

109TH CONGRESS
1ST SESSION

H. R. 4366

To establish a program to provide reinsurance for State natural catastrophe insurance programs to help the United States better prepare for and protect its citizens against the ravages of natural catastrophes, to encourage and promote mitigation and prevention for, and recovery and rebuilding from such catastrophes, and to better assist in the financial recovery from such catastrophes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 17, 2005

Ms. GINNY BROWN-WAITE of Florida (for herself and Mr. SHAW) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To establish a program to provide reinsurance for State natural catastrophe insurance programs to help the United States better prepare for and protect its citizens against the ravages of natural catastrophes, to encourage and promote mitigation and prevention for, and recovery and rebuilding from such catastrophes, and to better assist in the financial recovery from such catastrophes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Homeowners Insurance Protection Act of 2005”.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Congressional findings.
- Sec. 3. National Commission on Catastrophe Preparation and Protection.
- Sec. 4. Program authority.
- Sec. 5. Qualified lines of coverage.
- Sec. 6. Covered perils.
- Sec. 7. Contracts for reinsurance coverage for eligible State programs.
- Sec. 8. Minimum level of retained losses and maximum Federal liability.
- Sec. 9. Consumer Hurricane, Earthquake, Loss Protection (HELP) Fund.
- Sec. 10. Definitions.
- Sec. 11. Regulations.
- Sec. 12. Termination.
- Sec. 13. Annual study concerning benefits of the Act.
- Sec. 14. GAO study of the National Flood Insurance Program and hurricane-related flooding.

6 **SEC. 2. CONGRESSIONAL FINDINGS.**

7 The Congress finds that—

8 (1) America needs to take steps to be better
9 prepared for and better protected from catastrophes;

10 (2) the hurricane seasons of 2004 and 2005 are
11 startling reminders of both the human and economic
12 devastation that hurricanes, flooding, and other nat-
13 ural disasters can cause;

14 (3) if a repeat of the deadly 1900 Galveston
15 hurricane occurred again it could cause over \$36 bil-
16 lion in loss;

17 (4) if the 1904 San Francisco earthquake oc-
18 curred again it could cause over \$400 billion in loss;

1 (5) if a Category 5 hurricane were to hit Miami
2 it could cause over \$50 billion in loss and devastate
3 the insurance industry in the United States;

4 (6) if a repeat of the 1938 “Long Island Ex-
5 press” were to occur again it could cause over \$30
6 billion in damage and if a hurricane that strong
7 were to directly hit Manhattan it could cause over
8 \$150 billion in damage and cause irreparable harm
9 to our Nation’s economy;

10 (7) a more comprehensive and integrated ap-
11 proach to dealing with catastrophes is needed;

12 (8) using history as a guide, natural catas-
13 trophes will inevitably place a tremendous strain on
14 homeowners’ insurance markets in many areas, will
15 raise costs for consumers, and will jeopardize the
16 ability of many consumers to adequately insure their
17 homes and possessions;

18 (9) the lack of sufficient insurance capacity and
19 the inability of private insurers to build enough cap-
20 ital, in a short amount of time, threatens to increase
21 the number of uninsured homeowners, which, in
22 turn, increases the risk of mortgage defaults and the
23 strain on the Nation’s banking system;

1 (10) some States have intervened to ensure the
2 continued availability and affordability of home-
3 owners' insurance for all residents;

4 (11) it is appropriate that efforts to improve in-
5 surance availability be designed and implemented at
6 the State level;

7 (12) while State insurance programs may be
8 adequate to cover losses from most natural disasters,
9 a small percentage of events are likely to exceed the
10 financial capacity of these programs and the local
11 insurance markets;

12 (13) limited Federal reinsurance will improve
13 the effectiveness of State insurance programs and
14 private insurance markets and will increase the like-
15 lihood that homeowners' insurance claims will be
16 fully paid in the event of a large natural catastrophe
17 and that routine claims that occur after a mega-ca-
18 tastrophe will also continue to be paid;

19 (14) it is necessary to provide a Federal rein-
20 surance program that will provide more protection at
21 an overall lower cost and that will promote stability
22 in the homeowners' insurance market;

23 (15) it is the proper role of the Federal Govern-
24 ment to prepare for and protect its citizens from ca-
25 tastrophes and to facilitate consumer protection, vic-

1 tim assistance, and recovery, including financial re-
2 covery; and

3 (16) any Federal reinsurance program must be
4 founded upon sound actuarial principles and priced
5 in a manner that encourages the creation of State
6 funds and maximizes the buying potential of these
7 State funds and encourages and promotes prevention
8 and mitigation, recovery and rebuilding, and con-
9 sumer education, and emphasizes continuous anal-
10 ysis and improvement.

11 **SEC. 3. NATIONAL COMMISSION ON CATASTROPHE PREPA-**
12 **RATION AND PROTECTION.**

13 (a) ESTABLISHMENT.—The Secretary of the Treas-
14 ury shall establish a commission to be known as the Na-
15 tional Commission on Catastrophe Preparation and Pro-
16 tection.

17 (b) DUTIES.—The Commission shall meet for the
18 purpose of advising the Secretary regarding the estimated
19 loss costs associated with the contracts for reinsurance
20 coverage available under this Act and carrying out the
21 functions specified in this Act, including—

22 (1) the development and implementation of
23 public education concerning the risks posed by nat-
24 ural catastrophes;

1 (2) the development and implementation of pre-
2 vention, mitigation, recovery, and rebuilding stand-
3 ards that better prepare and protect the United
4 States from catastrophes; and

5 (3) conducting continuous analysis of the effec-
6 tiveness of this Act and recommending improve-
7 ments to the Congress so that the costs of providing
8 catastrophe protection are decreased and so that the
9 United States is better prepared.

10 (c) MEMBERS.—

11 (1) APPOINTMENT AND QUALIFICATION.—The
12 Commission shall consist of 9 members, as follows:

13 (A) HOMELAND SECURITY MEMBER.—The
14 Secretary of Homeland Security or the Sec-
15 retary's designee.

16 (B) APPOINTED MEMBERS.—8 members
17 appointed by the Secretary, who shall consist
18 of—

19 (i) one individual who is an actuary;

20 (ii) one individual who is employed in
21 engineering;

22 (iii) one individual representing the
23 scientific community;

24 (iv) one individual representing prop-
25 erty and casualty insurers;

1 (v) one individual representing rein-
2 surers;

3 (vi) one individual who is a member or
4 former member of the National Association
5 of Insurance Commissioners; and

6 (vii) two individuals who are con-
7 sumers.

8 (2) PREVENTION OF CONFLICTS OF INTER-
9 EST.—Members shall have no personal or financial
10 interest at stake in the deliberations of the Commis-
11 sion.

12 (d) TREATMENT OF NON-FEDERAL MEMBERS.—
13 Each member of the Commission who is not otherwise em-
14 ployed by the Federal Government shall be considered a
15 special Government employee for purposes of sections 202
16 and 208 of title 18, United States Code.

17 (e) EXPERTS AND CONSULTANTS.—The Commission
18 may procure temporary and intermittent services from in-
19 dividuals or groups recognized as experts in the fields of
20 meteorology, seismology, vulcanology, geology, structural
21 engineering, wind engineering, and hydrology, and other
22 fields, under section 3109(b) of title 5, United States
23 Code, but at a rate not in excess of the daily equivalent
24 of the annual rate of basic pay payable for level V of the
25 Executive Schedule, for each day during which the indi-

1 vidual procured is performing such services for the Com-
2 mission. The Commission may also procure, and the Con-
3 gress encourages the Commission to procure, experts from
4 universities, research centers, foundations, and other ap-
5 propriate organizations who could study, research, and de-
6 velop methods and mechanisms that could be utilized to
7 strengthen structures to better withstand the perils cov-
8 ered by this Act.

9 (f) COMPENSATION.—Each member of the Commis-
10 sion who is not an officer or employee of the Federal Gov-
11 ernment shall be compensated at a rate of basic pay pay-
12 able for level V of the Executive Schedule, for each day
13 (including travel time) during which such member is en-
14 gaged in the performance of the duties of the Commission.
15 All members of the Commission who are officers or em-
16 ployees of the United States shall serve without compensa-
17 tion in addition to that received for their services as offi-
18 cers or employees of the United States.

19 (g) OBTAINING DATA.—The Commission and the
20 Secretary may solicit loss exposure data and such other
21 information either deems necessary to carry out its re-
22 sponsibilities from governmental agencies and bodies and
23 organizations that act as statistical agents for the insur-
24 ance industry. The Commission and the Secretary shall
25 take such actions as are necessary to ensure that informa-

1 tion that either deems is confidential or proprietary is dis-
2 closed only to authorized individuals working for the Com-
3 mission or the Secretary. No company which refuses to
4 provide information requested by the Commission or the
5 Secretary may participate in the program for reinsurance
6 coverage authorized under this Act, nor may any State
7 insurance or reinsurance program participate if any gov-
8 ernmental agency within that State has refused to provide
9 information requested by the Commission or the Sec-
10 retary.

11 (h) FUNDING.—

12 (1) AUTHORIZATION OF APPROPRIATIONS.—

13 There is authorized to be appropriated—

14 (A) \$10,000,000 for fiscal year 2006 for
15 the initial expenses in establishing the Commis-
16 sion and the initial activities of the Commission
17 that cannot timely be covered by amounts ob-
18 tained pursuant to section 7(b)(6)(B)(iii), as
19 determined by the Secretary;

20 (B) such additional sums as may be nec-
21 essary to carry out subsequent activities of the
22 Commission;

23 (C) \$10,000,000 for fiscal year 2006 for
24 the initial expenses of the Secretary in carrying

1 out the program authorized under section 4;
2 and

3 (D) such additional sums as may be nec-
4 essary to carry out subsequent activities of the
5 Secretary under this Act.

6 (2) OFFSET.—The Secretary shall provide, to
7 the maximum extent practicable, that an amount
8 equal to any amount appropriated under paragraph
9 (1) is obtained from purchasers of reinsurance cov-
10 erage under this Act and deposited in the Fund es-
11 tablished under section 9. Such amounts shall be ob-
12 tained by inclusion of a provision for the Secretary’s
13 and the Commission’s expenses incorporated into the
14 pricing of the contracts for such reinsurance cov-
15 erage, pursuant to section 7(b)(6)(B)(iii).

16 (i) TERMINATION.—The Commission shall terminate
17 upon the effective date of the repeal under section 12(c).

18 **SEC. 4. PROGRAM AUTHORITY.**

19 (a) IN GENERAL.—The Secretary of the Treasury, in
20 consultation with the Secretary of Homeland Security,
21 shall carry out a program under this Act to make home-
22 owners protection coverage available through contracts for
23 reinsurance coverage under section 7, which shall be made
24 available for purchase only by eligible State programs.

1 (b) PURPOSE.—The program shall be designed to
2 make reinsurance coverage under this Act available—

3 (1) to improve the availability and affordability
4 of homeowners' insurance for the purpose of facili-
5 tating the pooling, and spreading the risk, of cata-
6 strophic financial losses from natural catastrophes;

7 (2) to improve the solvency and capacity of
8 homeowners' insurance markets;

9 (3) to encourage the development and imple-
10 mentation of mitigation, prevention, recovery, and
11 rebuilding standards; and

12 (4) to recommend methods to continuously im-
13 prove the way the United States reacts and responds
14 to catastrophes, including improvements to the
15 HELP Fund established under section 9.

16 (c) CONTRACT PRINCIPLES.—Under the program
17 under this Act, the Secretary shall offer reinsurance cov-
18 erage through contracts with covered purchasers, which
19 contracts shall—

20 (1) minimize the administrative costs of the
21 Federal Government;

22 (2) provide coverage based solely on insured
23 losses within the State for the eligible State program
24 purchasing the contract.

1 **SEC. 5. QUALIFIED LINES OF COVERAGE.**

2 Each contract for reinsurance coverage made avail-
3 able under this Act shall provide insurance coverage
4 against residential property losses to homes (including
5 dwellings owned under condominium and cooperative own-
6 ership arrangements) and the contents of apartment
7 buildings.

8 **SEC. 6. COVERED PERILS.**

9 Each contract for reinsurance coverage made avail-
10 able under this Act shall cover losses insured or reinsured
11 by the eligible State program purchasing the contract that
12 are proximately caused by—

- 13 (1) earthquakes;
- 14 (2) perils ensuing from earthquakes, including
15 fire and tsunamis;
- 16 (3) tropical cyclones having maximum sustained
17 winds of at least 74 miles per hour, including hurri-
18 canes and typhoons;
- 19 (4) tornadoes;
- 20 (5) volcanic eruptions;
- 21 (6) catastrophic winter storms; and
- 22 (7) any other natural catastrophe (not including
23 any flood) insured or reinsured under the eligible
24 State program for which reinsurance coverage under
25 section 7 is provided.

1 The Secretary shall, by regulation, define the natural ca-
2 tastrophe perils under this section.

3 **SEC. 7. CONTRACTS FOR REINSURANCE COVERAGE FOR**
4 **ELIGIBLE STATE PROGRAMS.**

5 (a) **ELIGIBLE STATE PROGRAMS.**—A program shall
6 be eligible to purchase a contract under this section for
7 reinsurance coverage under this Act only if the State enti-
8 ty authorized to make such determinations certifies to the
9 Secretary that the program complies with the following re-
10 quirements:

11 (1) **PROGRAM DESIGN.**—The program shall be a
12 State-operated—

13 (A) insurance program that—

14 (i) offers coverage for homes (which
15 may include dwellings owned under condo-
16 minium and cooperative ownership ar-
17 rangements) and the contents of apart-
18 ments to State residents; and

19 (ii) is authorized by State law; or

20 (B) reinsurance program that is designed
21 to improve private insurance markets that offer
22 coverage for homes (which may include dwell-
23 ings owned under condominium and cooperative
24 ownership arrangements) and the contents of
25 apartments.

1 (2) OPERATION.—The program shall meet the
2 following requirements:

3 (A) A majority of the members of the gov-
4 erning body of the program shall be public offi-
5 cials.

6 (B) The State shall have a financial inter-
7 est in the program, which shall not include a
8 program authorized by State law or regulation
9 that requires insurers to pool resources to pro-
10 vide property insurance coverage for covered
11 perils.

12 (C) The State shall not be eligible for con-
13 sumer HELP Fund assistance if a State has
14 appropriated money from the State fund and
15 not paid it back to the State fund, with inter-
16 est.

17 (3) TAX STATUS.—The program shall be struc-
18 tured and carried out in a manner so that the pro-
19 gram is exempt from all Federal taxation.

20 (4) COVERAGE.—The program shall cover all
21 perils enumerated in section 6.

22 (5) EARNINGS.—The program may not provide
23 for, nor shall have ever made, any redistribution of
24 any part of any net profits of the program to any
25 insurer that participates in the program.

1 (6) PREVENTION AND MITIGATION.—The pro-
2 gram shall include prevention and mitigation provi-
3 sions that require that not less \$10,000,000 and not
4 more than 35 percent of the net investment income
5 of the State insurance or reinsurance program be
6 used for programs to mitigate losses from natural
7 catastrophes for which the State insurance or rein-
8 surance program was established. For purposes of
9 this paragraph, prevention and mitigation shall in-
10 clude methods to reduce losses of life and property,
11 including appropriate measures to adequately re-
12 flect—

13 (A) encouragement of awareness about the
14 risk factors and what can be done to eliminate
15 or reduce them;

16 (B) location of the risk, by giving careful
17 consideration of the natural risks for the loca-
18 tion of the property before allowing building
19 and considerations if structures are allowed;
20 and

21 (C) construction relative to the risk and
22 hazards, which act upon—

23 (i) State mandated building codes ap-
24 propriate for the risk;

1 (ii) adequate enforcement of the risk-
2 appropriate building codes;

3 (iii) building materials that prevent or
4 significantly lessen potential damage from
5 the natural catastrophes;

6 (iv) building methods that prevent or
7 significantly lessen potential damage from
8 the natural catastrophes; and

9 (v) a focus on prevention and mitiga-
10 tion for any substantially damaged struc-
11 ture, with an emphasis on how structures
12 can be retrofitted so as to make them
13 building code compliant.

14 (7) REQUIREMENTS REGARDING COVERAGE.—

15 (A) IN GENERAL.—The program—

16 (i) may not, except for charges or as-
17 sessments related to post-event financing
18 or bonding, involve cross-subsidization be-
19 tween any separate property and casualty
20 lines covered under the program unless the
21 elimination of such activity in an existing
22 program would negatively impact the eligi-
23 bility of the program to purchase a con-
24 tract for reinsurance coverage under this
25 Act pursuant to paragraph (3);

1 (ii) shall include provisions that au-
2 thorize the State insurance commissioner
3 or other State entity authorized to make
4 such a determination to terminate the pro-
5 gram if the insurance commissioner or
6 other such entity determines that the pro-
7 gram is no longer necessary to ensure the
8 availability of homeowners' insurance for
9 all residents of the State; and

10 (iii) shall provide that, for any insur-
11 ance coverage for homes (which may in-
12 clude dwellings owned under condominium
13 and cooperative ownership arrangements)
14 and the contents of apartments that is
15 made available under the State insurance
16 program and for any reinsurance coverage
17 for such insurance coverage made available
18 under the State reinsurance program, the
19 premium rates charged shall be amounts
20 that, at a minimum, are sufficient to cover
21 the full actuarial costs of such coverage,
22 based on consideration of the risks involved
23 and accepted actuarial and rate making
24 principles, anticipated administrative ex-

1 penses, and loss and loss-adjustment ex-
2 penses.

3 (B) APPLICABILITY.—This paragraph shall
4 apply—

5 (i) before the expiration of the 2-year
6 period beginning on the date of the enact-
7 ment of this Act, only to State programs
8 which, after January 1, 2006, commence
9 offering insurance or reinsurance coverage
10 described in subparagraph (A) or (B), re-
11 spectively, of paragraph (1); and

12 (ii) after the expiration of such period,
13 to all State programs.

14 (8) OTHER QUALIFICATIONS.—

15 (A) IN GENERAL.—The State program
16 shall (for the year for which the coverage is in
17 effect) comply with regulations that shall be
18 issued under this paragraph by the Secretary,
19 in consultation with the National Commission
20 on Catastrophe Preparation and Prevention es-
21 tablished under section 3. The regulations shall
22 establish criteria for State programs to qualify
23 to purchase reinsurance under this section,
24 which are in addition to the requirements under
25 the other paragraphs of this subsection.

1 (B) CONTENTS.—The regulations issued
2 under this paragraph shall include requirements
3 that—

4 (i) the State program shall have pub-
5 lic members on its board of directors or
6 have an advisory board with public mem-
7 bers;

8 (ii) the State program provide ade-
9 quate insurance or reinsurance protection,
10 as applicable, for the peril covered, which
11 shall include a range of deductibles and
12 premium costs that reflect the applicable
13 risk to eligible properties;

14 (iii) insurance or reinsurance cov-
15 erage, as applicable, provided by the State
16 program is made available on a non-
17 discriminatory basis to all qualifying resi-
18 dents;

19 (iv) any new construction, substantial
20 rehabilitation, and renovation insured or
21 reinsured by the program complies with
22 applicable State or local government build-
23 ing, fire, and safety codes;

24 (v) the State, or appropriate local gov-
25 ernments within the State, have in effect

1 and enforce nationally recognized model
2 building, fire, and safety codes and con-
3 sensus-based standards that offer risk re-
4 sponsive resistance that is substantially
5 equivalent or greater than the resistance to
6 earthquakes or high winds;

7 (vi) the State has taken actions to es-
8 tablish an insurance rate structure that
9 takes into account measures to mitigate in-
10 surance losses;

11 (vii) there are in effect, in such State,
12 laws or regulations sufficient to prohibit
13 price gouging, during the term of reinsur-
14 ance coverage under this Act for the State
15 program in any disaster area located with-
16 in the State; and

17 (viii) the State program complies with
18 such other requirements that the Secretary
19 considers necessary to carry out the pur-
20 poses of this Act.

21 (b) TERMS OF CONTRACTS.—Each contract under
22 this section for reinsurance coverage under this Act shall
23 be subject to the following terms and conditions:

1 (1) MATURITY.—The term of the contract shall
2 not exceed 1 year or such other term as the Sec-
3 retary may determine.

4 (2) PAYMENT CONDITION.—The contract shall
5 authorize claims payments for eligible losses only to
6 the eligible State program purchasing the coverage.

7 (3) RETAINED LOSSES REQUIREMENT.—For
8 each event of a covered peril, the contract shall
9 make a payment for the event only if the total
10 amount of insurance claims for losses, which are
11 covered by qualified lines, occur to properties located
12 within the State covered by the contract, and that
13 result from events, exceeds the amount of retained
14 losses provided under the contract (pursuant to sec-
15 tion 8(a)) purchased by the eligible State program.

16 (4) MULTIPLE EVENTS.—The contract shall
17 cover any eligible losses from one or more covered
18 events that may occur during the term of the con-
19 tract and shall provide that if multiple events occur,
20 the retained losses requirement under paragraph (3)
21 shall apply on a calendar year basis, in the aggre-
22 gate and not separately to each individual event.

23 (5) TIMING OF ELIGIBLE LOSSES.—Eligible
24 losses under the contract shall include only insur-
25 ance claims for property covered by qualified lines

1 that are reported to the eligible State program with-
2 in the 3-year period beginning upon the event or
3 events for which payment under the contract is pro-
4 vided.

5 (6) PRICING.—

6 (A) DETERMINATION.—The price of rein-
7 surance coverage under the contract shall be an
8 amount established by the Secretary as follows:

9 (i) RECOMMENDATIONS.—The Sec-
10 retary shall take into consideration the rec-
11 ommendations of the Commission in estab-
12 lishing the price, but the price may not be
13 less than the amount recommended by the
14 Commission.

15 (ii) FAIRNESS TO TAXPAYERS.—The
16 price shall be established at a level that is
17 designed to reflect the risks and costs
18 being borne under each reinsurance con-
19 tract issued under this Act and that takes
20 into consideration empirical models of nat-
21 ural disasters and the capacity of private
22 markets to absorb insured losses from nat-
23 ural disasters.

24 (iii) SELF-SUFFICIENCY.—The rates
25 for reinsurance coverage shall be estab-

1 lished at a level that annually produces ex-
2 pected premiums that shall be sufficient to
3 pay the expected annualized cost of all
4 claims, loss adjustment expenses, and all
5 administrative costs of reinsurance cov-
6 erage offered under this section.

7 (B) COMPONENTS.—The price shall consist
8 of the following components:

9 (i) RISK-BASED PRICE.—A risk-based
10 price, which shall reflect the anticipated
11 annualized payout of the contract accord-
12 ing to the actuarial analysis and rec-
13 ommendations of the Commission.

14 (iii) ADMINISTRATIVE COSTS.—A sum
15 sufficient to provide for the operation of
16 the Commission and the administrative ex-
17 penses incurred by the Secretary in car-
18 rying out this Act.

19 (7) INFORMATION.—The contract shall contain
20 a condition providing that the Commission may re-
21 quire the State program that is covered under the
22 contract to submit to the Commission all informa-
23 tion on the State program relevant to the duties of
24 the Commission, as determined by the Secretary.

1 (8) ADDITIONAL CONTRACT OPTION.—The con-
2 tract shall provide that the purchaser of the contract
3 may, during the term of such original contract, pur-
4 chase additional contracts from among those offered
5 by the Secretary at the beginning of the term, sub-
6 ject to the limitations under section 8, at the prices
7 at which such contracts were offered at the begin-
8 ning of the term, prorated based upon the remaining
9 term as determined by the Secretary. Such addi-
10 tional contracts shall provide coverage beginning on
11 a date 15 days after the date of purchase but shall
12 not provide coverage for losses for an event that has
13 already occurred.

14 (9) OTHERS.—The contract shall contain such
15 other terms as the Secretary considers necessary to
16 carry out this Act and to ensure the long-term fi-
17 nancial integrity of the program under this Act.

18 (c) PARTICIPATION BY MULTI-STATE CATASTROPHE
19 FUND PROGRAMS.—Nothing in this Act shall prohibit the
20 creation of multi-State catastrophe insurance or reinsur-
21 ance programs, or the participation by such programs in
22 the program established pursuant to section 4. The Sec-
23 retary shall, by regulation, apply the provisions of this Act
24 to multi-State catastrophe insurance and reinsurance pro-
25 grams.

1 **SEC. 8. MINIMUM LEVEL OF RETAINED LOSSES AND MAX-**
2 **IMUM FEDERAL LIABILITY.**

3 (a) AVAILABLE LEVELS OF RETAINED LOSSES.—In
4 making reinsurance coverage available under this Act, the
5 Secretary shall make available for purchase contracts for
6 such coverage that require the sustainment of retained
7 losses from covered perils (as required under section
8 7(b)(3) for payment of eligible losses) in various amounts,
9 as the Secretary, in consultation with the Commission, de-
10 termines appropriate and subject to the requirements
11 under subsection (b).

12 (b) MINIMUM LEVEL OF RETAINED LOSSES.—

13 (1) CONTRACTS FOR STATE PROGRAMS.—Sub-
14 ject to paragraphs (3) and (4) and notwithstanding
15 any other provision of this Act, a contract for rein-
16 surance coverage under section 7 for an eligible
17 State program that offers insurance or reinsurance
18 coverage described in subparagraph (A) or (B), re-
19 spectively, of section 7(a)(1) may not be made avail-
20 able or sold unless the contract requires retained
21 losses from covered perils in the following amount:

22 (A) IN GENERAL.—The State program
23 shall sustain an amount of retained losses of
24 not less than—

1 (i) the claims-paying capacity of the
2 eligible State program, as determined by
3 the Secretary; and

4 (ii) an amount, determined by the
5 Secretary in consultation with the Commis-
6 sion, that is the amount equal to the eligi-
7 ble losses projected to be incurred once
8 every 50 years on an annual basis from
9 covered perils.

10 (B) TRANSITION RULE FOR EXISTING PRO-
11 GRAMS.—

12 (i) CLAIMS-PAYING CAPACITY.—Sub-
13 ject to clause (ii), in the case of any eligi-
14 ble State program that was offering insur-
15 ance or reinsurance coverage on the date
16 of the enactment of this Act and the
17 claims-paying capacity of which is greater
18 than the amount determined under sub-
19 paragraph (A)(i) but less than an amount
20 determined for the program under sub-
21 paragraph (A)(ii), the minimum level of re-
22 tained losses applicable under this para-
23 graph shall be the claims-paying capacity
24 of such State program.

1 (ii) AGREEMENT.—Clause (i) shall
2 apply to a State program only if the pro-
3 gram enters into a written agreement with
4 the Secretary providing a schedule for in-
5 creasing the claims-paying capacity of the
6 program to the amount determined for the
7 program under subparagraph (A)(ii) over a
8 period not to exceed 5 years. The Sec-
9 retary may extend the 5-year period for
10 not more than 5 additional one-year peri-
11 ods if the Secretary determines that losses
12 incurred by the State program as a result
13 of covered perils create excessive hardship
14 on the State program. The Secretary shall
15 consult with the appropriate officials of the
16 State program regarding the required
17 schedule and any potential one-year exten-
18 sions.

19 (C) TRANSITION RULE FOR NEW PRO-
20 GRAMS.—

21 (i) 50-YEAR EVENT.—The Secretary
22 may provide that, in the case of an eligible
23 State program that, after January 1,
24 2006, commences offering insurance or re-
25 insurance coverage, during the 7-year pe-

1 riod beginning on the date that reinsur-
2 ance coverage under section 7 is first made
3 available, the minimum level of retained
4 losses applicable under this paragraph
5 shall be the amount determined for the
6 State under subparagraph (A)(i), except
7 that such minimum level shall be adjusted
8 annually as provided in clause (ii) of this
9 subparagraph.

10 (ii) ANNUAL ADJUSTMENT.—Each an-
11 nual adjustment under this clause shall in-
12 crease the minimum level of retained losses
13 applicable under this subparagraph to an
14 eligible State program described in clause
15 (i) in a manner such that—

16 (I) during the course of such 7-
17 year period, the applicable minimum
18 level of retained losses approaches the
19 minimum level that, under subpara-
20 graph (A) (ii), will apply to the eligi-
21 ble State program upon the expiration
22 of such period; and

23 (II) each such annual increase is
24 a substantially similar amount, to the
25 extent practicable.

1 (D) REDUCTION BECAUSE OF REDUCED
2 CLAIMS-PAYING CAPACITY.—

3 (i) AUTHORITY.—Notwithstanding
4 subparagraphs (A), (B), and (C) or the
5 terms contained in a contract for reinsur-
6 ance pursuant to such subparagraphs, if
7 the Secretary determines that the claims-
8 paying capacity of an eligible State pro-
9 gram has been reduced because of payment
10 for losses due to an event, the Secretary
11 may reduce the minimum level of retained
12 losses.

13 (ii) TERM OF REDUCTION.—The Sec-
14 retary may extend the 5-year period for
15 not more than 5 additional one-year peri-
16 ods if the Secretary determines that losses
17 incurred by the State program as a result
18 of covered perils create excessive hardship
19 on the State program. The Secretary shall
20 consult with the appropriate officials of the
21 State program regarding the required
22 schedule and any potential one-year exten-
23 sions.

24 (E) CLAIMS-PAYING CAPACITY.—For pur-
25 poses of this paragraph, the claims-paying ca-

1 capacity of a State-operated insurance or reinsur-
2 ance program under section 7(a)(1) shall be de-
3 termined by the Secretary, in consultation with
4 the Commission, taking into consideration the
5 claims-paying capacity as determined by the
6 State program, retained losses to private insur-
7 ers in the State in an amount assigned by the
8 State insurance commissioner, the cash surplus
9 of the program, and the lines of credit, reinsur-
10 ance, and other financing mechanisms of the
11 program established by law.

12 (c) MAXIMUM FEDERAL LIABILITY.—

13 (1) IN GENERAL.—Notwithstanding any other
14 provision of law, the Secretary may sell only con-
15 tracts for reinsurance coverage under this Act in
16 various amounts that comply with the following re-
17 quirements:

18 (A) ESTIMATE OF AGGREGATE LIABIL-
19 ITY.—The aggregate liability for payment of
20 claims under all such contracts in any single
21 year is unlikely to exceed \$200,000,000,000 (as
22 such amount is adjusted under paragraph (2)).

23 (B) ELIGIBLE LOSS COVERAGE SOLD.—El-
24 igible losses covered by all contracts sold within
25 a State during a 12-month period do not exceed

1 the difference between the following amounts
2 (each of which shall be determined by the Sec-
3 retary in consultation with the Commission):

4 (i) The amount equal to the eligible
5 loss projected to be incurred once every
6 500 years from a single event in the State.

7 (ii) The amount equal to the eligible
8 loss projected to be incurred once every 50
9 years from a single event in the State.

10 (2) ANNUAL ADJUSTMENTS.—The Secretary
11 shall annually adjust the amount under paragraph
12 (1)(A) (as it may have been previously adjusted) to
13 provide for inflation in accordance with an inflation
14 index that the Secretary determines to be appro-
15 priate.

16 (d) LIMITATION ON PERCENTAGE OF RISK IN EX-
17 CESS OF RETAINED LOSSES.—

18 (1) IN GENERAL.—The Secretary may not
19 make available for purchase contracts for reinsur-
20 ance coverage under this Act that would pay out
21 more than 100 percent of eligible losses in excess of
22 retained losses in the case of a contract under sec-
23 tion 7 for an eligible State program, for such State.

24 (2) PAYOUT.—For purposes of this subsection,
25 the amount of payout from a reinsurance contract

1 shall be the amount of eligible losses in excess of re-
2 tained losses multiplied by the percentage under
3 paragraph (1).

4 **SEC. 9. CONSUMER HURRICANE, EARTHQUAKE, LOSS PRO-**
5 **TECTION (HELP) FUND.**

6 (a) **ESTABLISHMENT.**—There is established within
7 the Treasury of the United States a fund to be known
8 as the Consumer HELP Fund (in this section referred
9 to as the “Fund”).

10 (b) **CREDITS.**—The Fund shall be credited with—

11 (1) amounts received annually from the sale of
12 contracts for reinsurance coverage under this Act;

13 (2) any amounts borrowed under subsection
14 (d);

15 (3) any amounts earned on investments of the
16 Fund pursuant to subsection (e); and

17 (4) such other amounts as may be credited to
18 the Fund.

19 (c) **USES.**—Amounts in the Fund shall be available
20 to the Secretary only for the following purposes:

21 (1) **CONTRACT PAYMENTS.**—For payments to
22 covered purchasers under contracts for reinsurance
23 coverage for eligible losses under such contracts.

24 (2) **COMMISSION COSTS.**—To pay for the oper-
25 ating costs of the Commission.

1 (3) ADMINISTRATIVE EXPENSES.—To pay for
2 the administrative expenses incurred by the Sec-
3 retary in carrying out the reinsurance program
4 under this Act.

5 (4) TERMINATION.—Upon termination under
6 section 13, as provided in such section.

7 (d) BORROWING.—

8 (1) AUTHORITY.—To the extent that the
9 amounts in the Fund are insufficient to pay claims
10 and expenses under subsection (c), the Secretary
11 may issue such obligations of the Fund as may be
12 necessary to cover the insufficiency and shall pur-
13 chase any such obligations issued.

14 (2) PUBLIC DEBT TRANSACTION.—For the pur-
15 pose of purchasing any such obligations, the Sec-
16 retary may use as a public debt transaction the pro-
17 ceeds from the sale of any securities issued under
18 chapter 31 of title 31, United States Code, and the
19 purposes for which securities are issued under such
20 chapter are hereby extended to include any purchase
21 by the Secretary of such obligations under this sub-
22 section.

23 (3) CHARACTERISTICS OF OBLIGATIONS.—Obli-
24 gations issued under this subsection shall be in such
25 forms and denominations, bear such maturities, bear

1 interest at such rate, and be subject to such other
2 terms and conditions, as the Secretary shall deter-
3 mine.

4 (4) TREATMENT.—All redemptions, purchases,
5 and sales by the Secretary of obligations under this
6 subsection shall be treated as public debt trans-
7 actions of the United States.

8 (5) REPAYMENT.—Any obligations issued under
9 this subsection shall be repaid including interest,
10 from the Fund and shall be recouped from pre-
11 miums charged for reinsurance coverage provided
12 under this Act.

13 (e) INVESTMENT.—If the Secretary determines that
14 the amounts in the Fund are in excess of current needs,
15 the Secretary may invest such amounts as the Secretary
16 considers advisable in obligations issued or guaranteed by
17 the United States.

18 (f) PROHIBITION OF FEDERAL FUNDS.—Except for
19 amounts made available pursuant to subsection (d) and
20 section 3(h), no further Federal funds shall be authorized
21 or appropriated for the Fund or for carrying out the rein-
22 surance program under this Act.

23 **SEC. 10. DEFINITIONS.**

24 For purposes of this Act, the following definitions
25 shall apply:

1 (1) COMMISSION.—The term “Commission”
2 means the National Commission on Catastrophe
3 Risks and Insurance Loss Costs established under
4 section 3.

5 (2) COVERED PERILS.—The term “covered per-
6 ils” means the natural disaster perils under section
7 6.

8 (3) COVERED PURCHASER.—The term “covered
9 purchaser” means an eligible State-operated insur-
10 ance or reinsurance program that purchases reinsur-
11 ance coverage made available under a contract under
12 section 7.

13 (4) DISASTER AREA.—The term “disaster area”
14 means a geographical area, with respect to which—

15 (A) a covered peril specified in section
16 has occurred; and

17 (B) a declaration that a major disaster ex-
18 ists, as a result of the occurrence of such
19 peril—

20 (i) has been made by the President of
21 the United States; and

22 (ii) is in effect.

23 (5) ELIGIBLE LOSSES.—The term “eligible
24 losses” means losses in excess of the sustained and

1 retained losses, as defined by the Secretary after
2 consultation with the Commission.

3 (6) ELIGIBLE STATE PROGRAM.—The term “eli-
4 gible State program” means a State program that,
5 pursuant to section 7(a), is eligible to purchase rein-
6 surance coverage made available through contracts
7 under section 7, or a multi-State program that is eli-
8 gible to purchase such coverage pursuant to section
9 7(c).

10 (7) PRICE GOUGING.—The term “price
11 gouging” means the providing of any consumer good
12 or service by a supplier related to repair or restora-
13 tion of property damaged from a catastrophe for a
14 price that the supplier knows or has reason to know
15 is greater, by at least the percentage set forth in a
16 State law or regulation prohibiting such act (not-
17 withstanding any real cost increase due to any at-
18 tendant business risk and other reasonable expenses
19 that result from the major catastrophe involved),
20 than the price charged by the supplier for such con-
21 sumer good or service immediately before the dis-
22 aster.

23 (8) QUALIFIED LINES.—The term “qualified
24 lines” means lines of insurance coverage for which

1 losses are covered under section 5 by reinsurance
2 coverage under this Act.

3 (9) REINSURANCE COVERAGE.—The term “re-
4 insurance coverage under this Act” means coverage
5 under contracts made available under section 7.

6 (10) SECRETARY.—The term “Secretary”
7 means the Secretary of the Treasury.

8 (11) STATE.—The term “State” means the
9 States of the United States, the District of Colum-
10 bia, the Commonwealth of Puerto Rico, the Com-
11 monwealth of the Northern Mariana Islands, Guam,
12 the Virgin Islands, American Samoa, and any other
13 territory or possession of the United States.

14 **SEC. 11. REGULATIONS.**

15 The Secretary, in consultation with the Secretary of
16 the Department of Homeland Security, shall issue any
17 regulations necessary to carry out the program for rein-
18 surance coverage under this Act.

19 **SEC. 12. TERMINATION.**

20 (a) IN GENERAL.—Except as provided in subsection
21 (b), the Secretary may not provide any reinsurance cov-
22 erage under this Act covering any period after the expira-
23 tion of the 20-year period beginning on the date of the
24 enactment of this Act.

1 (b) **EXTENSION.**—If upon the expiration of the period
2 under subsection (a) the Secretary, in consultation with
3 the Commission, determines that continuation of the pro-
4 gram for reinsurance coverage under this Act is necessary
5 or appropriate to carry out the purpose of this Act under
6 section 4(b) because of insufficient growth of capacity in
7 the private homeowners’ insurance market, the Secretary
8 shall continue to provide reinsurance coverage under this
9 Act until the expiration of the 5-year period beginning
10 upon the expiration of the period under subsection (a).

11 (c) **REPEAL.**—Effective upon the date that reinsur-
12 ance coverage under this Act is no longer available or in
13 force pursuant to subsection (a) or (b), this Act (except
14 for this section) is repealed.

15 (d) **DEFICIT REDUCTION.**—The Secretary shall cover
16 into the General Fund of the Treasury any amounts re-
17 maining in the Fund under section 9 upon the repeal of
18 this Act.

19 **SEC. 13. ANNUAL STUDY CONCERNING BENEFITS OF THE**
20 **ACT.**

21 (a) **IN GENERAL.**—The Secretary shall, on an annual
22 basis, conduct a study and submit to the Congress a report
23 that—

24 (1) analyzes the cost and availability of home-
25 owners’ insurance for losses resulting from cata-

1 strophic natural disasters covered by the reinsurance
2 program under this Act;

3 (2) describes the efforts of the participating
4 States in—

5 (A) enacting preparedness, prevention,
6 mitigation, recovery, and rebuilding standards;
7 and

8 (B) educating the public on the risks asso-
9 ciated with natural catastrophe; and

10 (3) makes recommendations regarding ways to
11 improve the program under this Act and its adminis-
12 tration.

13 (b) CONTENTS.—Each annual study under this sec-
14 tion shall also determine and identify, on an aggregate
15 basis—

16 (1) for each State or region, the capacity of the
17 private homeowners' insurance market with respect
18 to coverage for losses from catastrophic natural dis-
19 asters;

20 (2) for each State or region, the percentage of
21 homeowners who have such coverage, the catas-
22 trophes covered, and the average cost of such cov-
23 erage; and

1 (3) for each State or region, the effects this Act
2 is having on the availability and affordability of such
3 insurance.

4 (c) TIMING.—Each annual report under this section
5 shall be submitted not later than March 30 of the year
6 after the year for which the study was conducted.

7 (d) COMMENCEMENT OF REPORTING REQUIRE-
8 MENT.—The Secretary shall first submit an annual report
9 under this section not later than two years after the date
10 of the enactment of this Act.

11 **SEC. 14. GAO STUDY OF THE NATIONAL FLOOD INSURANCE**
12 **PROGRAM AND HURRICANE-RELATED**
13 **FLOODING.**

14 (a) IN GENERAL.—In light of the flooding associated
15 with Hurricane Katrina, the Comptroller General of the
16 United States shall conduct a study of the availability and
17 adequacy of flood insurance coverage for losses to resi-
18 dences and other properties caused by hurricane-related
19 flooding.

20 (b) CONTENTS.—The study under this section shall
21 determine and analyze—

22 (1) the frequency and severity of hurricane-re-
23 lated flooding during the last 20 years in comparison
24 with flooding that is not hurricane-related;

1 (2) the differences between the risks of flood-re-
2 lated losses to properties located within the 100-year
3 floodplain and those located outside of such flood-
4 plain;

5 (3) the extent to which insurance coverage re-
6 ferred to in subsection (a) is available for properties
7 not located within the 100-year floodplain;

8 (4) the advantages and disadvantages of mak-
9 ing such coverage for such properties available under
10 the national flood insurance program;

11 (5) appropriate methods for establishing pre-
12 miums for insurance coverage under such program
13 for such properties that, based on accepted actuarial
14 and rate making principles, cover the full costs of
15 providing such coverage;

16 (6) appropriate eligibility criteria for making
17 flood insurance coverage under such program avail-
18 able for properties that are not located within the
19 100-year floodplain or within a community partici-
20 pating in the national flood insurance program;

21 (7) the appropriateness of the existing
22 deductibles for all properties eligible for insurance
23 coverage under the national flood insurance pro-
24 gram, including the standard and variable
25 deductibles for pre-FIRM and post-FIRM prop-

1 erties, and whether a broader range of deductibles
2 should be established;

3 (8) income levels of policyholders of insurance
4 made available under the national flood insurance
5 program whose properties are pre-FIRM subsidized
6 properties;

7 (9) how the national flood program is marketed,
8 if changes can be made so that more people are
9 aware of flood coverage, and how take-up rates may
10 be improved;

11 (10) the number of homes that are not primary
12 residences that are insured under the national flood
13 insurance program and are pre-FIRM subsidized
14 properties; and

15 (11) suggestions and means on how the pro-
16 gram under this Act can better meet its stated goals
17 as well as the feasibility of expanding the NFIP to
18 cover the perils covered by this Act.

19 (c) CONSULTATION WITH FEMA.—In conducting
20 the study under this section, the Comptroller General shall
21 consult with the Director of the Federal Emergency Man-
22 agement Agency.

23 (d) REPORT.—The Comptroller General shall com-
24 plete the study under this section and submit a report to

- 1 the Congress regarding the findings of the study not later
- 2 than 5 months after the date of the enactment of this Act.

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