

110TH CONGRESS
1ST SESSION

S. 928

To establish a program to provide more protection at lower cost through a national backstop 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, to better assist in the financial recovery from such catastrophes, and to develop a rigorous process of continuous improvement.

IN THE SENATE OF THE UNITED STATES

MARCH 20, 2007

Mr. NELSON of Florida (for himself and Mr. MARTINEZ) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To establish a program to provide more protection at lower cost through a national backstop 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, to better assist in the financial recovery from such catastrophes, and to develop a rigorous process of continuous improvement.

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 Protection Act of 2007”.

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. Regulations.
- Sec. 11. Termination.
- Sec. 12. Annual study concerning benefits of the Act.
- Sec. 13. GAO study of the National Flood Insurance Program and hurricane-related flooding.
- Sec. 14. Definitions.

6 **SEC. 2. FINDINGS.**

7 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 thousands of
16 deaths and over \$36,000,000,000 in loss;
- 17 (4) if the 1906 San Francisco earthquake oc-
18 curred again it could cause thousands of deaths, dis-

1 place millions of residents, destroy thousands of
2 businesses, and cause over \$400,000,000,000 in loss;

3 (5) if a Category 5 hurricane were to hit Miami
4 it could cause thousands of deaths and over
5 \$50,000,000,000 in loss and devastate the local and
6 national economy;

7 (6) if a repeat of the 1938 “Long Island Ex-
8 press” were to occur again it could cause thousands
9 of deaths and over \$30,000,000,000 in damage, and
10 if a hurricane that strong were to directly hit Man-
11 hattan it could cause over \$150,000,000,000 in
12 damage and cause irreparable harm to our Nation’s
13 economy;

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

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

22 (9) the lack of sufficient insurance capacity and
23 the inability of private insurers to build enough cap-
24 ital, in a short amount of time, threatens to increase
25 the number of uninsured homeowners, which, in

1 turn, increases the risk of mortgage defaults and the
2 strain on the Nation's banking system;

3 (10) some States have exercised leadership
4 through reasonable action to ensure the continued
5 availability and affordability of homeowners' insurance
6 for all residents;

7 (11) it is appropriate that efforts to improve insurance
8 availability be designed and implemented at
9 the State level;

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

15 (13) a limited national insurance backstop will
16 improve the effectiveness of State insurance programs
17 and private insurance markets and will increase the
18 likelihood that homeowners' insurance
19 claims will be fully paid in the event of a large natural
20 catastrophe and that routine claims that occur
21 after a mega-catastrophe will also continue to be
22 paid;

23 (14) it is necessary to provide a national insurance
24 backstop program that will provide more pro-

1 tection at an overall lower cost and that will promote
2 stability in the homeowners' insurance market;

3 (15) it is the proper role of the Federal Govern-
4 ment to prepare for and protect its citizens from ca-
5 tastrophes and to facilitate consumer protection, vic-
6 tim assistance, and recovery, including financial re-
7 covery; and

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

16 **SEC. 3. NATIONAL COMMISSION ON CATASTROPHE PREPA-**
17 **RATION AND PROTECTION.**

18 (a) ESTABLISHMENT.—The Secretary of the Treas-
19 ury shall establish a commission to be known as the Na-
20 tional Commission on Catastrophe Preparation and Pro-
21 tection.

22 (b) DUTIES.—The Commission shall meet for the
23 purpose of advising the Secretary regarding the estimated
24 loss costs associated with the contracts for reinsurance

1 coverage available under this Act and carrying out the
 2 functions specified in this Act, including—

3 (1) the development and implementation of
 4 public education concerning the risks posed by nat-
 5 ural catastrophes;

6 (2) the development and implementation of pre-
 7 vention, mitigation, recovery, and rebuilding stand-
 8 ards that better prepare and protect the United
 9 States from catastrophes; and

10 (3) conducting continuous analysis of the effec-
 11 tiveness of this Act and recommending improve-
 12 ments to the Congress so that—

13 (A) the costs of providing catastrophe pro-
 14 tection are decreased; and

15 (B) the United States is better prepared.

16 (c) MEMBERS.—

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

19 (A) HOMELAND SECURITY MEMBER.—The
 20 Secretary of Homeland Security or the Sec-
 21 retary's designee.

22 (B) APPOINTED MEMBERS.—8 members
 23 appointed by the Secretary, who shall consist
 24 of—

25 (i) 1 individual who is an actuary;

1 (ii) 1 individual who is employed in
2 engineering;

3 (iii) 1 individual representing the sci-
4 entific community;

5 (iv) 1 individual representing property
6 and casualty insurers;

7 (v) 1 individual representing rein-
8 surers;

9 (vi) 1 individual who is a member or
10 former member of the National Association
11 of Insurance Commissioners; and

12 (vii) 2 individuals who are consumers.

13 (2) PREVENTION OF CONFLICTS OF INTER-
14 EST.—Members shall have no personal or financial
15 interest at stake in the deliberations of the Commis-
16 sion.

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

22 (e) EXPERTS AND CONSULTANTS.—

23 (1) IN GENERAL.—The Commission may pro-
24 cure temporary and intermittent services from indi-
25 viduals or groups recognized as experts in the fields

1 of meteorology, seismology, vulcanology, geology,
2 structural engineering, wind engineering, and hy-
3 drology, and other fields, under section 3109(b) of
4 title 5, United States Code, but at a rate not in ex-
5 cess of the daily equivalent of the annual rate of
6 basic pay payable for level V of the Executive Sched-
7 ule, for each day during which the individual pro-
8 cured is performing such services for the Commis-
9 sion.

10 (2) OTHER EXPERTS.—The Commission may
11 also procure, and the Congress encourages the Com-
12 mission to procure, experts from universities, re-
13 search centers, foundations, and other appropriate
14 organizations who could study, research, and develop
15 methods and mechanisms that could be utilized to
16 strengthen structures to better withstand the perils
17 covered by this Act.

18 (f) COMPENSATION.—

19 (1) IN GENERAL.—Each member of the Com-
20 mission who is not an officer or employee of the
21 Federal Government shall be compensated at a rate
22 of basic pay payable for level V of the Executive
23 Schedule, for each day (including travel time) during
24 which such member is engaged in the performance
25 of the duties of the Commission.

1 (2) FEDERAL EMPLOYEES.—All members of the
2 Commission who are officers or employees of the
3 United States shall serve without compensation in
4 addition to that received for their services as officers
5 or employees of the United States.

6 (g) OBTAINING DATA.—

7 (1) IN GENERAL.—The Commission and the
8 Secretary may solicit loss exposure data and such
9 other information as either the Commission or the
10 Secretary deems necessary to carry out its respon-
11 sibilities from governmental agencies and bodies and
12 organizations that act as statistical agents for the
13 insurance industry.

14 (2) OBLIGATION TO KEEP CONFIDENTIAL.—
15 The Commission and the Secretary shall take such
16 actions as are necessary to ensure that information
17 that either deems confidential or proprietary is dis-
18 closed only to authorized individuals working for the
19 Commission or the Secretary.

20 (3) FAILURE TO COMPLY.—No State insurance
21 or reinsurance program may participate if any gov-
22 ernmental agency within that State has refused to
23 provide information requested by the Commission or
24 the Secretary.

25 (h) FUNDING.—

1 (1) AUTHORIZATION OF APPROPRIATIONS.—

2 There is authorized to be appropriated—

3 (A) \$10,000,000 for fiscal year 2008 for
4 the—

5 (i) initial expenses in establishing the
6 Commission; and

7 (ii) initial activities of the Commission
8 that cannot timely be covered by amounts
9 obtained pursuant to section
10 7(b)(6)(B)(iii), as determined by the Sec-
11 retary;

12 (B) such additional sums as may be nec-
13 essary to carry out subsequent activities of the
14 Commission;

15 (C) \$10,000,000 for fiscal year 2008 for
16 the initial expenses of the Secretary in carrying
17 out the program authorized under section 4;
18 and

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

22 (2) OFFSET.—

23 (A) OBTAINED FROM PURCHASERS.—The
24 Secretary shall provide, to the maximum extent
25 practicable, that an amount equal to any

1 amount appropriated under paragraph (1) is
2 obtained from purchasers of reinsurance cov-
3 erage under this Act and deposited in the Fund
4 established under section 9.

5 (B) INCLUSION IN PRICING CONTRACTS.—

6 Any offset obtained under subparagraph (A)
7 shall be obtained by inclusion of a provision for
8 the Secretary's and the Commission's expenses
9 incorporated into the pricing of the contracts
10 for such reinsurance coverage, pursuant to sec-
11 tion 7(b)(6)(B)(iii).

12 (i) TERMINATION.—The Commission shall terminate
13 upon the effective date of the repeal under section 11(c).

14 **SEC. 4. PROGRAM AUTHORITY.**

15 (a) IN GENERAL.—The Secretary, in consultation
16 with the Secretary of Homeland Security, shall carry out
17 a program under this Act to make homeowners protection
18 coverage available through contracts for reinsurance cov-
19 erage under section 7, which shall be made available for
20 purchase only by eligible State programs.

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

23 (1) to improve the availability and affordability
24 of homeowners' insurance for the purpose of facili-

1 tating the pooling, and spreading the risk, of cata-
2 strophic financial losses from natural catastrophes;

3 (2) to improve the solvency and capacity of
4 homeowners' insurance markets;

5 (3) to encourage the development and imple-
6 mentation of mitigation, prevention, recovery, and
7 rebuilding standards; and

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

12 (c) CONTRACT PRINCIPLES.—Under the program es-
13 tablished under this Act, the Secretary shall offer reinsur-
14 ance coverage through contracts with covered purchasers,
15 which contracts shall—

16 (1) minimize the administrative costs of the
17 Federal Government; and

18 (2) provide coverage based solely on insured
19 losses within a State for the eligible State program
20 purchasing the contract.

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

22 Each contract for reinsurance coverage made avail-
23 able under this Act shall provide insurance coverage
24 against residential property losses to—

1 (1) homes (including dwellings owned under
2 condominium and cooperative ownership arrange-
3 ments); and

4 (2) the contents of apartment buildings.

5 **SEC. 6. COVERED PERILS.**

6 (a) IN GENERAL.—Each contract for reinsurance
7 coverage made available under this Act shall cover losses
8 insured or reinsured by an eligible State program pur-
9 chasing the contract that are proximately caused by—

10 (1) earthquakes;

11 (2) perils ensuing from earthquakes, including
12 fire and tsunamis;

13 (3) tropical cyclones having maximum sustained
14 winds of at least 74 miles per hour, including hurri-
15 canes and typhoons;

16 (4) tornadoes;

17 (5) volcanic eruptions;

18 (6) catastrophic winter storms; and

19 (7) any other natural catastrophe peril (not in-
20 cluding any flood) insured or reinsured under the el-
21 igible State program for which reinsurance coverage
22 under section 7 is provided.

23 (b) RULEMAKING.—The Secretary shall, by regula-
24 tion, define the natural catastrophe perils described in
25 subsection (a)(7).

1 **SEC. 7. CONTRACTS FOR REINSURANCE COVERAGE FOR**
 2 **ELIGIBLE STATE PROGRAMS.**

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

9 (1) PROGRAM DESIGN.—The program shall be a
 10 State-operated—

11 (A) insurance program that—

12 (i) offers coverage for—

13 (I) homes (which may include
 14 dwellings owned under condominium
 15 and cooperative ownership arrange-
 16 ments); and

17 (II) the contents of apartments
 18 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—

23 (i) homes (which may include dwell-
 24 ings owned under condominium and coop-
 25 erative ownership arrangements); and

26 (ii) the contents of apartments.

1 (2) OPERATION.—

2 (A) IN GENERAL.—The program shall
3 meet the following requirements:

4 (i) A majority of the members of the
5 governing body of the program shall be
6 public officials.

7 (ii) The State shall have a financial
8 interest in the program, which shall not in-
9 clude a program authorized by State law
10 or regulation that requires insurers to pool
11 resources to provide property insurance
12 coverage for covered perils.

13 (iii) The State shall not be eligible for
14 Consumer HELP Fund assistance under
15 section 9 if a State has appropriated
16 money from the State fund and not paid it
17 back to the State fund, with interest.

18 (iv) Upon receipt of assistance from
19 the Consumer HELP Fund, each reim-
20 bursement contract sold by a State shall
21 provide for reimbursements at 100 percent
22 of eligible losses.

23 (v) A State shall be required to utilize
24 either—

1 (I) an open rating system that
2 permits insurers to set homeowners'
3 insurance rates without prior approval
4 of the State; or

5 (II) a rate approval process that
6 requires actuarially sound, risk-based,
7 self-sufficient homeowners' insurance
8 rates.

9 (B) CERTIFICATION.—A State shall not be
10 eligible for Consumer HELP Fund assistance
11 unless the Secretary can certify that such State
12 is in compliance with the requirement described
13 in clause (v).

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

17 (4) COVERAGE.—The program shall cover perils
18 enumerated in section 6.

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

23 (6) PREVENTION AND MITIGATION.—

24 (A) IN GENERAL.—The program shall in-
25 clude prevention and mitigation provisions that

1 require that not less \$10,000,000 and not more
2 than 35 percent of the net investment income
3 of the State insurance or reinsurance program
4 be used for programs to mitigate losses from
5 natural catastrophes for which the State insur-
6 ance or reinsurance program was established.

7 (B) RULE OF CONSTRUCTION.—For pur-
8 poses of this paragraph, prevention and mitiga-
9 tion shall include methods to reduce losses of
10 life and property, including appropriate meas-
11 ures to adequately reflect—

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

15 (ii) location of the risk, by giving
16 careful consideration of the natural risks
17 for the location of the property before al-
18 lowing building and considerations if struc-
19 tures are allowed; and

20 (iii) construction relative to the risk
21 and hazards, which act upon—

22 (I) State mandated building
23 codes appropriate for the risk;

24 (II) adequate enforcement of the
25 risk-appropriate building codes;

1 (III) building materials that pre-
 2 vent or significantly lessen potential
 3 damage from the natural catas-
 4 trophes;

5 (IV) building methods that pre-
 6 vent or significantly lessen potential
 7 damage from the natural catas-
 8 trophes; and

9 (V) a focus on prevention and
 10 mitigation for any substantially dam-
 11 aged structure, with an emphasis on
 12 how structures can be retrofitted so as
 13 to make them building code compli-
 14 ant.

15 (7) REQUIREMENTS REGARDING COVERAGE.—

16 (A) IN GENERAL.—The program—

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

1 tract for reinsurance coverage under this
2 Act pursuant to paragraph (3);

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

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

1 principles, anticipated administrative ex-
2 penses, and loss and loss-adjustment ex-
3 penses.

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

6 (i) before the expiration of the 2-year
7 period beginning on the date of the enact-
8 ment of this Act, only to State programs
9 which, after January 1, 2008, commence
10 offering insurance or reinsurance coverage
11 described in subparagraph (A) or (B), re-
12 spectively, of paragraph (1); and

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

15 (8) OTHER QUALIFICATIONS.—

16 (A) REGULATIONS.—

17 (i) COMPLIANCE.—The State program
18 shall (for the year for which the coverage
19 is in effect) comply with regulations that
20 shall be issued under this paragraph by the
21 Secretary, in consultation with the Na-
22 tional Commission on Catastrophe Prepa-
23 ration and Protection established under
24 section 3.

1 (ii) CRITERIA.—The regulations
2 issued under clause (i) shall establish cri-
3 teria for State programs to qualify to pur-
4 chase reinsurance under this section, which
5 are in addition to the requirements under
6 the other paragraphs of this subsection.

7 (B) CONTENTS.—The regulations issued
8 under subparagraph (A)(i) shall include re-
9 quirements that—

10 (i) the State program shall have pub-
11 lic members on its board of directors or
12 have an advisory board with public mem-
13 bers;

14 (ii) the State program provides ade-
15 quate insurance or reinsurance protection,
16 as applicable, for the peril covered, which
17 shall include a range of deductibles and
18 premium costs that reflect the applicable
19 risk to eligible properties;

20 (iii) insurance or reinsurance cov-
21 erage, as applicable, provided by the State
22 program is made available on a non-
23 discriminatory basis to all qualifying resi-
24 dents;

1 (iv) any new construction, substantial
2 rehabilitation, and renovation insured or
3 reinsured by the program complies with
4 applicable State or local government build-
5 ing, fire, and safety codes;

6 (v) the State, or appropriate local gov-
7 ernments within the State, have in effect
8 and enforce nationally recognized model
9 building, fire, and safety codes and con-
10 sensus-based standards that offer risk re-
11 sponsive resistance that is substantially
12 equivalent or greater than the resistance to
13 earthquakes or high winds;

14 (vi) the State has taken actions to es-
15 tablish an insurance rate structure that
16 takes into account measures to mitigate in-
17 surance losses;

18 (vii) there are in effect, in such State,
19 laws or regulations sufficient to prohibit
20 price gouging, during the term of reinsur-
21 ance coverage under this Act for the State
22 program in any disaster area located with-
23 in the State; and

24 (viii) the State program complies with
25 such other requirements that the Secretary

1 considers necessary to carry out the pur-
2 poses of this Act.

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

6 (1) MATURITY.—The term of the contract shall
7 not exceed 1 year or such longer term as the Sec-
8 retary may determine.

9 (2) PAYMENT CONDITION.—The contract shall
10 authorize claims payments for eligible losses only to
11 the eligible State program purchasing the coverage.

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

21 (4) MULTIPLE EVENTS.—The contract shall—
22 (A) cover any eligible losses from 1 or
23 more covered events that may occur during the
24 term of the contract; and

1 (B) provide that if multiple events occur,
2 the retained losses requirement under para-
3 graph (3) shall apply on a calendar year basis,
4 in the aggregate and not separately to each in-
5 dividual event.

6 (5) TIMING OF ELIGIBLE LOSSES.—Eligible
7 losses under the contract shall include only insur-
8 ance claims for property covered by qualified lines
9 that are reported to the eligible State program with-
10 in the 3-year period beginning upon the event or
11 events for which payment under the contract is pro-
12 vided.

13 (6) PRICING.—

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

17 (i) RECOMMENDATIONS.—The Sec-
18 retary shall take into consideration the rec-
19 ommendations of the Commission in estab-
20 lishing the price, but the price may not be
21 less than the amount recommended by the
22 Commission.

23 (ii) FAIRNESS TO TAXPAYERS.—The
24 price shall be established at a level that—

1 (I) is designed to reflect the risks
2 and costs being borne under each re-
3 insurance contract issued under this
4 Act; and

5 (II) takes into consideration em-
6 pirical models of natural disasters and
7 the capacity of private markets to ab-
8 sorb insured losses from natural dis-
9 asters.

10 (iii) SELF-SUFFICIENCY.—The rates
11 for reinsurance coverage shall be estab-
12 lished at a level that annually produces ex-
13 pected premiums that shall be sufficient to
14 pay the expected annualized cost of all
15 claims, loss adjustment expenses, and all
16 administrative costs of reinsurance cov-
17 erage offered under this section.

18 (B) COMPONENTS.—The price shall consist
19 of the following components:

20 (i) RISK-BASED PRICE.—A risk-based
21 price, which shall reflect the anticipated
22 annualized payout of the contract accord-
23 ing to the actuarial analysis and rec-
24 ommendations of the Commission.

1 (ii) ADMINISTRATIVE COSTS.—A sum
2 sufficient to provide for the operation of
3 the Commission and the administrative ex-
4 penses incurred by the Secretary in car-
5 rying out this Act.

6 (7) INFORMATION.—The contract shall contain
7 a condition providing that the Commission may re-
8 quire a State program that is covered under the con-
9 tract to submit to the Commission all information on
10 the State program relevant to the duties of the Com-
11 mission, as determined by the Secretary.

12 (8) ADDITIONAL CONTRACT OPTION.—

13 (A) IN GENERAL.—The contract shall pro-
14 vide that the purchaser of the contract may,
15 during a term of such original contract, pur-
16 chase additional contracts from among those of-
17 fered by the Secretary at the beginning of the
18 term, subject to the limitations under section 8,
19 at the prices at which such contracts were of-
20 fered at the beginning of the term, prorated
21 based upon the remaining term as determined
22 by the Secretary.

23 (B) TIMING.—An additional contract pur-
24 chased under subparagraph (A) shall provide
25 coverage beginning on a date 15 days after the

1 date of purchase but shall not provide coverage
 2 for losses for an event that has already oc-
 3 curred.

4 (9) OTHERS.—The contract shall contain such
 5 other terms as the Secretary considers necessary—

6 (A) to carry out this Act; and

7 (B) to ensure the long-term financial integ-
 8 rity of the program under this Act.

9 (c) PARTICIPATION BY MULTI-STATE CATASTROPHE
 10 FUND PROGRAMS.—

11 (1) IN GENERAL.—Nothing in this Act shall
 12 prohibit, and this Act shall be construed to facilitate
 13 and encourage, the creation of multi-State catas-
 14 trophe insurance or reinsurance programs, or the
 15 participation by such programs in the program es-
 16 tablished pursuant to section 4.

17 (2) REGULATIONS.—The Secretary shall, by
 18 regulation, apply the provisions of this Act to multi-
 19 State catastrophe insurance and reinsurance pro-
 20 grams.

21 **SEC. 8. MINIMUM LEVEL OF RETAINED LOSSES AND MAX-**
 22 **IMUM FEDERAL LIABILITY.**

23 (a) AVAILABLE LEVELS OF RETAINED LOSSES.—In
 24 making reinsurance coverage available under this Act, the
 25 Secretary shall make available for purchase contracts for

1 such coverage that require the sustainment of retained
 2 losses from covered perils (as required under section
 3 7(b)(3) for payment of eligible losses) in various amounts,
 4 as the Secretary, in consultation with the Commission, de-
 5 termines appropriate and subject to the requirements
 6 under subsection (b).

7 (b) MINIMUM LEVEL OF RETAINED LOSSES.—

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

17 (A) IN GENERAL.—The State program
 18 shall sustain an amount of retained losses of
 19 not less than—

20 (i) the claims-paying capacity of the
 21 eligible State program, as determined by
 22 the Secretary; and

23 (ii) an amount, determined by the
 24 Secretary in consultation with the Commis-
 25 sion, that is the amount equal to the eligi-

1 ble losses projected to be incurred at least
2 once every 50 years on an annual basis
3 from covered perils.

4 (B) TRANSITION RULE FOR EXISTING PRO-
5 GRAMS.—

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

19 (ii) AGREEMENT.—

20 (I) IN GENERAL.—Clause (i)
21 shall apply to a State program only if
22 the program enters into a written
23 agreement with the Secretary pro-
24 viding a schedule for increasing the
25 claims-paying capacity of the program

1 to the amount determined for the pro-
 2 gram under subparagraph (A)(ii) over
 3 a period not to exceed 5 years.

4 (II) EXTENSION.—The Secretary
 5 may extend the 5-year period under
 6 subclause (I) for not more than 5 ad-
 7 ditional 1-year periods if the Sec-
 8 retary determines that losses incurred
 9 by the State program as a result of
 10 covered perils create excessive hard-
 11 ship on the State program.

12 (III) CONSULTATION.—The Sec-
 13 retary shall consult with the appro-
 14 priate officials of the State program
 15 regarding the required schedule and
 16 any potential 1-year extensions.

17 (C) TRANSITION RULE FOR NEW PRO-
 18 GRAMS.—

19 (i) 50-YEAR EVENT.—The Secretary
 20 may provide that, in the case of an eligible
 21 State program that, after January 1,
 22 2008, commences offering insurance or re-
 23 insurance coverage, during the 7-year pe-
 24 riod beginning on the date that reinsur-
 25 ance coverage under section 7 is first made

1 available, the minimum level of retained
2 losses applicable under this paragraph
3 shall be the amount determined for the
4 State under subparagraph (A)(i), except
5 that such minimum level shall be adjusted
6 annually as provided in clause (ii) of this
7 subparagraph.

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

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

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

24 (D) REDUCTION BECAUSE OF REDUCED
25 CLAIMS-PAYING CAPACITY.—

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

11 (ii) TERM OF REDUCTION.—

12 (I) EXTENSION.—The Secretary
13 may extend the 5-year period for not
14 more than 5 additional 1-year periods
15 if the Secretary determines that losses
16 incurred by the State program as a
17 result of covered perils create exces-
18 sive hardship on the State program.

19 (II) CONSULTATION.—The Sec-
20 retary shall consult with the appro-
21 priate officials of the State program
22 regarding the required schedule and
23 any potential 1-year extensions.

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 11, 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 (A) may issue such obligations of the Fund
 12 as may be necessary to cover the insufficiency;
 13 and

14 (B) shall purchase any such obligations
 15 issued.

16 (2) PUBLIC DEBT TRANSACTION.—For the pur-
 17 pose of purchasing any such obligations under para-
 18 graph (1)—

19 (A) the Secretary may use as a public debt
 20 transaction the proceeds from the sale of any
 21 securities issued under chapter 31 of title 31,
 22 United States Code; and

23 (B) the purposes for which such securities
 24 are issued under such chapter are hereby ex-

1 tended to include any purchase by the Secretary
2 of such obligations under this subsection.

3 (3) CHARACTERISTICS OF OBLIGATIONS.—Obli-
4 gations issued under this subsection shall be in such
5 forms and denominations, bear such maturities, bear
6 interest at such rate, and be subject to such other
7 terms and conditions, as the Secretary shall deter-
8 mine.

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

13 (5) REPAYMENT.—Any obligations issued under
14 this subsection shall be—

15 (A) repaid including interest, from the
16 Fund; and

17 (B) recouped from premiums charged for
18 reinsurance coverage provided under this Act.

19 (e) INVESTMENT.—If the Secretary determines that
20 the amounts in the Fund are in excess of current needs,
21 the Secretary may invest such amounts as the Secretary
22 considers advisable in obligations issued or guaranteed by
23 the United States.

24 (f) PROHIBITION OF FEDERAL FUNDS.—Except for
25 amounts made available pursuant to subsection (d) and

1 section 3(h), no further Federal funds shall be authorized
2 or appropriated for the Fund or for carrying out the rein-
3 surance program under this Act.

4 **SEC. 10. REGULATIONS.**

5 The Secretary, in consultation with the Secretary of
6 the Department of Homeland Security, shall issue any
7 regulations necessary to carry out the program for rein-
8 surance coverage under this Act.

9 **SEC. 11. TERMINATION.**

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

15 (b) EXTENSION.—If upon the expiration of the period
16 under subsection (a) the Secretary, in consultation with
17 the Commission, determines that continuation of the pro-
18 gram for reinsurance coverage under this Act is necessary
19 or appropriate to carry out the purpose of this Act under
20 section 4(b) because of insufficient growth of capacity in
21 the private homeowners' insurance market, the Secretary
22 shall continue to provide reinsurance coverage under this
23 Act until the expiration of the 5-year period beginning
24 upon the expiration of the period under subsection (a).

1 (c) REPEAL.—Effective upon the date that reinsur-
 2 ance coverage under this Act is no longer available or in
 3 force pursuant to subsection (a) or (b), this Act (except
 4 for this section) is repealed.

5 (d) DEFICIT REDUCTION.—The Secretary shall cover
 6 into the General Fund of the Treasury any amounts re-
 7 maining in the Fund under section 9 upon the repeal of
 8 this Act.

9 **SEC. 12. ANNUAL STUDY CONCERNING BENEFITS OF THE**
 10 **ACT.**

11 (a) IN GENERAL.—The Secretary shall, on an annual
 12 basis, conduct a study and submit to the Congress a report
 13 that—

14 (1) analyzes the cost and availability of home-
 15 owners' insurance for losses resulting from cata-
 16 strophic natural disasters covered by the reinsurance
 17 program under this Act;

18 (2) describes the efforts of the participating
 19 States in—

20 (A) enacting preparedness, prevention,
 21 mitigation, recovery, and rebuilding standards;
 22 and

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

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

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

7 (1) for each State or region, the capacity of the
8 private homeowners’ insurance market with respect
9 to coverage for losses from catastrophic natural dis-
10 asters;

11 (2) for each State or region, the percentage of
12 homeowners who have such coverage, the catas-
13 trophes covered, and the average cost of such cov-
14 erage; and

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

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

21 (d) COMMENCEMENT OF REPORTING REQUIRE-
22 MENT.—The Secretary shall first submit an annual report
23 under this section not later than 2 years after the date
24 of the enactment of this Act.

1 **SEC. 13. GAO STUDY OF THE NATIONAL FLOOD INSURANCE**
2 **PROGRAM AND HURRICANE-RELATED**
3 **FLOODING.**

4 (a) IN GENERAL.—In light of the flooding associated
5 with Hurricane Katrina, the Comptroller General of the
6 United States shall conduct a study of the availability and
7 adequacy of flood insurance coverage for losses to resi-
8 dences and other properties caused by hurricane-related
9 flooding.

10 (b) CONTENTS.—The study under this section shall
11 determine and analyze—

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

15 (2) the differences between the risks of flood-re-
16 lated losses to properties located within the 100-year
17 floodplain and those located outside of such flood-
18 plain;

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

22 (4) the advantages and disadvantages of mak-
23 ing such coverage for such properties available under
24 the national flood insurance program;

25 (5) appropriate methods for establishing pre-
26 miums for insurance coverage under such program

1 for such properties that, based on accepted actuarial
2 and rate making principles, cover the full costs of
3 providing such coverage;

4 (6) appropriate eligibility criteria for making
5 flood insurance coverage under such program avail-
6 able for properties that are not located within the
7 100-year floodplain or within a community partici-
8 pating in the national flood insurance program;

9 (7) the appropriateness of the existing
10 deductibles for all properties eligible for insurance
11 coverage under the national flood insurance pro-
12 gram, including the standard and variable
13 deductibles for pre-FIRM and post-FIRM prop-
14 erties, and whether a broader range of deductibles
15 should be established;

16 (8) income levels of policyholders of insurance
17 made available under the national flood insurance
18 program whose properties are pre-FIRM subsidized
19 properties;

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

24 (10) the number of homes that are not primary
25 residences that are insured under the national flood

1 insurance program and are pre-FIRM subsidized
2 properties; and

3 (11) suggestions and means on how the pro-
4 gram under this Act can better meet its stated goals
5 as well as the feasibility of expanding the national
6 flood insurance program to cover the perils covered
7 by this Act.

8 (c) CONSULTATION WITH FEMA.—In conducting
9 the study under this section, the Comptroller General shall
10 consult with the Administrator of the Federal Emergency
11 Management Agency.

12 (d) REPORT.—The Comptroller General shall com-
13 plete the study under this section and submit a report to
14 the Congress regarding the findings of the study not later
15 than 5 months after the date of the enactment of this Act.

16 **SEC. 14. DEFINITIONS.**

17 For purposes of this Act, the following definitions
18 shall apply:

19 (1) COMMISSION.—The term “Commission”
20 means the National Commission on Catastrophe
21 Preparation and Protection established under section
22 3.

23 (2) COVERED PERILS.—The term “covered per-
24 ils” means the natural disaster perils under section
25 6.

1 (3) COVERED PURCHASER.—The term “covered
2 purchaser” means an eligible State-operated insur-
3 ance or reinsurance program that purchases reinsur-
4 ance coverage made available under a contract under
5 section 7.

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

8 (A) a covered peril specified in section 6
9 has occurred; and

10 (B) a declaration that a major disaster ex-
11 ists, as a result of the occurrence of such
12 peril—

13 (i) has been made by the President of
14 the United States; and

15 (ii) is in effect.

16 (5) ELIGIBLE LOSSES.—The term “eligible
17 losses” means losses in excess of the sustained and
18 retained losses, as defined by the Secretary after
19 consultation with the Commission.

20 (6) ELIGIBLE STATE PROGRAM.—The term “eli-
21 gible State program” means—

22 (A) a State program that, pursuant to sec-
23 tion 7(a), is eligible to purchase reinsurance
24 coverage made available through contracts
25 under section 7; or

1 (B) a multi-State program that is eligible
2 to purchase such coverage pursuant to section
3 7(c).

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

17 (8) QUALIFIED LINES.—The term “qualified
18 lines” means lines of insurance coverage for which
19 losses are covered under section 5 by reinsurance
20 coverage under this Act.

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

24 (10) SECRETARY.—The term “Secretary”
25 means the Secretary of the Treasury.

1 (11) STATE.—The term “State” means the
2 States of the United States, the District of Colum-
3 bia, the Commonwealth of Puerto Rico, the Com-
4 monwealth of the Northern Mariana Islands, Guam,
5 the Virgin Islands, American Samoa, and any other
6 territory or possession of the United States.

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