

ACT 304

H.B. NO. 3437

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

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

SECTION 1. The legislature finds that there is a need to increase the post-hurricane assessment on those insurers that acted as servicing facilities for the Hawaii hurricane relief fund during the preceding year.

The legislature finds that the Hawaii hurricane relief fund's exposure has increased since inception while the post-hurricane assessment on those acting as servicing facilities has not changed. The assessment provided by a formula, although limited to a maximum of \$500,000,000, is not greater than \$300,000,000.

Additionally, proposed national legislation would require state-funded catastrophe programs to maintain minimum claims-paying capacities. For the State of Hawaii, the minimum retention level would be \$2,000,000,000. The Hawaii hurricane relief fund has claims-paying capabilities of \$1,350,000,000.

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 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;
- (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) 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.] twelve months ending at the start of the month preceding the month in which the covered event occurs. 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] a fixed percentage of the total coverage provided by the fund under its 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) during the month preceding the month in which the covered event occurs. The percentage to be used in calculating the total assessment shall be as follows:

- (i)¹ For calendar year 1998, a percentage as fixed by the board in the plan of operation, but in no event shall the total assessment exceed \$500,000,000;
- (ii) For calendar year 1999, 1.125 per cent;
- (iii) For calendar year 2000, 1.25 per cent; and
- (iv) For calendar year 2001, and each calendar year thereafter, 1.5 per cent.

A separate total assessment shall be made for each covered event. The total assessment shall be allocated to each servicing facility based on the proportion of the total 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[.], in each case, during the twelve months ending at the start of the month preceding the month in which the covered event occurs. 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[.]; and

- (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;
- (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, providing loss mitigation incentives, 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 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) Create loss mitigation incentives, including but not limited to premium credits, premium rebates, loans, or cash payments;
- (16) Enter into claims financing transactions, including but not limited to reinsurance transactions, debt transactions, and other transactions incorporating elements of reinsurance, insurance, debt or equity;
- (17) Establish business and corporate entities or organizations pursuant to the purposes of this chapter; and
- [(15)] (18) Perform any and all acts reasonably necessary to carry out the purposes of this chapter.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 20, 1998.)

Note

- 1. Should be underscored.