
SENATE COMMITTEE ON INSURANCE

Senator Susan Rubio, Chair

2021 - 2022 Regular

Bill No: SB 11 **Hearing Date:** April 8, 2021
Author: Rubio
Version: March 1, 2021
Urgency: No **Fiscal:** No
Consultant: Brian Flemmer

SUBJECT: The California FAIR Plan Association: basic property insurance: exclusions

DIGEST: Would authorize the FAIR Plan to sell commercial coverage to farms.

ANALYSIS:

Existing law:

- 1) Establishes the California FAIR Plan Association, a joint reinsurance association in which all insurers licensed to write basic property insurance participate in administering a program providing for the equitable apportionment of basic property insurance for persons who are unable to obtain that coverage through normal channels.
- 2) Defines “basic property insurance” for these purposes, and excludes from that definition insurance on automobile or farm risks.

This bill:

- 1) Provides for authorization for the FAIR Plan to sell commercial coverage to farms covering structures, by replacing the prohibition on farm insurance with a prohibition on insuring agricultural crop risks.
- 2) Makes other technical changes.

Background

According to the Author,

“Since the devastating fires of 2017 and 2018, insurers have been reevaluating fire risk throughout the state. For several years, many homeowners insurance customers in high fire risk areas have had to turn to the FAIR Plan for homeowners insurance. Now, the pressures that have faced homeowners for years are steadily affecting the availability of commercial insurance in a variety of ways.

California has over 25 million acres of farmland, most of which is in the low fire risk central valley. However farmers, ranchers, and growers in the central valley foothills, central coast, inland southern California, wine country, and throughout the wildland urban interface are now struggling to

find coverage. If a farmer is unable to find insurance on the private market and lives on their farm, the FAIR Plan can only offer coverage for the home. Unfortunately, this can leave the barn and other out buildings, as well as farming equipment, uninsured.

Insurance is critically important for farming operations. Many farmers take out large loans in order to plant the year's crop, paying it back after harvest, and often must use the farm itself as collateral. An uninsured farm cannot be collateralized, leaving the farmer with no access to capital to operate the farm. The unavailability of insurance will no doubt have the greatest impact on smaller and family run farms first, and could drive them out of business.

According to a report by inewssource.org, the California Farm Bureau Federation has learned of about 500 hundred farmers in just Napa, Sonoma, Monterey and San Luis Obispo counties who have been unable to renew their insurance policies since 2019. Additionally, the Committee's recent March 11 informational hearing took testimony from representatives of a variety of commercial interests echoing availability concerns at a wider level that increasingly looks like the availability crisis afflicting rural and high risk homeowners. This bill will ensure important access to a line of insurance coverage for farmers during the current commercial availability concerns, and create parity between farms and other types of commercial businesses in California that are already able to access the FAIR Plan for coverage."

Senate Bill 11 will provide statutory clarity that California's commercial farms and ranches are eligible for basic property insurance coverage via the California Fair Plan. This minor change is significant to the state's farming and ranching families because the industry has witnessed an increasing number of property insurance non-renewals, primarily due to increased wildfire risk related to the property.

Existing law (Insurance Code sections 10090 – 10100.2) establishes the California FAIR Plan to act as the "insurer of last resort" for California homeowners and businesses who lack the availability of insurance in other private markets. The FAIR plan assures that homeowners and businesses have access to basic property insurance. Unfortunately, this section of law also provides a narrow exclusion that prohibits FAIR Plan from underwriting "farm risk."

In the agricultural lexicon "farm risk" is most accurately a reference to specialty insurance for the protection of agricultural crops (i.e. crop insurance). Generally speaking, crop insurance is for the protection of commodities from factors or "risks" associated to production, foreign and domestic markets, unforeseen institutional changes, personal risk (death, illness or injury) and financial risks. In most cases, crop insurance covers loss of commodity yield or revenue, not infrastructure. Crop insurance is readily available.

The 2020 LNU Lightning Complex and Glass Fires ravaged Napa County and caused more than \$175 million in agricultural related damages, with agricultural infrastructure losses exceed \$35 million dollars. While the economic losses to agriculture infrastructure are smaller than those associated to other residential and commercial

properties over the last several years, the aggregated loss of all property and property risks are driving the non-renewals. The risk of wildfire destroying residential, commercial and agricultural properties are largely the same, and the trend of non-renewals occurring to residential properties located in high fire hazard areas of the state is mirroring the non-renewals occurring to farming and ranching properties. California counties like Sonoma, Napa, Monterey, Mendocino, Placer, San Luis Obispo, Ventura and San Diego continue to experience residential and agricultural property insurance non-renewals with increasing frequency.

Due to the increased risk of wildfire, California's farms and ranches are now facing a similar situation as many homeowners living in or near the Wildland Urban Interface (WUI); the lack of available property insurance. However, unlike private homeowners and some business property owners, farming and ranching operations do not have access to basic property insurance provided by the California FAIR Plan. For a farm or ranch property, when the private insurance market is unable to underwrite a policy due to wildfire risk, farmers and ranchers do not have an available option or an insurer of last resort.

The unavailability of property insurance has now also started to impact another financial component related to the agricultural industry, the availability of financial credit. Within agriculture, lines of financial credit require the farm or ranch property to have insurance coverage. Without insurance coverage, the farm or ranch cannot acquire a line of credit to grow and harvest commodities, or invest in the property itself. Without access to these lines of credit, many farms and ranches will simply cease to exist as the liability of operating without insurance is too great a risk.

SB 11 solves the insurance availability issue for farms and ranches by clarifying existing statute to authorize the FAIR Plan to underwrite basic property coverage for those properties specifically. SB 11 will not expand insurance coverage for losses of agricultural commodities, or act as a secondary market for crop insurance purposes; it will merely provide farms with access to FAIR on par with that other businesses receive.

Suggested Amendments

- 1) The current language of the bill attempts to allow the FAIR Plan to sell commercial insurance to farms by replacing a blanket exclusion for insuring farm risks with an exclusion on agricultural crop insurance. While this would implicitly authorize the sale of insurance for structures on farms, it would require further defining of the new exclusion. The Committee instead recommends clarifying amendments that would exempt from the meaning of "farm risk," coverage on a "farm's equipment or permanent structures, other than private garages, from the prohibition on insuring "farm risks" in order to make the authorization. Doing so will leave

Related/Prior Legislation

AB 1875, (Wood, Chapter 629, Statutes of 2018), requires CDI to establish the California Home Insurance Finder on its website by July 1, 2020, as specified; requires, on or after July 1, 2020, an insurer to provide to an applicant who is denied coverage, or to a policyholder whose policy is canceled or not renewed, information regarding the

Finder, and allows the insurer to combine this disclosure with a disclosure regarding information about the FAIR Plan; requires, on or after July 1, 2020, upon offer of a policy of residential property insurance a disclosure to be provided to the applicant that policies from other insurers offering extended replacement cost coverage of at least 50% may be available for that property, as specified; among other provisions.

SB 1302, (McGuire, Chapter 543, Statutes of 2016), requires insurers to provide the FAIR Plan Internet Web site address and statewide toll-free telephone number to an applicant for insurance who is denied coverage, or a policyholder whose policy is canceled or non-renewed; requires the FAIR Plan to establish and maintain an Internet Web site through which a person may receive information and assistance in applying for insurance; requires an agent or broker to assist a person in making an application for the FAIR Plan, another insurer offering coverage or provide the person with the FAIR Plan Website and phone number.

ARGUMENTS IN SUPPORT:

The California FAIR Plan supports this change, arguing,

“California’s ongoing wildfire challenges have now impacted insurance coverages for farms in California. Since the fall of 2020, the FAIR Plan has been working with the FARM Bureau, legislative staff, and other stakeholders to address the need for insurance coverage for farms. The proposed amendments will provide basic property insurance for permanent structures used primarily for the production of commercial agricultural commodities or livestock (and does not include crop insurance).

While the FAIR Plan is prepared to do its part in addressing the unavailability of farm coverage in California, it is important to note that we do not have the rates, forms, expertise, or other resources to provide this coverage immediately. We will need time to develop the coverage forms and rates, and the regulatory process itself to approve such coverage can take some time.

Due to the current and anticipated demand for basic property insurance from the FAIR Plan, and whether there is an urgency clause or not in SB 11, it is essential that the FAIR Plan be provided regulatory relief in some form of an expedited approval process of its policy forms, endorsements and rates to meet the imminent needs of policyholders needing basic property coverage from the FAIR Plan. Stated plainly, without an expedited approval process, the FAIR Plan anticipates that the creation and approval of forms and rates could take eighteen to twenty-four months, which would hinder our ability to provide the basic property coverage required in SB 11.”

Also in support, the Rural County Representatives of California writes, “RCRC member counties have a disproportionate percentage of businesses and residents who have had their residential property insurance nonrenewed due to wildfire risk in the past five years. A large majority of our communities are in high hazard severity zones and have

seen both dramatic premium increases and drastic spikes in nonrenewals. While many rural residents and business owners understand that higher costs for coverage will be the new standard under higher wildfire threats, many of them have had to resort to the FAIR Plan for fire insurance coverage as a last resort.”

SUPPORT:

African American Farmers of California
Agricultural Council of California
American Pistachio Growers
CA Cotton Ginners & Growers Association
California Apple Commission
California Association of Winegrape Growers
California Blueberry Association
California Blueberry Commission
California Citrus Mutual
California FAIR Plan
California Farm Bureau Federation
California Fresh Fruit Association
California Rice Commission
California Walnut Commission
Grower-Shipper Association of Central California
Monterey County Farm Bureau
Nisei Farmers League
Olive Growers Council of California
Personal Insurance Federation of California
Rural County Representatives of California
San Luis Obispo County Farm Bureau
Sonoma County Farm Bureau
Western Agricultural Processors Association
Western Plant Health Association
Wine Institute

OPPOSITION:

None on File.

-- END --