AMENDED IN ASSEMBLY APRIL 28, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 43

Introduced by Assembly Member Blakeslee

December 1, 2008

An act to amend Section 10089.7 of the Insurance Code, relating to the California Earthquake Authority.

LEGISLATIVE COUNSEL'S DIGEST

AB 43, as amended, Blakeslee. California Earthquake Authority: employees.

Existing law authorizes the California Earthquake Authority to hire up to 25 employees and subjects those employees to state civil service provisions, as specified. Existing law also authorizes the authority to contract for the services of a chief executive officer, a chief financial officer, and an operations ~~manager,~~ *manager.*

This bill would remove the 25-person limit on the number of employees subject to civil service provisions and would also authorize the authority to contract for the services of a chief mitigation officer. The bill would additionally establish the responsibilities of the chief mitigation officer, as specified.

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

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

SECTION 1. Section 10089.7 of the Insurance Code is amended to read:

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 Rules Committee 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 Rules Committee 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; and (13) 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 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) No licensed insurer, its officers, directors, employees, or agents, shall 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 the provisions of Section 10089.21, nothing in this chapter shall 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, there shall be no liability on the part of, and no cause of action shall 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 his or her discretion, shall provide a representative of his or her 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, 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 chief mitigation officer for the authority shall be responsible for establishing programs to mitigate against seismic risk by developing ~~corporate outreach~~ programs *to reach out to homeowners, companies, corporations, landlords with small property holdings, and the general public*, providing loans and grants, forming partnerships with local*, state, and federal* governments and private entities, ~~or~~ *and* utilizing other programs deemed necessary by the chief mitigation officer *that are consistent with Section 10089.38*.

(k) 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.

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