



Personal Insurance Federation of California

California's Personal Lines Trade Association

REPRESENTING THE LEADING AUTOMOBILE AND HOMEOWNERS INSURERS

State Farm • Farmers • 21st Century Insurance Group • SAFECO • Progressive

MEMORANDUM

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Date: June 23, 2005

To: The Honorable Jackie Speier, Chair
Members, Senate Banking, Finance and Insurance Committee

From: Dan C. Dunmoyer, President
Rex D. Frazier, Vice President of Legislative and Regulatory Affairs
Michael A. Gunning, Senior Legislative Advocate
Michael A. Paiva, Senior Legislative Advocate

RE: AB 1374 (Liu) – Seismic Safety
As Amended May 5, 2005
Senate Banking, Finance and Insurance Committee
PIFC Position: Oppose

The Personal Insurance Federation of California, representing insurers who write over 50% of all personal lines insurance sold in the state, **opposes AB 1374 by Assembly Member Liu.** AB 1374 deletes the July 7, 2007 sunset date on the Seismic Safety Account (Account), thereby extending the source of funding for the California Seismic Safety Commission (CSSC) indefinitely.

The CSSC was created as a result of the enactment of the 1974 Seismic Safety Commission Act. From 1974 until 2003, the CSSC was funded through the state's General Fund. The severe budget crisis of 2003 forced the CSSC to seek an alternative funding source. Since 2003, the CSSC has been funded by an assessment on in-force commercial and homeowner property insurance policies. This change in funding was accomplished with the passage of SB 1049 (Statutes of 2003) which provided for a sunset on July 1, 2007.

PIFC is opposed to AB 1374 because it would allow for the continuation of a tax that PIFC believes is unfair and is potentially illegal. Furthermore, PIFC asserts that if the Legislature and the Governor believe that the mission of the CSSC is of benefit to all Californians it should be funded out of the General Fund, as was the practice prior to the passage of SB 1049. Finally, PIFC proposes that the CSSC, in conjunction with the Legislature, work to ensure that proceeds from an upcoming court settlement earmarked for the CSSC, are used to fund the operations of the CSSC.

Unfair tax. In *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866 [64 Cal.Rptr.2d 447], the California Supreme considered the issue of whether an assessment on paint manufacturers was properly imposed. In *Sinclair* the court held, in part, that fees may be collected if the assessment represents a reasonable cost of regulation, if the assessment is related to the regulatory activity, or if the fees bore a "reasonable relationship to the social or economic burdens its operations generated." PIFC asserts that the CSSC has no regulatory authority or responsibility in regulating the insurance industry and that the mission of the CSSC is to provide benefits to the state as a whole and not just to commercial and residential property insurance policyholders. Thus, the assessment does not fall within the guidelines of a valid fee and is really a tax. As such the "tax" would need to be approved by a 2/3 vote of the Legislature.

General Fund. PIFC asserts that the function of the CSSC is to provide a benefit to all Californians. The Seismic Safety Act begins by noting that “different agencies at various levels of government have substantial responsibilities in the fields of earthquake preparedness and seismic safety” (Government Code Section 8870) and then goes on to enumerate the many ways that the CSSC can assist state and local agencies coordinate earthquake preparedness efforts. PIFC notes that the Act specifies that the 15 members of the CSSC shall come from a broad range of backgrounds including architecture, planning, fire protection, public utilities, engineering, geology, seismology, local government, social service, and emergency services. Insurance is listed as an area of expertise that is sought by the CSSC, but it is just one among a field of many. Breadth of experience was clearly sought by the CSSC. Thus, imposing a tax on commercial and homeowner property insurance policy holders seems out of step with the mission of the CSSC.

CRAF Settlement Money. It has recently come to the attention of PIFC that the CSSC has been designated as a recipient of a “gift” originating from the liquidation of the California Research and Assistance Fund (CRAF). Paragraph 14 of the court order related to the CRAF settlement, reads, in part, as follows:

“After all known debts and liabilities have been paid or adequately provided for, the Receiver shall prepare a gift agreement for distribution of any remaining CRAF assets to the California Seismic Safety Commission (CSSC) to be used solely for research related to earthquake risk reduction. Upon execution of that agreement by the Receiver and the CSSC, the Receiver shall distribute CRAF’s remaining assets to the CSSC, less an amount kept in reserve to pay the Receiver and service providers for work done to complete the dissolution.”

PIFC has asked the Attorney General to determine how much money will be available to the CSSC, when it will be available, and if the mission of the CSSC needs to be amplified in order to ensure that the mission of the CSSC is consistent with the court order’s requirement that the settlement money be used “solely for research.” PIFC believes that all of these questions should be explored before the Legislature further binds the Insurance Fund, especially given the fact that the current sunset does not expire until July 1, 2007.

For all these reasons, **PIFC is opposed to AB 1374 and urges a no vote on this bill.** If you have any questions, please do not hesitate to contact Michael A. Paiva at (916) 442-6646.

cc: Assembly Member Liu, Author
Ron Spingarn, Senate Banking, Finance and Insurance Committee
Tim Conaghan, Senate Republican Caucus
Cynthia Bryant, Governor’s Office
Scott Reid, Office of the Insurance Advisor
Senate Floor Analysis

4. AB1374SenBank05