

111TH CONGRESS  
1ST SESSION

# S. 1486

To amend the Internal Revenue Code of 1986 to provide for the creation of disaster protection funds by property and casualty insurance companies for the payment of policyholders' claims arising from future catastrophic events.

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## IN THE SENATE OF THE UNITED STATES

JULY 21, 2009

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

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## A BILL

To amend the Internal Revenue Code of 1986 to provide for the creation of disaster protection funds by property and casualty insurance companies for the payment of policyholders' claims arising from future catastrophic events.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Policyholder Disaster  
5 Protection Act of 2009".

6 **SEC. 2. FINDINGS.**

7 The Congress makes the following findings:

1           (1) Rising costs resulting from natural disasters  
2           are placing an increasing strain on the ability of  
3           property and casualty insurance companies to assure  
4           payment of homeowners' claims and other insurance  
5           claims arising from major natural disasters now and  
6           in the future.

7           (2) Present tax laws do not provide adequate  
8           incentives to assure that natural disaster insurance  
9           is provided or, where such insurance is provided,  
10          that funds are available for payment of insurance  
11          claims in the event of future catastrophic losses from  
12          major natural disasters, as present law requires an  
13          insurer wishing to accumulate surplus assets for this  
14          purpose to do so entirely from its after-tax retained  
15          earnings.

16          (3) Revising the tax laws applicable to the prop-  
17          erty and casualty insurance industry to permit care-  
18          fully controlled accumulation of pretax dollars in  
19          separate reserve funds devoted solely to the payment  
20          of claims arising from future major natural disasters  
21          will provide incentives for property and casualty in-  
22          surers to make natural disaster insurance available,  
23          will give greater protection to the Nation's home-  
24          owners, small businesses, and other insurance con-

1 sumers, and will help assure the future financial  
2 health of the Nation's insurance system as a whole.

3 (4) Implementing these changes will reduce the  
4 possibility that a significant portion of the private  
5 insurance system would fail in the wake of a major  
6 natural disaster and that governmental entities  
7 would be required to step in to provide relief at tax-  
8 payer expense.

9 **SEC. 3. CREATION OF POLICYHOLDER DISASTER PROTEC-**  
10 **TION FUNDS; CONTRIBUTIONS TO AND DIS-**  
11 **TRIBUTIONS FROM FUNDS; OTHER RULES.**

12 (a) CONTRIBUTIONS TO POLICYHOLDER DISASTER  
13 PROTECTION FUNDS.—Subsection (c) of section 832 of  
14 the Internal Revenue Code of 1986 (relating to the taxable  
15 income of insurance companies other than life insurance  
16 companies) is amended by striking “and” at the end of  
17 paragraph (12), by striking the period at the end of para-  
18 graph (13) and inserting “; and”, and by adding at the  
19 end the following new paragraph:

20 “(14) the qualified contributions to a policy-  
21 holder disaster protection fund during the taxable  
22 year.”.

23 (b) DISTRIBUTIONS FROM POLICYHOLDER DISASTER  
24 PROTECTION FUNDS.—Paragraph (1) of section 832(b) of  
25 the Internal Revenue Code of 1986 is amended by striking

1 “and” at the end of subparagraph (D), by striking the  
2 period at the end of subparagraph (E) and inserting “,  
3 and”, and by adding at the end the following new subpara-  
4 graph:

5           “(F) the amount of any distributions from  
6           a policyholder disaster protection fund during  
7           the taxable year, except that a distribution  
8           made to return to the qualified insurance com-  
9           pany any contribution which is not a qualified  
10          contribution (as defined in subsection (h)) for a  
11          taxable year shall not be included in gross in-  
12          come if such distribution is made prior to the  
13          filing of the tax return for such taxable year.”.

14          (c) DEFINITIONS AND OTHER RULES RELATING TO  
15 POLICYHOLDER DISASTER PROTECTION FUNDS.—Section  
16 832 of the Internal Revenue Code of 1986 (relating to  
17 insurance company taxable income) is amended by adding  
18 at the end the following new subsection:

19          “(h) DEFINITIONS AND OTHER RULES RELATING TO  
20 POLICYHOLDER DISASTER PROTECTION FUNDS.—For  
21 purposes of this section—

22           “(1) POLICYHOLDER DISASTER PROTECTION  
23          FUND.—The term ‘policyholder disaster protection  
24          fund’ (hereafter in this subsection referred to as the

1 ‘fund’) means any custodial account, trust, or any  
2 other arrangement or account—

3 “(A) which is established to hold assets  
4 that are set aside solely for the payment of  
5 qualified losses, and

6 “(B) under the terms of which—

7 “(i) the assets in the fund are re-  
8 quired to be invested in a manner con-  
9 sistent with the investment requirements  
10 applicable to the qualified insurance com-  
11 pany under the laws of its jurisdiction of  
12 domicile,

13 “(ii) the net income for the taxable  
14 year derived from the assets in the fund is  
15 required to be distributed no less fre-  
16 quently than annually,

17 “(iii) an excess balance drawdown  
18 amount is required to be distributed to the  
19 qualified insurance company no later than  
20 the close of the taxable year following the  
21 taxable year for which such amount is de-  
22 termined,

23 “(iv) a catastrophe drawdown amount  
24 may be distributed to the qualified insur-  
25 ance company if distributed prior to the

1 close of the taxable year following the year  
2 for which such amount is determined,

3 “(v) a State required drawdown  
4 amount may be distributed, and

5 “(vi) no distributions from the fund  
6 are required or permitted other than the  
7 distributions described in clauses (ii)  
8 through (v) and the return to the qualified  
9 insurance company of contributions that  
10 are not qualified contributions.

11 “(2) QUALIFIED INSURANCE COMPANY.—The  
12 term ‘qualified insurance company’ means any insur-  
13 ance company subject to tax under section 831(a).

14 “(3) QUALIFIED CONTRIBUTION.—The term  
15 ‘qualified contribution’ means a contribution to a  
16 fund for a taxable year to the extent that the  
17 amount of such contribution, when added to the pre-  
18 vious contributions to the fund for such taxable  
19 year, does not exceed the excess of—

20 “(A) the fund cap for the taxable year,  
21 over

22 “(B) the fund balance determined as of the  
23 close of the preceding taxable year.

1           “(4)       EXCESS       BALANCE       DRAWDOWN  
2       AMOUNTS.—The term ‘excess balance drawdown  
3       amount’ means the excess (if any) of—

4           “(A) the fund balance as of the close of  
5       the taxable year, over

6           “(B) the fund cap for the following taxable  
7       year.

8           “(5) CATASTROPHE DRAWDOWN AMOUNT.—

9           “(A) IN GENERAL.—The term ‘catastrophe  
10       drawdown amount’ means an amount that does  
11       not exceed the lesser of the amount determined  
12       under subparagraph (B) or (C).

13          “(B) NET LOSSES FROM QUALIFYING  
14       EVENTS.—The amount determined under this  
15       subparagraph shall be equal to the qualified  
16       losses for the taxable year determined without  
17       regard to clause (ii) of paragraph (8)(A).

18          “(C) GROSS LOSSES IN EXCESS OF  
19       THRESHOLD.—The amount determined under  
20       this subparagraph shall be equal to the excess  
21       (if any) of—

22           “(i) the qualified losses for the taxable  
23       year, over

24           “(ii) the lesser of—

1                   “(I) the fund cap for the taxable  
2                   year (determined without regard to  
3                   paragraph (9)(E)), or

4                   “(II) 30 percent of the qualified  
5                   insurance company’s surplus as re-  
6                   gards policyholders as shown on the  
7                   company’s annual statement for the  
8                   calendar year preceding the taxable  
9                   year.

10                   “(D) SPECIAL DRAWDOWN AMOUNT FOL-  
11                   LOWING A RECENT CATASTROPHE LOSS  
12                   YEAR.—If for any taxable year included in the  
13                   reference period the qualified losses exceed the  
14                   amount determined under subparagraph (C)(ii),  
15                   the ‘catastrophe drawdown amount’ shall be an  
16                   amount that does not exceed the lesser of the  
17                   amount determined under subparagraph (B) or  
18                   the amount determined under this subpara-  
19                   graph. The amount determined under this sub-  
20                   paragraph shall be an amount equal to the ex-  
21                   cess (if any) of—

22                   “(i) the qualified losses for the taxable  
23                   year, over

24                   “(ii) the lesser of—

1                   “(I) 1/3 of the fund cap for the  
2 taxable year (determined without re-  
3 gard to paragraph (9)(E)), or

4                   “(II) 10 percent of the qualified  
5 insurance company’s surplus as re-  
6 gards policyholders as shown on the  
7 company’s annual statement for the  
8 calendar year preceding the taxable  
9 year.

10                   “(E) REFERENCE PERIOD.—For purposes  
11 of subparagraph (D), the reference period shall  
12 be determined under the following table:

| <b>“For a taxable year<br/>beginning in—</b> | <b>The reference period<br/>shall be—</b> |
|--|---|
| 2012 and later .....                         | The 3 preceding taxable years.            |
| 2011 .....                                   | The 2 preceding taxable years.            |
| 2010 .....                                   | The preceding taxable year.               |
| 2008 or before .....                         | No reference period applies.              |

13                   “(6) STATE REQUIRED DRAWDOWN AMOUNT.—  
14 The term ‘State required drawdown amount’ means  
15 any amount that the department of insurance for  
16 the qualified insurance company’s jurisdiction of  
17 domicile requires to be distributed from the fund, to  
18 the extent such amount is not otherwise described in  
19 paragraph (4) or (5).

20                   “(7) FUND BALANCE.—The term ‘fund balance’  
21 means—

1           “(A) the sum of all qualified contributions  
2 to the fund,

3           “(B) less any net investment loss of the  
4 fund for any taxable year or years, and

5           “(C) less the sum of all distributions under  
6 clauses (iii) through (v) of paragraph (1)(B).

7           “(8) QUALIFIED LOSSES.—

8           “(A) IN GENERAL.—The term ‘qualified  
9 losses’ means, with respect to a taxable year—

10           “(i) the amount of losses and loss ad-  
11 justment expenses incurred in the qualified  
12 lines of business specified in paragraph  
13 (9), net of reinsurance, as reported in the  
14 qualified insurance company’s annual  
15 statement for the taxable year, that are at-  
16 tributable to one or more qualifying events  
17 (regardless of when such qualifying events  
18 occurred),

19           “(ii) the amount by which such losses  
20 and loss adjustment expenses attributable  
21 to such qualifying events have been re-  
22 duced for reinsurance received and recover-  
23 able, plus

24           “(iii) any nonrecoverable assessments,  
25 surcharges, or other liabilities that are

1 borne by the qualified insurance company  
2 and are attributable to such qualifying  
3 events.

4 “(B) QUALIFYING EVENT.—For purposes  
5 of subparagraph (A), the term ‘qualifying event’  
6 means any event that satisfies clauses (i) and  
7 (ii).

8 “(i) EVENT.—An event satisfies this  
9 clause if the event is 1 or more of the fol-  
10 lowing:

11 “(I) Windstorm (hurricane, cy-  
12 clone, or tornado).

13 “(II) Earthquake (including any  
14 fire following).

15 “(III) Winter catastrophe (snow,  
16 ice, or freezing).

17 “(IV) Fire.

18 “(V) Tsunami.

19 “(VI) Flood.

20 “(VII) Volcanic eruption.

21 “(VIII) Hail.

22 “(ii) CATASTROPHE DESIGNATION.—  
23 An event satisfies this clause if the event—

1                   “(I) is designated a catastrophe  
2                   by Property Claim Services or its suc-  
3                   cessor organization,

4                   “(II) is declared by the President  
5                   to be an emergency or disaster, or

6                   “(III) is declared to be an emer-  
7                   gency or disaster in a similar declara-  
8                   tion by the chief executive official of a  
9                   State, possession, or territory of the  
10                  United States, or the District of Co-  
11                  lumbia.

12                  “(9) FUND CAP.—

13                  “(A) IN GENERAL.—The term ‘fund cap’  
14                  for a taxable year is the sum of the separate  
15                  lines of business caps for each of the qualified  
16                  lines of business specified in the table contained  
17                  in subparagraph (C) (as modified under sub-  
18                  paragraphs (D) and (E)).

19                  “(B) SEPARATE LINES OF BUSINESS  
20                  CAP.—For purposes of subparagraph (A), the  
21                  separate lines of business cap, with respect to  
22                  a qualified line of business specified in the table  
23                  contained in subparagraph (C), is the product  
24                  of—

1                   “(i) net written premiums reported in  
 2                   the annual statement for the calendar year  
 3                   preceding the taxable year in such line of  
 4                   business, multiplied by

5                   “(ii) the fund cap multiplier applica-  
 6                   ble to such qualified line of business.

7                   “(C) QUALIFIED LINES OF BUSINESS AND  
 8                   THEIR RESPECTIVE FUND CAP MULTIPLIERS.—  
 9                   For purposes of this paragraph, the qualified  
 10                  lines of business and fund cap multipliers speci-  
 11                  fied in this subparagraph are those specified in  
 12                  the following table:

| <b>“Line of Business on Annual<br/>Statement Blank:</b> | <b>Fund Cap<br/>Multiplier:</b> |
|---|---------------------------------|
| Fire .....  | 0.25                            |
| Allied .....  | 1.25                            |
| Farmowners Multiple Peril .....                         | 0.25                            |
| Homeowners Multiple Peril .....                         | 0.75                            |
| Commercial Multi Peril (non-liability portion) .....    | 0.50                            |
| Earthquake .....  | 13.00                           |
| Inland Marine .....                                     | 0.25.                           |

13                  “(D) SUBSEQUENT MODIFICATIONS OF  
 14                  THE ANNUAL STATEMENT BLANK.—If, with re-  
 15                  spect to any taxable year beginning after the ef-  
 16                  fective date of this subsection, the annual state-  
 17                  ment blank required to be filed is amended to  
 18                  replace, combine, or otherwise modify any of  
 19                  the qualified lines of business specified in sub-  
 20                  paragraph (C), then for such taxable year sub-  
 21                  paragraph (C) shall be applied in a manner

1 such that the fund cap shall be the same  
 2 amount as if such reporting modification had  
 3 not been made.

4 “(E) 20-YEAR PHASE-IN.—Notwith-  
 5 standing subparagraph (C), the fund cap for a  
 6 taxable year shall be the amount determined  
 7 under subparagraph (C), as adjusted pursuant  
 8 to subparagraph (D) (if applicable), multiplied  
 9 by the phase-in percentage indicated in the fol-  
 10 lowing table:

| “Taxable year beginning in: | Phase-in percentage<br>to be applied<br>to fund cap<br>computed<br>under subparagraphs<br>(A) and (B) |
|-----------------------------|---|
| 2009 .....                  | 5 percent   |
| 2010 .....                  | 10 percent  |
| 2011 .....                  | 15 percent  |
| 2012 .....                  | 20 percent  |
| 2013 .....                  | 25 percent  |
| 2014 .....                  | 30 percent  |
| 2015 .....                  | 35 percent  |
| 2016 .....                  | 40 percent  |
| 2017 .....                  | 45 percent  |
| 2018 .....                  | 50 percent  |
| 2019 .....                  | 55 percent  |
| 2020 .....                  | 60 percent  |
| 2021 .....                  | 65 percent  |
| 2022 .....                  | 70 percent  |
| 2023 .....                  | 75 percent  |
| 2024 .....                  | 80 percent  |
| 2025 .....                  | 85 percent  |
| 2026 .....                  | 90 percent  |
| 2027 .....                  | 95 percent  |
| 2028 and later .....        | 100 percent.  |

11 “(10) TREATMENT OF INVESTMENT INCOME  
 12 AND GAIN OR LOSS.—

1           “(A) CONTRIBUTIONS IN KIND.—A trans-  
2           fer of property other than money to a fund  
3           shall be treated as a sale or exchange of such  
4           property for an amount equal to its fair market  
5           value as of the date of transfer, and appro-  
6           priate adjustment shall be made to the basis of  
7           such property. Section 267 shall apply to any  
8           loss realized upon such a transfer.

9           “(B) DISTRIBUTIONS IN KIND.—A transfer  
10          of property other than money by a fund to the  
11          qualified insurance company shall not be treat-  
12          ed as a sale or exchange or other disposition of  
13          such property. The basis of such property im-  
14          mediately after such transfer shall be the great-  
15          er of the basis of such property immediately be-  
16          fore such transfer or the fair market value of  
17          such property on the date of such transfer.

18          “(C) INCOME WITH RESPECT TO FUND AS-  
19          SETS.—Items of income of the type described in  
20          paragraphs (1)(B), (1)(C), and (2) of sub-  
21          section (b) that are derived from the assets held  
22          in a fund, as well as losses from the sale or  
23          other disposition of such assets, shall be consid-  
24          ered items of income, gain, or loss of the quali-  
25          fied insurance company. Notwithstanding para-

1 graph (1)(F) of subsection (b), distributions of  
2 net income to the qualified insurance company  
3 pursuant to paragraph (1)(B)(ii) of this sub-  
4 section shall not cause such income to be taken  
5 into account a second time.

6 “(11) NET INCOME; NET INVESTMENT LOSS.—  
7 For purposes of paragraph (1)(B)(ii), the net in-  
8 come derived from the assets in the fund for the tax-  
9 able year shall be the items of income and gain for  
10 the taxable year, less the items of loss for the tax-  
11 able year, derived from such assets, as described in  
12 paragraph (10)(C). For purposes of paragraph (7),  
13 there is a net investment loss for the taxable year  
14 to the extent that the items of loss described in the  
15 preceding sentence exceed the items of income and  
16 gain described in the preceding sentence.

17 “(12) ANNUAL STATEMENT.—For purposes of  
18 this subsection, the term ‘annual statement’ shall  
19 have the meaning set forth in section 846(f)(3).

20 “(13) EXCLUSION OF PREMIUMS AND LOSSES  
21 ON CERTAIN PUERTO RICAN RISKS.—Notwith-  
22 standing any other provision of this subsection, pre-  
23 miums and losses with respect to risks covered by a  
24 catastrophe reserve established under the laws or  
25 regulations of the Commonwealth of Puerto Rico

1 shall not be taken into account under this subsection  
2 in determining the amount of the fund cap or the  
3 amount of qualified losses.

4 “(14) REGULATIONS.—The Secretary shall pre-  
5 scribe such regulations as may be necessary or ap-  
6 propriate to carry out the purposes of this sub-  
7 section, including regulations—

8 “(A) which govern the application of this  
9 subsection to a qualified insurance company  
10 having a taxable year other than the calendar  
11 year or a taxable year less than 12 months,

12 “(B) which govern a fund maintained by a  
13 qualified insurance company that ceases to be  
14 subject to this part, and

15 “(C) which govern the application of para-  
16 graph (9)(D).”.

17 (d) EFFECTIVE DATE.—The amendments made by  
18 this section shall apply to taxable years beginning after  
19 December 31, 2008.

○