

ACT 153

H.B. NO. 596

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-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 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;
 - [~~(15)~~] ~~(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;
 - [~~(16)~~] ~~(17)~~ Create loss mitigation incentives, including but not limited to premium credits, premium rebates, loans, or cash payments;
 - [~~(17)~~] ~~(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;
 - [~~(18)~~] ~~(19)~~ Establish business and corporate entities or organizations pursuant to the purposes of this chapter; and
 - [~~(19)~~] ~~(20)~~ Perform any and all acts reasonably necessary to carry out the purposes of this chapter.”

SECTION 2. Section 431P-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The hurricane reserve trust fund shall receive deposits of the special mortgage recording fee established by this chapter. [The] 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.”

SECTION 3. Act 339, Session Laws of Hawaii 1993, as amended by Act 17, Special Session Laws of Hawaii 1995, as amended by Act 222, Session Laws of Hawaii 1997, as amended by Act 151, Session Laws of Hawaii 1999, is amended by amending subsection (d) of section 10 to read as follows:

“(d) The director of finance is authorized to issue reimbursable general obligation bonds in the principal amount of \$200,000,000, or so much thereof as may be requested and deemed necessary by the commissioner for the purposes of the Hawaii hurricane relief fund, and the same sum is appropriated for each of the fiscal years [~~1998-1999, 1999-2000, and~~] 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 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.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2001.

(Approved May 25, 2001.)