California’s insurer of last resort would face more scrutiny under bill heading to Newsom’s desk

Insurance News Net

In the closing days of the legislative year, California lawmakers sent Gov. Gavin Newsom a bill that is meant to toughen scrutiny of the state’s embattled fire insurer of last resort by insisting that two of their leaders join its governing committee.

Assembly Bill 234 would put the state’s two top lawmakers — currently Senate President Pro Tem Mike McGuire and Assembly Speaker Robert Rivas — on the governing committee of the FAIR Plan, the insurer that’s mandated by law to sell policies to homeowners who can’t get them from other insurance companies. But the lawmakers or their representatives would be non-voting members of the committee, raising concerns about the bill’s effectiveness.

The FAIR Plan, which is an alliance of insurers that do business in the state, has grown to more than 610,000 policies as of June, a 154% increase since September 2021. It has become one of the largest insurers in California as other insurance companies have canceled or stopped issuing new policies here, citing growing wildfire risk. The plan is run by its member insurers — not the state. Its governing committee consists of mostly insurance representatives, though the governor appoints some non-voting members.

Insurance Commissioner Ricardo Lara asked the governor to sign the bill, saying in a letter dated Saturday that it “will help further needed transparency of this insurance safety net while supporting legislative policymakers’ oversight efforts.”

The bill, which the Assembly sent to the governor on Saturday, would be effective immediately and comes at a time of numerous challenges for the FAIR Plan:

It faces lawsuits from homeowners who say they have been denied coverage for their smoke-damage claims from the Los Angeles County fires in January. Hilary McLean, spokesperson for the FAIR Plan, said the plan would not comment on ongoing litigation.In July, the state's Insurance Department filed legal action (not a lawsuit)against the plan, accusing it of denying more than 200 smoke-damage claims and saying the department's multiyear investigation found hundreds of violations of consumer-protection laws. The FAIR Plan has responded to the department's Order to Show Cause by requesting a hearing before a state administrative body. McLean said the plan has been working with the department over the past year to "update and clarify its policy language around smoke damage, so the language reflects the manner in which these claims are being adjusted."Earlier this month, Gov. Gavin Newsom accused the FAIR Plan of violating court orders related to covering smoke damage and urging it to start approving smoke-damage claims "expeditiously." McLean said the plan "appreciates Gov. Newsom's concerns about handling claims quickly and fairly. We are committed to ensuring that every policyholder is treated with compassion, respect and in full accordance with California law." She said the plan will submit a response to the governor this week.

McLean said the plan does not have a position on the governing-committee legislation.

The smoke-damage complaints come on top of numerous other issues FAIR Plan policyholders and insurance professionals have raised. As CalMatters reported last year and earlier this year, those include poor customer service, payment delays and slow response times, which the plan attributed to growing pains.

The Consumer Federation of California opposed the bill, criticizing it for not having enough teeth.

"Is it a bad thing? Probably not,"Robert Herrell, executive director of the nonprofit group, told CalMatters. "But if anybody thinks that putting two non-voting members on the committee is going to be meaningful, they're deluding themselves."

Herrell, a former deputy insurance commissioner under former Commissioner Dave Jones, said the FAIR Plan governing committee — which is mostly made up of the insurance industry — will still have the ability to conduct business behind closed doors.

Joel Laucher, who also worked under Jones and is now a program specialist at consumer advocacy group United Policyholders, used to go to the FAIR Plan's governing committee meetings as chief deputy commissioner of rate regulation. He said at several meetings, he would have to wait while the committee's executives went into closed sessions.

"They stated that their executive sessions were privileged, confidential and not open to the department," Laucher said.

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But he said it could still be useful to have state lawmakers on the committee who could learn more about the workings of the FAIR Plan. "Having direct experience as a legislator might provide them with some understanding and information they might need to initiate broader authority over the FAIR Plan," he said.

During the vote on Friday, Democratic Sen. Anna Caballero of Merced said the roles of the two lawmakers or their representatives would "mirror that of the governor's four existing non-voting appointees."

Paying claims over time

The Legislature also passed AB 226, which will allow the FAIR Plan to get bond financing through the California Infrastructure and Economic Development Bank. The bill aims to ensure the plan, which has warned about its continued ability to pay claims, will be able to spread out financing its claims payments over time.

Assemblymember David Alvarez, the Democrat from Chula Vista who co-authored the bill, told CalMatters that funding for the FAIR Plan was a priority for the Legislature.

"If the FAIR Plan became insolvent, our (insurance) crisis would become a disaster," said Sen. Roger Niello, the Republican from Roseville who's vice chair of the Senate insurance committee.

Automatic payments

Lastly, lawmakers sent AB 290 to the governor's desk. The bill requires the FAIR Plan to establish a system for its policyholders to make automatic payments. The FAIR Plan originally opposed the bill but now has no position on it, McLean said. The plan will have to create the system to give policyholders the automatic-payment option by April 1, 2026, but policyholders cannot be canceled or not renewed if they don’t enroll in it.