



**The closed-door deal the Insurance Commissioner made with the insurance industry – deregulation of rates in exchange for companies agreeing to cover 85% of the homes in risky areas – is a fraud.**

Under the public transparency requirements of the California Public Records Act and Proposition 103, Consumer Watchdog has obtained a copy of the secret proposal to bail out the insurance industry that Commissioner Lara and the insurance industry unsuccessfully tried to jam through the Legislature during its final days. The proposal was sent by Lara’s chief deputy to lobbyists for the insurance industry on August 29.

It is clear from this new information that the wholesale changes to CDI regulations that Lara announced on September 21 track the most egregious provisions of the failed legislative proposal. The following analysis highlights the many provisions in the draft bill that are identical or similar to the plan announced by Commissioner Lara.

#### **“85% Commitment” is a Fraud**

- The ONLY consumer benefit in the bill is insurers’ promise to expand coverage to more homeowners in “distressed” areas. But all the bill requires is that an insurance company make a “commitment.” It does not actually require the company to meet the “commitment.” And the Commissioner can waive the “commitment” at any time for any insurer that claims “it is not possible” for it to meet the “commitment.”

Insurers who claim they cannot meet the 85% promise would still win the deregulation contained in the rest of the bill: speedy rate increase approvals, no public scrutiny of rates, use of catastrophe models/algorithms and reinsurance cost pass-throughs to jack up rates.

*1861.055 (h) If an insurer is able to demonstrate to the commissioner that it is not possible for it to increase or maintain its market penetration for homeowners and/or commercial property insurance coverage in distressed areas of the state to no less than 85% of its aggregate market penetration for homeowners or commercial property insurance in the state outside the distressed areas, or to accept existing FAIR Plan basic property insurance and/or commercial property policies pursuant to the clearinghouse program as set forth in Section 10095, subsections (i) and/or (j), the commissioner shall have the discretion to authorize such insurer to utilize catastrophe modeling and/or to reflect the justified net reinsurance costs for California-only risks to be included as a consideration in any rate change application on a case-by-case basis.*

- Even if met, the “85% commitment” doesn’t require insurers to offer a single new homeowner a standard insurance policy. Instead of selling regular insurance, insurers can meet their commitment by choosing to take policyholders out of the FAIR Plan but sell them only the bare bones policies offered by the FAIR Plan. In other words, insurers could meet their

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6330 SAN VICENTE BLVD, SUITE 250 LOS ANGELES, CA 90048 | 310-392-0522

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“commitment” to sell in “distressed” areas but leave homeowners in the same bad position as they were in with the FAIR Plan: with a limited-benefit, high-cost policy that just happens to be sold by an admitted insurer instead of the FAIR Plan.

*1861.055(f) The requirement for an admitted insurance company to increase or maintain its market penetration for homeowners and/or commercial property insurance coverage in distressed areas of the state to no less than 85% of its aggregate market penetration for homeowners and/or commercial property insurance in the state outside the distressed areas may be satisfied by combining both its commitment to increase or maintain its voluntary homeowners and/or commercial property penetration in the distressed areas and its commitment to accept existing FAIR Plan basic property insurance and/or commercial property policies.*

- Even if the Commissioner does not waive the “85% commitment,” the bill contains no parameters or detail about how it would be implemented. Definitions, oversight and enforcement of the promise is left to the Commissioner’s sole discretion. Most basic questions are not answered: What is the definition of “distressed areas”? Would a company have to reach 85% before getting the concessions? If not what’s the timeline to comply? What’s the penalty for failure? How is compliance certified? How often is compliance confirmed? Nothing requires insurers to charge a price in “distressed areas” that consumers are able to pay.
- Making insurance *unaffordable* is a way for companies to avoid meeting the 85% target. Higher risk consumers who can’t afford policies will remain uninsured or with the FAIR Plan, and the rest of the state will have higher rates because of cat models, reinsurance and deregulation.

Raising rates will make it harder, not easier, for Californians who live in high-risk communities to afford coverage.

**Allows insurance companies to get massive rate increases by inserting unverifiable and unjustified costs into pricing.**

- The bill authorizes insurance companies to pass through to consumers the unregulated price of reinsurance. But it says the passthrough will be limited to “California-only risks.” There is no definition of “California-only risks,” and segregating out the portion of a reinsurance premium attributable to a particular state or risk has never been done before.

*1861.055(e)(3) Authorizing justified net reinsurance costs for California-only risks to be included as a consideration in the rate change applications submitted by admitted insurance companies to the department.*

- Allows insurance companies to use private catastrophe models sold by Wall Street firms and insurance ratings agencies that have stated publicly they will not disclose their algorithms, to set residential insurance rates.

*1861.055(e)(2) Authorizing the use of catastrophe modeling by admitted insurance companies to support their requested rate changes filed with the department to allow admitted insurers to better anticipate future potential catastrophe losses together with regulations specifying how catastrophe models may be utilized while ensuring appropriate transparency of the models.*

**The bill illegally guts the consumer protections of Prop 103 that have saved Californians hundreds of billions of dollars.**

- Directs the Commissioner to speed agency approval of rates, derailing the requirement that insurance companies open their books and fully justify a rate increase before the Commissioner can approve one.

*1861.055(e)(1) Authorizing revisions to the administrative procedures applicable to the review and disposition of rate change applications by admitted insurance companies necessary or appropriate to ensure timely approval or disapproval of such applications.*

- Effectively eliminates public participation in the rate review process by allowing CDI to determine whether unresolved issues with the application merit further review, without reference to the issues raised by the intervenor or the intervenor's positions on those issues.

Forces CDI actuaries to take final positions on issues even if the insurer has refused to provide data or adequately respond to questions about the proposed rate.

*1861.05(d)(3) The department may obtain one or more 30 calendar day extensions of the 60-day period described in subdivision (c) by providing a written notification to the applicant and any intervenor that includes all of the following information:*  
*(A) All issues relating to the application that are resolved.*  
*(B) All issues relating to the application that remain unresolved.*  
*(C) The position of the department on all remaining unresolved issues.*

- Eliminates consumer due process and participation rights in the rate review process on rate increases filed under the 7%/15% mandatory hearing thresholds, gutting one of the key purposes of Prop 103: to encourage public participation in the rate setting process.

Only the insurer – not CDI or intervenor – may extend rate review beyond 180 days without calling a hearing, even if insurer stonewalls on providing data necessary to determine if a rate is justified, as they routinely do today.

No provisions for a consumer representative who has intervened in a rate proceeding to provide their analysis to be considered by the Commissioner. Would allow insurance companies to accept any rate increase deal arranged by the Commissioner behind closed doors, and deem a rate approved – at the insurance company’s discretion – with no consideration of public’s input.

*1861.05 (d)(4) ...if no consumer or consumer representative has filed a petition for hearing regarding such rate change application within 45 days after the department provides public notice of such application, or if a petition for a hearing is filed by a consumer or consumer representative within 45 days after the department provides public notice of a rate change application seeking a rate change of less than 7% for personal lines or 15% for commercial lines, the department shall provide the applicant its calculation of the estimated minimum and maximum permitted earned premium relating to the pending rate change application based on the data provided to the department by the applicant to-date and the analysis of the department based on such data. If the applicant accepts the estimated minimum and maximum permitted earned premium provided by the department, the applicant may implement such accepted minimum or maximum permitted earned premium and the pending rate change application shall be deemed approved by the department at the minimum or maximum earned premium accepted by the applicant.*

- Requires publication of documents filed by intervenors on the CDI website (which Consumer Watchdog supports), but does not require publication of insurer objections, responses, opposition to intervenor data requests, or other information filed by insurers in response to intervenors. Nor does it require publication of proposals and communications between CDI and insurance companies.

Requires an intervenor’s participation be analyzed based on the extent to which the commissioner agrees with the intervenor – precisely the opposite of what the law requires. The voters recognized that consumer participants’ views may diverge from the department’s and sought to provide consumers an independent voice in rate proceedings that may not otherwise be heard by allowing broad standards for consumer intervention and compensation. Any attempt to discourage or otherwise narrow the consumer participation standards of Proposition 103 would conflict with that underlying purpose.

*1861.10 (d) The commissioner shall timely make, but no greater than twenty calendar days after receiving and finalizing the specified documents, all of the following documents related to public participation available on the department’s internet website in the same manner as all other materials related to a rate application made pursuant to this article:*

*(1) The intervenor’s Petition for Hearing, Petition to Intervene, and Notice of Intent to Seek Compensation;*

- (2) The intervenor's budget with costs and expenditures related to their participation, including both the requested compensation value and the amount awarded by the department, and any request for an award of compensation;*
- (3) Any amount awarded to an intervenor by the department, including the specific citation to the intervenor's brief or testimony that was used by the department in support of a final, valid order, regulation, or decision by the commissioner or a court, and the reasoning used by the department to determine how the contribution made by the intervenor was substantial;*
- (4) The intervenor's initial arguments, which shall include a prima facie argument that demonstrates a substantial contribution to the proceedings, and a statement demonstrating that the intervenor's argument is not duplicative of the department's efforts ...*

- Defies California's Constitution and negates the voters' exercise of their initiative power by overriding requirement that amendments to 103 must "further its purposes" - falsely says these unconstitutional changes to Proposition 103 further its purposes:

*The Legislature finds and declares that the proposed changes to the rate review process further the purposes of Proposition 103 by ensuring timely approval of complete rate applications in the rate review process...*

### **The bill bails out insurers for their FAIR Plan obligations.**

- Allows insurance companies to force all California home or commercial property owners to bailout insurance companies by paying surcharges to cover FAIR Plan losses (today, insurance companies are responsible for such losses):

*10094.25(a) The association may provide, with the prior approval of the commissioner, for assessment of all member insurers in the event the FAIR Plan is substantially threatened with insolvency in amounts sufficient to operate the facility, and the member insurers shall be authorized to recoup any such assessment from the policyholders of the member insurers in amounts and subject to the conditions to be determined by the commissioner through amendment of the plan of operation.*

- Says these bailout surcharges are not subject to Proposition 103, and relieves insurance companies from paying any taxes on the surcharges they collect:

*10094.25(a) Any amounts recouped by a member insurer shall not be considered premiums for any other purpose, including the computation of gross premium tax or producers' commissions.*

- Allows insurance companies to blame California government for the surcharges:

*10094.25(a) Any surcharge recouped by a member insurer from its policyholders shall be separately stated on either a billing or policy declaration sent to an insured, as determined by the commissioner.*

### **Allows Commissioner to Avoid Legal Protections Against Overreach by CDI and other State Agencies**

- Orders the commissioner to circumvent the democratic, transparent, participatory regulatory process by declaring an emergency, authorizing emergency regulations and exempting regulations from APA.

*1861.055 (e) The California Legislature finds and declares that the current situation regarding the California insurance marketplace constitutes an emergency that calls for immediate action to avoid serious harm to the public peace, health, safety, and general welfare. The Legislature finds and declares further that the emergency situation clearly poses such an immediate, serious harm that delaying action to ensure available coverage in the competitive admitted insurance marketplace would be inconsistent with the public interest and that any regulations that the commissioner deems necessary to address, implement, and enforce the following subjects may be adopted as emergency regulations by the commissioner pursuant to California Government Code section 11346.1:*

- Sets a 12.31.2024 deadline for issuance of the regulations: the same date by which Commissioner Lara has promised to issue his regulatory changes.

**From:** [Shari McHugh](#)  
**To:** [Martinez, Michael](#)  
**Subject:** Draft language  
**Date:** Sunday, August 27, 2023 6:26:54 PM  
**Attachments:** [PADIC proposed wording - final.docx](#)  
[PADIC proposed wording - final.pdf](#)

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Hi,

I have been trying to not inundate you and I know you have been working with APCIA on the 30-day extension issue. However, my folks continue to have concerns about the completed application language. So, PADIC 's lawyers and rate filing people drafted the attached language. They believe it is in line with Prop 103 and they believe it takes reasonable step toward addressing their concerns.

I hope this is received in the spirit of trying to be helpful and not trying to confuse things even more.

Look forward to hearing your thoughts.

Shari

(2) The 60-day period provided in subdivision (c) shall not commence until the application is complete pursuant to the filing checklist as provided by Cal. Code Regs. Tit. 10, section 2648.4 – Complete Application, including reconciliation of the data provided with the application. The department shall test the application for reconciliation using the shared automated reconciliation tool within 14 days of receipt of the application. If the application is deemed incomplete or unreconciled, the commissioner shall provide a list of items missing from the application within the initial 14-day period described in this subdivision, and the applicant shall submit the missing items within seven (7) days of the receipt of the list of missing items. Any subsequent review of the application for completeness shall follow the same 14-day and 7-day communication deadlines.

(3) The commissioner may request one 30-day extension of the 60-day period described in this subdivision. The request for an extension shall be accompanied by a statement that includes all of the following information:

(A) All issues within the application that are deemed resolved.

(B) All issues within the application that remain at issue.

(C) The position of the department on all remaining open issues.

(D) The commissioner's calculation of the minimum and maximum permitted earned premium, which shall be an offer that the insurer may accept or be the basis of the insurer continuing to seek approval of the application on different terms.

(E) All rates and forms deemed resolved by the commissioner are approved for immediate use.

(4) The insurer must respond within 10 calendar days from receipt of the extension request to all issues identified by the commissioner as remaining unresolved. The commissioner must provide a final reply 10 calendar days after receipt of the insurer's response. If any issues remain disputed after receipt of the commissioner's final reply, insurers may demand mediation of remaining issues with the department. The demand for mediation must be made within 15 days of receipt of the commissioner's reply, and mediation must occur within 45 days of the demand for mediation and resolve all issues. Mediation of issues must be with an agreed neutral mediator. Mediation will not extend or toll the 180-day period as provided by subdivision (c).



**From:** [Shari McHugh](#)  
**To:** [Martinez, Michael](#)  
**Subject:** RE: Draft language  
**Date:** Tuesday, August 29, 2023 1:06:32 PM

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Hi,

I managed to talk my folks into trying to take a much more targeted approach to address their concerns with the “complete application” language. They understand that the 14-day regs provide the process for in-take of application and they are hoping to perhaps simply mention the regs in the statute. What do you think of the language below...

(2) The 60-day period provided in subdivision (c) shall not commence until the application is deemed complete by the department, **pursuant to Cal. Code Regs. tit. 10 § 2648.2**, including reconciliation of the data provided with the application. The department shall publish a data reconciliation tool for insurers to use as soon as administratively feasible. Until the data reconciliation tool is available, insurance companies shall continue to reconcile the data as currently allowed by the department.

I am really trying to get them to a happy place.

Thank you for your patience and understanding.

Shari

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**From:** Shari McHugh <smchugh@mchughgr.com>  
**Sent:** Sunday, August 27, 2023 6:26 PM  
**To:** Martinez, Michael (michael.martinez@insurance.ca.gov) <michael.martinez@insurance.ca.gov>  
**Subject:** Draft language

Hi,

I have been trying to not inundate you and I know you have been working with APCIA on the 30-day extension issue. However, my folks continue to have concerns about the completed application language. So, PADIC 's lawyers and rate filing people drafted the attached language. They believe it is in line with Prop 103 and they believe it takes reasonable step toward addressing their concerns.

I hope this is received in the spirit of trying to be helpful and not trying to confuse things even more.

Look forward to hearing your thoughts.

Shari

**From:** [Martinez, Michael](#)  
**To:** [Rex Frazier](#); [Seren Taylor](#); [Allison Adey](#); [denneile.ritter@apci.org](mailto:denneile.ritter@apci.org); [Sektnan, Mark](#); [Shari McHugh](#); [Shane Lavigne](#); [John Norwood](#)  
**Cc:** [Christine Aurre](#); [Sears, Darci](#); [O'Malley, Kathleen](#); [Barba, James](#); [Rice, Jill](#)  
**Subject:** Insurance Language (08-29-2023) -- REVISED  
**Date:** Tuesday, August 29, 2023 8:19:00 PM  
**Attachments:** [Insurance Language \(08-29-2023\).pdf](#)

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All,

Attached please find a revised mock-up of language by the California Department of Insurance along with continued input from the Governor's Administration, Assembly, and Senate.

Major additions:

- New urgency language (page 1)
- Proposed budget bill language now contained in SB 104/AB 104 (page 1)
- Clarifying language to data reconciliation tool paragraph (page 3)
- New paragraph on 60-day review period/30-day extension period/minimum and maximum permitted earned premium (pages 3-4)
- Line added on Department's authority to ensure compliance for those insurers that file commitments in rate applications (pages 5, 6, and 7)
- Clarifying language on FAIR Plan recoupment section around commercial property coverage as a result of an order of the Commissioner issued on or after September 15, 2023, along with three-year sunset date for just this subdivision; assessments application date updated from "on or after October 1, 2023" to "on or after September 15, 2023". (page 9)
- Quarterly progress report on data reconciliation tool (page 14)

--Michael

Michael R. O. Martinez  
*Chief Deputy Commissioner and Legislative Director*  
(Pronouns: He/Him)

**Insurance Commissioner Ricardo Lara**  
California Department of Insurance  
300 Capitol Mall, Suite 1700  
Sacramento, California 95814

Main Line (916) 492-3565

### **Urgency Language:**

This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall become effective immediately. The California Legislature finds and declares that the current situation regarding the California insurance marketplace constitutes an emergency that calls for immediate action to avoid serious harm to the public peace, health, safety, and general welfare.

### **Legislative findings and declarations:**

The purpose of Proposition 103 is to protect consumers from excessive, inadequate, or unfairly discriminatory insurance rates and practices and to encourage a competitive insurance marketplace available to all Californians. The Legislature finds and declares that the proposed changes to the rate review process further the purposes of Proposition 103 by ensuring timely approval of complete rate applications in the rate review process, thereby promoting and encouraging a more competitive insurance marketplace given the continued threat of climate change, resulting in increased fairness, availability, and affordability of insurance for all California consumers.

### **Proposed budget bill language now contained in SB 104/AB 104:**

Notwithstanding any other law, to the extent that the Department of Insurance determines a need for consulting services related to the review of property and casualty insurance premium rate filings, the department may augment this item not sooner than 30 days after notification in writing is provided to the chairpersons of the fiscal committees in each house of the Legislature and the Chairperson of the Joint Legislative Budget Committee.

### **Severability language:**

The provisions of this bill are severable. If any provision of this bill or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

**Insurance Code section 1861.05 is amended to read:**

(a) No rate shall be approved or remain in effect which is excessive, inadequate, unfairly discriminatory or otherwise in violation of this chapter. In considering whether a rate is excessive, inadequate or unfairly discriminatory, no consideration shall be given to the degree of competition and the commissioner shall consider whether the rate mathematically reflects the insurance company's investment income.

(b) Every insurer which desires to change any rate shall file a complete rate application with the commissioner. A complete rate application shall include all data referred to in Sections 1857.7, 1857.9, 1857.15, and 1864 and such other information as the commissioner may require. The applicant shall have the burden of proving that the requested rate change is justified and meets the requirements of this article.

(c) The commissioner shall notify the public of any application by an insurer for a rate change. The application shall be deemed approved sixty days after public notice unless (1) a consumer or his or her representative requests a hearing within forty-five days of public notice and the commissioner grants the hearing, or determines not to grant the hearing and issues written findings in support of that decision, or (2) the commissioner on his or her own motion determines to hold a hearing, or (3) the proposed rate adjustment exceeds 7% of the then applicable rate for personal lines or 15% for commercial lines, in which case the commissioner must hold a hearing upon a timely request. In any event, a rate change application shall be deemed approved 180 days after the rate application is received by the commissioner (A) unless that application has been disapproved by a final order of the commissioner subsequent to a hearing, or (B) extraordinary circumstances exist. For purposes of this section, "received" means the date delivered to the department.

(d) For purposes of this section, extraordinary circumstances include the following:

(1) Rate change application hearings commenced during the 180-day period provided by subdivision (c). If a hearing is commenced during the 180-day period, ***except as otherwise provided in subsection (d)(2)***, the rate change application shall be deemed approved upon expiration of the 180-day period or 60 days after the close of the record of the hearing, whichever is later, unless disapproved prior to that date.

~~(2) Rate change applications that are not approved or disapproved within the 180-day period provided by subdivision (c) as a result of a judicial proceeding directly involving the application and initiated by the applicant or an~~

~~intervenor. During the pendency of the judicial proceedings, the 180-day period is tolled, except that in no event shall the commissioner have less than 30 days after conclusion of the judicial proceedings to approve or disapprove the application. Notwithstanding any other provision of law, nothing shall preclude the commissioner from disapproving an application without a hearing if a stay is in effect barring the commissioner from holding a hearing within the 180-day period.~~

(2) The department shall publish a data reconciliation tool for insurers to use as soon as administratively feasible. After the reconciliation tool has been published, the 60-day period provided in subdivision (c) shall not commence until the application is deemed complete by the department, including reconciliation of the data provided with the application. Until the data reconciliation tool is available, no rate application shall be rejected by the department as incomplete solely on the basis of incomplete data reconciliation.

(3) The department may obtain one or more 30 calendar day extensions of the 60-day period described in subdivision (c) by providing a written notification to the applicant and any intervenor that includes all of the following information:

(A) All issues relating to the application that are resolved.

(B) All issues relating to the application that remain unresolved.

(C) The position of the department on all remaining unresolved issues.

(4) After the 60-day period set forth in subdivision (c) has been subject to two 30 calendar day extensions pursuant to subdivision (d)(3), if no consumer or consumer representative has filed a petition for hearing regarding such rate change application within 45 days after the department provides public notice of such application, or if a petition for a hearing is filed by a consumer or consumer representative within 45 days after the department provides public notice of a rate change application seeking a rate change of less than 7% for personal lines or 15% for commercial lines, the department shall provide the applicant its calculation of the estimated minimum and maximum permitted earned premium relating to the pending rate change application based on the data provided to the department by the applicant to-date and the analysis of the department based on such data. The applicant shall within 10 calendar days after receipt of the estimated minimum and maximum permitted earned premium provide written notification to the department that such estimates have been either accepted or rejected by the applicant. If the applicant accepts the estimated minimum and maximum permitted earned premium provided by the department, the applicant

may implement such accepted minimum or maximum permitted earned premium and the pending rate change application shall be deemed approved by the department at the minimum or maximum earned premium accepted by the applicant. If the applicant rejects the estimated minimum and maximum permitted earned premium provided by the department, subject to the limitations and conditions set forth in this section, the applicant shall retain the opportunity to seek approval from the department of the pending rate change application on different terms.

(5) (3) The hearing has been continued pursuant to Section 11524 of the Government Code or the 180-day period has been extended by Order of the presiding Administrative Law Judge upon a motion for an extension by a party upon a showing of good cause. The 180-day period provided by subdivision (c) shall be tolled during any period in which a hearing is continued pursuant to Section 11524 of the Government Code or the 180-day period has been extended by Order of the presiding Administrative Law Judge. A continuance pursuant to Section 11524 of the Government Code or a motion to extend the 180-day period shall be decided on a case by case basis. If the hearing is commenced or continued during the 180-day period, the rate change application shall be deemed approved upon the expiration of the 180-day period or 100 days after the case is submitted, whichever is later, unless disapproved prior to that date. Notwithstanding any other provision of law, nothing shall preclude the commissioner from disapproving an application without a hearing if a stay is in effect barring the commissioner from holding a hearing within the 180-day period.

**Insurance Code section 1861.055 is amended to read:**

(a) The commissioner shall adopt regulations governing hearings required by subdivision (c) of Section 1861.05 on or before 120 days after the enactment of this section. Those regulations shall, at the minimum, include timelines for scheduling and commencing hearings, and procedures to prevent delays in commencing or continuing hearings without good cause.

(b) The sole remedy for failure by the commissioner to adopt the regulations required by subdivision (a) within the prescribed period or to abide by those regulations once adopted shall be a writ of mandate by any aggrieved party in a court of competent jurisdiction to compel the commissioner to adopt those regulations, or commence or resume hearings.

(c) Nothing in this section shall preclude the commissioner from commencing hearings required by subdivision (c) of Section 1861.05 prior to adopting the regulations required by this section.

(d) The administrative law judge shall render a decision within 30 days of the closing of the record in the proceeding.

**(e) The California Legislature finds and declares that the current situation regarding the California insurance marketplace constitutes an emergency that calls for immediate action to avoid serious harm to the public peace, health, safety, and general welfare. The Legislature finds and declares further that the emergency situation clearly poses such an immediate, serious harm that delaying action to ensure available coverage in the competitive admitted insurance marketplace would be inconsistent with the public interest and that any regulations that the commissioner deems necessary to address, implement, and enforce the following subjects may be adopted as emergency regulations by the commissioner pursuant to California Government Code section 11346.1:**

**(1) Authorizing revisions to the administrative procedures applicable to the review and disposition of rate change applications by admitted insurance companies necessary or appropriate to ensure timely approval or disapproval of such applications.**

**(2) Authorizing the use of catastrophe modeling by admitted insurance companies to support their requested rate changes filed with the department to allow admitted insurers to better anticipate future potential catastrophe losses together with regulations specifying how catastrophe models may be utilized while ensuring appropriate transparency of the models.**

**(3) Authorizing justified net reinsurance costs for California-only risks to be included as a consideration in the rate change applications submitted by admitted insurance companies to the department.**

**(f) The emergency regulations authorized pursuant to subsection (e)(2) and (e)(3) shall provide that no admitted insurance company providing homeowners and/or commercial property insurance in the state shall be authorized to utilize catastrophe modeling pursuant to subsection (e)(1) or to reflect the justified net reinsurance costs for California-only risks to be included as a consideration in any rate change application pursuant to subsection (e)(2) unless the admitted insurer commits to both increase or maintain its market penetration for**

homeowners and/or commercial property insurance coverage in distressed areas of the state to no less than 85% of its aggregate market penetration for homeowners and/or commercial property insurance in the state outside the distressed areas and commits to accept existing FAIR Plan basic property insurance and/or commercial property policies that are otherwise in good faith entitled to but are unable to procure homeowners or commercial property insurance in the normal insurance market through ordinary methods, and both such commitments have been accepted by the commissioner pursuant to subsection (g). The requirement for an admitted insurance company to increase or maintain its market penetration for homeowners and/or commercial property insurance coverage in distressed areas of the state to no less than 85% of its aggregate market penetration for homeowners and/or commercial property insurance in the state outside the distressed areas may be satisfied by combining both its commitment to increase or maintain its voluntary homeowners and/or commercial property penetration in the distressed areas and its commitment to accept existing FAIR Plan basic property insurance and/or commercial property policies. For purposes of this subsection, “distressed areas” shall be further defined by the commissioner and the areas of the state designated as “distressed areas” shall be reviewed and amended as appropriate by the commissioner no less frequently than once a year.

(g) An admitted insurer’s commitment to increase or maintain its market penetration for homeowners and/or commercial property insurance coverage in distressed areas of the state to no less than 85% of its aggregate market penetration for homeowners and/or commercial property insurance in the state outside the distressed areas, its commitment to accept existing FAIR Plan basic property insurance and/or commercial property policies, and adherence to the Mitigation in Rating Plans and Wildfire Risk Models regulation (tit. 10, CCR §2644.9) shall be contained in a complete rate application submitted to the department pursuant to section 1861.05 and shall be subject to the prior approval of the commissioner. The commissioner shall have the authority to enforce any commitment made by an admitted insurer and approved by the commissioner pursuant to this section. Any admitted insurer that writes only homeowners or commercial property insurance in the state shall be required to commit to increase or maintain its market penetration to no less than 85% of its aggregate market penetration for homeowners and/or commercial property insurance in the state outside the distressed areas, and commit to accept existing FAIR Plan basic property insurance and/or commercial property policies only for homeowners or commercial property, as applicable.



**(h) If an insurer is able to demonstrate to the commissioner that it is not possible for it to increase or maintain its market penetration for homeowners and/or commercial property insurance coverage in distressed areas of the state to no less than 85% of its aggregate market penetration for homeowners or commercial property insurance in the state outside the distressed areas, or to accept existing FAIR Plan basic property insurance and/or commercial property policies pursuant to the clearinghouse program as set forth in Section 10095, subsections (i) and/or (j), the commissioner shall have the discretion to authorize such insurer to utilize catastrophe modeling and/or to reflect the justified net reinsurance costs for California-only risks to be included as a consideration in any rate change application on a case-by-case basis. The commissioner shall have the authority to enforce any commitment made by an admitted insurer and approved by the commissioner pursuant to this section. Nothing in this section precludes an admitted insurer from otherwise voluntarily offering homeowners or commercial property policies in distressed areas.**

**(i) The authority to issue emergency regulations as provided in this section shall terminate on December 31, 2024. Emergency regulations authorized under this section shall remain in effect until such time as the commissioner adopts permanent regulations. The provisions of Title 2, Division 3, Part 1, Chapter 3.5 of the California Government Code are superseded to the extent inconsistent with the provisions of this section.**

**[Insurance Code section 1861.10 is amended to read:](#)**

(a) Any person may initiate or intervene in any proceeding permitted or established pursuant to this chapter, challenge any action of the commissioner under this article, and enforce any provision of this article.

(b) The commissioner or a court shall award reasonable advocacy and witness fees and expenses to any person who demonstrates that (1) the person represents the interests of consumers, and, (2) that he or she has made a substantial contribution to the adoption of any order, regulation, or decision by the commissioner or a court. Where such advocacy occurs in response to a rate application, the award shall be paid by the applicant.

(c) All requests for a finding of eligibility to seek compensation and all findings of eligibility, as described in Section 2662.2 of Title 10 of the California Code of

Regulations, shall be published on the Department of Insurance Internet Web site during the eligibility period.

*(d) The commissioner shall timely make, but no greater than twenty calendar days after receiving and finalizing the specified documents, all of the following documents related to public participation available on the department's internet website in the same manner as all other materials related to a rate application made pursuant to this article:*

- (1) The intervenor's Petition for Hearing, Petition to Intervene, and Notice of Intent to Seek Compensation;*
- (2) The intervenor's budget with costs and expenditures related to their participation, including both the requested compensation value and the amount awarded by the department, and any request for an award of compensation;*
- (3) Any amount awarded to an intervenor by the department, including the specific citation to the intervenor's brief or testimony that was used by the department in support of a final, valid order, regulation, or decision by the commissioner or a court, and the reasoning used by the department to determine how the contribution made by the intervenor was substantial;*
- (4) The intervenor's initial arguments, which shall include a prima facie argument that demonstrates a substantial contribution to the proceedings, and a statement demonstrating that the intervenor's argument is not duplicative of the department's efforts; and,*
- (5) Official responses by the department to the intervenor's legal pleadings.*

[Insurance Code section 10094.25 is added to read:](#)

*(a) The association may provide, with the prior approval of the commissioner, for assessment of all member insurers in the event the FAIR Plan is substantially threatened with insolvency in amounts sufficient to operate the facility, and the member insurers shall be authorized to recoup any such assessment from the policyholders of the member insurers in amounts and subject to the conditions to be determined by the commissioner through amendment of the plan of operation. Any amounts recouped by a member insurer shall not be considered premiums for any other purpose, including the computation of gross premium tax or producers' commissions. Any surcharge recouped by a member insurer from its policyholders shall be separately stated on either a billing or policy declaration sent to an insured, as determined by the commissioner.*

**(b) The amount an insurer is assessed shall be based on the insurer's proportion that its premiums written during the second preceding calendar year for that line of business bear to the aggregate premiums written by all insurers in the program for that line of business, excluding that portion of the premiums written attributable to the operation of the association, so that the assessment owed equals the insurer's market share of losses for that line of business.**

**(c) The amount an insurer is assessed by the association shall also be bifurcated by line of business to reflect losses proportionate to that line of business so that an assessment to cover losses related to association commercial property coverages are solely allocated to commercial property lines of business and an assessment to cover losses related to association dwelling property coverages are solely allocated to residential property lines of business.**

**(d) For expansions of FAIR Plan commercial property coverages that are the result of an order of the commissioner issued on or after September 15, 2023, subject to any limitations contained in the plan of operation, a member insurer may fully recoup an assessment related to commercial property coverages through a surcharge on commercial property policies. This section 10094.25(d) shall be operative only until September 15, 2026.**

**(e) This section shall apply only to assessments paid on or after September 15, 2023.**

**Insurance Code section 10095 is amended to read:**

(a) Within 30 days following the effective date of this chapter, the association shall submit to the commissioner, for the commissioner's review, a proposed plan of operation, consistent with this chapter, creating an association consisting of all insurers licensed to write and engaged in writing in this state, on a direct basis, basic property insurance or any component of basic property insurance in homeowners or other dwelling multiperil policies. An insurer described in this subdivision shall be a member of the association and shall remain a member as a condition of its authority to transact those kinds of insurance in this state.

(b) The proposed plan shall authorize the association to assume and cede reinsurance on risks written by insurers in conformity with the program.

(c) Under the plan, an insurer shall participate in the writings, expenses, and profits and losses of the association in the proportion that its premiums written during the second preceding calendar year bear to the aggregate premiums written by all insurers in the program, excluding that portion of the premiums written attributable to the operation of the association. Premiums written on a policy of basic residential earthquake insurance issued by the California Earthquake Authority pursuant to Section 10089.6 shall be attributed to the insurer that writes the underlying policy of residential property insurance.

(d) The plan shall provide for administration by a governing committee under rules to be adopted by the governing committee with the approval of the commissioner. Voting on administrative questions of the association and facility shall be weighted in accordance with each insurer's premiums written during the second preceding calendar year as disclosed in the reports filed by the insurer with the commissioner.

(e) The plan shall provide for a plan to encourage persons to secure basic property insurance through normal channels from an admitted insurer or a licensed surplus line broker by informing those persons what steps they must take in order to secure the insurance through normal channels.

(f) The plan shall be subject to the approval of the commissioner and shall go into effect upon the tentative approval of the commissioner. The commissioner may, at any time, withdraw tentative approval or the commissioner may, at any time after giving final approval, revoke that approval if the commissioner feels it is necessary to carry out the purposes of the chapter. The withdrawal or revocation of that approval shall not affect the validity of any policies executed before the date of the withdrawal. If the commissioner disapproves or withdraws or revokes their approval to all or any part of the plan of operation, the association shall, within 30 days, submit for review an appropriately revised plan or part of a revised plan, and, if the association fails to do so, or if the revised plan is unacceptable, the commissioner shall promulgate a plan of operation or part of a plan as the commissioner may deem necessary to carry out this chapter.

(g) The association may, on its own initiative or at the request of the commissioner, amend the plan of operation, subject to approval by the commissioner, who shall have supervision of the inspection bureau, the facility, and the association. The commissioner, or any person designated by the commissioner, shall have the power of visitation of and examination into the operation and free access to all the books, records, files, papers, and documents that relate to operation of the facility and

association, and may summon, qualify, and examine as witnesses all persons having knowledge of those operations, including officers, agents, or employees thereof.

(h) An insurer member of the plan shall provide to an applicant who is denied coverage, or a policyholder whose policy is canceled or not renewed, the internet website address and statewide toll-free telephone number for the plan established pursuant to Section 10095.5 for the purpose of obtaining information and assistance in obtaining basic property insurance.

(i) To reduce the association's concentration and number of policies, and to encourage maximum use of the normal insurance market consistent with subdivision (c) of Section 10090, the association shall develop and implement a clearinghouse program on or before July 1, 2021, to reduce the number of existing FAIR Plan ***basic property insurance*** policies and provide the opportunity for admitted insurers to offer homeowners' insurance policies to FAIR Plan policyholders. ***The basic property insurance clearinghouse program shall provide a priority to those FAIR Plan policyholders that have complied with the Mitigation in Rating Plans and Wildfire Risk Models regulation (tit. 10, CCR §2644.9), have consented to participate in the clearinghouse program, and are otherwise in good faith entitled to but are unable to procure homeowners insurance in the normal insurance market through ordinary methods. Any member insurer that participates in the basic property*** clearinghouse program shall sign an agreement with the association that sets forth the terms and conditions for the insurer to offer homeowners insurance through the policy's listed agent or broker of record, if any. The clearinghouse program may include a provision to include nonadmitted insurers if admitted insurers have the first option.

***(j) To reduce the association's concentration and number of commercial property policies and to encourage maximum use of the normal insurance market consistent with subdivision (c) of Section 10090, the association shall develop and implement a commercial property insurance policy clearinghouse program on or before July 1, 2024, to reduce the number of existing FAIR Plan commercial property policies and to provide the opportunity for admitted insurers to offer commercial property insurance policies to existing FAIR Plan commercial property policyholders. The commercial property clearinghouse program shall provide a priority to those policyholders that have complied with the Mitigation in Rating Plans and Wildfire Risk Models regulation (tit. 10, CCR §2644.9), have consented to participate in the clearinghouse programs, and are otherwise in good faith entitled to but are unable to procure homeowners insurance in the normal insurance market through ordinary methods. Any member insurer that***

participates in the commercial property policy clearinghouse program shall sign an agreement with the association that sets forth the terms and conditions for the insurer to offer commercial property insurance through the policy's listed agent or broker of record, if any. The commercial property policy clearinghouse program may include a provision to include nonadmitted insurers if admitted insurers have the first option.

(k) Insurer groups under the same ownership may elect to be treated as one insurer for purposes of participating in the plan, the clearinghouse programs, and assessments pursuant to this article.

(l)(1) The association shall comply with the California Consumer Privacy Act (Civil Code §§ 1798.100-1798.199), the Insurance Information and Privacy Protection Act (Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1) and regulations on the Privacy of Nonpublic Personal Information (Subchapter 5.9 (commencing with Section 2689.1) of Chapter 5 of Title 10 of the California Code of Regulations).

(2) The association shall provide all policyholders with notice of each of the following:

(A) The manner in which the association shall share policyholders' personal information to facilitate offers of private insurance through the clearinghouse programs.

(B) A method to opt out of the sharing of policyholders' personal information in connection with the clearinghouse programs.

(m) If the commissioner finds that the clearinghouse programs are no longer required because the number of policies of basic property insurance and/or commercial property policies in the FAIR Plan in distressed areas of the state have been reduced to a satisfactory level, the commissioner may approve or issue reasonable amendments to the plan of operation that are necessary or appropriate to temporarily pause the clearinghouse programs in their entirety or to temporarily pause the clearinghouse programs with respect to either basic property insurance or commercial property policies.

(n) Nothing in this section precludes an admitted insurer from otherwise offering homeowners or commercial property policies in distressed areas.

**(o) The commissioner may, from time to time as conditions warrant, after notice and public hearing, promulgate reasonable rules and regulations, and amendments and additions thereto, as are necessary to administer this article.**

**(p) The association shall provide the following information at the following time intervals to the Commissioner, Governor, and relevant legislative policy committees, in addition to posted on the association's public website:**

**(1) Residential policy counts, exposures, and total premium for dwelling policies insured by zip code and county, reported at the end of each quarter of each year;**

**(2) Commercial policy counts, exposures, and total premium by zip code and county, reported at the end of each quarter of each year;**

**(3) Progress reports of clearinghouse programs referenced in Sections 10095(i) and 10095(j), including changes in policy counts, exposures, and total premium of the FAIR Plan in specific distressed areas identified by the department at the end of each calendar year; and,**

**(4) Progress reports on recommendations in improving its customer service, claims handling practices, financial standards, and business operations as set forth in any pending department market conduct exams and operational reviews to the department's satisfaction.**

**Insurance Code section 10100.1 is amended to read:**

**10100.1.** The association, subject to the approval of the Insurance Commissioner, may provide for the equitable distribution of risks provided **for in Section 10095(i) and (j)** by means of assignment to individual members of such facility or by a pool or association of insurers participating in such facility.

**Insurance Code section 21.5 is amended to read:**

(a) “Administrative law bureau” or “administrative hearing bureau” means the unit within the Department of Insurance that provides administrative hearings.

(b) An administrative law judge appointed by the commissioner pursuant to civil service rules shall be employed within the administrative law bureau and shall not be supervised directly by the commissioner or supervised directly or indirectly by an employee in the legal branch of the department.



(c) The commissioner shall appoint a chief administrative law judge, which shall be an exempt position.

(d) The chief administrative law judge shall be responsible for the oversight of the Administrative Hearing Bureau, its administrative law judges, and shall organize, coordinate, supervise, and direct the operations of the Administrative Hearing Bureau. The chief administrative law judge shall not be supervised directly by the commissioner or supervised directly or indirectly by an employee in the legal branch of the department. Nothing in this section shall be construed to limit the independence of any administrative law judge during their proceedings, deliberations, and rulings.

[Insurance Code section 929.5 is added to read:](#)

(a) The commissioner shall complete an insurance availability report, including available information collected on residential and commercial insurance policy information, and post to the department's Internet Web site on or before December 31, 2024, and each year thereafter.

(b) The commissioner shall complete an insurance wildfire risk mitigation report, including available information collected on residential and commercial insurance policy information, and post to the department's Internet Web site on or before December 31, 2024, and each year thereafter.

(c) The commissioner shall complete a quarterly progress update regarding the promulgation and implementation of the emergency regulations referenced in Insurance Code Section 1861.055, with the first report due on or by December 31, 2023, and at the end of each quarter until December 31, 2024.

(d) The department shall provide a quarterly progress report regarding the publication of the data reconciliation tool for insurers set forth in section 1861.05(d)(2) until the data reconciliation tool has been made available.

(e) The reports referenced in subsection (a), (b), (c), and (d) above, shall be submitted to the Governor and relevant legislative policy committees.



Government Code section 63049.63 is added to read:

(a) Notwithstanding any other provision of this division, a financing of the costs of claims upon the request of the California FAIR Plan Association pursuant to Section 10094.3 of the Insurance Code shall be deemed to be in the public interest and eligible for financing by the bank, and Article 3 (commencing with Section 63040), Article 4 (commencing with Section 63042), Article 5 (commencing with Section 63043), Article 6 (commencing with Section 63048), and Article 7 (commencing with Section 63049) shall not apply to the financing provided by the bank to, or at the request of, the California FAIR Plan Association or the department in connection with the fund.

(b) Notwithstanding any other provision of this division, the bank shall not have authority over any matter that is subject to the approval of the Insurance Commissioner under Chapter 9 (commencing with Section 10090) of Part 1 of Division 2 of the Insurance Code.

(c) The bank may issue bonds pursuant to Chapter 5 (commencing with Section 63070) and may loan the proceeds thereof to the California FAIR Plan Association or use the proceeds to refund bonds previously issued on behalf of the California FAIR Plan Association.

(d) Bonds issued under this section shall not be deemed to constitute a debt or liability of the state or of any political subdivision thereof, other than the bank, or a pledge of the faith and credit of the state or of any political subdivision, but shall be payable solely from the fund and other revenues and assets securing the bonds. All bonds issued under this article shall contain on the face of the bonds a statement to that effect.

Government Code section 10094.3 is added to read:

(a) Notwithstanding any other limits on assessments, the association may levy upon member insurers special bond assessments in the amount necessary to pay the principal of and interest on the bonds, and to meet other requirements established by agreements relating to the bonds. The assessments shall be collected only from the member insurers providing insurance in the line of business for

which the bonds are issued, and shall be applied in the same manner as separate assessments are used. Special bond assessments made pursuant to this section shall also be subject to the surcharges required by Section 10094.1.

(b) The association may request the issuance of bonds by the California Infrastructure and Economic Development Bank pursuant to Section 63049.63 of the Government Code to ensure the solvency of the association. The bonds are to be paid from the special bond assessments assessed by the association for those purposes. Special bond assessments to repay bonds issued for payment of insurance benefits shall be assessed, to the extent necessary, for the respective line of business for which bonds are issued. It is a public purpose and in the best interest of the public health, safety, and general welfare of the residents of this state to provide for the issuance of bonds to pay claims under association policies.

(c) Notwithstanding any other law, after all bonds issued pursuant to this section have been redeemed, no further initial special bond assessments shall be levied or made.

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