that person or entity received any benefits under this chapter, against the State, or its officers and employees. The State and its officers and employees shall not be liable for the results of any application, denial of application, claim, loss, or other benefits provided by the fund pursuant to this chapter. Nothing in this chapter shall be construed as authorizing any claim against the State whatsoever, nor shall this chapter be construed as authorizing any claim against the fund in excess of any note, loan, liability, or other obligation incurred by the fund. Nothing in this section shall be construed to alter any obligation to pay assessments or charges authorized to be imposed or levied by the board pursuant to this chapter. The fund shall be subject to chapter 431 only as provided for in this chapter."

SECTION 7. Section 431P-16, Hawaii Revised Statutes, is amended to read as follows:

"§431P-16 Establishment of trust funds. (a) The fund shall establish outside the state treasury a hurricane reserve trust fund and any accounts thereunder and any other trust fund or account necessary to carry out the purposes of this chapter. Moneys deposited in the hurricane reserve trust fund and any accounts thereunder or any other trust fund or account 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, including, but not limited to, trust or custodial accounts created for the benefit of the fund's secured parties under contractual claims financing arrangements. 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, in each case, increases the principal amount of the secured debt and 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 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] or 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 secured debt[, if any.]; provided that the board may establish a lower special mortgage recording fee amount pursuant to section 431P-5(b)(14). With respect to an open end revolving loan, the principal amount of the debt on which the special mortgage recording fee is calculated shall be the maximum amount which may be outstanding under the loan at any one time. With respect to a mortgage securing a nonmonetary or inchoate obligation, the principal amount of the debt on which the special mortgage recording fee is calculated shall be the monetary amount which the mortgagee attributes to the obligation. If the debt is stated in a foreign currency, it shall be converted to U.S. dollars using an exchange rate published in a newspaper

of general circulation in this State within one week prior to recordation of the mortgage or amendment of mortgage.

The special mortgage recording fee shall be in addition to any applicable fees under chapter 501 or 502. The special mortgage recording fee shall be submitted to and collected by 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 special mortgage recording fee shall be submitted at the time the mortgage or amendment of mortgage is recorded together with any related forms or certifications required by the bureau of conveyances or the assistant registrar of the land court of the State.

(c) The Hawaii hurricane relief fund shall implement the assessments of all 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[,] or into trust or custodial accounts, created for the benefit of the fund's secured parties, that are held inside or outside the hurricane reserve trust fund.

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

(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 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 interest and principal on re-insurance or other similar financial arrangements and bonds or notes issued pursuant to this chapter.] deposited into the hurricane reserve trust fund or into trust or custodial accounts, created for the benefit of the fund's secured parties, that are held inside or outside the hurricane reserve trust fund. 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 re-insurance [or other similar financial arrangements] shall be deposited into the hurricane reserve trust fund.

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

(h) Moneys in the hurricane reserve trust fund or in trust or custodial accounts, created for the benefit of the fund's secured parties, shall be expended by the Hawaii hurricane relief fund or its authorized designee and used solely for the purposes of this chapter.

(i) [Upon] Solely upon dissolution of the Hawaii hurricane relief fund, the net moneys 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 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 3, 1998.)