# SENATE BILL No. 1258

**Introduced by Senator Kehoe**

February 19, 2010

An act to add Sections 8587.3 and 8587.4 to the Government Code, and to add Section 16031 to the Insurance Code, relating to emergency services, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1258, as introduced, Kehoe. Emergency services: property insurance surcharge.

(1) Existing law establishes the California Emergency Management Agency, which is responsible for the state's emergency and disaster response services for certain manmade disasters and emergencies, including responsibility for activities necessary to prevent, respond to, recover from, and mitigate the effects of emergencies and disasters to people and property.

This bill would establish the Local Government Mutual Aid Enhancement Program in the agency, and would require funds, as specified, deposited in the Emergency Response Fund, to be allocated to the program upon appropriation by the Legislature. This bill would require the Secretary of California Emergency Management to allocate funds to specified entities, for the purpose of enhancing or sustaining fire and rescue disaster mutual aid capacity to combat the effect of all hazard disasters, as provided. This bill would also require the secretary, in consultation with specified entities, to develop a strategy, as provided, for the enhancement of mutual aid, and would require each fire and rescue operational area to submit a 3-year strategy for the enhancement of fire and rescue disaster mutual aid, as specified, to the secretary.

(2) Existing law provides that the Insurance Commissioner, in cooperation with insurers, the Office of Emergency Services, and other

emergency service agencies, shall establish procedures for the coordination of efforts between insurers and their representatives and those of emergency response agencies.

This bill would create the Emergency Response Fund in the State Treasury. Insureds would be required to pay a special purpose surcharge on commercial and residential fire and multiperil insurance policies, including policies with combined property and liability coverage, issued or renewed on or after July 1, 2010, as specified. Funds from this surcharge would be available for appropriation by the Legislature to fund emergency activities, as defined, of the California Emergency Management Agency, the Department of Forestry and Fire Protection, and the Military Department. Any balance remaining in the fund at the end of a fiscal year would be retained and carried forward to the next fiscal year. This bill would require insurers collecting the surcharge to make a specified disclosure on the policy declarations page, billing statement, or a separate document accompanying the declarations page or billing statement. This bill would also require the Department of Insurance, the Department of Forestry and Fire Protection, and other state agencies and departments to cooperate and provide information to the California Emergency Management Agency as necessary to implement this act.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 8587.3 is added to the Government Code, to read:

8587.3. (a) There is established in the California Emergency Management Agency the Local Government Mutual Aid Enhancement Program.

(b) (1) On July 1, 2011, and each year thereafter, upon appropriation by the Legislature, the program shall be allocated 31.3 percent of the funds deposited in the Emergency Response Fund created pursuant to Section 16031 of the Insurance Code, for the purposes specified in this section.

(2) The Secretary of California Emergency Management shall allocate the funds specified in paragraph (1) to entities within an

operational area as specified in Section 8605, and that are participants in the Master Mutual Aid Agreement as defined by Section 8561. The funds shall be allocated to entities based upon both of the following:

(A) A pro rata share of fees collected for the Emergency Response Fund created pursuant to Section 16031 of the Insurance Code within that operational area.

(B) The population served by each local fire agency or special district that provides fire protection within that operational area.

(3) On an annual basis, any funds that are not allocated and are not scheduled to be allocated from the Emergency Response Fund created pursuant to Section 16031 of the Insurance Code for the support of state expenditures, shall, upon appropriation by the Legislature, be allocated to the program for the purposes specified in this section, and shall be allocated by the secretary pursuant to paragraph (2).

(c) Entities that receive an allocation pursuant to subdivision (b) shall use the funds to enhance or sustain fire and rescue disaster mutual aid capacity to combat the effect of all hazard disasters in any of the following areas:

(1) Disaster response capacity.

(2) Communications interoperability that comply with Section 8592.5.

(3) Household and individual preparedness outreach and education.

(4) Programs to immediately reduce community vulnerability to hazards identified in their approved hazard mitigation plan pursuant to Section 65302.6.

(d) Entities that receive an allocation pursuant to subdivision (b) may use the funds to support personnel, training, exercises, equipment, construction, and other activities that enhance or sustain disaster mutual aid capacity, or reduce community vulnerability to disasters.

(e) For purposes of promoting the implementation and functioning of the program, upon appropriation by the Legislature, the secretary may allocate funds to reimburse agencies and special districts that provide staff support for operational area or regional fire and rescue coordination.

(f) Funds allocated to entities pursuant to this section shall not be used to supplant any existing funds allocated to that entity by the California Emergency Management Agency for fire and rescue services.

SEC. 2. Section 8587.4 is added to the Government Code, to read:

8587.4. (a) Beginning on July 1, 2011, and on July 1 every three years thereafter, the Secretary of California Emergency Management, in consultation with the Department of Forestry and Fire Protection, FIRESCOPE, and any other necessary groups representing firefighters, fire chiefs, and special fire districts throughout the state, shall develop a strategy for enhancement of mutual aid. The strategy shall do all of the following:

(1) Identify eligible purchases, activities, and programs that promote the delivery of mutual aid.

(2) Set goals for mutual aid enhancement.

(3) Identify criteria for allocations of resources for mutual aid.

(4) Prescribe the fiscal and administrative oversight of the Local Government Mutual Aid Enhancement Program established pursuant to Section 8587.3.

(b) On a date identified by the Secretary of California Emergency Management, each fire and rescue operational area shall submit a three-year strategy, to the secretary, for the enhancement of fire and rescue disaster mutual aid. The plan shall satisfy the requirements specified in subdivision (a) and shall specify how fire entities within the operational area will use the funds over the next three years.

SEC. 3. Section 16031 is added to the Insurance Code, to read:

16031. (a) The Emergency Response Fund is hereby created in the State Treasury. Funds received by the California Emergency Management Agency pursuant to this section shall be deposited into this fund. Funds deposited into this fund may be appropriated by the Legislature for the purposes of this section to fund the emergency activities of the California Emergency Management Agency, the Department of Forestry and Fire Protection, and the Military Department.

(b) Insureds shall pay a special purpose surcharge on each commercial and residential fire and multiperil insurance policy issued or renewed on or after July 1, 2010, equivalent to 4.8 percent of the premium written on residential fire and multiperil insurance or the property exposure for commercial policies in California. The surcharge shall only be applied to new business and renewal transactions. No adjustment shall be made for midterm increases or decreases in exposure or coverage. The amount of the surcharge shall be calculated to the nearest dollar. Notwithstanding any other provision of law, failure to collect the surcharge from insureds prior to January 1, 2011, shall not result in a penalty, fine, or other liability.

(c) Every admitted insurer in this state shall collect the emergency response surcharge specified in subdivision (b), which shall be separately identified on each policy, with respect to residential fire and multiperil insurance and the property portion of commercial policies.

(d) For those policies on which the surplus line tax is paid by a surplus line broker pursuant to Sections 1775.1 to 1775.5, inclusive, the surplus line broker shall collect the emergency response surcharge with respect to the property portion of any homeowners policy, all risk insurance policy, or named peril insurance policy that specifically includes fire coverage placed with a nonadmitted insurer. Where those policies cover multistate risks, the surcharge shall be applied pro rata to that portion of the premium allocated to risks in this state based on the percentage of the property risk located in California.

(e) (1) Funds received as a result of the surcharge imposed on insureds as a percentage of premiums written on residential fire and multiperil insurance and property exposures for commercial insurance policies shall be remitted by the admitted insurers to the California Emergency Management Agency, or other state agency designated to collect the surcharge on behalf of the California Emergency Management Agency, within 45 days following the end of each calendar quarter. The premiums written by admitted insurers for property exposures shall be as stated on lines 1, 4, and 5.1 of the annual statement filed by each insurer pursuant to Section 900.

(2) Funds received as a result of the surcharge imposed on insureds as a percentage of premiums written on property exposures for both commercial and residential insurance policies placed with a nonadmitted insurer shall be remitted by the surplus line brokers to the Surplus Line Association in the same manner and form as the stamping fee paid on the policies placed with a nonadmitted insurer by a surplus line broker. The Surplus Line Association shall remit the funds received from surplus line brokers to the

California Emergency Management Agency, or its designee, within 45 days following the end of each calendar quarter.

(f) None of the special purpose surcharges shall be considered premiums for any purpose, including the computation of gross premium tax or agent's commission. The full amount of the surcharge is due at inception or renewal of the insurance policy, even if the premium is paid in installments. The amount of each special purpose surcharge shall be separately stated on either a billing or policy declaration sent to an insured. Notwithstanding this subdivision, an admitted insurer or surplus line broker may omit collecting of the surcharge from its insured if the expense of collecting the surcharge would exceed the amount of the surcharge and instead remit the amount of omitted surcharges to the California Emergency Management Agency or its designee, provided that nothing in this subdivision shall relieve the admitted insurer or surplus line broker of its obligation to recoup the amount of the surcharge otherwise collectible.

(g) (1) For commercial policies with combined property and liability coverage, for which the actual property coverage cannot be determined, the admitted insurer shall calculate, and the insured shall remit, the surcharge based upon the ratio of 50 percent attributable to the property coverage. Within 45 days following submission of its annual statement to the National Association of Insurance Commissioners, an admitted insurer shall reconcile its lines 1, 4, and 5.1 surcharge remittances based upon its annual statement.

(2) For policies for which a surplus line tax is paid by a surplus line broker pursuant to Sections 1775.1 to 1775.5, inclusive, for risks with combined property and liability coverage, the surplus line broker shall calculate and the insured shall remit the surcharge based on a ratio of 50 percent attributable to the property coverage.

(h) Each admitted insurer and surplus line broker collecting the surcharge shall be required to disclose the surcharge as the "California Emergency Response Safety Surcharge" on the declarations page, the billing statement, or a separate document accompanying the declarations page or billing statement. If an insurer chooses to provide supplemental materials to policyholders describing the surcharge, the language shall comply substantially with the following:

"The State of California has imposed an Emergency Response Safety Surcharge on all residential and commercial insurance policies issued or renewed on or after July 1, 2010. The purpose of this surcharge is to ensure adequate funding of emergency response services throughout California. We are required by law to collect the surcharge from our policyholders. The surcharge, which is separately stated on your declarations page or billing statement, is calculated at 4.8 percent of the applicable policy premium."

(i) Failure of an insured to pay the surcharge shall be treated as a failure to pay the premium. Failure to pay the surcharge shall result in the cancellation of the policy.

(j) If a policy is canceled before the end of the term for which it was issued or the end of the period for which a premium has been paid, the surcharge amount shall not be refunded. However, any assessable policy of insurance that is canceled as of the effective date of the policy, if all of the premium is returned to the insured, and no coverage was ever provided to the insured, shall not be subject to a surcharge. All refunds of previously collected surcharges on those canceled policies shall be applied to reduce the surcharges reported in the same calendar quarter in which the refunded surcharges were made.

(k) Funds in the Emergency Response Fund shall be distributed, upon appropriation, to the California Emergency Management Agency, the Department of Forestry and Fire Protection, and the Military Department for the support of the emergency response activities of those departments, and to the California Emergency Management Agency or its designee for the actual administrative costs incurred in collecting the surcharge pursuant to this section, and for the maintenance of an adequate reserve.

(*l*) Any balance remaining in the Emergency Response Fund at the end of each fiscal year shall be retained in the fund and carried forward to the next fiscal year.

(m) The Department of Insurance, the Department of Forestry and Fire Protection, and other state agencies and departments shall cooperate and provide information to the California Emergency Management Agency as necessary to implement this program.

(n) For the purposes of this section, the following definitions apply:

(1) "Admitted insurer" means an insurer that has secured a certificate of authority from the commissioner as required by Section 700 and is subject to the tax set forth in Section 28 of Article XIII of the California Constitution.

(2) "Hazard" means the potential impact to people or property as a result of seismic activity, flood, or wild land fire.

(3) "Surplus line broker" means a person licensed pursuant to Section 1765.2.

(o) For purposes of this section, "FAIR Plan" established pursuant to Chapter 9 (commencing with Section 10090) of Part 1 of Division 2, is an admitted insurer.

SEC. 4. 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 Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make necessary statutory changes to improve the state's ability to respond to potentially devastating and deadly emergencies at the earliest time possible, it is necessary that this act take effect immediately.

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