

## Attachment I

### 2009-10 Emergency Response Initiative Trailer Bill Language

SECTION 1. 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 January 1, 2010, equivalent to 2.8 percent of the premium written on property exposure for commercial or residential insurance properties in California. The surcharge shall only be applied to new business and renewal transactions. No adjustment shall be made for mid-term 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 April 1, 2010, shall not result in a penalty, fine, or other liability.

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

(d) For those policies for which the surplus line tax is paid by a surplus line broker pursuant to Sections 1775.1-1775.5, 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 these 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 property exposures for both commercial and residential 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 at 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 section 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 one of the following: (1) the declarations page (2) the billing statement, or (3) 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 substantially comply 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 January 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 2.8 percent of the total policy premium relating to property insurance."

(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 refund of the surcharge amount submitted to the California Emergency Management Agency or its designee shall not be remitted to the insured. 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, 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 wildland 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. 2. 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 the necessary statutory changes to improve the state's ability to respond to potentially devastating and deadly emergencies at the earliest time possible and to implement the 2009 Budget Act, it is necessary that this act take effect immediately.