

SUBCHAPTER T. FAIR PLAN
Division 1. Plan of Operation
28 TAC §5.9912

1. INTRODUCTION. The Texas Department of Insurance proposes an amendment to §5.9912, concerning the plan of operation of the Fair Access to Insurance Requirements (FAIR) Plan Association. The Texas FAIR Plan Association was established by Insurance Code Article 21.49A for the purpose of delivering residential property insurance to qualified citizens of Texas in areas determined by the Commissioner of Insurance to be underserved areas. The current Governing Committee, composed of eleven voting members, five of whom represent insurers, four members of the public, and two members who are licensed agents, has requested an amendment to the Plan of Operation to clarify that all members may be reimbursed for actual expenses. The FAIR Plan often has meetings which are not located in the home town of the members and has been reimbursing members for their actual expenses to attend meetings. It has recommended that §5.9912 be amended by adding subsection (o) which provides for the reimbursement of reasonable actual expenses to members of the Governing Committee.

2. FISCAL NOTE. Marilyn Hamilton, Associate Commissioner, Property and Casualty Program, has determined that for each year of the first five years the proposed section will be in effect, there will be no fiscal impact to state and local governments as a result

of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

3. PUBLIC BENEFIT/COST NOTE. Ms. Hamilton has also determined that for each of the first five years the amended section is in effect, the public benefits anticipated as a result of the proposed section will be that the pool of qualified persons willing to serve on the Governing Committee of the FAIR Plan will be expanded since it will be clear that members will not have to use personal funds to pay expenses of attending meetings. An expanded pool of qualified persons willing to serve will benefit the FAIR Plan Association and the public as well. The estimated cost per member for reimbursement of actual reasonable expenses is approximately \$470.00 per year. This figure is based on the actual past expenses of members who have incurred costs for hotel accommodations, travel and meals while attending a FAIR Plan Association meeting. The total estimated annual cost for the FAIR Plan Association would be \$5,170 which is based on eleven members and annual reimbursable expenses of \$470 each. The Government Code §2006.001 defines small business and microbusiness in pertinent part as a legal entity, including a corporation, partnership, or sole proprietorship that is formed for the purpose of making a profit. Since the FAIR Plan Association was not formed for the purpose of making a profit, it does not meet the definition, and thus it is not necessary to include a small or micro-business analysis in this proposal.

4. REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on August 29, 2005 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Marilyn Hamilton, Associate Commissioner, Property and Casualty Program, Mail Code 104 PC, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. A request for a public hearing should be submitted separately to the Office of the Chief Clerk.

5. STATUTORY AUTHORITY. The amendment is proposed under the Insurance Code Article 21.49A and §36.001. Article 21.49A, §3(a) authorizes the FAIR Plan Governing Committee to propose amendments to the plan of operation and submit them to the Commissioner of Insurance for approval. Article 21.49A charges the Commissioner with the authority to supervise the Association and to approve and adopt by rule the plan of operation developed by the Governing Committee. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

6. CROSS REFERENCE TO STATUTE. The following article is affected by this proposal:

Rule

Statute

§5.9912

Insurance Code Article 21.49A

7. TEXT.

§5.9912. Governing Committee.

(a) - (n) (No change.)

(o) Members of the Governing Committee may be reimbursed for their reasonable actual expenses incurred as a result of serving as a member of the Governing Committee. The FAIR Plan Association will establish procedures for reimbursement.

8. CERTIFICATION. This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued at Austin, Texas, on _____, 2005.

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance