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**AB-2927 California Earthquake Authority.** (2017-2018)

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**Assembly Bill No. 2927**

**CHAPTER 828**

An act to amend Sections 10089.23 and 10089.29 of the Insurance Code, relating to insurance, and making an appropriation therefor.

[ Approved by Governor September 27, 2018. Filed with Secretary of State September 27, 2018. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 2927, Nazarian. California Earthquake Authority.

Existing law establishes the California Earthquake Authority (CEA), administered under the authority of the Insurance Commissioner and governed by a 3-member board. Under existing law, the CEA is authorized to transact insurance in this state as necessary to sell policies of basic residential earthquake insurance. Existing law establishes a capital structure for the CEA, with several sources of financing. Existing law generally makes all moneys and invested assets held in the California Earthquake Authority Fund, subject to specified restrictions, "available capital," which is the first source of financing used to pay earthquake claims and claim expenses. Under existing law, the California Earthquake Authority Fund is a continuously appropriated fund.

Existing law authorizes the Treasurer, as agent for the CEA, to sell investment grade revenue bonds or issue or secure other debt financing of the CEA in an amount up to \$1,000,000,000 if the benefits paid following an earthquake event exhaust 4 specified sources of capital, including the CEA's available capital and all insurer capital contributions and assessments. Existing law authorizes the CEA to surcharge all CEA policies, in a net amount not to exceed \$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, to secure funds to repay the bonded indebtedness or other debt, and requires a CEA policy to include a specified notice of the surcharge to its policyholders. Existing law requires the aggregate amount of the surcharge to be reduced according to a specified market share calculation.

This bill would revise that bond provision to require the CEA, with the Treasurer as its agent, to issue and sell investment grade revenue bonds or secure other debt financing, or both, in amounts up to \$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, if the 4 existing specified sources of capital plus risk transfer provided through capital market contracts are exhausted. By creating a new mandatory source of funding, the bill would make an appropriation.

This bill would clarify that the CEA may use its existing surcharge authority to additionally repay costs of issuance and sale of revenue bonds or other debt, and amounts paid or payable to bond issuers and providers of credit support and letters of credit. The bill would eliminate the surcharge reduction requirements. The bill would amend the required notice of surcharge provided to policyholders to state that if a policyholder fails to cancel or nonrenew the CEA policy and fails to pay the CEA policy premium and surcharge by the payment deadline, both the CEA policy and the related policy of residential property insurance will be canceled. The bill would also make findings and declarations.

## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

### **SECTION 1.** The Legislature finds and declares the following:

(a) The California Earthquake Authority (CEA) was duly established by Legislative acts in 1995 and 1996, acting as a public instrumentality of the State of California, to provide those California residential property insurance policyholders whose residential property insurance is provided by CEA participating insurance companies with access to insurance against damage from and losses caused by earthquakes, which damage and loss are typically excluded from coverage under residential property insurance policies.

(b) The CEA has successfully operated, and as of the date of this act, is in its 22nd year of operation.

(c) The CEA's claim-paying capacity consists of its own available capital, traditional reinsurance available under contract, other risk transfer capacity available under contract, the capital realized from its issuance of bonds and reinsurance recoverables, the power under law, and under contract with its policyholders pursuant to the express terms of its issued insurance policies, to impose temporary premium surcharges of up to 20 percent of annual premiums to repay certain debt obligations incurred by the CEA following an earthquake, and the power to levy and collect assessments from its participating insurance companies in statutorily defined amounts.

(d) Despite its express and specific presence in the law and in CEA policies since the CEA's inception, this statutorily conferred power to generate funds from policyholder premium surcharges to repay postearthquake debt has been regarded, by agencies that would assess the CEA's postearthquake creditworthiness, as insufficiently certain of execution to constitute a suitable, ratable claim-paying capacity. Because it is essential that surcharge-supported postearthquake debt be recognized as suitable, ratable CEA claim-paying capacity, it is therefore imperative that the CEA's existing power to surcharge its own policyholders, pursuant to law and to contract, be assured.

(e) In enacting this act, the Legislature seeks to strengthen and clarify the CEA's existing power to impose postearthquake surcharges on policyholders in a way that will ensure that agencies that would rate the CEA's credit would recognize the CEA's policyholder surcharge supported debt as a defined, fully authorized, ineluctable portion of the CEA's claim-paying capacity.

### **SEC. 2.** Section 10089.23 of the Insurance Code is amended to read:

**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, the maximum permissible insurer assessments pursuant to Section 10089.30 and Section 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.

**SEC. 3.** Section 10089.29 of the Insurance Code is amended to read:

**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.