

**"CHAPTER 431P  
HAWAII HURRICANE RELIEF FUND**

Part I. General Provisions

Section

- 431P-1 Definitions
- 431P-2 Establishment of Hawaii hurricane relief fund
- 431P-3 Board of directors
- 431P-4 Planning and assessment functions of the fund;  
discretion to provide insurance
- 431P-5 Powers, duties, and functions
- 431P-5.5 Accumulation of \$500,000,000 in funds and  
commitments
- 431P-6 Advisory committee
- 431P-7 Plan of operation
- 431P-8 Annual statements
- 431P-9 Powers of the commissioner
- 431P-10 Coverage available from the fund; deductible
- 431P-11 Underlying policy required; hurricane coverage  
shall be provided
- 431P-12 Mitigation
- 431P-13 Appeals
- 431P-14 Immunity and limitation on liability
- 431P-15 Exemption from property and liability insurance  
guaranty association; insolvency of fund
- 431P-16 Establishment of trust funds
- 431P-16.5 Immunity
- 431P-17 Repealed
- 431P-18 Exemption for Hawaiian home lands

## Cross References

Loss mitigation grant program, see chapter 431, article 22.

### "PART I. GENERAL PROVISIONS

**§431P-1 Definitions.** As used in this chapter, unless the context otherwise requires:

"Board" means the board of directors of the Hawaii hurricane relief fund.

"Commissioner" means the insurance commissioner as defined in section 431:2-102.

"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.

"Covered event" means each hurricane that directly causes windstorm damage in the State.

"Deductible" or "mandatory deductible" means the amount of loss assumed by the policyholder that is not included in the coverages provided by the fund.

"Department" means the department of commerce and consumer affairs.

"Director" means the director of finance.

"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) 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.

"Fund" means the Hawaii hurricane relief fund established by this chapter.

"Hurricane" means a storm that has been declared and defined by the Central Pacific Hurricane Center of the National Weather Service to be a hurricane.

"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.

"Plan of operation" means the plan for providing hurricane property insurance as adopted by the board of directors of the Hawaii hurricane relief fund, and any amendments thereto, under section 431P-7.

"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.

"Policy of property insurance" means a policy providing "property insurance" as defined in section 431:1-206. For purposes of this chapter, it includes "basic property insurance" as provided under article 21 of chapter 431.

"Property insurance" means policies, riders, or endorsements of insurance that provide indemnity, in whole or in part, for the loss, destruction, or damage of eligible property.

"Servicing facility" means any insurer engaged in writing direct property insurance in this State and licensed in this State, and any other party authorized to act in like capacity on behalf of the fund.

"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. [L 1993, c 339, pt of §2; am L Sp 1995, c 17, §1; am L 1998, c 106, §§1, 2]

" **[\$431P-2] Establishment of Hawaii hurricane relief fund.** There shall be a Hawaii hurricane relief fund to be placed within the department of commerce and consumer affairs for administrative purposes. The fund shall be a public body and a body corporate and politic. [L 1993, c 339, pt of §2]

" **§431P-3 Board of directors.** (a) The board of directors of the fund shall consist of the insurance commissioner as an ex officio voting member and six members appointed by the governor in accordance with section 26-34. The board shall be the policy making body of the fund. As such, the board shall be responsible for establishing policies for the administration and operation of the fund and the performance of other duties and functions assigned to the fund.

(b) Two members shall, by and with the advice and consent of the senate, be appointed by the governor for a term of four years; provided that of the initial appointees, one shall be appointed for a two-year term. A vacancy on the authority of a seat subject to this subsection shall be filled in accordance

with Article V, section 6, of the Constitution of the State of Hawaii.

(c) Two members shall, by and with the advice and consent of the senate, be appointed by the governor from a list of nominations submitted by the president of the senate. The members appointed from a list of nominations of the president of the senate shall serve for a term of four years; provided that of the initial appointees, one shall be appointed for a two-year term.

(d) Two members shall, by and with the advice and consent of the senate, be appointed by the governor from a list of nominations submitted by the speaker of the house of representatives. The members appointed from a list of nominations of the speaker of the house of representatives shall serve for a term of four years; provided that of the initial appointees, one shall be appointed for a two-year term.

(e) The governor shall select a chairperson and vice-chairperson from among the members.

(f) The board shall meet as often as necessary to formulate and implement strategies and plans of operation in furtherance of this chapter. Upon its appointment, the board shall adopt an interim plan of operation within ninety days.

(g) The appointed directors shall receive no compensation for services, but shall be entitled to reimbursement of necessary expenses, including travel expenses, incurred in the performance of their duties.

(h) The board may appoint, not subject to chapter 76, an executive director of the fund whose salary shall be set by the board. The board may employ, not subject to chapter 76, technical experts and officers, agents, and employees, permanent or temporary, as required. The board may also contract with persons, not subject to chapters 76 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. [L 1993, c 339, pt of §2; am L 1998, c 106, §3; am L 2000, c 253, §150; am L 2005, c 22, §29]

" **[\$431P-4] Planning and assessment functions of the fund; discretion to provide insurance.** (a) The fund shall be responsible for monitoring the availability of property insurance, including insurance for covered events, in this State. If at any time the board determines, in its sole discretion, that the private insurance market is not making such insurance reasonably available to consumers in this State, the fund may offer policies of hurricane property insurance for sale in accordance with this chapter.

(b) Nothing in subsection (a) shall prohibit the board from exercising its powers to develop plans and procedures for the operation and management of the fund without regard to the determination of the board as to the availability of insurance in the private market. [L 1993, c 339, pt of §2]

" **§431P-5 Powers, duties, and functions.** (a) The Hawaii hurricane relief fund shall have the following general powers:

- (1) To sue and be sued;
- (2) To make and alter policies for its organization and internal administration;
- (3) To adopt rules in accordance with chapter 91 to effectuate the purposes of this chapter;
- (4) To borrow moneys, including but not limited to moneys from state or federal sources and to issue notes or other obligations of the fund for the purposes of providing funds for any of its purposes as authorized by the legislature from time to time;
- (5) To pledge, assign, or grant a security interest in all or any part of the moneys, rents, charges, assessments, or other revenue and any proceeds thereof derived by the fund; provided that any pledge, assignment, or grant of security interest shall constitute a lien and security interest on such money, rents, charges, assessments, or other revenue, and any proceeds thereof to the extent and with the priority set forth in the document establishing the pledge, assignment, or security interest, without the necessity for physical delivery, recording, or further act; and provided further that in effectuating any pledge, assignment, or grant of security interest, the fund may do either or both of the following:
  - (A) Transfer possession of collateral to its secured parties; or
  - (B) Execute and cause to be filed at the bureau of conveyances of the State of Hawaii, Uniform Commercial Code financing statements for the purpose of providing notice to third parties of a pledge, assignment, or grant of security interest; provided that any failure to file a financing statement or the filing of a financing statement that contains incomplete or inaccurate information shall not affect the perfected lien and security interest of the pledge, assignment, or grant of security interest; and
- (6) Enter into contracts as necessary to effectuate the purposes of this chapter.

- (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 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 twelve months ending at the start of the month preceding the month in which the covered event occurs. The total assessment shall be a fixed percentage of the total coverage provided by the fund under its policies of hurricane property insurance 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) 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 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 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 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, 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 maximum

- limits on or, uniform reduction of the special mortgage recording fee, pursuant to rules adopted by the board;
- (15) Suspend or reactivate the special mortgage recording fee pursuant to resolution of the board;
  - (16) 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;
  - (17) Create loss mitigation incentives, including but not limited to premium credits, premium rebates, loans, or cash payments;
  - (18) 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;
  - (19) Establish business and corporate entities or organizations pursuant to the purposes of this chapter; and
  - (20) Perform any and all acts reasonably necessary to carry out the purposes of this chapter. [L 1993, c 339, pt of §2; am L Sp 1995, c 17, §2; am L 1996, c 307, §7; am L 1998, c 106, §4 and c 304, §2; am L 2001, c 153, §1]

" **§431P-5.5 Accumulation of \$500,000,000 in funds and commitments.** (a) Upon written confirmation from the insurance commissioner that the director of finance has secured \$500,000,000, in the aggregate, in the form of:

- (1) Commitments from either the federal government or an agency of the federal government or a financial institution;
- (2) Revenue bonds other than those issued or to be issued in response to the occurrence of a covered event; or
- (3) A combination of the commitments or bonds;

the Hawaii hurricane relief fund shall:

- (1) Control or freeze rates; and
- (2) Continue accumulating premiums from policies of hurricane property insurance and the special mortgage recording fee, net of any reinsurance payments, operating expenses and funds necessary for the development of a comprehensive loss reduction plan.

(b) When the balance of the net moneys accumulated totals \$500,000,000, the Hawaii hurricane relief fund may notify the insurance commissioner of that fact. The insurance commissioner, in turn, may order, following the receipt of the

notice, a reduction in the rates for policies of hurricane property insurance.

(c) In the event of a loss from a covered event, the net moneys accumulated shall be used to settle claims and pay current and ongoing expenses of the Hawaii hurricane relief fund. The net accumulated moneys, commitments, and bonds described in subsection (a)(2) shall be used only in the event losses from a covered event exceed the assessment pursuant to section 431P-5(b)(8)(B).

(d) In the event the balance of the net accumulated moneys falls below \$400,000,000, the Hawaii hurricane relief fund shall establish rates, subject to the approval of the insurance commissioner, necessary to replenish the account balance to \$500,000,000 as promptly as reasonably practicable. The director of finance shall seek to arrange additional commitments whenever the account balance falls below \$400,000,000.

(e) The Hawaii hurricane relief fund shall be exempt from paying all taxes and fees levied by the State on other insurers. [L Sp 1995, c 32, §2; am L 2000, c 76, §1]

" **[§431P-6] Advisory committee.** To assist it in implementing this chapter the fund may appoint an advisory committee consisting of:

- (1) Not less than one individual who is employed or trained as a meteorologist and possesses knowledge of the history, trends, and nature of windstorms in the Pacific Ocean;
- (2) Not less than one individual who is a member of the American Academy of Actuaries; and
- (3) Not less than one individual who is a structural engineer licensed to practice in the State and is knowledgeable about local community building codes.

The fund may establish additional advisory committees as it may deem necessary in furtherance of this chapter. [L 1993, c 339, pt of §2]

" **§431P-7 Plan of operation.** (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.

(b) If the fund fails to adopt a plan of operation, or the fund fails to adopt amendments to the plan of operation, the commissioner shall adopt a plan of operation or make amendments

necessary to carry out the purposes of this chapter. Any plan of operation, or amendment, adopted by rule of the commissioner, shall continue in full force and effect until the rule is superseded by a plan of operation, or amendment, adopted by a majority vote of all members of the fund's board, and approved by the commissioner.

- (c) The plan of operation shall:
  - (1) Establish procedures for performance of all powers and duties of the fund;
  - (2) Establish procedures for providing notice to all persons with interests insurable by the fund in the State of the type of insurance available from the fund in the event the fund offers insurance;
  - (3) Provide for and adopt all necessary forms, including insurance policies to be used by and on behalf of the fund, for use by the fund and servicing facilities;
  - (4) Adopt actuarially sound rates, based on reasonable assumptions relative to expectations of hurricane frequency and severity, to be charged for insurance provided by the fund, in accordance with article 14 of chapter 431;
  - (5) Publish manuals of rules, rates, and rating and classification plans, which shall address mandatory deductibles, limits of coverage, and the classification of risks and rate modifications based on the exposure of insureds;
  - (6) Establish procedures for receiving and servicing applications to the fund;
  - (7) Establish procedures for processing and maintaining records of the fund relating to its financial transactions, its agents, its employees, its operations, and all transactions with any servicing facility;
  - (8) Establish procedures for the collection and remittance of the premiums and return of unearned premiums where applicable;
  - (9) Establish procedures for the payment of valid claims;
  - (10) Establish procedures for prorating available funds pursuant to section 431P-15;
  - (11) Establish procedures for obtaining reinsurance;
  - (12) Establish procedures to borrow funds; and
  - (13) Develop a plan for the investment of moneys held by the fund subject to the limitations in article 6 of chapter 431. [L 1993, c 339, pt of §2; am L Sp 1995, c 17, §3]

" **[§431P-8] Annual statements.** (a) The fund shall submit to the commissioner each year, not later than one hundred twenty days after the end of the fund's fiscal year, a financial report in a form approved by the commissioner.

(b) The commissioner may require other reports concerning risks insured by the fund as the commissioner deems appropriate. [L 1993, c 339, pt of §2]

" **§431P-9 Powers of the commissioner.** (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.

(b) The commissioner may exercise all of the commissioner's powers provided by law in the supervision and regulation of the fund, any servicing facility, and any other person or entity subject to the jurisdiction of the commissioner. [L 1993, c 339, pt of §2; am L Sp 1995, c 17, §4]

" **§431P-10 Coverage available from the fund; deductible.** (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, or industrial purposes and shall provide for a mandatory deductible. The deductible amount for residential 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 perils deductible of the companion policy; provided that the board may establish higher deductible limits.

(b) Insurers seeking to provide multi-peril coverage for residential property, including multi-peril coverage of the hurricane peril, subject to the fund's program for incentives and credits, shall submit to the commissioner a written request

for permission to write the coverage; provided that in the absence of such authorization, no other policy of residential property insurance or endorsement to a policy of residential property insurance on eligible residential property located in this State shall be issued to provide insurance for damages or losses caused by a covered event if such coverage is less than that offered by the fund. If multi-peril coverage on commercial property is no longer being offered by the fund, any multi-peril coverage on commercial property offered by an insurer shall qualify as a comparable coverage under section 431P-5(b)(8)(A). Multi-peril coverage on residential property which [includes] coverage for hurricane losses offered by an insurer shall qualify as a comparable coverage under section 431P-5(b)(8)(A). [L 1993, c 339, pt of §2; am L Sp 1995, c 17, §5; am L 2000, c 153, §1; am L 2016, c 141, §14]

" **§431P-11 Underlying policy required; hurricane coverage shall be provided.** (a) Any eligible property for which coverage is sought from the fund shall already be insured by an underlying policy of property insurance as defined in section 431:1-206 or article 21 of chapter 431 but excluding the covered event. Every underlying policy of property insurance provided by an unauthorized insurer shall be subject to the procedures, guidelines and surcharges as provided in the plan of operation. (b) The fund shall not deny any application for hurricane property insurance on any property eligible under subsection (a).

(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 a companion policy. The policy issued by the fund shall not provide coverage in the event that there is no 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. [L 1993, c 339, pt of §2; am L 1998, c 106, §5]

" **[§431P-12] Mitigation.** The fund shall develop a comprehensive loss reduction plan for the hurricane peril. The plan shall include standards for new residential and commercial structures and separate standards for existing residential and

commercial structures. The plan shall provide a timetable for implementation of mandatory loss mitigation measures for both new and existing structures. [L 1993, c 339, pt of §2]

" **[\$431P-13] Appeals.** (a) Any applicant or policyholder adversely affected by a decision of the fund shall have the right to appeal to the fund's board within thirty days after the decision. The application for an appeal shall specify how the person making the appeal was aggrieved and the grounds upon which relief is demanded. The decision of the board shall be deemed final.

(b) Any final action, decision, or order of the board under this chapter shall be subject to judicial review by the circuit court. [L 1993, c 339, pt of §2]

" **§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 producers; the fund or its agents, employees, or 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, 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. [L 1993, c 339, pt of §2; am L 1998, c 106, §6; am L 2002, c 155, §101]

" **[§431P-15] Exemption from property and liability insurance guaranty association; insolvency of fund.** Notwithstanding any other provision of law to the contrary, neither the fund nor its policyholders shall be subject to the provisions of, or be eligible for, the benefits provided in sections 431:16-101 to 117 inclusive. If the total amount available at any time to the fund is insufficient to make all necessary payments, the moneys available shall be prorated and the unpaid portion shall be paid as soon thereafter as moneys become available. [L 1993, c 339, pt of §2]

" **§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. Except as determined by board order, 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 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; 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) After each covered event, if the board determines that the moneys in the hurricane reserve trust fund, excluding moneys determined by the board to be needed to continue fund operations following the covered event, will be insufficient to pay claims and other obligations of the fund arising out of that covered event, the Hawaii hurricane relief fund shall 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 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 surcharge shall remain in effect until all claims and other obligations of the fund, including but not limited to claims under fund policies of hurricane property insurance, claims financing transactions, bonds, notes, and other obligations arising out of that covered event have been fully discharged. 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 producers' commissions. The fund may establish procedures for insurers to collect the surcharge from customers who hold property or casualty policies.

(f) Any proceeds, experience refunds, or other return funds under reinsurance 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 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) Moneys in the hurricane reserve trust fund may be disbursed upon dissolution of the Hawaii hurricane relief fund; provided that:

(1) The net moneys in the hurricane reserve trust fund shall revert to the state general fund after 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 are completed; and

(2) If 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;

provided that all interest earned from the principal in the hurricane reserve trust fund shall be transferred and deposited into the general fund each year that the hurricane reserve trust fund remains in existence. [L 1993, c 339, pt of §2; am L Sp 1995, c 17, §6; am L 1996, c 307, §8; am L 1998, c 106, §7; am L 1999, c 151, §1; am L 2001, c 153, §2; am L 2002, c 155, §102 and c 179, §5; am L 2011, c 81, §10 and c 124, §47]

**Note**

L 1993, c 339, §§10 and 11, as amended by L Sp 1995, c 17, §7; L 1996, c 307, §9; L 1997, c 222; L 1999, c 151, §2; and L 2001, c 153, §3, provide:

"SECTION 10. (a) The director may establish a loan program to assist the Hawaii hurricane relief fund in carrying out the plan of operation, and may make loans to the Hawaii hurricane relief fund. There is hereby created in the treasury of the State a separate and special fund to be designated as the hurricane bond loan fund of this Act.

(b) The department of budget and finance, with the approval of the governor, is authorized to issue in the name of the department revenue bonds at such times and in such amount or amounts not to exceed \$200,000,000 in aggregate principal as may be requested and deemed necessary by the commissioner for the purposes of the Hawaii hurricane relief fund. All such bonds shall be issued pursuant to part III of chapter 39, except as provided in this section.

(c) The resolution or certificate providing for the issuance of the bonds may provide that all or part of the proceeds may be held and invested in the hurricane bond loan fund until needed for the purposes of the Hawaii hurricane relief fund. For the purposes of providing a source of revenue or security for these bonds, the director may pledge funds deposited or to be deposited in the hurricane bond loan fund to the payment or security of the bonds, and the pledge shall constitute a lien and security interest on the moneys in the hurricane bond loan fund to the extent and with the priority set forth in the document establishing the pledge, without the necessity for physical delivery, recording, or other further act. No revenue bonds may be issued pursuant to this section unless the director of finance shall first make a determination based on information provided by the commissioner that there are sufficient revenues and other assets to pay debt service on the revenue bonds.

(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 each of the fiscal years 2000-2001 and 2001-2002 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 11. The state supreme court shall have exclusive and original jurisdiction over any actual controversy or dispute

concerning the applicability of article VII of the state constitution to the financing of the Hawaii hurricane relief fund and the hurricane reserve trust fund through the issuance of revenue bonds or reimbursable general obligation bonds, and the security provisions thereof and the imposition and collection of any rates and charges to repay or provide security for the bonds."

L 2001, c 153, §4 provides:

"SECTION 4. The special mortgage recording fee established under section 431P-16, Hawaii Revised Statutes, shall be suspended as of July 1, 2001, and shall remain suspended until reactivated by the Hawaii hurricane relief fund's board of directors."

" **§431P-16.5 Immunity.** There shall be no cause of action, claim for damages or relief, charge, or any other liability of any kind whatsoever created against the State, the Hawaii hurricane relief fund, the commissioner, or their respective agents, employees, or board, by, or relating to the loss mitigation grant program. [L 2002, c 179, §4; am L 2011, c 124, §48]

" **§431P-17 REPEALED.** L 2016, c 141, §21.

#### **Cross References**

Notice prior to discontinuation of writing property insurance coverage, see §431:10E-151.

" **[§431P-18] Exemption for Hawaiian home lands.** Nothing in this chapter shall prohibit or limit any person from obtaining insurance for property subject to the Hawaiian Homes Commission Act of 1920, as amended, from any insurer other than the fund if such insurance is deemed sufficient by the commissioner. [L 1993, c 339, pt of §2]