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INSURANCE CODE - INS

DIVISION 2. CLASSES OF INSURANCE [1880 - 12880.8] (*Division 2 enacted by Stats. 1935, Ch. 145.*)

PART 1. FIRE AND MARINE INSURANCE [1880 - 10108.1] (*Part 1 enacted by Stats. 1935, Ch. 145.*)

CHAPTER 8.6. California Earthquake Authority [10089.5 - 10089.55] (*Chapter 8.6 added by Stats. 1995, Ch. 944, Sec. 2.*)

10089.5. As used in this chapter:

(a) "Authority" means the California Earthquake Authority.

(b) "Available capital" means the sum of all moneys and invested assets actually held in the California Earthquake Authority Fund, less loss reserves and loss adjustment expense reserves under all of the authority's policies of residential earthquake insurance, and less the unearned premium reserve. "Available capital" includes all interest or other income from the investment of money held in the California Earthquake Authority Fund. "Available capital" does not include unearned premium, the proceeds of contracts of reinsurance procured by or in the name of the authority pursuant to subdivision (a) of Section 10089.10, any funds realized on capital market contracts authorized by subdivision (b) of Section 10089.10, or the proceeds of bonds issued by or in the name of the authority.

(c) "Basic residential earthquake insurance" means that policy of residential earthquake insurance described in Section 10089 except as follows:

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

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

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

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

(d) "Board" means the governing board of the authority.

(e) "Bonds" means bonds, notes, commercial paper, variable rate and variable maturity securities, and any other evidence of indebtedness.

(f) "Capital market contract" means an agreement between the authority and a purchaser pursuant to which the purchaser agrees to purchase bonds of the authority.

(g) "Nonparticipating insurer" means an insurer that elects not to transfer or place any residential earthquake policies in the authority.

(h) "Panel" means the advisory panel of the authority.

(i) "Participating insurer" means an insurer that has elected to join the authority.

(j) "Policy of residential property insurance" means those policies described in Section 10087.

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

(l) "Qualifying residential property" includes all those residential dwellings set forth in Section 10087.

(m) "Residential earthquake insurance market share" means an individual insurer's total direct premium received for (1) residential earthquake policies and endorsements written or renewed by the insurer in California and (2) residential earthquake policies written or renewed by the authority for which the insurer has written or renewed an underlying policy of residential property insurance, divided by the total gross premiums received by all admitted insurers and the authority for their basic residential earthquake insurance in California.

(n) "Residential property insurance market share" means an individual insurer's total gross premiums received for residential property insurance policies written or renewed by the insurer, divided by the total gross premiums received by all admitted insurers for residential property insurance in California.

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

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

(Amended by Stats. 2007, Ch. 303, Sec. 1. Effective January 1, 2008. Operative July 1, 2008, by second Sec. 8 of Ch. 303.)

10089.6. (a) (1) There is hereby created the California Earthquake Authority, which shall be administered and governed by the governing board described in Section 10089.7 under the authority of the commissioner and overseen by the California Catastrophe Response Council solely with regard to any administrative or support services the authority may provide to, or for the benefit of, the Wildfire Fund created pursuant to Section 3284 of the Public Utilities Code or the Wildfire Fund Administrator appointed pursuant to Section 8899.72 of the Government Code. All other businesses or activities of the authority unrelated to the Wildfire Fund shall be governed solely by the board. The authority shall have the powers conferred by this chapter. The authority shall be authorized to transact insurance in this state as necessary to sell policies of basic residential earthquake insurance in the manner set forth in Sections 10089.26, 10089.27, and 10089.28. The authority shall have no authority to transact any other type of insurance business.

(2) The authority shall be authorized to exercise the powers of the Wildfire Fund Administrator as provided in Section 3281 of the Public Utilities Code until the appointment of the administrator by the council.

(b) (1) The investments of the authority shall be limited to those securities eligible under Section 16430 of the Government Code.

(2) The rights, obligations, and duties owed by the authority to its insureds, beneficiaries of insureds, and applicants for insurance shall be the same as the rights, obligations, and duties owed by insurers to its insureds, beneficiaries of insureds, and applicants for insurance under common law, regulations, and statutes. The authority shall be liable to its insureds, beneficiaries of insureds, and applicants for insurance as an insurer is liable to its insureds, beneficiaries of insureds, and applicants for insurance under common law, regulations, and statutes.

(c) The operating expenses of the authority shall be capped at not more than 6 percent of the premium income received by the authority. The funds shall be available to pay any advocacy fees awarded in a proceeding under subdivision (c) of Section 10089.11.

(d) For purposes of this section, the term "operating expenses of the authority" excludes solely the following:

(1) The costs of and transaction expenses associated with risk-transfer purchases, including the purchase of reinsurance and with capital-market contracts.

(2) The expense of securing and repaying bonds.

(3) The cost of repayment of bonds guaranteed, insured, or otherwise backed by any department or agency of the United States or of this state, or by any private entity.

(4) Payments to third parties for all of the following services provided to the authority:

(A) Investment.

(B) Loss-modeling.

(C) Legal services.

(5) Costs associated with the authority's efforts to acquaint the public with and market authority products, promote earthquake preparedness, and earthquake-loss mitigation under the authority's duly adopted strategic plan.

(6) Producer compensation.

(7) Participating insurer fees and reimbursement amounts arising under written contracts.

(8) Amounts paid by the authority to support research in seismic science and seismic engineering.

(9) Loans, grants, and expenses to support and maintain the authority's earthquake loss-mitigation goals and programs, whether conducted by the authority alone or in collaboration with or by other persons.

(10) The costs of and loss-adjustment expenses associated with adjusting and paying policyholder claims for earthquake losses that are incurred by the authority under its earthquake insurance policies, including all costs and expenses associated with claim-related litigation, provided that all of those costs and expenses shall be reported to the Legislature in the manner required by subdivision (e) of Section 10089.13.

(11) Any cost incurred to provide administrative services and other support to or for the benefit of the Wildfire Fund created pursuant to Section 3284 of the Public Utilities Code, which cost shall be borne by the Wildfire Fund.

(e) The board may authorize the authority to contract with the Wildfire Fund created under Section 3284 of the Public Utilities Code to provide services and other support as the Wildfire Fund may require.

(Amended by Stats. 2019, Ch. 396, Sec. 10. (AB 1513) Effective January 1, 2020.)

10089.7. (a) The authority shall be governed by a three-member governing board consisting of the Governor, the Treasurer, and the Insurance Commissioner, each of whom may name designees to serve as board members in their place. The Speaker of the Assembly and the Chairperson of the Senate Committee on Rules shall serve as nonvoting, ex officio members of the board, and may name designees to serve in their place.

(b) The board shall be advised by an advisory panel whose members shall be appointed by the Governor, except as provided in this subdivision. The advisory panel shall consist of four members who represent insurance companies that are licensed to transact fire insurance in the state, two of whom shall be appointed by the commissioner, two licensed insurance agents, one of whom shall be appointed by the commissioner, and three members of the public not connected with the insurance industry, at least one of whom shall be a consumer representative. In addition, the Speaker of the Assembly, and the Chairperson of the Senate Committee on Rules may each appoint one member of the public not connected with the insurance industry. Panel members shall serve for four-year terms, which may be staggered for administrative convenience, and panel members may be reappointed. The commissioner shall be a nonvoting, ex officio member of the panel and shall be entitled to attend all panel meetings, either in person or by representative.

(c) The board shall have the power to conduct the affairs of the authority and may perform all acts necessary or convenient in the exercise of that power. Without limitation, the board may: (1) employ or contract with officers and employees to administer the authority; (2) retain outside actuarial, geological, and other professionals; (3) enter into other obligations relating to the operation of the authority; (4) invest the moneys in the California Earthquake Authority Fund; (5) obtain reinsurance and financing for the authority as authorized by this chapter; (6) contract with participating insurers to service the policies of basic residential earthquake insurance issued by the authority; (7) issue bonds payable from and secured by a pledge of the authority of all or any part of the revenues of the authority to finance the activities authorized by this chapter and sell those bonds at public or private sale in the form and on those terms and conditions as the Treasurer shall approve; (8) pledge all or any part of the revenues of the authority to secure bonds and any repayment or reimbursement obligations of the authority to any provider of insurance or a guarantee of liquidity or credit facility entered into to provide for the payment of debt service on any bond of the authority; (9) employ and compensate bond counsel, financial consultants, and other advisers determined necessary by the Treasurer in connection with the issuance and sale of any bonds; (10) issue or obtain from any department or agency of the United States or of this state, or any private company, any insurance or guarantee of liquidity or credit facility determined to be appropriate by the Treasurer to provide for the payment of debt service on any bond of the authority; (11) engage the commissioner to collect revenues of the authority; (12) issue bonds to refund or purchase or otherwise acquire bonds on terms and conditions as the Treasurer shall approve; (13) exercise the powers of the California Catastrophe Response Council created in Section 8899.70 of the Government Code until a majority of the council members are appointed; and (14) perform all acts that relate to the function and purpose of the authority, whether or not specifically designated in this chapter.

(d) The authority shall reimburse board and panel members for their reasonable expenses incurred in attending meetings and conducting the business of the authority.

- (e) (1) There shall be a limited civil immunity, and no criminal liability in a private capacity, on account of any act performed or omitted or obligation entered into in an official capacity, when done or omitted in good faith and without intent to defraud, on the part of the board, the panel, or any member of either, or on the part of any officer, employee, or agent of the authority. This provision shall not eliminate or reduce the responsibility of the authority under the covenant of good faith and fair dealing.
- (2) In any claim against the authority based upon an earthquake policy issued by the authority, the authority shall be liable for any damages, including damages under Section 3294 of the Civil Code, for a breach of the covenant of good faith and fair dealing by the authority or its agents.
- (3) In any claim based upon an earthquake policy issued by the authority, the participating carrier shall be liable for any damages for a breach of a common law, regulatory, or statutory duty as if it were a contracting insurer. The authority shall indemnify the participating carrier from any liability resulting from the authority's actions or directives. The board shall not indemnify a participating carrier for any loss resulting from failure to comply with directives of the authority or from violating statutory, regulatory, or common law governing claims handling practices.
- (4) A licensed insurer, its officers, directors, employees, or agents, shall not have any antitrust civil or criminal liability under the Cartwright Act (Part 2 (commencing with Section 16600) of Division 7 of the Business and Professions Code) by reason of its activities conducted in compliance with this chapter. Further, the California Earthquake Authority shall be deemed a joint arrangement established by statute to ensure the availability of insurance pursuant to subdivision (b) of Section 1861.03.
- (5) Subject to Section 10089.21, this chapter shall not be construed to limit any exercise of the commissioner's power, including enforcement and disciplinary actions, or the imposition of fines and orders to ensure compliance with this chapter, the rules and guidelines of the authority, or any other law or rule applicable to the business of insurance.
- (6) Except as provided in paragraph (3) and by any other provision of this chapter, liability on the part of, and a cause of action, shall not be permitted in law or equity against, any participating insurer for any earthquake loss to property for which the authority has issued a policy unless the loss is covered by an insurance policy issued by the participating insurer. A policy issued by the authority shall not be deemed to be a policy issued by a participating insurer.
- (f) The Attorney General, in the Attorney General's discretion, shall provide a representative of the Attorney General's office to attend and act as antitrust counsel at all meetings of the panel. The Attorney General shall be compensated for legal service rendered in the manner specified in Section 11044 of the Government Code.
- (g) The authority may sue or be sued and may employ or contract with that staff and those professionals the board deems necessary for its efficient administration.
- (h) (1) The authority may contract for the services of a chief executive officer, a chief financial officer, a chief mitigation officer, and an operations manager, and may contract for the services of reinsurance intermediaries, financial market underwriters, modeling firms, a computer firm, an actuary, an insurance claims consultant, counsel, and private money managers. These contracts shall not be subject to otherwise applicable provisions of the Government Code and the Public Contract Code and, for those purposes, the authority shall not be considered a state agency or other public entity. Other employees of the authority shall be subject to civil service provisions.
- (2) When the authority hires multiple private money managers to manage the assets of the California Earthquake Authority Fund, other than the primary custodian of the securities, the authority shall consider small California-based firms who are qualified to manage the money in the fund. The purpose of this provision is to prevent the exclusion of small qualified investment firms solely because of their size.
- (i) Members of the board and panel, and their designees, and the chief executive officer, the chief financial officer, the chief mitigation officer, and the operations manager of the authority shall be required to file financial disclosure statements with the Fair Political Practices Commission. The appointing authorities for members and designees of the board and panel shall, when making appointments, avoid appointing persons with conflicts of interest. Section 87406 of the Government Code, the Milton Marks Postgovernment Employment Restrictions Act of 1990, shall apply to the authority. Members of the board, the chief financial officer, the chief executive officer, the chief operations manager, the chief counsel, and any other person designated by the authority shall be deemed to be designated employees for the purpose of that act. In addition, no member of the board, nor the chief financial officer, the chief executive officer, the chief operations manager, and the chief counsel, shall, upon leaving the employment of the authority, seek, accept, or enter into employment or a consulting or other contractual arrangement for the period of one year with any employer or entity that entered into a participating agreement, or a reinsurance, bonding, letter of credit, or private capital markets contract with the authority during the time the employee was employed by the authority, which that member or employee had negotiated or approved, or participated in negotiating. A violation of these provisions shall be subject to enforcement pursuant to Chapter 11 (commencing with Section 91000) of Title 9 of the Government Code.
- (j) The board shall establish the duties of, and give direction to, the chief mitigation officer, to support and enhance the authority's appropriate efforts to create and maintain all of the following:

(1) Program activities that mitigate against seismic risks, for the benefit of homeowners, other property owners, including landlords with smaller holdings, and the general public of the state.

(2) Collaboration with academic institutions, nonprofit entities, and commercial business entities in joint efforts to conduct mitigation-related research and educational activities, and conduct program activities to mitigate against seismic risk.

(3) Programs to provide financial assistance in the form of loans, grants, credits, rebates, or other financial incentives to further efforts to mitigate against seismic risk, including, but not limited to, structural and contents retrofitting of residential structures.

(4) Collaborations and joint programs with subdivisions and programs of local, state, and federal governments and with other national programs that may further California's disaster preparedness, protection, and mitigation goals.

(5) Other programs, support efforts, and activities deemed appropriate by the board to further the authority's appropriate mitigation and mitigation-related goals.

(k) The authority may accept grants and gifts of property, real or personal, tangible and intangible, and services for the Earthquake Loss Mitigation Fund, established pursuant to Section 10089.37, or the related residential retrofit program from federal, state, and local government sources and private sources.

(l) The Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) applies to meetings of the board and the panel.

(Amended by Stats. 2019, Ch. 396, Sec. 11. (AB 1513) Effective January 1, 2020.)

10089.8. (a) The authority shall operate pursuant to a written plan of operations. The panel shall submit a plan to the board for approval. If it approves the plan, the board shall submit the plan to the commissioner for his or her approval. On receiving the commissioner's approval, the board shall formally adopt the plan and submit the plan to the Legislature. Upon commencement of the issuance of insurance policies by the authority, any subsequent amendments to the plan of operation shall be approved by the board and the commissioner.

(b) If at any time the commissioner disapproves the submitted plan or any plan amendments adopted by the board, the board may within 15 days submit changes in the plan to the commissioner. If the commissioner disapproves the plan or the changes in the plan, or if the board fails to submit a plan or to make and submit the requested changes, the commissioner may require the board to adopt that plan or those changes directed by the commissioner.

(c) The plan of operations shall establish in detail the policies and procedures of the authority, including, but not limited to, financial operations of the authority, claims procedures, methods of premium collection, procedures consistent with constitutional, statutory, and common law requirements for resolving grievances of applicants or policyholders who are dissatisfied with application handling or adverse claims decisions, whether by the authority or by a participating insurer, assessment procedures, a plan for resolution of assessment disputes between the authority and insureds, grievances between the authority and participating insurers, participating insurer fees and expenses, reasonable underwriting standards, and producer compensation.

(d) The plan of operations shall include provisions that establish a mechanism for policyholders to make installment payments of the annual premium paid for coverage by the authority. The authority shall make the installment payment option available to all policyholders who elect to purchase coverage from the authority. The authority may charge a nominal fee to policyholders who opt to make installment payments. The fees, in the aggregate, shall cover the full costs of administering the installment payment option incurred by the authority and the participating insurer but shall not include any interest or finance charge. The authority shall not require a participating insurer, in the case of a policyholder who opts to make installment payments as provided in this subdivision, to remit any portion of the annual premium to the authority before that amount of the annual premium is collected by the participating insurer. The authority shall consult with participating insurers in establishing or amending the provisions of the plan of operations that govern the installment payment option.

(Amended by Stats. 1997, Ch. 231, Sec. 1. Effective January 1, 1998.)

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

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

(c) In the event a nonparticipating insurer elects to become a participating insurer of the authority, the authority is authorized to present to the nonparticipating insurer the most recent form of the amended uniform authority participation contract it has executed or proposed to execute with existing participating insurers and require its execution as a condition of authority participation. The

acceptance by the authority of, and reliance by the authority on, the executed amended authority participation contract that is authorized by this subdivision shall not be deemed a lack of the uniformity of contract required by subdivision (a).

(Amended by Stats. 2007, Ch. 303, Sec. 2. Effective January 1, 2008. Operative July 1, 2008, by second Sec. 8 of Ch. 303.)

10089.10. To expand the capacity of the authority and achieve maximum capacity for writing earthquake coverage, the authority shall do both of the following acts, on prior approval of the commissioner:

- (a) The authority shall purchase contracts of reinsurance at rates and on terms the board considers reasonable and appropriate.
- (b) The authority, through the Treasurer, shall enter capital market contracts on terms as the board and Treasurer may consider reasonable and appropriate. The Treasurer shall not withhold approval except for good cause related to the purposes of the authority. Such terms may include indemnification and contribution provisions protecting parties to the capital market contracts of the authority against material misstatements in or material omissions from the authority's official statements and other authority documents referred to in the capital markets contracts.
- (c) The total annual expenditure for reinsurance contracts and capital market contracts pursuant to this section shall not exceed a reasonable and appropriate percentage of the annual earthquake insurance premiums collected by the authority.

(Amended by Stats. 1996, Ch. 967, Sec. 7. Effective September 27, 1996.)

10089.11. (a) The commissioner shall adopt regulations to implement the provisions of this chapter within 60 days of its effective date. The regulations shall be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare.

(b) Regulations shall specify procedures for ratemaking and forms approval, define the type and quality of investments the authority is authorized to make, define coverage types and limits, set forth producer compensation rates, and specify the procedures to be followed by the authority following any earthquake event where the magnitude of earthquake losses make it likely that prorated benefits may be paid. The regulations shall be consistent with the requirements of Proposition 103.

(c) The rights provided by Section 1861.10 shall apply to proceedings under this chapter relating to establishing rates and regulations for earthquake insurance sold by the authority.

(d) All materials and documents prepared or used by the authority to determine its rates other than proprietary materials and documents owned or licensed by third parties shall be considered public documents, and copies of the public documents shall be made available to the public for inspection at no charge. Members of the public may purchase public ratemaking related documents from the authority at actual cost.

(Amended by Stats. 1996, Ch. 967, Sec. 8. Effective September 27, 1996.)

10089.12. The commissioner shall have full power and authority to examine the books and records of the authority at any time, and in connection with the operations and function of the authority, the commissioner shall have the duties and powers set forth in Article 14.5 (commencing with Section 1065.1) of Chapter 1 of Part 2 of Division 1 and in Division 3 (commencing with Section 12900).

(Added by Stats. 1995, Ch. 944, Sec. 2. Effective January 1, 1996.)

10089.13. (a) One year following its commencement of operations, and annually thereafter by each August 1, the authority shall report to the Legislature and the commissioner on program operations in a format prescribed by the commissioner. The report shall include, but shall not be limited to, the financial condition of the authority, a description of all rates and rating plans approved for use in the authority, an evaluation of the functioning of the authority in light of its stated purpose of making residential property insurance and residential earthquake insurance more available. The report shall also include an analysis of the growth by market share of residential property insurance of participating insurers compared to nonparticipating insurers, any adverse consequences on the various insurance distribution systems resulting from the operation of the authority or alterations in the growth of the residential property insurance market share between participating insurers and nonparticipating insurers, any adverse consequences of the various insurance distribution systems resulting from the operation of the authority or alterations in the growth of homeowners' insurance market share between participating insurers and nonparticipating insurers, and an analysis of any recommended program changes to permit the authority to better fulfill its stated purpose. In making this determination the board shall be mindful of the competitive nature of the market and how any decision can negatively impact insurers who are currently competing in the marketplace. The report shall be posted on the authority's official Internet Web site.

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

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

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

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

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

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

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

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

(1) The available capital of the authority.

(2) The liabilities of the authority.

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

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

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

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

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

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

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

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

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

(Amended by Stats. 2009, Ch. 480, Sec. 1. (AB 866) Effective January 1, 2010.)

10089.14. (a) The authority shall not issue any earthquake policy and no insurer shall transfer any earthquake risk to the authority until all of the following conditions have been met:

(1) The Internal Revenue Service has determined that the authority will be or is exempt from federal income tax.

(2) Insurers whose cumulative residential property insurance market share is more than 70 percent of the total residential property insurance market in California, measured as of January 1, 1995, have filed letters of intent, with binding contractual obligation, to

participate in the authority.

(3) The authority has obtained letters of intent, with binding contractual obligation, for capital contributions in the amounts set forth in Section 10089.15.

(4) The authority has obtained appropriate risk transfer ability in the form of firm reinsurance commitments in an aggregate amount of not less than 200 percent of the total capital contributions committed by all participating insurers.

(b) Except as permitted by subdivision (e) of Section 10089.15 and subdivision (b) of Section 10089.16, insurers shall not be entitled to transfer any earthquake risk to the authority until they have met the capital contribution requirements set forth in Section 10089.15, and no insurer shall be entitled to transfer any earthquake risk to the authority pursuant to Section 10089.27 unless the insurer has signed a contract to participate in the authority, is in compliance with the capital contribution requirements set forth in Section 10089.15, and has complied with any related requirements set by the board.

(Amended by Stats. 1996, Ch. 968, Sec. 3. Effective September 27, 1996.)

10089.15. (a) Initial operating capital shall be contributed by insurance companies admitted to write residential property insurance in the state. Each insurer that elects to participate in the authority shall contribute as its share of operating capital an amount equal to one billion dollars (\$1,000,000,000) multiplied by the percentage representing that insurer's residential earthquake insurance market share as of January 1, 1994, as determined by the board. A minimum of seven hundred million dollars (\$700,000,000) in commitments shall be required before the authority may become operational.

(b) Until the authority becomes operational, contributions of initial operating capital shall be held by the commissioner in trust for the contributing insurers in the California Earthquake Authority Fund.

(c) Because insurers will retain the risk of earthquake losses on individual earthquake policies until they are renewed into the authority, participating insurers may elect to contribute operating capital in 12 installments payable on the first day of each successive calendar month after the insurer elects to participate. Each insurer shall compute its monthly installment based on the portion of the insurer's earthquake coverage that will be renewed into the authority during the next month. The final installment shall be equal to the excess of the participating insurer's required contribution over the sum of the previous 11 installments. Those insurers that elect to participate in the authority after the beginning operating date of the authority shall make initial capital contributions calculated using their residential earthquake insurance market share as of January 1, 1994, or the date of their election to participate in the authority, whichever contribution amount is greater.

(d) An insurer or insurer group that represents 1.25 percent or less of the residential property insurance market, as measured by premium volume, or that has a surplus of less than one billion dollars (\$1,000,000,000), may elect to become a participating insurer with the full rights and responsibilities of participating insurers of the authority, pursuant to the provisions of this section.

(e) The insurer or insurer groups defined in subdivision (d) may elect to contribute their operating capital, as required by subdivision (a) of Section 10089.15, in 60 equal monthly installments, payable on the first day of each successive calendar month after the insurer elects to participate. In the event that earthquake losses result in the authority's payment of claims while the authority's available funds are inadequate to meet claims liabilities, and insurers participating under this section have operating capital contributions outstanding, the operating capital contributions necessary to meet any unfunded claims liabilities will become due and payable within 30 days of a request for such accelerated payment by the board, not to exceed the maximum contribution owed by each insurer.

(f) No insurer may elect to contribute operating capital pursuant to subdivision (e) unless the aggregate premium or aggregate surplus of all affiliated insurers in its group meets the eligibility standards established by subdivision (d).

(Amended (as added by Stats. 1995, Ch. 944) by Stats. 1996, Ch. 968, Sec. 4. Effective September 27, 1996.)

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The board shall first calculate the nonparticipating insurer's risk capital surcharge as of the first anniversary of the date the insurer first placed or renewed into the authority earthquake insurance policies. The board shall recalculate the risk capital surcharge for each of up to four years after the first year of calculation and shall impose the resulting surcharge; if the insurer's earthquake insurance risk profile becomes substantially similar to the authority's average risk profile for a book of authority earthquake insurance business of similar size, the board shall relieve the insurer of any further obligation to pay risk capital surcharges.

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

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

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

(f) (1) An associate participating insurer shall not cancel or refuse to renew a residential property insurance policy existing on the date it elected to become an associate participating insurer after an offer of earthquake coverage is accepted solely because the insured has accepted that offer of earthquake coverage.

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

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

(1) The policy is terminated by the named insured.

(2) The policy is refused renewal on the basis of sound underwriting principles that relate to the coverages provided by the underlying policy of residential property insurance and that are consistent with the approved rating plan and related documents filed with the department as required by existing law.

(3) The commissioner finds that the exposure to potential losses will threaten the solvency of the associate participating insurer or place the associate participating insurer in a hazardous condition. "Hazardous condition" has the same meaning as in Section 1065.1 and includes, but is not limited to, a condition in which an associate participating insurer makes claims payments for losses resulting from an earthquake that occurred within the preceding two years and that required a reduction in policyholder surplus of at least 25 percent for payment of those claims.

(4) There is cancellation under Section 676.

(5) The associate participating insurer has lost or experienced a substantial reduction in the availability or scope of reinsurance coverage or a substantial increase in the premium charged for reinsurance coverage for its residential property insurance policies, and the commissioner has approved a plan for the nonrenewals that is fair and equitable, and that is responsive to the changes in the associate participating insurer's reinsurance position.

(6) The named insured is insured based upon membership in a motor club, as defined in Section 12142, and the membership in that organization is terminated as provided in paragraph (2) of subdivision (c) of Section 1861.03.

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

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

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

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

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

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

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

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

(m) Policies of basic residential earthquake insurance written by associate participating insurers shall be subject to assessment by the California Insurance Guarantee Association and shall be covered to the extent provided in Article 14.2 (commencing with Section 1063) of Chapter 1 of Part 2 of Division 1. Except as provided in Section 10089.34, insurance policies written by participating insurers that are not associate participating insurers shall not be subject to assessment by the California Insurance Guarantee

Association if the assessment is imposed to pay claims covered by policies of basic residential earthquake insurance written by an associate participating insurer.

(Amended by Stats. 2007, Ch. 303, Sec. 4. Effective January 1, 2008. Operative July 1, 2008, by second Sec. 8 of Ch. 303.)

10089.17. Notwithstanding subdivision (h) of Section 10089.7, the authority shall be subject to the provisions of the Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code).

(Added by Stats. 1996, Ch. 967, Sec. 11. Effective September 27, 1996.)

10089.19. (a) Participating insurers that want to withdraw from the authority may do so on 12 months' written notice to the authority. Insurers that withdraw shall not be entitled to any refund, reimbursement, or reduction of any initial capital contribution obligation or earthquake loss assessments previously paid or accrued with respect to losses incurred prior to the withdrawal. Insurers that withdraw shall offer residential earthquake insurance coverage pursuant to Chapter 8.5 (commencing with Section 10081) to those policyholders for whom they write the underlying residential property insurance upon the first renewal following the insurer's notice to the authority. The authority shall nonrenew all policies of basic residential earthquake insurance issued to policyholders whose provider of residential earthquake insurance has withdrawn from the authority. No participating insurer may withdraw unless every insurer affiliated with that insurer, as defined in subdivision (a) of Section 1215, or under common control with that insurer, defined in subdivision (c) of Section 1215, simultaneously withdraws from the authority.

(b) If a noticed withdrawal would result in participation by insurers whose cumulative residential property insurance market share is less than 65 percent of the total residential property insurance market in California, the commissioner shall make recommendations to the Legislature for the continuation or termination of the authority.

(Amended by Stats. 2017, Ch. 417, Sec. 25. (AB 1696) Effective January 1, 2018.)

10089.20. The authority shall renew any policy of basic residential earthquake insurance, provided the authority receives payment of the applicable renewal premium on or before the expiration date stated in the policy. The authority shall nonrenew, rescind, or cancel a policy if the property is no longer covered by an underlying policy of residential property insurance. The policy issued by the authority shall not provide coverage in the event that there is no underlying policy of property insurance at the time of loss. In that case, any unearned premiums shall be returned to the policyholder on a pro rata basis.

(Amended by Stats. 1996, Ch. 967, Sec. 12. Effective September 27, 1996.)

10089.21. The authority is a public instrumentality of the State of California and the exercise of its powers is an essential state governmental function. No provision of law, including, but not limited to, subdivision (h) of Section 10089.7 and subdivision (e) of Section 10089.22, shall be construed to affect the status of the authority as a public instrumentality of the State of California. Notwithstanding any other provision of law, the authority is not and shall never be authorized to become a debtor in a case under the United States Bankruptcy Code (Title 11 of the United States Code) or to make an assignment for the benefit of creditors or to become the subject of any similar case or proceeding, nor is the authority subject to Article 14 (commencing with Section 1010) and Article 14.3 (commencing with Section 1064.1) of Chapter 1 of Part 2 of Division 1. Notwithstanding any other provision of law, the commissioner shall not, directly or indirectly, when exercising the power and authority contained or referred to in or arising from Section 10089.6, paragraph (5) of subdivision (e) of Section 10089.7, Section 10089.12, subdivision (e) of Section 10089.22, subdivision (b) of Section 10089.35, or any other statute, rule, or regulation, impede or in any manner interfere with, but shall affirmatively take all necessary steps to effect, and no person acting under subdivision (c) of Section 10089.11, or any other provision of law or principle of equity shall be permitted in any way to impede or in any manner interfere with: (a) the full and timely payment of principal, interest, and premiums on revenue bonds of the authority and amounts due those bond insurers and providers of credit support and letters of credit; and (b) any pledge or assignment of revenues as security for those payments or amounts due, and the full and timely application of those pledged or assigned revenues to those payments and amounts due, in each or either case, (a) or (b), as and when due in accordance with and subject to the limitations contained in Section 10089.22 and the terms of the constituent instruments defining the rights of the holders of the bonds and the providers of bond insurance, credit support, and letters of credit.

Division 3.6 (commencing with Section 810) of Title 1 of the Government Code shall not apply to acts of the authority.

(Added by Stats. 1996, Ch. 967, Sec. 13. Effective September 27, 1996.)

10089.22. (a) The authority shall be continued in existence for so long as its bonds are outstanding. Unless and until the authority is terminated pursuant to Section 10089.43, the commissioner and the authority shall execute assignments and contracts and take all necessary steps to assure that all revenue of the authority is paid to a trustee appointed by the Treasurer, which trustee may be the treasurer. The revenue of the authority shall be pledged and assigned to and held in trust by the trustee and invested and disbursed by the trustee, to pay, or to set aside funds to pay, principal, interest, and premiums on bonds and amounts due bond insurers and providers of credit support and letters of credit for those bonds, but only in the manner and in accordance with the terms of the constituent instruments defining the rights of the holders of bonds of the authority and the providers of bond insurance, credit support

and letters of credit for those bonds. Amounts held by the trustee from time to time after provisions for those payments may be disbursed free of trust to the California Earthquake Authority Fund. Notwithstanding the foregoing provisions of this section, (1) debt service payments on bonds of the authority secured by or payable from securities described in Section 16430 of the Government Code shall not be secured by a pledge or assignment of revenue of the authority other than revenue of the authority from (A) the proceeds of sale of such bonds, (B) the securities described in Section 16430 of the Government Code, and (C) principal and interest payments on such securities described in Government Code Section 16430, but debt service payments on such bonds of the authority may also be made payable from revenue of the authority in the California Earthquake Authority Fund, and (2) the constituent instruments defining the rights of the holders of bonds of the authority referred to in paragraph (1) shall specify that payment of a portion of the interest on such bonds is contingent upon payment of policyholder claims for which the bonds are responsible and that the obligation of the authority is to first apply such assigned or pledged revenue to the payment of such policyholder claims instead of paying that contingent interest.

(b) There is hereby created the California Earthquake Authority Fund, which is not a fund in the State Treasury. Notwithstanding Section 13340 of the Government Code, the fund is continuously appropriated without regard to fiscal years for the purposes of this chapter. The fund shall be administered by the commissioner, subject to the direction of the board, to pay all costs arising from this chapter, including, but not limited to, premiums payable by the authority under contracts of reinsurance, claims arising under policies of basic residential earthquake insurance issued by the authority, operating and other expenses of the authority, and to establish reserves. At the discretion of the commissioner, segregated, dedicated accounts within the fund may be established for those payments.

(c) The board may cause moneys in the fund to be invested and reinvested, from time to time, in accordance with paragraph (4) of subdivision (c) of Section 10089.7 and subject to subdivision (b) of Section 10089.6. Moneys in the fund and not so invested may be deposited from time to time in (1) financial institutions authorized by law to receive deposits of public moneys, or (2) with the approval of the Treasurer, the Surplus Money Investment Fund as provided in Article 4 (commencing with Section 16470) of Division 4 of Title 2 of the Government Code.

(d) A national bank shall be custodian of all securities belonging to the fund, except as otherwise provided in this chapter and except as otherwise provided in the constituent instruments that define the rights of the holders of bonds of the authority and the providers of bond insurance, credit support, and letters of credit for those bonds.

(e) The board may, in cooperation with the Treasurer, authorize the establishment of an account or fund in the State Treasury in the name of the authority, but money deposited with the Treasurer in that account or fund is not state money within the intent of Section 16305.2 of the Government Code, and Sections 16305.3 to 16305.7, inclusive, of the Government Code shall not apply to money drawn or collected by the authority.

(Added by Stats. 1996, Ch. 967, Sec. 14. Effective September 27, 1996.)

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

(2) Each participating insurer's assessment shall be determined by multiplying the percentage share of the authority's total gross written premium that is attributable to that participating insurer's sales of authority insurance policies, as of April 30 of the immediately preceding year or the most recent year for which premium data not more than one year old are available, by the amount of the total assessment sought by the authority.

(3) The maximum permissible insurer assessments pursuant to this section and Sections 10089.30 and 10089.31 shall be reduced uniformly by multiplication of the maximum assessments and other amounts provided in those sections by the percentage of the total residential property insurance market share participation attained by the authority. The total amount of all assessments levied on participating insurance companies by the authority pursuant to this section shall not exceed three billion dollars (\$3,000,000,000), regardless of the frequency or severity of earthquake losses at any and all times subsequent to the creation of the authority. Once a participating insurer has paid, pursuant to this section, amounts equal to the percentage share of the authority's total gross written premium attributable to that participating insurer's sales of authority insurance policies, as of April 30 of the immediately preceding year or the most recent full year for which premium data not more than one year old are available, multiplied by three billion dollars (\$3,000,000,000) reduced as provided in this paragraph from the maximum assessment, the authority's power to assess that insurer under this section shall cease and the authority shall be prohibited from levying additional assessments on that insurer pursuant to this section.

(4) Beginning December 31 of the first year of operations, and each December 31 thereafter, the board shall adjust the maximum permissible insurer assessments pursuant to this section, the maximum permissible insurer assessments pursuant to Sections

10089.30 and 10089.31, the maximum permissible authority policyholder assessment pursuant to Section 10089.29, and the maximum permissible bond issuances or other debt financing issued or secured by the Treasurer pursuant to Section 10089.29 to reflect the market share of new insurers entering into the authority as authorized by Sections 10089.15 and 10089.16 and participating insurers withdrawing from the authority as authorized by Section 10089.19. The adjustments shall be made in the same manner as authorized by paragraph (3).

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

(c) Notwithstanding the other provisions of this section, the aggregate assessment the authority is authorized by this section to impose shall be reduced to zero on December 1, 2008, with respect to earthquake events that commence on or after December 1, 2008.

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

(Amended by Stats. 2019, Ch. 497, Sec. 178. (AB 991) Effective January 1, 2020.)

10089.24. (a) Notwithstanding any other provision of this chapter, the maximum permissible assessment pursuant to Section 10089.23 of a participating insurer that began renewing business into the authority less than 12 months prior to the date of the assessment shall be based on the residential earthquake market share of business actually placed into the authority by the insurer as of the date of the assessment.

(b) Notwithstanding any other provision of this chapter, the maximum permissible assessments pursuant to Section 10089.23 that are permitted for all participating insurers not covered by subdivision (a) shall not be modified to reflect the addition of a new participating insurer until 12 months after that insurer has begun renewing business into the authority.

(Added by Stats. 1998, Ch. 264, Sec. 4. Effective August 6, 1998.)

10089.25. Beginning December 31, 1997, and annually thereafter on the 30th of April, the board shall notify each participating insurer of the maximum earthquake loss funding assessment level that it may be required to meet.

(Amended by Stats. 1998, Ch. 264, Sec. 5. Effective August 6, 1998.)

10089.26. (a) The authority shall issue policies of basic residential earthquake insurance, including an option for earthquake loss assessment policies for individual condominium unit properties, to any owner of a qualifying residential property, as long as the owner has secured a policy of residential property insurance from a participating insurer.

(1) For purposes of this section, earthquake loss assessment coverage shall be issued in a minimum amount of fifty thousand dollars (\$50,000) for individual condominium units valued at more than one hundred thirty-five thousand dollars (\$135,000). Earthquake loss assessment coverage shall be issued in a minimum amount of twenty-five thousand dollars (\$25,000) for individual condominium units of one hundred thirty-five thousand dollars (\$135,000) in value or less. The value of the land shall be excluded when determining the value of the condominium, as it relates to the earthquake loss assessment coverage offered by the authority.

(2) The panel shall submit to the board, and the board shall approve, rates for earthquake loss assessment coverage that reasonably balance the earthquake loss assessment coverages offered and the potential exposure to earthquake loss resulting from an earthquake loss assessment policy as compared to the coverages offered and the potential exposure to earthquake loss resulting from residential property other than individual condominium policies.

It is the intent of the Legislature, to the extent practicable, that rates charged by the authority to condominium loss assessment policyholders and residential property owner policyholders are treated equitably, and that a proportionate share of premiums is paid for potential exposure to loss, to the authority.

(b) Nothing in this section shall prohibit a participating or nonparticipating insurer from offering a condominium earthquake loss assessment policy for different amounts of coverage other than those offered by the authority.

(Amended by Stats. 2014, Ch. 419, Sec. 8. (AB 2064) Effective January 1, 2015.)

10089.27. (a) Every participating insurer that has in-force residential earthquake insurance policies in the state as of the date of commencement of authority operations shall renew each in-force residential earthquake insurance policy or earthquake coverage provided by endorsement into the authority at the time the policy or endorsement comes up for renewal. The effective date of each policy renewal into the authority shall be the renewal date of the policy as recorded in the records of the insurer and disclosed to the policyholder. The risk of loss under the insurance policy does not transfer to the authority until 12:01 a.m. of the policy renewal date.

(b) (1) All policies of residential earthquake insurance written by any participating insurer shall have been renewed into the authority within one year of the commencement of operations of the authority or the date an insurer elects to participate in the authority, whichever is later, and after that date, no participating insurer shall be permitted to write a policy of insurance that provides coverage within the terms and limits of a policy of basic residential earthquake insurance for any qualifying residential property in the state. Participating insurers may sell residential earthquake insurance products that supplement or augment the basic residential earthquake insurance provided by the authority.

(2) Upon application to the authority demonstrating good cause and approval of the commissioner, a participating insurer may take up to 60 days beyond that one-year period to complete its renewal of earthquake policies into the authority. No extension of time to complete earthquake policy renewals into the authority shall serve to extend the due date by which an insurer is to make its initial capital contribution, as set forth in Section 10089.15. The commissioner shall not approve any extension if the effect of the extension would allow an insurer to selectively transfer earthquake policies with high risks to the authority while retaining policies with lower risks during that interim period.

(3) After policies of residential earthquake insurance are renewed in the authority, insurers shall have no responsibilities or liabilities regarding those policies for losses incurred after the date of renewal of those policies, except for duties and responsibilities to the authority and policyholders under the terms of this chapter.

(4) No insurer may participate in the authority unless every insurer affiliated with that insurer, as defined in subdivision (a) of Section 1215, or under common control with that insurer, as defined in subdivision (c) of Section 1215, also participates in the authority.

(Amended by Stats. 2017, Ch. 417, Sec. 26. (AB 1696) Effective January 1, 2018.)

10089.28. (a) All policies of residential earthquake insurance provided by the authority shall be written by the authority. Authority policies shall be marketed and policyholders serviced by the participating insurer that writes the underlying policy of residential property insurance, and participating insurers shall be reasonably compensated for the claims and policyholder services they provide on behalf of the authority. Authority services may be performed on behalf of the authority in any reasonable manner by the participating insurer that is in compliance with statutory, regulatory, and case law regarding claims handling practices; provided, however, where the authority has promulgated specific procedures to govern its operations, the participating insurer shall conform its practices to those procedures. The authority procedures shall comply with statutory, regulatory, and case law governing claims handling practices. Nothing in this provision shall be deemed or construed to affect any duty or liability of the authority or participating carrier as set forth in paragraphs (2) and (3) of subdivision (e) of Section 10089.7.

(b) Concurrent with the issuance or renewal by the authority of a residential earthquake insurance policy, the following disclosure shall be provided to the insured in 14-point boldface type:

"California Earthquake Authority Policy Disclosure

You have purchased a California Earthquake Authority (CEA) earthquake insurance policy, which can help you cover the cost of repairing damage to your property and possessions caused by an earthquake.

The CEA is not part of your homeowners' insurance company.

Please keep in mind these important things about your CEA insurance policy:

1. CEA policy coverages are different from the coverages provided in your homeowners' insurance policy. For example, this policy does not cover earthquake damage to swimming pools, and it may provide more limited coverage for chimneys, outbuildings, and masonry fences. These are examples of possible differences between your CEA policy and your homeowners' policy, and you should consult your CEA policy to understand the types of losses that are limited or excluded and those that are covered.
2. If CEA's liability for earthquake losses exceeds the CEA's available resources the CEA may reduce its payment to you or pay you in installments. This policy is not covered by the California Insurance Guarantee Association, and therefore, the California Insurance Guarantee Association will not pay your claims if the CEA becomes insolvent and is unable to make payments as promised.
3. In certain cases, your CEA policy premium may be subject to future surcharges if the CEA's obligations to pay earthquake losses rise to a predefined level. In that case, in addition to your annual premium you may be charged up to an additional 20% of that premium."

(c) The authority shall provide to participating insurers appropriate applications and forms and shall maintain records of all policies written, moneys received, and claims paid.

(d) The duty of an agent or broker to investigate the financial condition of the authority before placement of insurance shall be the same as the duty of an agent or broker to investigate the financial condition of an admitted insurer before placement of a policy of insurance.

(e) This section shall become operative on January 1, 2016.

(Repealed (in Sec. 9) and added by Stats. 2014, Ch. 419, Sec. 10. (AB 2064) Effective January 1, 2015. Section operative January 1, 2016, by its own provisions.)

10089.29. (a) (1) Notwithstanding the prior approval requirement of Section 10089.10, the authority shall issue and sell investment grade revenue bonds or secure other debt financing of the authority, or both, in amounts determined by the board pursuant to Section 10089.32, but not to exceed one billion dollars (\$1,000,000,000) plus costs of issuance and sale of those revenue bonds, costs of securing that debt financing, and amounts paid or payable to bond issuers and providers of credit support and letters of credit for, and interest on, those revenue bonds or other debt, if claims and claim expenses incurred by the authority from an earthquake event exhaust the total of the following:

(A) The authority's available capital.

(B) The maximum amount of all contributions of initial operating capital made by participating insurers pursuant to Section 10089.15, and assessments levied and paid pursuant to Section 10089.23.

(C) All reinsurance actually available and under contract to the authority.

(D) All risk transfer provided and any other capital committed through capital market contracts that is actually under contract to the authority from private capital markets.

(2) The Treasurer shall act as agent for sale of the revenue bonds described in paragraph (1), and shall make available the net proceeds of those revenue bonds as funding for the authority. Failure of the authority to sell those revenue bonds or obtain that debt financing for any reason shall not obligate the State of California to provide or arrange replacement funding for the authority. The Treasurer may sell revenue bonds for the purpose of refunding the revenue bonds or other debt financing when authorized to do so by the board, and the surcharge authorized by this section may be used to repay that refunding, plus costs of issuance and sale of those revenue bonds or other debt financing being refunded, and amounts paid or payable to bond issuers and providers of credit support and letters of credit for, and interest on, those revenue bonds or other debt being refunded.

(b) (1) In the event of a revenue bond sale or debt financing arrangement pursuant to this section, the authority shall have the power to surcharge annually all authority policies to secure funds, which the authority may use solely to repay the bonded indebtedness or other debt, plus costs of issuance and sale of those revenue bonds or other debt, and amounts paid or payable to bond issuers and providers of credit support and letters of credit for, and interest on, those revenue bonds or other debt. Notwithstanding paragraph (3) of subdivision (a) of Section 10089.23, the total net surcharge collected shall not exceed one billion dollars (\$1,000,000,000), plus costs of issuance and sale of those revenue bonds or other debt and amounts paid or payable to bond issuers and providers of credit support and letters of credit for, and interest on, those revenue bonds or other debt. The surcharge on an authority policy shall not exceed 20 percent of the annual authority residential earthquake insurance policy premium in any one year. A surcharge levied and collected pursuant to this section shall not be considered revenue, notwithstanding subdivision (o) of Section 10089.5, including for purposes of the calculation of rates filed with the commissioner pursuant to subdivision (e) of Section 10089.40. A surcharge levied and collected pursuant to this section also shall not be considered basic residential earthquake premium for any purpose, including the calculation of producer commission.

(2) If a policy issued by the authority includes a premium surcharge pursuant to this subdivision, the participating insurer shall provide the insured a notice in a stand-alone document stating that the policyholder may cancel or nonrenew the earthquake policy. The notice shall specify that cancellation or nonrenewal of the earthquake policy will not affect the underlying residential property insurance policy. The statement shall be provided with the premium billing and shall include the following statement in 14-point boldface type:

NOTICE OF SURCHARGE ON CEA EARTHQUAKE INSURANCE POLICY AND RIGHT TO CANCEL

THE CEA IS IMPOSING A SURCHARGE ON THE PREMIUM OF ALL CEA EARTHQUAKE INSURANCE POLICIES. You may choose to renew, to cancel, or not to renew ("nonrenew") your CEA earthquake insurance policy. If you choose to cancel or nonrenew your CEA earthquake insurance policy, your CEA earthquake insurance policy will be canceled and that cancellation will

have no effect on your policy of residential property insurance. If you fail to cancel or to nonrenew your CEA earthquake insurance policy, and if you also fail to pay the CEA earthquake insurance policy premium and surcharge by the payment deadline, both your CEA earthquake insurance policy and your policy of residential property insurance will be canceled. IF YOU WANT EARTHQUAKE INSURANCE PROVIDED BY THE CEA, YOU MUST PAY THE PREMIUM FOR THE CEA EARTHQUAKE INSURANCE POLICY AND THE SURCHARGE.

(c) The total amount of indebtedness and policy surcharges authorized under this section shall not exceed one billion dollars (\$1,000,000,000) plus costs of issuance and sale of those revenue bonds or other debt and amounts paid or payable to bond issuers and providers of credit support and letters of credit for, and interest on, those revenue bonds or other debt, regardless of the frequency or severity of earthquake losses incurred after the creation of the authority. Once the authority has levied policy surcharges in a total amount of one billion dollars (\$1,000,000,000) plus costs of issuance and sale of those revenue bonds or securing other debt financing and amounts paid or payable to bond issuers and providers of credit support and letters of credit for, and interest on, those revenue bonds or other debt financing, the authority's power to surcharge authority policies shall cease and the authority shall be prohibited from levying additional surcharges pursuant to this section.

(d) Consistent with Section 676, the authority shall cancel the policy of basic residential earthquake insurance if the policyholder fails to pay the earthquake policy surcharge authorized by the authority, and the insurer shall cancel the policy of residential property insurance if the policyholder fails to pay the policy surcharge authorized by the authority.

(Amended by Stats. 2018, Ch. 828, Sec. 3. (AB 2927) Effective January 1, 2019.)

10089.30. If claims and claim expenses paid by the authority due to earthquake events exhaust the total of (a) the authority's available capital, (b) the maximum amount of all insurer capital contributions and assessments pursuant to Sections 10089.15 and 10089.23, (c) all reinsurance actually available and under contract to the authority, (d) the maximum amount of all authority policyholder assessments pursuant to Section 10089.29, and (e) all capital committed and actually available from the private capital markets, the board, subject to the approval of the commissioner, shall have the power to assess participating insurance companies subject to the maximum limits in this section. Each participating insurer's assessment shall be determined by multiplying the percentage share of the authority's total gross written premium attributable to that participating insurer's sales of authority insurance policies, as of April 30 of the immediately preceding year or the most recent year for which premium data not more than one year old are available, by the amount of the total assessment sought by the authority. The total amount of all assessments levied against participating insurance companies by the authority pursuant to this section shall not exceed two billion dollars (\$2,000,000,000), regardless of the frequency or severity of earthquake losses at any and all times subsequent to the creation of the authority. Once a participating insurer has paid, pursuant to this section, amounts equal to its percentage share of the authority's total gross written premium, multiplied by two billion dollars (\$2,000,000,000) reduced from the maximum assessment as provided in paragraph (3) of subdivision (a) of Section 10089.23, the authority's power to assess that insurer under this section shall cease and the authority shall be prohibited from levying additional assessments on that insurer pursuant to this section. The assessment shall be limited to the amount necessary to pay the expected claims and claim expenses of the authority and return the authority's available capital to three hundred fifty million dollars (\$350,000,000), as determined by the board, subject to approval by the commissioner.

(Amended by Stats. 2007, Ch. 303, Sec. 6. Effective January 1, 2008. Operative July 1, 2008, by second Sec. 8 of Ch. 303.)

10089.31. If claims and claim expenses paid by the authority due to earthquake events that commence on or after December 1, 2008, exhaust the total of all (a) the authority's available capital, (b) the maximum amount of all insurer capital contributions and assessments pursuant to Sections 10089.15, 10089.23, and 10089.30, (c) all reinsurance actually available and under contract to the authority, (d) the maximum amount of all authority policyholder assessments pursuant to Section 10089.29, and (e) all capital committed and actually available from the private capital markets, the board, beginning December 1, 2008, for earthquake events commencing on or after December 1, 2008, shall have the power to assess participating insurance companies subject to the maximum limits in this section. Each participating insurer's assessment shall be determined by multiplying the percentage share of the authority's total gross written premium attributable to that participating insurer's sales of authority insurance policies as of April 30 of the immediately preceding year, or the most recent year for which premium data not more than one year old are available, by the amount of the total assessment sought by the authority. The total amount of all assessments levied against participating insurance companies by the authority pursuant to this section shall not exceed one billion seven hundred eighty million dollars (\$1,780,000,000), regardless of the frequency or severity of earthquake losses at any and all times subsequent to the creation of the authority. Once a participating insurer has paid pursuant to this section amounts equal to its percentage share of the authority's total gross written premium, multiplied by one billion seven hundred eighty million dollars (\$1,780,000,000) reduced as provided in paragraph (3) of subdivision (a) of Section 10089.23 from the maximum assessment, which is to be reduced periodically pursuant to subdivision (b) of Section 10089.33, or upon the earlier occurrence of the effective date stated in paragraph (6) of subdivision (b) of Section 10089.33, the authority's power to assess that insurer under this section shall cease and the authority shall be prohibited from levying additional assessments on that insurer pursuant to this section. The assessment shall be limited to the amount necessary to pay the expected claims and claim expenses of the authority and return the authority's available capital to three hundred fifty million dollars (\$350,000,000), as determined by the board.

10089.32. The authority shall endeavor at all times to make specific authority earthquake policyholder assessments, and the Treasurer shall endeavor at all times to secure debt financing, only for the actual funds reasonably estimated to be required for immediate authority operations.

(Added by Stats. 1995, Ch. 944, Sec. 2. Effective January 1, 1996.)

10089.33. (a) If the average daily balance of the authority's available capital exceeds six billion dollars (\$6,000,000,000) for the last 180 days of any calendar year, the board shall relieve all participating insurers of their obligation to pay additional earthquake loss assessments under Section 10089.30, by an aggregate amount equal to the amount of available capital in excess of six billion dollars (\$6,000,000,000). Each December 31 thereafter, the board shall further reduce the aggregate assessment authorized under Section 10089.30 by the net increase in available capital in excess of the previous levels of available capital at which a reduction in the aggregate Section 10089.30 assessment was made. No reduction pursuant to this subdivision shall exceed 15 percent of the original aggregate Section 10089.30 assessment in any year of operation of the authority.

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

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

(2) Unless the authority has made payments and established appropriate reserves for claims and claim expenses, including for losses incurred but not reported, that in the aggregate exceeded five hundred million dollars (\$500,000,000) on account of a single earthquake event commencing in 2010, as certified by the authority's consulting actuary and accepted by the board and the authority's available capital as of January 1, 2011, did not exceed the authority's available capital as of December 1, 2008, then effective April 1, 2011, the maximum aggregate Section 10089.31 assessment shall be reduced by an amount equal to the sum of an amount equal to 5 percent of the initial maximum aggregate Section 10089.31 assessment amount and an amount equal to the retained earnings differential, and 2010 shall be an assessment-reduction year.

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

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

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

(6) Effective on the day after the last day of the 10th assessment-reduction year authorized by the board, the remaining maximum aggregate Section 10089.31 assessment shall be reduced to zero.

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

accordance with generally accepted accounting principles as of the preceding December 31. As used in this paragraph, the term "capacity growth" is the one-year amount of purchased risk transfer, such as reinsurance, or borrowed risk transfer such as bonds, put in place in the authority's financial structure to account for the authority's aggregate exposure growth over the preceding year ending December 31. The board shall be authorized and entitled, in its sole discretion, to make all final decisions regarding the authority's level of financial strength and security and the authority's choice and use of financing and risk-transfer mechanisms. As used in this paragraph, the term "aggregate exposure" means the aggregate of the limits of liability under all coverages of all earthquake insurance policies issued by the authority.

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

(Amended by Stats. 2007, Ch. 303, first Sec. 8. Effective January 1, 2008. Operative July 1, 2008, by second Sec. 8 of Ch. 303.)

10089.34. (a) (1) The policies issued by the authority shall not be subject to assessment for, nor shall any authority policyholder be eligible for benefits from, the California Insurance Guaranty Association.

(2) Policies of residential earthquake insurance written by participating insurers that supplement, augment, or are in excess of the authority's policy of basic earthquake insurance shall be subject to assessment by the California Insurance Guaranty Association and shall be covered to the extent provided in Article 14.2 (commencing with Section 1063) of Chapter 1 of Part 2 of Division 1.

(b) (1) Policies of basic residential earthquake insurance written by nonparticipating insurers shall be subject to assessment by the California Insurance Guaranty Association and shall be covered to the extent provided in Article 14.2 (commencing with Section 1063) of Chapter 1 of Part 2 of Division 1.

(2) Participating insurers of the authority shall have no obligation to pay assessments to the California Insurance Guaranty Association for covered claims obligation arising from policies of basic residential earthquake insurance written by nonparticipating insurers.

(Amended by Stats. 1996, Ch. 967, Sec. 18. Effective September 27, 1996.)

10089.35. (a) If at any time the board determines that all the authority's available capital may be exhausted and no source of additional funds such as assessments, reinsurance, or private capital market moneys will be available to the authority to pay policyholder claims, the board shall draw up and present to the commissioner a plan to pay policyholder claims on a pro rata basis or in installment payments. The board shall maintain sufficient capital to ensure the continued operation of the authority for the purpose of implementing the proration or installment plan. At this point, the commissioner shall adopt a schedule for reinstitution of an insurer's statutory obligation to offer earthquake coverage by a means other than placement in the authority. In no event shall the schedule adopted pursuant to this subdivision be for a period longer than six months.

(b) Upon presentation of that plan to prorate or pay in installments, the commissioner shall order the authority to cease renewing or accepting new earthquake insurance policies and may apply to the superior court for orders or injunctions as the commissioner deems necessary to prevent any event or occurrence adverse to the authority, including, but not limited to, any or all of the following:

(1) Interference with the commissioner's consideration and implementation of a plan for pro rata or installment payment of policyholder claims under this section.

(2) Interference with or attachment of the assets of the authority.

(3) Institution or prosecution of any actions or proceedings against the authority.

(4) The obtaining of preferences, judgments, attachments, or other liens or levies against the authority or its assets.

(5) The withholding by a participating insurer or any other person of any premium, surcharge, assessment, or other amount lawfully due and owing to the authority.

(c) Entry of orders or injunctions obtained by the commissioner upon the application permitted by subdivision (a) shall not vest the superior court with general jurisdiction over the business or assets of the authority or any plan for the pro rata or installment payment of policyholder claims under this section, and the superior court's jurisdiction shall be limited to the entry and enforcement of those orders and injunctions.

(d) The State of California shall have no liability for payment of claims in excess of funds available pursuant to this chapter. The State of California, and any of the funds of the State of California, shall have no obligations whatsoever for payment of claims or costs arising from this act, except as specifically provided in this act.

(Amended by Stats. 1996, Ch. 968, Sec. 10. Effective September 27, 1996.)

10089.36. In the event a natural disaster program is enacted by Congress, the panel shall convene and prepare a plan to dissolve the authority or conform this act with the federal program. Following its deliberations, the panel shall recommend a plan of action to the board and the Legislature.

(Amended by Stats. 1996, Ch. 968, Sec. 11. Effective September 27, 1996.)

10089.37. The board shall set aside in each calendar year an amount equal to 5 percent of investment income accruing on the authority's invested funds, or five million dollars (\$5,000,000), whichever is less, if deemed actuarially sound by a consulting actuary employed or hired by the authority, to be maintained as a subaccount in the California Earthquake Authority Fund. The authority shall use those funds to fund the establishment and operation of an Earthquake Loss Mitigation Fund. In the event a set-aside of mitigation-related funds may impair the actuarial soundness of the authority, the board may delay the implementation of this section. Any delay shall be reported to the Legislature and the commissioner and reported publicly.

(Added by Stats. 1995, Ch. 944, Sec. 2. Effective January 1, 1996.)

10089.38. Upon the development and implementation of an economical system satisfactory to the board and the commissioner to prevent misapplication of mitigation funds, the Earthquake Loss Mitigation Fund may be applied to supply grants and loans or loan guarantees to dwelling owners who wish to retrofit their homes to protect against earthquake damage.

(Added by Stats. 1995, Ch. 944, Sec. 2. Effective January 1, 1996.)

10089.39. (a) The operational rules of the Earthquake Loss Mitigation Fund shall be part of the authority's plan of operations.

(b) On or before July 1, 2000, the authority shall establish in the operational rules of the Earthquake Loss Mitigation Fund, a plan for the expedited expansion of the residential retrofit program statewide. The program shall include personnel and administrative requirements and all other programmatic specifications necessary to the implementation of the plan.

(Amended by Stats. 1999, Ch. 715, Sec. 2. Effective January 1, 2000.)

10089.395. (a) The Legislature finds and declares that there exists the California Residential Mitigation Program, also known as the CRMP, a joint powers authority created in 2012 by agreement between the California Earthquake Authority and the Office of Emergency Services.

(b) Any funds appropriated by the Legislature for the purpose of funding the CRMP's implementation of the grant program described in this section shall be to the department, which shall provide the funds to the California Earthquake Authority's Earthquake Loss Mitigation Fund, pursuant to subdivision (k) of Section 10089.7 and according to the terms of an agreement negotiated by the department and the authority. The authority, the prime funder of the CRMP, shall then transfer the funds from its Earthquake Loss Mitigation Fund to the CRMP for further implementation and expansion of the CRMP's Earthquake Brace and Bolt program, upon actions by the respective governing boards of the authority and the CRMP, authorizing and accepting that transfer. The CRMP shall, pursuant to the requirements of this section, implement the grant program and make grants that assist a qualifying owner of a single-family residential structure by defraying the owner's costs of seismic retrofitting of the structure.

(c) The CRMP may make a grant to an applicant who satisfies all of the following:

- (1) The applicant is an owner of record of, and lives in, the structure to be retrofitted.
- (2) The structure is a single-family, detached, residential building composed of one to four dwelling units.
- (3) The structure meets structural requirements established pursuant to subdivision (e).
- (4) The structure is located in a high-risk earthquake area, based on criteria established pursuant to subdivision (e).
- (5) The retrofit work qualifies as work for which the applicant may receive a grant, based on criteria established pursuant to subdivision (e).

(d) Subject to the policies, procedures, and criteria adopted pursuant to subdivision (e), a grant shall not exceed the lesser of 75 percent of the cost of the qualifying retrofit work, or three thousand dollars (\$3,000).

(e) The governing board of the CRMP shall adopt policies and procedures to implement this section, including, but not limited to, establishing structural eligibility requirements for structures that will receive a grant for seismic retrofit work, defining criteria for determining whether a structure is located in a high-earthquake-risk area, and defining criteria for seismic retrofit work that qualifies as work eligible for receipt of a grant, which may be awarded in amounts of greater or lesser than the amounts established by subdivision (d). In adopting those policies and procedures, the governing board shall provide notice and opportunity for public review and comment, publish the policies and procedures on the CRMP's Internet Web site, and otherwise make the policies and procedures available to the public.

10089.396. (a) In administering the Earthquake Brace and Bolt program pursuant to Section 10089.395, the California Residential Mitigation Program (CRMP) shall do both of the following:

- (1) Provide outreach to low-income households to increase awareness of the Earthquake Brace and Bolt program in those communities where the program is offered.
- (2) Set aside at least 10 percent of the funds available each year for the program pursuant to Section 10089.395 to provide supplemental grants to homeowners in low-income households who were selected to receive grants pursuant to subdivision (c) of Section 10089.395.
 - (A) A homeowner in a low-income household may apply for a supplemental grant, which shall be awarded on a first-come-first-served basis until the funding set aside for supplemental grants is exhausted.
 - (B) The supplemental grant shall be in an amount as necessary to provide the homeowner in the low-income household with 90 percent of the retrofit costs remaining after payment of the grant awarded to that homeowner pursuant to subdivision (c) of Section 10089.395.
 - (C) Any unexpended supplemental grant funding shall be available to provide grants to other eligible applicants on the waiting list.

(b) For purposes of this section, "low-income household" means a household that has an income at or below 80 percent of the median household income in California.

(Added by Stats. 2019, Ch. 219, Sec. 1. (AB 548) Effective January 1, 2020.)

10089.397. (a) The Legislature finds and declares that there exists the California Residential Mitigation Program, also known as the CRMP, a joint powers authority created in 2012 by agreement between the California Earthquake Authority and the Office of Emergency Services.

(b) Any funds appropriated by the Legislature for the purpose of funding the CRMP's implementation of the grant program described in this section shall be to the department, which shall provide the funds to the California Earthquake Authority's Earthquake Loss Mitigation Fund, pursuant to subdivision (k) of Section 10089.7 and according to the terms of an agreement negotiated by the department and the authority. The authority, the prime funder of the CRMP, shall then transfer the funds from its Earthquake Loss Mitigation Fund to the CRMP for further implementation and expansion of the CRMP's Earthquake Brace and Bolt program, upon actions by the respective governing boards of the authority and the CRMP, authorizing and accepting that transfer. The CRMP may, pursuant to the requirements of this section, implement the grant program and on or after July 1, 2015, make grants that assist a qualifying owner of a multiunit residential structure by defraying the owner's cost of seismic retrofitting of the structure.

(c) The CRMP may make a grant to an applicant who satisfies all of the following:

- (1) The applicant is an owner of record of the structure to be retrofitted and has secured the written consent of all other owners of the structure to make a grant application.
- (2) The structure is a residential building of not fewer than two, but not more than 10, dwelling units.
- (3) The dwelling units in the structure are occupied by tenants who are members of "lower income households," as defined in subdivision (a) of Section 50079.5 of the Health and Safety Code.
- (4) The structure meets structural requirements established pursuant to subdivision (d).
- (5) The structure is located in a high-risk earthquake area, based on criteria established pursuant to subdivision (d).
- (6) The retrofit work qualifies as work for which the applicant may receive a grant, based on criteria established pursuant to subdivision (d).

(d) The governing board of the CRMP shall adopt policies and procedures necessary to implement this section, including, but not limited to, establishing the means by which the applicant may satisfy the tenant-related economic eligibility criteria for the program, establishing structural eligibility requirements for a structure that will receive seismic retrofit work, defining criteria for determining whether a structure is located in a high-risk earthquake area, defining criteria for seismic retrofit work that qualifies as work eligible for receipt of a grant, and defining criteria for the determination of the amount of a grant awarded pursuant to the program created by

this section. In adopting those policies and procedures, the governing board shall provide notice and opportunity for public review and comment, publish the policies and procedures on the CRMP's Internet Web site, and otherwise make the policies and procedures available to the public.

(Added by Stats. 2015, Ch. 25, Sec. 42. (SB 84) Effective June 24, 2015.)

10089.40. (a) Rates established by the authority shall be actuarially sound so as to not be excessive, inadequate, or unfairly discriminatory. Rates shall be established based on the best available scientific information for assessing the risk of earthquake frequency, severity, and loss. Rates shall be equivalent for equivalent risks. Factors the board shall consider in adopting rates include, but are not limited to, the following:

(1) Location of the insured property and its proximity to earthquake faults and to other geological factors that affect the risk of earthquake or damage from earthquake.

(2) The soil type on which the insured dwelling is built.

(3) Construction type and features of the insured dwelling.

(4) Age of the insured dwelling.

(5) The presence of earthquake hazard reduction factors, including those set forth in subdivision (a) of Section 10089.2.

(b) (1) If scientific information from geologists, seismologists, or similar experts that assesses the frequency or severity of risk of earthquake is considered in setting rates or in arriving at the modeling assumptions upon which those rates are based, the information may be used to establish differentials among risks only if the information, assumptions, and methodology used are consistent with the available geophysical data and the state of the art of scientific knowledge within the scientific community.

(2) Scientific information from geologists, seismologists, or similar experts shall not be conclusive to support the establishment of different rates between the most populous rating territories in the northern and southern regions of the state unless that information, as analyzed by experts such as the United States Geological Survey, the California Division of Mines and Geology, and experts in the scientific or academic community, clearly shows a higher risk of earthquake frequency, severity, or loss between those most populous rating territories to support those differences.

(3) It is not the intent of the Legislature in adopting this subdivision to mandate a uniform statewide flat rate for California Earthquake Authority policies.

(c) The classification system established by the board shall not be adjusted or tempered in any way to provide rates lower than are justified for classifications that present a high risk of loss or higher than are justified for classifications that present a low risk of loss.

(d) Policyholders who have retrofitted their homes to withstand earthquake shake damage according to standards and to the extent set by the board shall enjoy a premium discount or credit of 5 percent on the authority-issued policy of residential earthquake coverage. For residential dwellings, the 5-percent discount shall be applicable if the dwelling, at a minimum, meets the following requirements: the dwelling was built prior to 1979, is tied to the foundation, has cripple walls braced with plywood or its equivalent, and the water heater is secured to the building frame. For mobilehomes, the 5-percent discount shall be applicable if the mobilehome, at a minimum, is reinforced by an earthquake resistant bracing system certified by the Department of Housing and Community Development. The board may approve a premium discount or credit above 5 percent, as long as the discount or credit is determined actuarially sound by the authority.

(e) All rates shall be approved by the commissioner prior to their use.

(Amended by Stats. 2001, Ch. 745, Sec. 154. Effective October 12, 2001.)

10089.41. (a) The offer of an authority policy by a participating insurer shall constitute a mode of insurer compliance with Chapter 8.5 (commencing with Section 10081) of Part 1 of Division 2, and as set forth in Section 10084.

(b) If the authority ceases operation for any reason, including, but not limited to, repeal of this chapter or insolvency of the authority, participating carriers shall no longer be able to satisfy the requirement to offer residential earthquake insurance coverage by placement within the authority. The commissioner shall adopt a schedule in accordance with subdivision (a) of Section 10089.35 to establish when participating carriers shall be required to offer coverage by another mode authorized pursuant to Chapter 8.5 (commencing with Section 10081) of Part 1 of Division 2 to those policyholders for whom they write the underlying policies of residential property insurance.

(c) If the authority ceases operation pursuant to a statute enacted by the Legislature, that statute shall determine the duty of participating insurers to provide earthquake insurance pursuant to Chapter 8.5 (commencing with Section 10081). Chapter 8.5

(commencing with Section 10081) shall remain in effect unless specifically repealed by that statute.

(Amended by Stats. 1996, Ch. 968, Sec. 13. Effective September 27, 1996.)

10089.42. (a) At least once each year a participating insurer shall provide each of its residential property insureds with marketing documents produced at the authority's expense.

(b) This section shall become operative on January 1, 2016.

(Added by Stats. 2014, Ch. 419, Sec. 11. (AB 2064) Effective January 1, 2015.)

10089.43. Upon termination of the authority by the Legislature, its remaining funds shall be transferred to the General Fund unless otherwise directed by the Legislature.

(Added by Stats. 1995, Ch. 944, Sec. 2. Effective January 1, 1996.)

10089.44. Notwithstanding any other provision of law, premiums collected by the authority shall be exempt from collection of the state's insurance premium tax, and the amount of tax foregone by the state shall be considered for all purposes a contribution by the state and its citizens to the capital and operating revenues of the authority.

No funds contributed to, or collected or held by, the authority shall be available to meet the general obligations of the state unless the authority has been terminated and wound up, and all funds due or owing to any person pursuant to this act have been paid, held in reserve, or returned.

(Added by Stats. 1995, Ch. 944, Sec. 2. Effective January 1, 1996.)

10089.46. Bonds issued under this chapter shall not be a debt or liability of the state or of any political subdivision of the state, or a pledge of the full faith and credit of the state or of any political subdivision, but shall be payable solely from the funds provided in this chapter.

(Added by Stats. 1995, Ch. 944, Sec. 2. Effective January 1, 1996.)

10089.47. Bonds issued by the authority are legal investments for all trust funds, the funds of all insurance companies, banks, trust companies, executors, administrators, trustees, and other fiduciaries. The bonds are securities that may legally be deposited with, and received by, any state or municipal officer or agency or political subdivision of the state for any purpose for which the deposit of bonds or obligations of the state is now, or may hereafter be, authorized by law, including deposits to secure public funds.

(Added by Stats. 1995, Ch. 944, Sec. 2. Effective January 1, 1996.)

10089.48. Interest earned on any bonds issued by the authority shall at all times be free from state personal income tax and corporate income tax.

(Added by Stats. 1995, Ch. 944, Sec. 2. Effective January 1, 1996.)

10089.49. The state hereby pledges to and agrees with the holders of bonds that the state will not limit, alter, or restrict the rights hereby vested in the authority to fulfill each pledge of revenues and any other terms of any agreement made with or for the benefit of the holders of bonds or in any way impair the rights or remedies of the holders of bonds.

(Added by Stats. 1995, Ch. 944, Sec. 2. Effective January 1, 1996.)

10089.50. The Treasurer may from time to time enter into one or more credit facilities permitting the authority to draw an amount up to one billion dollars (\$1,000,000,000) with payment, interest rate, indemnity, compensation, security, default, remedy, and other terms and conditions as determined by the authority. All drawings under these credit facilities shall be available as funding for the authority as provided in Section 10089.29.

(Amended by Stats. 1996, Ch. 967, Sec. 19. Effective September 27, 1996.)

10089.51. The authority shall have the power to pledge to the providers of credit facilities and to the owners of bonds the surcharges imposed or to be imposed pursuant to subdivision (b) of Section 10089.29 to secure payment of all obligations of the authority under those credit facilities and bonds, respectively. A pledge of those surcharges shall constitute a lien and security interest that shall immediately attach to the surcharges whether or not imposed or collected at the time the pledge is made, and shall be effective, valid, and binding and enforceable against the authority, the Treasurer, the beneficiaries of the basic residential earthquake insurance issued from time to time, and all others asserting rights in the surcharges to the extent set forth, and in accordance with, the terms of the pledge contained in the credit facilities or bonds, as the case may be, whether or not those parties have notice of the pledge and without the need for any physical delivery, recordation, filing, or further act.

(Added by Stats. 1995, Ch. 944, Sec. 2. Effective January 1, 1996.)

10089.52. Nothing in Section 10089.50 or 10089.51 is intended to limit the applicability to the authority of any provision of Section 5450 or subdivision (c) of Section 5922 of the Government Code.

(Added by Stats. 1996, Ch. 967, Sec. 20. Effective September 27, 1996.)

10089.53. (a) Any insurer that withdraws from the authority under Section 10089.19 while bonds or other debt is outstanding shall impose annually a premium surcharge on each policy of residential earthquake insurance written by it equal in percentage amount, calculated as a percentage of the basic residential earthquake insurance premium, to the percentage amount of the surcharge being imposed in that year by the authority pursuant to subdivision (b) of Section 10089.29. That insurer shall remit promptly all those surcharges collected by it to the trustee appointed pursuant to Section 10089.22. The surcharges shall be used solely to repay the bonded indebtedness or other debt issued pursuant to subdivision (a) of Section 10089.29. If the sum of the surcharges remitted to the trustee pursuant to this section plus the amount of the surcharges imposed by the authority pursuant to subdivision (b) of Section 10089.29 would exceed the amount authorized by that provision, then surcharges of the authority shall be reduced by an amount equal to that excess.

(b) Should the Legislature and Governor approve legislation that causes the authority to cease operation while bonds or other debt are outstanding, participating insurers shall impose annually a premium surcharge on each policy of residential earthquake insurance written by them equal in percentage amount, calculated as a percentage of the basic residential earthquake insurance premium, to the percentage amount of the surcharge being imposed in that year by the authority pursuant to subdivision (b) of Section 10089.29. Those insurers shall remit promptly all these surcharges collected by them to the trustee appointed pursuant to Section 10089.22. The surcharges shall be used solely to repay the bonded indebtedness or other debt issued pursuant to subdivision (a) of Section 10089.29. If the sum of the surcharges remitted to the trustee pursuant to this section plus the amount of the surcharges imposed by the authority pursuant to subdivision (b) of Section 10089.29 would exceed the amount authorized by that provision, then surcharges of the authority shall be reduced by an amount equal to that excess.

(Added by Stats. 1996, Ch. 967, Sec. 21. Effective September 27, 1996.)

10089.54. (a) Unless authorized by a statute enacted subsequent to the effective date of this section, the authority shall cease writing new earthquake insurance policies 180 days after implementation by both the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Association ("Freddie Mac") of policies to require earthquake insurance for any single-family residential structure, other than a condominium unit or townhome, as a condition of purchasing a mortgage or trust deed secured by that structure. Notwithstanding this restriction, the authority shall continue to renew its existing earthquake insurance policies and shall accept applications for earthquake insurance from residential property insurance policyholders of participating insurers in accordance with subdivision (b) of Section 10086.

(b) In the event that both the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Association ("Freddie Mac") have proposed to implement policies to require earthquake insurance for any single-family residential structure, other than a condominium unit or townhome, as a condition of purchasing a mortgage or trust deed secured by that structure, it is the intent of the Legislature that the Legislature should convene to consider whether the authority should continue to write new earthquake insurance policies, with or without modification, or to cease writing new earthquake insurance policies.

(Added by Stats. 1996, Ch. 969, Sec. 4. Effective January 1, 1997.)

10089.55. The board shall conduct the affairs of the authority with respect to transacting earthquake insurance, including administering the California Earthquake Authority Fund. Except as provided in paragraph (2) of subdivision (a) of Section 10089.6, the board has no authority to administer the Wildfire Fund. At every meeting of the board, the board shall post an agenda that clearly identifies the meeting as relating to the business of earthquake insurance.

(Added by Stats. 2019, Ch. 81, Sec. 6. (AB 111) Effective July 12, 2019.)