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## A BILL FOR AN ACT

RELATING TO INSURANCE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The purpose of this Act is to address the  
2 transfer of moneys from the hurricane reserve trust fund to the  
3 Hawaii insurance guaranty association for the payment of covered  
4 claims against an insolvent insurer, the insolvency of which was  
5 caused by a hurricane. Under this Act, such a transfer may be  
6 authorized by the board of directors of the Hawaii hurricane  
7 relief fund only when the fund has no policy of hurricane  
8 property insurance in force.

9           SECTION 2. Section 431:16-108, Hawaii Revised Statutes, is  
10 amended by amending subsection (a) to read as follows:

11           "(a) The association shall:

12           (1) Be obligated to the extent of the covered claims  
13           existing prior to the order of liquidation and arising  
14           within thirty days after the order of liquidation, or  
15           before the policy expiration date if less than thirty  
16           days after the order of liquidation, or before the  
17           insured replaces the policy or causes its  
18           cancellation, if the insured does so within thirty



1 days of the order of liquidation. The obligation  
2 shall be satisfied by paying to the claimant an amount  
3 as follows:

4 (A) The full amount of a covered claim for benefits  
5 under a workers' compensation insurance coverage;

6 (B) An amount not exceeding \$10,000 per policy for a  
7 covered claim for the return of unearned premium;

8 or

9 (C) An amount not exceeding \$300,000 per claim for  
10 all other covered claims.

11 In no event shall the association be obligated to a  
12 policyholder or claimant in an amount in excess of the  
13 stated policy limit of the insolvent insurer under the  
14 policy from which the claim arises. Notwithstanding  
15 any other provisions of this part, a covered claim  
16 shall not include a claim filed with the association  
17 after the final date set by the court for the filing  
18 of claims against the liquidator or receiver of an  
19 insolvent insurer. Any obligation of the association  
20 to defend an insured shall cease upon the  
21 association's payment or tender of an amount equal to  
22 the lesser of the association's covered claim



1 obligation limit or the applicable policy limit[+].

2 The association may pay the obligations with funds

3 from the assessments pursuant to paragraph (3),

4 transferred moneys from the hurricane reserve trust

5 fund, and other revenues received by the association;

6 (2) Be deemed the insurer, but only to the extent of its  
7 obligation on covered claims and to that extent shall  
8 have all rights, duties, and obligations of the  
9 insolvent insurer as if the insurer had not become  
10 insolvent, including but not limited to the right to  
11 pursue and retain salvage and subrogation recoverable  
12 on covered claim obligations to the extent paid by the  
13 association;

14 (3) Assess insurers amounts necessary to pay the  
15 obligations of the association under paragraph (1)  
16 subsequent to an insolvency, the expenses of handling  
17 covered claims subsequent to an insolvency, and the  
18 cost of examinations under section 431:16-113, and  
19 other expenses authorized by this part. The  
20 assessments of each member insurer shall be in the  
21 proportion that the net direct written premiums of the  
22 member insurer for the preceding calendar year bears



1 to the net direct written premiums of all member  
2 insurers for the preceding calendar year. Each member  
3 insurer shall be notified of the assessment not later  
4 than thirty days before it is due. No member insurer  
5 may be assessed in any year an amount greater than two  
6 per cent of that member insurer's net direct written  
7 premiums for the preceding calendar year. If the  
8 maximum assessment, together with the other assets of  
9 the association, does not provide in any one year an  
10 amount sufficient to make all necessary payments, the  
11 funds available shall be prorated and the unpaid  
12 portion shall be paid as soon thereafter as funds  
13 become available. The association shall pay claims in  
14 any order that it may deem reasonable, including the  
15 payment of claims as they are received from the  
16 claimants or in groups or categories of claims. The  
17 association may exempt or defer, in whole or in part,  
18 the assessment of any member insurer, if the  
19 assessment would cause the member insurer's financial  
20 statement to reflect amounts of capital or surplus  
21 less than the minimum amounts required for a  
22 certificate of authority by any jurisdiction in which



1 the member insurer is authorized to transact  
2 insurance. However, during the period of deferment,  
3 no dividends shall be paid to shareholders or  
4 policyholders. Deferred assessments shall be paid  
5 when the payment will not reduce capital or surplus  
6 below required minimums. Payments shall be refunded  
7 to those companies receiving larger assessments by  
8 virtue of the deferment, or at the election of the  
9 companies, credited against future assessments. Each  
10 member insurer may set off against any assessment  
11 payments authorized by the administrator of the  
12 association to be made on covered claims and expenses  
13 incurred in the payment of the claims by the member  
14 insurer;

- 15 (4) Investigate claims brought against the association and  
16 adjust, compromise, settle, and pay covered claims to  
17 the extent of the association's obligation and deny  
18 all other claims and may review settlements, releases,  
19 and judgments to which the insolvent insurer or its  
20 insureds were parties to determine the extent to which  
21 the settlements, releases, and judgments may be  
22 properly contested. The association may appoint or



1 substitute and direct legal counsel retained under  
2 liability insurance policies for the defense of  
3 covered claims;

4 (5) Notify the persons as the commissioner directs under  
5 section 431:16-110(b)(1);

6 (6) Handle claims through its employees or through one or  
7 more insurers or other persons designated as servicing  
8 facilities. Designation of a servicing facility is  
9 subject to the approval of the commissioner, but the  
10 designation may be declined by a member insurer;

11 (7) Reimburse each servicing facility for obligations of  
12 the association paid by the facility and for expenses  
13 incurred by the facility while handling claims on  
14 behalf of the association and pay the other expenses  
15 of the association authorized by this part; and

16 (8) Have the authority, notwithstanding sections 431:10C-  
17 110 and 431:10C-111, to cancel all policies issued by  
18 an insolvent insurer. Covered claims under these  
19 policies shall be paid by the association in an amount  
20 not to exceed the stated policy limit of the insolvent  
21 insurer under the policy from which the claim arises,



- 1           or as provided under paragraph (1)(A) to (C),
- 2           whichever is less.
- 3           (b) The association may:
- 4           (1) Employ or retain the persons as are necessary to
- 5           handle claims and perform other duties of the
- 6           association;
- 7           (2) Borrow funds necessary to effect the purposes of this
- 8           part in accord with the plan of operation;
- 9           (3) Sue or be sued;
- 10          (4) Negotiate and become a party to the contracts as are
- 11          necessary to carry out the purpose of this part; and
- 12          (5) Perform all other acts as are necessary or proper to
- 13          effectuate the purpose of this part."

14          SECTION 3. Section 431P-5, Hawaii Revised Statutes, is  
 15 amended by amending subsection (b) to read as follows:

- 16          "(b) In addition to the general powers under subsection
- 17 (a), the fund shall have the specific power to:
- 18          (1) Adopt and administer a plan of operation in accordance
- 19          with section 431P-7, and a manual of rules and rates
- 20          to provide persons having an insurable interest in
- 21          eligible property with insurance coverage provided by
- 22          the fund;



- 1           (2) Authorize the provision of hurricane coverage by the  
2           fund for real property and tangible personal property  
3           located in or on real property and establish limits of  
4           liability for specific coverages within the range of  
5           authorized coverage;
- 6           (3) Adopt actuarially sound rates based on reasonable  
7           assumptions relative to expectations of hurricane  
8           frequency and severity for all coverage provided under  
9           policies or endorsements issued by the fund. Rates  
10          adopted shall be subject to approval by the  
11          commissioner pursuant to article 14 of chapter 431.  
12          Rates adopted shall provide for classification of  
13          risks and shall include past and prospective losses  
14          and expense experience in this State;
- 15          (4) Adopt procedures, guidelines, and surcharges  
16          applicable to policies of hurricane property insurance  
17          issued in connection with an underlying property  
18          policy issued by an unauthorized insurer;
- 19          (5) Adopt any form of insurance policy necessary for  
20          providing policies of hurricane property insurance by  
21          the fund, with the approval of the commissioner;





1           (6) Issue policies of hurricane property insurance and pay  
2           claims for coverage over the mandatory deductible or  
3           other deductible provided in the plan of operation or  
4           any manual of rules and rates adopted under the plan  
5           of operation;

6           (7) Require every licensed property and casualty insurer  
7           transacting direct property insurance business in this  
8           State to act as a servicing facility, and by contract  
9           with that insurer authorize the insurer to inspect  
10          eligible properties, service policies and  
11          policyholders of hurricane property insurance, provide  
12          claim services, and perform any other duties as  
13          authorized by the fund for applicants to the fund and  
14          those insured by it;

15          (8) (A) Assess all licensed property and casualty  
16          insurers the amounts which, together with the  
17          other assets of the fund, are sufficient to meet  
18          all necessary obligations of the fund. The  
19          assessment shall be made on the insurer's gross  
20          direct written premiums for property and casualty  
21          insurance in this State for the preceding  
22          calendar year. The rate of assessment in a year



1 in which a covered event has not occurred shall  
2 be 3.75 per cent and shall not include the  
3 insurer's gross direct written premiums for motor  
4 vehicle insurance in this State; provided that  
5 following a covered event, the rate of assessment  
6 may be increased to an amount not to exceed five  
7 per cent and may include the insurer's gross  
8 direct written premiums for motor vehicle  
9 insurance in this State. This increase shall  
10 remain in effect until such time as all claims  
11 and other obligations, including but not limited  
12 to bonds and notes, arising out of a covered  
13 event shall have been fully discharged. An  
14 insurer authorized to provide comparable coverage  
15 under section 431P-10(b) and which is providing  
16 hurricane property insurance in the State shall  
17 be assessed an amount that excludes gross direct  
18 written premiums for property insurance in this  
19 State. The assessment for a year in which a  
20 covered event has not occurred shall be collected  
21 quarterly during each calendar year;



1           (B) In the event of a loss from a covered event the  
2           fund, in addition to the assessment in  
3           subparagraph (A), shall assess those insurers  
4           which acted as servicing facilities during the  
5           twelve months ending at the start of the month  
6           preceding the month in which the covered event  
7           occurs. The total assessment shall be a fixed  
8           percentage of the total coverage provided by the  
9           fund under its policies of hurricane property  
10          insurance during the month preceding the month in  
11          which the covered event occurs. The percentage  
12          to be used in calculating the total assessment  
13          shall be as follows:

14           (i) For calendar year 1998, a percentage as  
15           fixed by the board in the plan of operation,  
16           but in no event shall the total assessment  
17           exceed \$500,000,000;

18           (ii) For calendar year 1999, 1.125 per cent;

19           (iii) For calendar year 2000, 1.25 per cent; and

20           (iv) For calendar year 2001, and each calendar  
21           year thereafter, 1.5 per cent.



1           A separate total assessment shall be made for  
2           each covered event. The total assessment shall  
3           be allocated to each servicing facility based on  
4           the proportion of the total amount of the fund's  
5           gross direct written premiums for policies of  
6           hurricane property insurance serviced by each  
7           servicing facility to the total amount of the  
8           fund's gross direct written premiums for policies  
9           of hurricane property insurance, in each case,  
10          during the twelve months ending at the start of  
11          the month preceding the month in which the  
12          covered event occurs. Assessments made under  
13          this subparagraph and those under subparagraph  
14          (A) in a year in which a covered event has  
15          occurred are due from each insurer based on  
16          assessment procedures established by the fund to  
17          meet its obligations to policyholders in a timely  
18          manner; and

19          (C) The fund may exempt or defer, in whole or in  
20          part, the assessment of any insurer if the  
21          assessment would cause the insurer's financial  
22          statement to reflect amounts of capital or



- 1                   surplus less than the minimum amounts required  
2                   for a certificate of authority in this State;
- 3       (9)   Develop a program of incentives to encourage insurers  
4           to provide policies of hurricane property insurance in  
5           the event the commissioner authorizes the provision of  
6           comparable insurance pursuant to section 431P-10(b)  
7           which may include but are not limited to exemption of  
8           the insurer's gross direct written premium for  
9           property insurance from the assessment pursuant to  
10          paragraph (8) (A);
- 11       (10)   Develop a credit based on the difference between  
12           premiums written in 1993 and the premiums written in  
13           1992 by each property insurer against the assessment  
14           for gross direct written premiums written in 1993;
- 15       (11)   Develop procedures regarding policies written by  
16           unauthorized insurers comparable to the assessments,  
17           surcharges, and other contributions made by insurers  
18           authorized to do business in this State;
- 19       (12)   Accumulate reserves or funds, including the investment  
20           income thereon, to be used for paying expenses, making  
21           or repaying loans or other obligations of the fund,



- 1 providing loss mitigation incentives, and paying valid  
2 claims for covered events insured by the fund;
- 3 (13) Collect and maintain statistical and other data as may  
4 be required by the commissioner;
- 5 (14) Exempt mortgage transactions from payments of the  
6 special mortgage recording fee and provide for maximum  
7 limits on or, uniform reduction of the special  
8 mortgage recording fee, pursuant to rules adopted by  
9 the board;
- 10 (15) Suspend or reactivate the special mortgage recording  
11 fee pursuant to resolution of the board;
- 12 (16) Impose fines for each incident of nonpayment of  
13 amounts due to the fund under this chapter; provided  
14 that the fines shall not exceed twenty-five per cent  
15 of the amount then due;
- 16 (17) Create loss mitigation incentives, including but not  
17 limited to premium credits, premium rebates, loans, or  
18 cash payments;
- 19 (18) Enter into claims financing transactions, including  
20 but not limited to reinsurance transactions, debt  
21 transactions, and other transactions incorporating  
22 elements of reinsurance, insurance, debt, or equity;



1        (19) Authorize the transfer of moneys from the hurricane  
 2        reserve trust fund to the Hawaii insurance guaranty  
 3        association to pay in accordance with chapter 431,  
 4        article 16, the obligations of covered claims of an  
 5        insolvent insurer when:

6        (A) The insolvency was caused by actual or expected  
 7        losses resulting from a hurricane; and

8        (B) The Hawaii hurricane relief fund has no policy of  
 9        hurricane property insurance in force;

10       ~~(19)~~ (20) Establish business and corporate entities or  
 11       organizations pursuant to the purposes of this  
 12       chapter; and

13       ~~(20)~~ (21) Perform any and all acts reasonably necessary to  
 14       carry out the purposes of this chapter."

15       SECTION 4. Section 431P-16, Hawaii Revised Statutes, is  
 16 amended by amending subsection (i) to read as follows:

17       "(i) Moneys in the hurricane reserve trust fund may be:

18       (1) Disbursed upon dissolution of the Hawaii hurricane  
 19       relief fund; provided that:

20       (A) The net moneys in the hurricane reserve trust  
 21       fund shall revert to the state general fund after  
 22       payments by the fund on behalf of licensed



1 property and casualty insurers or the State that  
2 are required to be made pursuant to any federal  
3 disaster insurance program enacted to provide  
4 insurance or reinsurance for hurricane risks are  
5 completed; and

6 (B) If such moneys are paid on behalf of licensed  
7 property and casualty insurers, payment shall be  
8 made in proportion to the premiums from policies  
9 of hurricane property insurance serviced by the  
10 insurers in the twelve months prior to  
11 dissolution of the fund; [~~or~~]

12 (2) Deposited to the loss mitigation grant fund  
13 established under section 431:22-102; or

14 (3) Transferred to the Hawaii insurance guaranty  
15 association in accordance with section 431P-5(b)(19);

16 provided that all interest earned from the principal in the  
17 hurricane reserve trust fund shall be transferred and deposited  
18 into the general fund each year that the hurricane reserve trust  
19 fund remains in existence."

20 SECTION 5. Section 431P-16.5, Hawaii Revised Statutes, is  
21 amended to read as follows:





1 "[+]§431P-16.5[+] **Transfer of funds; immunity.** There  
2 shall be no cause of action, claim for damages or relief,  
3 charge, or any other liability of any kind whatsoever created  
4 against the State, the Hawaii hurricane relief fund, the  
5 commissioner, or their respective agents, employees, or board[  
6 ~~by,~~]:

7 (1) By, or relating to, the transfer of any moneys from  
8 the hurricane reserve trust fund to the loss  
9 mitigation grant fund or from the loss mitigation  
10 grant fund to the hurricane reserve trust fund or  
11 involving the loss mitigation grant program[~~-~~]; or

12 (2) Relating to the transfer of any moneys from the  
13 hurricane reserve trust fund to the Hawaii insurance  
14 guaranty association in accordance with section 431P-  
15 5(b)(19)."

16 SECTION 6. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 7. This Act shall take effect on July 1, 2009.

19  
INTRODUCED BY: Calvin M. King

JAN 23 2009

**Report Title:**

Hurricane Reserve Trust Fund; Hawaii Insurance Guaranty Association

**Description:**

Authorizes the transfer of moneys from the hurricane reserve trust fund to the Hawaii insurance guaranty association for the payment of covered claims against an insolvent insurer when (1) the insolvency was caused by a hurricane and (2) the Hawaii hurricane relief fund has no hurricane insurance policy in force.

