

AMENDED IN SENATE SEPTEMBER 7, 2007

AMENDED IN SENATE AUGUST 23, 2007

AMENDED IN ASSEMBLY JUNE 1, 2007

AMENDED IN ASSEMBLY APRIL 19, 2007

AMENDED IN ASSEMBLY APRIL 11, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1159

Introduced by Assembly Member Richardson Coto
(Coauthor: Senator Machado)

February 23, 2007

~~An act relating to state funds.~~ *An act to amend Sections 10089.5, 10089.9, 10089.13, 10089.16, 10089.23, 10089.30, and 10089.33 of, and to add Section 10089.31 to, the Insurance Code, relating to insurance.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1159, as amended, ~~Richardson Coto. State funds: fiscal review.~~
Insurance: California Earthquake Authority.

Existing law authorizes the California Earthquake Authority, administered under the authority of the commissioner to transact basic residential earthquake insurance and defines "available capital," for the purpose of issuing policies.

This bill would revise the definition of "available capital," as specified.

Existing law permits the authority to require participating insurers to make certain additional capital assessments under specified

conditions. These assessments are required to be reduced to zero 12 years following the commencement of authority operations. That 12-year period ends on December 1, 2008.

This bill would specify that these assessments shall be reduced to zero on December 1, 2008, with respect to earthquake events that commence on or after that date. This bill would also provide that, if claims and claim expenses paid by the authority due to earthquake events that commence on or after December 1, 2008, exhaust existing capital and the maximum amount of all specified assessments, the board shall have the power to further assess participating insurers, subject to specified maximum limits according to a specified formula.

This bill would make various other related changes to implement the assessment provisions that apply to earthquake events that commence on or after December 1, 2008. The provisions of the bill would become operative on July 1, 2008.

Existing law sets forth the duties of the Department of Finance in overseeing the financial activities of state agencies generally.

Existing law authorizes various state agencies to impose and collect fees to cover the costs of performing certain services.

This bill would require the Department of Finance to submit to the Legislative Analyst a list of the fees identified in Schedule 8 of the Governor's Budget Summary 2007–08 that are remitted to the General Fund, and would require the Legislative Analyst to provide the head of each state agency and department identified as collecting any fees with a copy of the list. This bill would require each of these state agencies and departments to provide assistance to the Legislative Analyst in reviewing whether the fees accurately or inaccurately reflect the full costs associated with the service or program for which the agency or department charges a fee. The bill would require the Legislative Analyst to review these fees to determine whether the fees charged for each service or program cover, or more than cover, the cost to the state for providing each service or program, and to include its findings in its analysis of the 2009–10 Budget Bill.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 10089.5 of the Insurance Code is amended
- 2 to read:

1 10089.5. As used in this chapter:

2 (a) “Authority” means the California Earthquake Authority.

3 (b) “Available capital” means the sum of all moneys and
4 invested assets actually held in the California Earthquake Authority
5 Fund, less loss reserves and loss adjustment expense reserves under
6 all of the authority’s policies of residential earthquake insurance,
7 and less the unearned premium reserve. “Available capital”
8 includes all interest or other income from the investment of money
9 held in the California Earthquake Authority Fund. “Available
10 capital” does not include unearned premium, the proceeds of
11 contracts of reinsurance procured by or in the name of the authority
12 pursuant to subdivision (a) of Section 10089.10, any funds realized
13 on capital market contracts authorized by subdivision (b) of Section
14 10089.10, *any revenue resulting from the application of subdivision*
15 *(e) of Section 10089.11*, or the proceeds of bonds issued by or in
16 the name of the authority.

17 (c) “Basic residential earthquake insurance” means that policy
18 of residential earthquake insurance described in Section 10089
19 except as follows:

20 (1) (A) If one year after the authority commences operation the
21 authority has available capital equal to or exceeding seven hundred
22 million dollars (\$700,000,000), any policy issued or renewed on
23 or after that date shall provide, less any applicable deductible, not
24 less than two thousand five hundred dollars (\$2,500) in coverage
25 for additional living expenses.

26 (B) If the authority met the available capital requirements of
27 subparagraph (A) and two years after the authority commences
28 operation the authority has available capital equal to or exceeding
29 seven hundred million dollars (\$700,000,000), any policy issued
30 or renewed on or after that date shall provide, less any applicable
31 deductible, not less than three thousand dollars (\$3,000) in
32 coverage for additional living expenses.

33 (2) (A) If the authority did not meet the available capital
34 requirement of subparagraph (A) of paragraph (1) but, two years
35 after the authority commences operation the authority has available
36 capital equal to or exceeding seven hundred million dollars
37 (\$700,000,000), any policy issued or renewed on or after that date
38 shall provide, less any applicable deductible, not less than two
39 thousand five hundred dollars (\$2,500) in coverage for additional
40 living expenses.

1 (B) If the authority met the available capital requirements as
2 provided by subparagraph (A) and three years after the authority
3 commences operation the authority has available capital equal to
4 or exceeding seven hundred million dollars (\$700,000,000), any
5 policy issued or renewed on or after that date shall provide, less
6 any applicable deductible, not less than three thousand dollars
7 (\$3,000) in coverage for additional living expenses.

8 (d) “Board” means the governing board of the authority.

9 (e) “Bonds” means bonds, notes, commercial paper, variable
10 rate and variable maturity securities, and any other evidence of
11 indebtedness.

12 (f) “Capital market contract” means an agreement between the
13 authority and a purchaser pursuant to which the purchaser agrees
14 to purchase bonds of the authority.

15 (g) “Nonparticipating insurer” means an insurer that elects not
16 to transfer or place any residential earthquake policies in the
17 authority.

18 (h) “Panel” means the advisory panel of the authority.

19 (i) “Participating insurer” means an insurer that has elected to
20 join the authority.

21 (j) “Policy of residential property insurance” means those
22 policies described in Section 10087.

23 (k) “Private capital market” means one or more purchasers of
24 bonds of the authority pursuant to a capital market contract.

25 (l) “Qualifying residential property” includes all those residential
26 dwellings set forth in Section 10087.

27 (m) “Residential earthquake insurance market share” means an
28 individual insurer’s total direct premium received for (1) residential
29 earthquake policies and endorsements written or renewed by the
30 insurer in California and (2) residential earthquake policies written
31 or renewed by the authority for which the insurer has written or
32 renewed an underlying policy of residential property insurance,
33 divided by the total gross premiums received by all admitted
34 insurers and the authority for their basic residential earthquake
35 insurance in California.

36 (n) “Residential property insurance market share” means an
37 individual insurer’s total gross premiums received for residential
38 property insurance policies written or renewed by the insurer,
39 divided by the total gross premiums received by all admitted
40 insurers for residential property insurance in California.

1 (o) “Revenue” means all income and receipts of the authority,
2 including, but not limited to, income and receipts derived from
3 premiums, bond purchase agreements, capital contributions by
4 insurers, assessments levied on insurers, surcharges applied to
5 authority earthquake policyholders, and all interest or other income
6 from investment of money in any fund or account of the authority
7 established for the payment of principal or interest, or premiums
8 on bonds, including reserve funds.

9 (p) “Unearned premium reserve” means an amount equal to the
10 unearned portion of premiums due to, or received by, the authority
11 on all of its policies of residential earthquake insurance, without
12 deduction on account of reinsurance ceded. The unearned premium
13 reserve shall be charged as a reserve liability in determining the
14 authority’s financial condition. Because the unearned premium
15 reserve is established and maintained to protect the interests of
16 authority policyholders in their unexpired authority policies,
17 authority assets in an amount equal to the unearned premium
18 reserve shall not be subject to encumbrance by, or distribution to,
19 creditors of or claimants against the authority unless and until the
20 authority has paid in full all policyholder claims and policyholder
21 liabilities.

22 *SEC. 2. Section 10089.9 of the Insurance Code is amended to*
23 *read:*

24 10089.9. (a) Upon commencement of participation in the
25 authority, each participating insurer shall be required to execute a
26 contract with the commissioner *and the authority* that sets forth
27 its rights and responsibilities as an authority participant. The form
28 of contract shall be part of the authority’s plan of operations and
29 shall be uniform for every participating insurer.

30 (b) *The uniform authority participation contract required by*
31 *subdivision (a) may be modified by the full execution of a writing,*
32 *in a form drawn in accordance with this act, that embodies the*
33 *mutual intent and understandings of the commissioner, the*
34 *authority, and each participating insurer that has executed the*
35 *authority participation contract.*

36 (c) *In the event a nonparticipating insurer elects to become a*
37 *participating insurer of the authority, the authority is authorized*
38 *to present to the nonparticipating insurer the most recent form of*
39 *amended uniform authority participation contract it has executed*
40 *or proposed to execute with existing participating insurers and*

1 *require its execution as a condition of authority participation. The*
2 *acceptance by the authority of, and reliance by the authority on,*
3 *the executed amended authority participation contract that is*
4 *authorized by this subdivision shall not be deemed a lack of the*
5 *uniformity of contract required by subdivision (a).*

6 SEC. 3. Section 10089.13 of the Insurance Code is amended
7 to read:

8 10089.13. (a) One year following its commencement of
9 operations, and annually thereafter by each May 1, the authority
10 shall report to the Legislature and the commissioner on program
11 operations in a format prescribed by the commissioner. The report
12 shall include, but shall not be limited to, the financial condition of
13 the authority, a description of all rates and rating plans approved
14 for use in the authority, an evaluation of the functioning of the
15 authority in light of its stated purpose of making residential
16 property insurance and residential earthquake insurance more
17 available. The report shall also include an analysis of the growth
18 by market share of residential property insurance of participating
19 insurers compared to nonparticipating insurers, any adverse
20 consequences on the various insurance distribution systems
21 resulting from the operation of the authority or alterations in the
22 growth of the residential property insurance market share between
23 participating insurers and nonparticipating insurers, any adverse
24 consequences of the various insurance distribution systems
25 resulting from the operation of the authority or alterations in the
26 growth of homeowners' insurance market share between
27 participating insurers and nonparticipating insurers, and an analysis
28 of any recommended program changes to permit the authority to
29 better fulfill its stated purpose. In making this determination the
30 board shall be mindful of the competitive nature of the market and
31 how any decision can negatively impact insurers who are currently
32 competing in the marketplace.

33 (b) The annual report shall include full information describing
34 the following matters relating to the authority's condition and
35 affairs:

36 (1) The property or assets held by the authority, including the
37 amount of cash on hand and deposited in banks to its credit, the
38 amount of cash in the hands of servicing insurance companies, the
39 amount of any stocks or bonds owned by the authority, specifying

1 the amount, number of shares, and the par and market value of
2 each kind of stock or bond, and all other assets, specifying each.

3 (2) The liabilities of the authority, including the amount of losses
4 due and unpaid, the amount of claims for losses resisted by the
5 authority and the amount of losses in the process of adjustment or
6 in suspense, including all reported and supposed losses, the amount
7 of revenue bonds or other debt financing issues under Section
8 10089.29 or Section 10089.50, and all other liabilities.

9 (3) Income of the authority during the preceding year, specifying
10 premiums received, interest money received, and income from all
11 other sources, specifying the source.

12 (4) Expenditures of the authority during the preceding year,
13 specifying the amount of losses paid, the amount of expenses paid
14 by category, and the amount of all other payments and
15 expenditures.

16 (5) The costs and scope of all reinsurance and capital market
17 contracts entered into by the authority under Section 10089.10.

18 (c) As part of the annual report, the authority shall make a
19 separate, summary report on the financial capacity of the authority
20 to pay claims made against the authority. Copies of this report
21 shall also be made available to the public. The report shall include,
22 but shall not be limited to, the following information, valued as of
23 30 days prior to the date of the report:

24 (1) The available capital of the authority.

25 (2) The liabilities of the authority.

26 (3) The amount of all assessments previously made and the
27 amount of assessments that may be made in the future under
28 Section 10089.23.

29 (4) The amount of the reinsurance under contract and actually
30 available to the authority.

31 (5) The amount of all revenue bonds or other debt financing
32 previously issued or contracted for and the amount of all revenue
33 bonds or other debt financing that may be issued or contracted for
34 in the future under Section 10089.29.

35 (6) The amount of surcharges previously assessed against
36 policyholders and the amount of surcharges that are currently
37 outstanding against policyholders under Section 10089.29.

38 (7) The amount of capital committed and actually available by
39 contract from private capital markets that is available to pay claims
40 against the authority.

1 (8) The amount of all assessments previously made and the
2 amount of all assessments that may be made in the future under
3 Section 10089.30.

4 (9) *The amount of all assessments previously made and the*
5 *amount of all assessments that may be made in the future under*
6 *Section 10089.31.*

7 (d) In verification of the matters set forth in the annual report
8 provided for in subdivision (a), the Department of Finance shall
9 approve independent qualified auditors selected by the
10 commissioner to examine the books and accounts relating to all
11 matters concerning the financial and program operations of the
12 authority. The commissioner shall file a certified report of the
13 examination with the President pro Tempore of the Senate, the
14 Speaker of the Assembly, the Chairpersons of the Senate and
15 Assembly Insurance Committees, and the Chairperson of the Senate
16 Committee on Judiciary within 10 days of its receipt. Copies of
17 this report shall also be made available to the public. The expense
18 of examining the books and accounts of the authority shall be paid
19 out of the operating funds of the authority.

20 (e) The authority shall, within 120 days following a seismic
21 event that results in the payment of claims by the authority, and
22 within one year of a major seismic event that results in the payment
23 of claims by the authority, submit to the President pro Tempore
24 of the Senate, the Speaker of the Assembly, the Chairpersons of
25 the Senate and Assembly Insurance Committees, and the
26 Chairperson of the Senate Committee on Judiciary, and the
27 commissioner a concise written report of program operations
28 related to that seismic event. The reports shall include, but not be
29 limited to, progress on payment of claims, claims payments made
30 and anticipated, and the functioning of the authority in response
31 to the seismic event. Copies of this report shall also be made
32 available to the public.

33 *SEC. 4. Section 10089.16 of the Insurance Code is amended*
34 *to read:*

35 10089.16. (a) On application to the board, payment of any
36 assessments and fees calculated by the board, and fulfillment of
37 any additional requirements imposed by the board, nonparticipating
38 insurers may become participants in the authority with all rights
39 and privileges attendant to that participation.

1 (b) In order to act upon any findings and recommendations
2 reported to the Legislature pursuant to Section 10089.13, or to
3 implement a specific finding by the commissioner or the board
4 that modification of requirements for entry into the authority is
5 necessary to broaden the availability of residential property or
6 residential earthquake insurance, the board is authorized to open
7 the authority to participation by insurers who have not elected to
8 participate in compliance with Section 10089.15. In implementing
9 the authority granted by this section, the board may:

10 (1) Offer incentives for insurers to participate in the authority.

11 (2) Allow any insurer or insurer group that has not elected to
12 become a participating insurer to become an associate participating
13 insurer without complying with the capital contribution
14 requirements of Section 10089.15 if it has maintained or exceeded
15 its number of policies of residential property insurance written as
16 of January 1, 1996.

17 (c) Any action by the board pursuant to subdivision (b) shall be
18 subject to the following conditions and limitations:

19 (1) Any deliberation and action by the board shall be conducted
20 at a public meeting of the board.

21 (2) No action may be taken within one year of the date upon
22 which the authority begins writing policies of basic residential
23 earthquake insurance.

24 (3) The board shall have no authority to modify the requirements
25 of Section 10089.23-~~or~~, 10089.30, *or 10089.31*, or to provide, in
26 any other manner, for reduction of the liability of an insurer or
27 insurer group to comply with the assessments placed upon
28 participating insurers in the event of a loss.

29 (4) Notwithstanding Section 10089.11, any action of the board
30 pursuant to subdivision (b) shall be by regulation promulgated by
31 the board. Notwithstanding any other provision of law, there shall
32 be no authority by the board to promulgate emergency regulations
33 to implement subdivision (b). No regulations may be proposed
34 within one year of the date upon which the authority begins writing
35 policies of basic residential earthquake insurance. Notwithstanding
36 any exception provided in Section 11343 of the Government Code,
37 any regulation adopted pursuant to subdivision (b) shall be
38 submitted to the Office of Administrative Law for approval
39 pursuant to the Administrative Procedure Act.

1 (5) Any action by the board to establish an incentive pursuant
2 to subdivision (b) that is available to a single insurer or insurer
3 group shall be based upon standards adopted by the board that are
4 not arbitrary or discriminatory. Notwithstanding Section 10089.11,
5 these standards shall be established by regulation promulgated by
6 the board.

7 (6) A finding of necessity pursuant to subdivision (b) shall state
8 the specific facts and conditions that establish the necessity and
9 justify the actions to implement subdivision (b). All materials and
10 documents prepared or used by the authority to determine the
11 necessity to implement subdivision (b), other than proprietary
12 materials and documents owned or licensed by third parties, shall
13 be considered public documents, and copies of the public
14 documents shall be made available to the public for inspection at
15 no charge. Members of the public may purchase copies of these
16 documents from the authority at actual cost.

17 *(d) (1) A nonparticipating insurer that applies to the board to
18 become an authority participant must submit to the authority, in
19 connection with its application, earthquake insurance policy data
20 sufficient for the authority to ascertain through computer modeling
21 the current likelihood and magnitude of earthquake insurance
22 losses that would be attributable to that insurer's book of
23 earthquake insurance business during its first full year of authority
24 participation. The authority's modeled representation of such
25 insured earthquake losses shall be termed the "earthquake
26 insurance risk profile" of that insurer.*

27 *(2) If in the board's sole judgment the earthquake insurance
28 risk profile the nonparticipating insurer would bring to the
29 authority would be more likely to produce losses for the authority,
30 or would be likely to produce greater losses for the authority, than
31 would a book of existing authority business of similar size, the
32 board may require as a condition for approving the insurer's
33 application that the insurer pay up to five annual risk capital
34 surcharges into the authority in addition to any capital contribution
35 required by Section 10089.15 and any assessment obligations
36 required by Sections 10089.23, 10089.30, and 10089.31.*

37 *(3) The board shall first calculate the nonparticipating insurer's
38 risk capital surcharge as of the first anniversary of the date the
39 insurer first placed or renewed into the authority earthquake
40 insurance policies. The board shall recalculate the risk capital*

1 surcharge for each of up to four years after the first year of
2 calculation and shall impose the resulting surcharge; if the
3 insurer's earthquake insurance risk profile becomes substantially
4 similar to the authority's average risk profile for a book of
5 authority earthquake insurance business of similar size, the board
6 shall relieve the insurer of any further obligation to pay risk capital
7 surcharges.

8 (4) Each annual risk capital surcharge shall be in an amount
9 that, in the board's determination, is equal to the authority's
10 increased cost of providing capacity to insure that insurer's excess
11 earthquake insurance risk. The authority shall cause to be sent to
12 each such insurer a notice of that insurer's annual risk capital
13 surcharge.

14 (5) Full payment of a noticed risk capital surcharge shall be
15 due within 30 days and shall be overdue after 30 days. Penalties
16 and interest shall be assessed for late payments in the same manner
17 as provided for late payments of the insurer gross premium tax
18 provided for in Section 12258 of the Revenue and Taxation Code.
19 The board may waive the penalties and interest for good cause
20 shown.

21 ~~(d)~~

22 (e) Associate participating insurers shall place all new policies
23 of residential earthquake insurance, when writing new policies of
24 residential property insurance, into the authority. Insurers placing
25 policies with the authority under this section shall be subject to
26 the assessments provided for in Sections 10089.23~~and~~, 10089.30,
27 ~~and~~ 10089.31. Notwithstanding subdivision (m) of Section
28 10089.5, "residential earthquake insurance market share" for
29 purposes of any assessments pursuant to Sections 10089.23~~and~~,
30 10089.30, ~~and~~ 10089.31 levied on an associate participating insurer
31 shall mean an individual associate participating insurer's total
32 direct premium received for residential earthquake policies written
33 or renewed by the authority for which the insurer has written or
34 renewed an underlying policy of residential property insurance,
35 divided by the total gross premiums received by all admitted
36 insurers and the authority for their basic residential earthquake
37 insurance in California.

38 ~~(e)~~

39 (f) (1) An associate participating insurer shall not cancel or
40 refuse to renew a residential property insurance policy existing on

1 the date it elected to become an associate participating insurer after
2 an offer of earthquake coverage is accepted solely because the
3 insured has accepted that offer of earthquake coverage.

4 (2) An associate participating insurer shall maintain in force
5 any policy of residential property insurance existing on the date it
6 elected to become an associate participating insurer after an offer
7 of earthquake insurance has been accepted, unless the policy is
8 properly canceled pursuant to Section 676 or the associate
9 participating insurer has grounds for nonrenewal pursuant to
10 subdivision ~~(f)~~ (g).

11 ~~(f)~~
12 (g) An associate participating insurer may refuse to renew a
13 policy of residential property insurance after an offer of earthquake
14 coverage has been accepted if one of the following exceptions
15 applies:

- 16 (1) The policy is terminated by the named insured.
- 17 (2) The policy is refused renewal on the basis of sound
18 underwriting principles that relate to the coverages provided by
19 the underlying policy of residential property insurance and that
20 are consistent with the approved rating plan and related documents
21 filed with the department as required by existing law.
- 22 (3) The commissioner finds that the exposure to potential losses
23 will threaten the solvency of the associate participating insurer or
24 place the associate participating insurer in a hazardous condition.
25 “Hazardous condition” has the same meaning as in Section 1065.1
26 and includes, but is not limited to, a condition in which an associate
27 participating insurer makes claims payments for losses resulting
28 from an earthquake that occurred within the preceding two years
29 and that required a reduction in policyholder surplus of at least 25
30 percent for payment of those claims.
- 31 (4) There is cancellation under Section 676.
- 32 (5) The associate participating insurer has lost or experienced
33 a substantial reduction in the availability or scope of reinsurance
34 coverage or a substantial increase in the premium charged for
35 reinsurance coverage for its residential property insurance policies,
36 and the commissioner has approved a plan for the nonrenewals
37 that is fair and equitable, and that is responsive to the changes in
38 the associate participating insurer’s reinsurance position.
- 39 (6) The named insured is insured based upon membership in a
40 motor club, as defined in Section 12142, and the membership in

1 that organization is terminated as provided in paragraph (2) of
2 subdivision (c) of Section 1861.03.

3 ~~(g)~~

4 (h) For associate participating insurers, underwriting standards
5 applicable to residential property insurance shall not be applied in
6 an unfairly discriminatory fashion against any person who accepts
7 or elects to continue earthquake coverage.

8 ~~(h)~~

9 (i) Associate participating insurers shall be subject to the
10 following requirements:

11 (1) Associate participating insurers shall conform to all
12 provisions of the authority's plan of operation applicable to
13 participating insurers.

14 (2) No property that has previously been covered by a policy
15 of residential earthquake insurance written by the associate
16 participating insurer or associate participating insurer group, absent
17 at least one full policy year with an insurer not affiliated with the
18 associate participating insurer or its group, may be placed into the
19 authority by an associate participating insurer.

20 (3) Any associate participating insurer or associate participating
21 insurer group defined in paragraph (2) of subdivision (b) that has
22 failed to maintain or exceed the number of policies of residential
23 property insurance in force on January 1, 1996, may become an
24 associate participating insurer by contributing additional capital
25 into the authority at a rate to be established by the board, which
26 shall be a per policy rate comparable to the average cost per policy
27 paid by a participating insurer that joins the authority pursuant to
28 Section 10089.15.

29 ~~(i)~~

30 (j) Any associate participating insurer shall be required to
31 establish procedures to verify compliance with this section. The
32 procedures shall require verification that each basic residential
33 earthquake policy written by the authority complies with paragraph
34 (2) of subdivision ~~(h)~~ (i).

35 ~~(j)~~

36 (k) Any violation of this section may be enforced as a violation
37 of the Unfair Trade Practices Act (Article 6.5 (commencing with
38 Section 790) of Chapter 1 of Part 2 of Division 1). Each policy of
39 basic residential earthquake insurance written in the authority by
40 an associate participating insurer in violation of this section shall

1 be deemed to be a separate violation of the Unfair Trade Practices
 2 Act.

3 ~~(k)~~

4 (l) For purposes of this section, no insurer or associate
 5 participating insurer may participate in the authority unless all
 6 affiliated insurers participate in the authority.

7 ~~(t)~~

8 (m) Policies of basic residential earthquake insurance written
 9 by associate participating insurers shall be subject to assessment
 10 by the California Insurance Guaranty Association and
 11 shall be covered to the extent provided in Article 14.2
 12 (commencing with Section 1063) of Chapter 1 of Part 2 of Division
 13 1. Except as provided in Section 10089.34, insurance policies
 14 written by participating insurers that are not associate participating
 15 insurers shall not be subject to assessment by the California
 16 Insurance Guaranty Association if the assessment is
 17 imposed to pay claims covered by policies of basic residential
 18 earthquake insurance written by an associate participating insurer.

19 SEC. 5. Section 10089.23 of the Insurance Code is amended
 20 to read:

21 10089.23. (a) (1) If at any time following the payment of
 22 earthquake ~~losses claims and claim expenses~~ the authority's
 23 available capital is reduced to less than three hundred fifty million
 24 dollars (\$350,000,000), or if at any time the authority's available
 25 capital is insufficient to pay benefits and continue operations, the
 26 authority shall have the power to assess participating insurance
 27 companies subject to the maximum limits as set forth in this section
 28 and Section 10089.30. The assessment shall be limited to the
 29 amount necessary to pay the outstanding or expected claims *and*
 30 *claim expenses* of the authority and to return the authority's
 31 available capital to three hundred fifty million dollars
 32 (\$350,000,000), as determined by the board, subject to approval
 33 by the commissioner.

34 (2) Each participating insurer's assessment shall be determined
 35 by multiplying ~~its residential earthquake insurance market share~~
 36 *the percentage share of the authority's total gross written premium*
 37 *that is attributable to that participating insurer's sales of authority*
 38 *insurance policies*, as of April 30 of the immediately preceding
 39 year or the most recent year for which premium data not more than

1 one year old are available, by the amount of the total assessment
2 sought by the authority.

3 (3) ~~Maximum~~ *The maximum* permissible insurer assessments
4 pursuant to this section ~~and, the maximum permissible insurer~~
5 *assessments pursuant to Section 10089.30; and Section 10089.31,*
6 *the maximum permissible earthquake policyholder assessments*
7 pursuant to Section 10089.29, and *the maximum permissible bond*
8 *issuances or other debt financing issued or secured by the Treasurer*
9 pursuant to Section 10089.29 shall be reduced uniformly by
10 multiplication of the maximum assessments and other amounts
11 provided in those sections by the percentage of the total residential
12 property insurance market share participation attained by the
13 authority ~~upon its commencement, as described in Section~~
14 ~~10089.15.~~ The total amount of all assessments levied on
15 participating insurance companies by the authority pursuant to this
16 section shall not exceed three billion dollars (\$3,000,000,000),
17 regardless of the frequency or severity of earthquake losses at any
18 and all times subsequent to the creation of the authority. Once a
19 participating insurer has paid, *pursuant to this section,* amounts
20 equal to ~~its residential earthquake insurance market share the~~
21 *percentage share of the authority's total gross written premium*
22 *attributable to that participating insurer's sales of authority*
23 *insurance policies, as of April 30 of the immediately preceding*
24 *year or the most recent full year for which premium data not more*
25 *than one year old are available,* multiplied by three billion dollars
26 (\$3,000,000,000) ~~pursuant to this section~~ *reduced as provided in*
27 *this paragraph from the maximum assessment,* the authority's
28 power to assess that insurer under this section shall cease and the
29 authority shall be prohibited from levying additional assessments
30 on that insurer pursuant to this section.

31 (4) Beginning December 31 of the first year of operations, and
32 each December 31 thereafter, the board shall adjust the maximum
33 permissible insurer assessments pursuant to this section ~~and Section~~
34 *the maximum permissible insurer assessments pursuant to Sections*
35 *10089.30 and 10089.31,* the maximum permissible authority
36 policyholder assessment pursuant to Section 10089.29, and the
37 maximum permissible bond issuances or other debt financing
38 issued or secured by the Treasurer pursuant to Section 10089.29
39 to reflect the market share of new insurers entering into the
40 authority as authorized by Sections 10089.15 and 10089.16 and

1 participating insurers withdrawing from the authority as authorized
2 by Section 10089.19. The adjustments shall be made in the same
3 manner as authorized by paragraph (3).

4 (b) In the case of any insurer assessment, the authority shall
5 cause to be sent to each participating insurer a notice of that
6 insurer's assessment, and full payment shall be due within 30 days
7 and shall be overdue after 30 days. Penalties and interest shall be
8 assessed for late payments in the same manner as provided for late
9 payments of the insurer gross premium tax pursuant to Section
10 12258 of the Revenue and Taxation Code. The board may waive
11 the penalties and interest for good cause shown. The board shall
12 make every effort to assess insurers only for funds reasonably
13 anticipated to be necessary for claims payments *and claim expenses*
14 and to return the authority's available capital to three hundred fifty
15 million dollars (\$350,000,000).

16 (c) Notwithstanding the other provisions of this section, the
17 aggregate assessment *the authority is authorized by this section*
18 *to impose* shall be reduced to zero ~~12 years following the~~
19 ~~commencement of authority operations on December 1, 2008, with~~
20 *respect to earthquake events that commence on or after December*
21 *1, 2008.*

22 (d) The authority shall not assess a participating insurer under
23 this section based on any insurance business that is attributable to
24 the insurer selling ~~additional~~ *the insurer's* insurance products that
25 supplement or augment the basic residential earthquake insurance
26 provided by the authority.

27 *SEC. 6. Section 10089.30 of the Insurance Code is amended*
28 *to read:*

29 10089.30. If ~~benefits~~ *claims and claim expenses* paid by the
30 authority due to earthquake events exhaust the total of (a) the
31 authority's available capital, (b) the maximum amount of all insurer
32 capital contributions and assessments pursuant to Sections
33 10089.15 and 10089.23, (c) all reinsurance actually available and
34 under contract to the authority, (d) the maximum amount of all
35 authority policyholder assessments pursuant to Section 10089.29,
36 and (e) all capital committed and actually available from the private
37 capital markets, the board, subject to the approval of the
38 commissioner, shall have the power to assess participating
39 insurance companies subject to the maximum limits in this section.
40 *Each participating insurer's assessment shall be determined by*

1 multiplying the percentage share of the authority's total gross
2 written premium attributable to that participating insurer's sales
3 of authority insurance policies, as of April 30 of the immediately
4 preceding year or the most recent year for which premium data
5 not more than one year old are available, by the amount of the
6 total assessment sought by the authority. The total amount of all
7 assessments levied against participating insurance companies by
8 the authority pursuant to this section shall not exceed two billion
9 dollars (\$2,000,000,000), regardless of the frequency or severity
10 of earthquake losses at any and all times subsequent to the creation
11 of the authority. Once a participating insurer has paid, pursuant
12 to this section amounts equal to its residential earthquake insurance
13 market share percentage share of the authority's total gross written
14 premium, multiplied by two billion dollars (\$2,000,000,000)
15 pursuant to this section reduced from the maximum assessment as
16 provided in paragraph (3) of subdivision (a) of Section 10089.23,
17 the authority's power to assess that insurer under this section shall
18 cease and the authority shall be prohibited from levying additional
19 assessments on that insurer pursuant to this section. ~~The board~~
20 ~~shall make assessments pursuant to this section by the same method~~
21 ~~set forth in paragraph (2) of subdivision (a) of Section 10089.23,~~
22 ~~in proportion to each participating insurer's residential earthquake~~
23 ~~insurance market share.~~ The assessment shall be limited to the
24 amount necessary to pay the expected claims and claim expenses
25 of the authority and return the authority's available capital to three
26 hundred fifty million dollars (\$350,000,000), as determined by the
27 board, subject to approval by the commissioner.

28 SEC. 7. Section 10089.31 is added to the Insurance Code, to
29 read:

30 10089.31. If claims and claim expenses paid by the authority
31 due to earthquake events that commence on or after December 1,
32 2008, exhaust the total of all (a) the authority's available capital,
33 (b) the maximum amount of all insurer capital contributions and
34 assessments pursuant to Sections 10089.15, 10089.23, and
35 10089.30, (c) all reinsurance actually available and under contract
36 to the authority, (d) the maximum amount of all authority
37 policyholder assessments pursuant to Section 10089.29, and (e)
38 all capital committed and actually available from the private
39 capital markets, the board, beginning December 1, 2008, for
40 earthquake events commencing on or after December 1, 2008,

1 shall have the power to assess participating insurance companies
2 subject to the maximum limits in this section. Each participating
3 insurer's assessment shall be determined by multiplying the
4 percentage share of the authority's total gross written premium
5 attributable to that participating insurer's sales of authority
6 insurance policies as of April 30 of the immediately preceding
7 year, or the most recent year for which premium data not more
8 than one year old are available, by the amount of the total
9 assessment sought by the authority. The total amount of all
10 assessments levied against participating insurance companies by
11 the authority pursuant to this section shall not exceed one billion
12 seven hundred eighty million dollars (\$1,780,000,000), regardless
13 of the frequency or severity of earthquake losses at any and all
14 times subsequent to the creation of the authority. Once a
15 participating insurer has paid pursuant to this section amounts
16 equal to its percentage share of the authority's total gross written
17 premium, multiplied by one billion seven hundred eighty million
18 dollars (\$1,780,000,000) reduced as provided in paragraph (3)
19 of subdivision (a) of Section 10089.23 from the maximum
20 assessment, which is to be reduced periodically pursuant to
21 subdivision (b) of Section 10089.33, or upon the earlier occurrence
22 of the effective date stated in paragraph (6) of subdivision (b) of
23 Section 10089.33, the authority's power to assess that insurer
24 under this section shall cease and the authority shall be prohibited
25 from levying additional assessments on that insurer pursuant to
26 this section. The assessment shall be limited to the amount
27 necessary to pay the expected claims and claim expenses of the
28 authority and return the authority's available capital to three
29 hundred fifty million dollars (\$350,000,000), as determined by the
30 board.

31 SEC. 8. Section 10089.33 of the Insurance Code is amended
32 to read:

33 10089.33. (a) If the average daily balance of the authority's
34 available capital exceeds six billion dollars (\$6,000,000,000) for
35 the last 180 days of any calendar year, the board shall relieve all
36 participating insurers of their obligation to pay additional
37 earthquake loss assessments under ~~this chapter~~ Section 10089.30,
38 by an aggregate amount equal to the amount of available capital
39 in excess of six billion dollars (\$6,000,000,000), ~~as provided in~~
40 ~~this subdivision~~. Each December 31 thereafter, the board shall

1 further reduce the aggregate assessment authorized under ~~this~~
2 ~~section~~ *Section 10089.30* by the net increase in available capital
3 in excess of the previous levels of available capital at which a
4 reduction in the aggregate *Section 10089.30* assessment was made.
5 No reduction pursuant to this subdivision shall exceed 15 percent
6 of the original aggregate *Section 10089.30* assessment in any year
7 of operation of the authority. ~~In no event shall any reduction~~
8 ~~previously authorized by the board be reinstated.~~

9 *(b) Commencing April 1, 2010, and on each April 1 thereafter,*
10 *but only in years that such relief is authorized by this subdivision,*
11 *the board shall reduce the combined assessment obligation of all*
12 *participating insurers under Section 10089.31 by 5 percent of the*
13 *maximum aggregate Section 10089.31 assessment authorized as*
14 *of January 1, 2009, as provided in this subdivision. Each year of*
15 *Section 10089.31 assessment reduction is referred to in this*
16 *subdivision as an “assessment-reduction year.” Assessment*
17 *reductions shall take place as follows:*

18 *(1) Unless the authority has made payments and established*
19 *appropriate reserves for claims and claim expenses, including for*
20 *losses incurred but not reported, that in the aggregate exceeded*
21 *five hundred million dollars (\$500,000,000) on account of a single*
22 *earthquake event commencing in 2009, as certified by the*
23 *authority’s consulting actuary and accepted by the board, and the*
24 *authority’s available capital as of January 1, 2010, did not exceed*
25 *the authority’s available capital as of December 1, 2008, then*
26 *effective April 1, 2010, the maximum aggregate Section 10089.31*
27 *assessment shall be reduced by an amount equal to the sum of an*
28 *amount equal to 5 percent of the initial maximum aggregate Section*
29 *10089.31 assessment amount and an amount equal to the retained*
30 *earnings differential, and 2009 shall be an assessment-reduction*
31 *year.*

32 *(2) Unless the authority has made payments and established*
33 *appropriate reserves for claims and claim expenses, including for*
34 *losses incurred but not reported, that in the aggregate exceeded*
35 *five hundred million dollars (\$500,000,000) on account of a single*
36 *earthquake event commencing in 2010, as certified by the*
37 *authority’s consulting actuary and accepted by the board and the*
38 *authority’s available capital as of January 1, 2011, did not exceed*
39 *the authority’s available capital as of December 1, 2008, then*
40 *effective April 1, 2011, the maximum aggregate Section 10089.31*

1 assessment shall be reduced by an amount equal to the sum of an
2 amount equal to 5 percent of the initial maximum aggregate Section
3 10089.31 assessment amount and an amount equal to the retained
4 earnings differential, and 2010 shall be an assessment-reduction
5 year.

6 (3) Beginning in 2012 and each year thereafter, unless the
7 authority made payments and established appropriate reserves
8 for claims and claim expenses, including for losses incurred but
9 not reported, that in the aggregate exceeded five hundred million
10 dollars (\$500,000,000) on account of all earthquake events
11 commencing in the preceding year, as certified by the authority's
12 consulting actuary and accepted by the board and the authority's
13 available capital as of January 1 of that year did not exceed the
14 authority's available capital as of December 1, 2008, then effective
15 April 1 of that year, the maximum aggregate Section 10089.31
16 assessment shall be reduced by an amount equal to the sum of an
17 amount equal to 5 percent of the initial maximum aggregate Section
18 10089.31 assessment amount and an amount equal to the retained
19 earnings differential, and the preceding year shall be an
20 assessment-reduction year.

21 (4) If through operation of this subdivision a year is not deemed
22 an assessment-reduction year, no subsequent year shall be an
23 assessment reduction year unless and until either the authority's
24 available capital as of a subsequent April 1 exceeds the authority's
25 available capital as of December 1, 2008; or the limitation
26 established in paragraph (5), below, occurs.

27 (5) No more than two annual periods may be deemed not to
28 constitute assessment-reduction years.

29 (6) Effective on the day after the last day of the tenth
30 assessment-reduction year authorized by the board, the remaining
31 maximum aggregate Section 10089.31 assessment shall be reduced
32 to zero.

33 (7) As used in this section, "retained earnings differential"
34 means the positive dollar-amount difference between: (A) the
35 authority's positive one-year retained-earnings growth for the
36 preceding calendar year, minus (B) the authority's capacity growth
37 for the preceding calendar year, both calculated as of December
38 31. As used in this paragraph, "one-year retained-earnings
39 growth" means the difference between the authority's cumulative
40 retained earnings at December 31 of the preceding calendar year

1 and the authority's cumulative retained earnings at December 31
2 of the year before the preceding calendar year, calculated in
3 accordance with generally accepted accounting principles as of
4 the preceding December 31. As used in this paragraph, the term
5 "capacity growth" is the one-year amount of purchased risk
6 transfer, such as reinsurance, or borrowed risk transfer such as
7 bonds, put in place in the authority's financial structure to account
8 for the authority's aggregate exposure growth over the preceding
9 year ending December 31. The board shall be authorized and
10 entitled, in its sole discretion, to make all final decisions regarding
11 the authority's level of financial strength and security and the
12 authority's choice and use of financing and risk-transfer
13 mechanisms. As used in this paragraph, the term "aggregate
14 exposure" means the aggregate of the limits of liability under all
15 coverages of all earthquake insurance policies issued by the
16 authority.

17 (c) In no event shall the board reinstate, in whole or in part,
18 any assessment obligation it has reduced pursuant to this section.

19 SEC. 9. The provisions of this act shall become operative on
20 July 1, 2008.

21 SECTION 1. (a) The Legislature finds and declares as follows:

22 (1) ~~The state budget has experienced several years of deficits,~~
23 ~~reflecting a structural deficit of at least \$5 billion.~~

24 (2) ~~Given the state's continuing funding crisis, there is a need~~
25 ~~to conduct a comprehensive analysis of fees, including regulatory~~
26 ~~fees, identified in Schedule 8 of the Governor's Budget Summary~~
27 ~~2007-08 that are remitted to the General Fund to determine whether~~
28 ~~state departments and agencies are properly collecting the amount~~
29 ~~required or have adjusted their costs to reflect actual expenses,~~
30 ~~and to identify needed changes to comply with relevant statutory~~
31 ~~requirements.~~

32 (b) ~~This act shall be known and may be cited as the State Special~~
33 ~~Fund Fiscal Review Act of 2008.~~

34 SEC. 2. (a) (1) ~~No later than January 30, 2008, the Department~~
35 ~~of Finance shall provide the Legislative Analyst with a list of the~~
36 ~~fees, including regulatory fees, identified in Schedule 8 of the~~
37 ~~Governor's Budget Summary 2007-08 that are remitted to the~~
38 ~~General Fund, and of each state agency and department that collects~~
39 ~~these fees.~~

1 ~~(2) The Legislative Analyst shall provide the head of each state~~
2 ~~agency and department identified as collecting any fees with a~~
3 ~~copy of the list created under paragraph (1).~~

4 ~~(b) Each state agency or department identified as collecting any~~
5 ~~fees in the list created under paragraph (1) of subdivision (a) shall~~
6 ~~provide assistance to the Legislative Analyst in reviewing whether~~
7 ~~the fees accurately or inaccurately reflect the full costs associated~~
8 ~~with the service or program for which it charges a fee.~~

9 ~~(c) The Legislative Analyst shall review the fees included in~~
10 ~~the list created under paragraph (1) of subdivision (a) to determine~~
11 ~~whether the fees charged for each service or program cover, or~~
12 ~~more than cover, the cost to the state for providing each service~~
13 ~~or program. The Legislative Analyst shall include its findings in~~
14 ~~its analysis of the 2009–10 Budget Bill.~~