

111TH CONGRESS
1ST SESSION

S. 1487

To establish a bipartisan commission on insurance reform.

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 Banking, Housing, and Urban Affairs

A BILL

To establish a bipartisan commission on insurance reform.

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 “Commission on Cata-

5 strophic Disaster Risk and Insurance Act of 2009”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Hurricanes Katrina, Rita, and Wilma,
9 which struck the United States in 2005, caused over
10 \$200 billion in total economic losses, including in-
11 sured and uninsured losses.

1 (2) Although private sector insurance is cur-
2 rently available to spread some catastrophe-related
3 losses throughout the Nation and internationally,
4 most experts believe there will be significant insur-
5 ance and reinsurance shortages, resulting in dra-
6 matic rate increases for consumers and businesses,
7 and the unavailability of catastrophe insurance.

8 (3) The Federal Government has provided and
9 will continue to provide billions of dollars and re-
10 sources to pay for losses from catastrophes, includ-
11 ing hurricanes, volcanic eruptions, tsunamis, tor-
12 nados, and other disasters, at huge costs to Amer-
13 ican taxpayers.

14 (4) The Federal Government has a critical in-
15 terest in ensuring appropriate and fiscally respon-
16 sible risk management of catastrophes. Mortgages
17 require reliable property insurance, and the unavail-
18 ability of reliable property insurance would make
19 most real estate transactions impossible. In addition,
20 the public health, safety, and welfare demand that
21 structures damaged or destroyed in a catastrophe be
22 reconstructed as soon as possible. Therefore, the in-
23 ability of the private sector insurance and reinsur-
24 ance markets to maintain sufficient capacity to en-
25 able Americans to obtain property insurance cov-

1 erage in the private sector endangers the national
2 economy and the public health, safety, and welfare.

3 (5) Multiple proposals have been introduced in
4 the United States Congress over the past decade to
5 address catastrophic risk insurance, including the
6 creation of a national catastrophic reinsurance fund
7 and the revision of the Federal tax code to allow in-
8 surers to use tax-deferred catastrophe funds, yet
9 Congress has failed to act on any of these proposals.

10 (6) To the extent the United States faces high
11 risks from catastrophe exposure, essential technical
12 information on financial structures and innovations
13 in the catastrophe insurance market is needed.

14 (7) The most efficient and effective approach to
15 assessing the catastrophe insurance problem in the
16 public policy context is to establish a bipartisan com-
17 mission of experts to study the management of cata-
18 strophic disaster risk, and to require such commis-
19 sion to timely report its recommendations to Con-
20 gress so that Congress can quickly craft a solution
21 to protect the American people.

22 **SEC. 3. ESTABLISHMENT.**

23 There is established a bipartisan Commission on Cat-
24 astrophic Disaster Risk and Insurance (in this Act re-
25 ferred to as the “Commission”).

1 **SEC. 4. MEMBERSHIP.**

2 (a) MEMBERS.—The Commission shall be composed
3 of the following:

4 (1) The Administrator of the Federal Emer-
5 gency Management Agency or a designee of the Ad-
6 ministrator.

7 (2) The Administrator of the National Oceanic
8 and Atmospheric Administration or a designee of the
9 Administrator.

10 (3) Twelve additional members or their des-
11 ignees of whom one shall be—

12 (A) a representative of a consumer group;

13 (B) a representative of a primary insur-
14 ance company;

15 (C) a representative of a reinsurance com-
16 pany;

17 (D) an independent insurance agent with
18 experience in writing property and casualty in-
19 surance policies;

20 (E) a State insurance regulator;

21 (F) a State emergency operations official;

22 (G) a scientist;

23 (H) a faculty member of an accredited uni-
24 versity with experience in risk management;

25 (I) a member of nationally recognized
26 think tank with experience in risk management;

1 (J) a homebuilder with experience in struc-
2 tural engineering;

3 (K) a mortgage lender; and

4 (L) a nationally recognized expert in anti-
5 trust law.

6 (b) MANNER OF APPOINTMENT.—

7 (1) IN GENERAL.—Any member of the Commis-
8 sion described under subsection (a)(3) shall be ap-
9 pointed only upon unanimous agreement of—

10 (A) the majority leader of the Senate;

11 (B) the minority leader of the Senate;

12 (C) the Speaker of the House of Rep-
13 resentatives; and

14 (D) the minority leader of the House of
15 Representatives.

16 (2) CONSULTATION.—In making any appoint-
17 ment under paragraph (1), each individual described
18 in paragraph (1) shall consult with the President.

19 (c) ELIGIBILITY LIMITATION.—Except as provided in
20 subsection (a), no member or officer of the Congress, or
21 other member or officer of the Executive Branch of the
22 United States Government or any State government may
23 be appointed to be a member of the Commission.

24 (d) PERIOD OF APPOINTMENT.—

1 (1) IN GENERAL.—Each member of the Com-
2 mission shall be appointed for the life of the Com-
3 mission.

4 (2) VACANCIES.—A vacancy on the Commission
5 shall not affect its powers, but shall be filled in the
6 same manner as the original appointment was made.

7 (e) QUORUM.—

8 (1) MAJORITY.—A majority of the members of
9 the Commission shall constitute a quorum, but a
10 lesser number may hold hearings.

11 (2) APPROVAL ACTIONS.—All recommendations
12 and reports of the Commission required by this Act
13 shall be approved only by a majority vote of a
14 quorum of the Commission.

15 (f) CHAIRPERSON.—The majority leader of the Sen-
16 ate, the minority leader of the Senate, the Speaker of the
17 House of Representatives, and the minority leader of the
18 House of Representatives shall jointly select 1 member ap-
19 pointed pursuant to subsection (a) to serve as the Chair-
20 person of the Commission.

21 (g) MEETINGS.—The Council shall meet at the call
22 of its Chairperson or a majority of its members at any
23 time.

24 **SEC. 5. DUTIES OF THE COMMISSION.**

25 The Commission shall—

1 (1) assess—

2 (A) the condition of the property and cas-
3 ualty insurance and reinsurance markets in the
4 aftermath of Hurricanes Katrina, Rita, and
5 Wilma in 2005, and the 4 major hurricanes
6 that struck the United States in 2004; and

7 (B) the ongoing exposure of the United
8 States to earthquakes, volcanic eruptions,
9 tsunamis, and floods; and

10 (2) recommend and report, as required under
11 section 6, any necessary legislative and regulatory
12 changes that will—

13 (A) improve the domestic and international
14 financial health and competitiveness of such
15 markets; and

16 (B) assure consumers of the—

17 (i) availability of adequate insurance
18 coverage when an insured event occurs;
19 and

20 (ii) best possible range of insurance
21 products at competitive prices.

22 **SEC. 6. REPORT.**

23 (a) **IN GENERAL.**—Not later than 90 days after the
24 appointment of Commission members under section 4, the
25 Commission shall submit to the President and the Con-

1 gress a final report containing a detailed statement of its
2 findings, together with any recommendations for legisla-
3 tion or administrative action that the Commission con-
4 siderers appropriate, in accordance with the requirements
5 of section 5.

6 (b) CONSIDERATIONS.—In developing any rec-
7 ommendations under subsection (a), the Commission shall
8 consider—

9 (1) the catastrophic insurance and reinsurance
10 market structures and the relevant commercial prac-
11 tices in such insurance industries in providing insur-
12 ance protection to different sectors of the American
13 population;

14 (2) the constraints and opportunities in imple-
15 menting a catastrophic insurance system that can
16 resolve key obstacles currently impeding broader im-
17 plementation of catastrophe risk management and
18 financing with insurance;

19 (3) methods to improve risk underwriting prac-
20 tices, including—

21 (A) analysis of modalities of risk transfer
22 for potential financial losses;

23 (B) assessment of private securitization of
24 insurances risks;

1 (C) private-public partnerships to increase
2 insurance capacity in constrained markets; and

3 (D) the financial feasibility and sustain-
4 ability of a national catastrophe pool or regional
5 catastrophe pools designed to provide adequate
6 insurance coverage and increased underwriting
7 capacity to insurers and reinsurers;

8 (4) approaches for implementing a public insur-
9 ance scheme for low-income communities, in order to
10 promote risk reduction and explicit insurance cov-
11 erage in such communities;

12 (5) methods to strengthen insurance regulatory
13 requirements and supervision of such requirements,
14 including solvency for catastrophic risk reserves;

15 (6) methods to promote public insurance poli-
16 cies linked to programs for loss reduction in the un-
17 insured sectors of the American population;

18 (7) methods to strengthen the risk assessment
19 and enforcement of structural mitigation and vulner-
20 ability reduction measures, such as zoning and
21 building code compliance;

22 (8) the appropriate role for the Federal Govern-
23 ment in stabilizing the property and casualty insur-
24 ance and reinsurance markets, with an analysis—

25 (A) of options such as—

- 1 (i) a reinsurance mechanism;
- 2 (ii) the modernization of Federal tax-
- 3 ation policies; and
- 4 (iii) an “insurance of last resort”
- 5 mechanism; and
- 6 (B) how to fund such options; and
- 7 (9) the merits of 3 principle legislative pro-
- 8 posals introduced in the 109th Congress, namely:
- 9 (A) The creation of a Federal catastrophe
- 10 fund to act as a backup to State catastrophe
- 11 funds (S. 3117).
- 12 (B) Tax-deferred catastrophe accounts for
- 13 insurers (S. 3115).
- 14 (C) Tax-free catastrophe accounts for pol-
- 15 icyholders (S. 3116).

16 **SEC. 7. POWERS OF THE COMMISSION.**

17 (a) HEARINGS.—The Commission or, at the direction

18 of the Commission, any subcommittee or member of the

19 Commission, may, for the purpose of carrying out this

20 Act—

21 (1) hold such public hearings in such cities and

22 countries, sit and act at such times and places, take

23 such testimony, receive such evidence, and admin-

24 ister such oaths or affirmations as the Commission

1 or such subcommittee or member considers advis-
2 able; and

3 (2) require, by subpoena or otherwise, the at-
4 tendance and testimony of such witnesses and the
5 production of such books, records, correspondence,
6 memoranda, papers, documents, tapes, and materials
7 as the Commission or such subcommittee or member
8 considers advisable.

9 (b) ISSUANCE AND ENFORCEMENT OF SUB-
10 POENAS.—

11 (1) ISSUANCE.—Subpoenas issued under sub-
12 section (a) shall bear the signature of the Chair-
13 person of the Commission and shall be served by any
14 person or class of persons designated by the Chair-
15 person for that purpose.

16 (2) ENFORCEMENT.—In the case of contumacy
17 or failure to obey a subpoena issued under sub-
18 section (a), the United States district court for the
19 judicial district in which the subpoenaed person re-
20 sides, is served, or may be found may issue an order
21 requiring such person to appear at any designated
22 place to testify or to produce documentary or other
23 evidence. Any failure to obey the order of the court
24 may be punished by the court as a contempt of that
25 court.

1 (3) CONFIDENTIALITY.—

2 (A) IN GENERAL.—Information obtained
3 under a subpoena issued under subsection (a)
4 which is deemed confidential, or with reference
5 to which a request for confidential treatment is
6 made by the person furnishing such informa-
7 tion—

8 (i) shall be exempt from disclosure
9 under section 552 of title 5, United States
10 Code; and

11 (ii) shall not be published or disclosed
12 unless the Commission determines that the
13 withholding of such information is contrary
14 to the interest of the United States.

15 (B) EXCEPTION.—The requirements of
16 subparagraph (A) shall not apply to the publi-
17 cation or disclosure of any data aggregated in
18 a manner that ensures protection of the identity
19 of the person furnishing such data.

20 (c) AUTHORITY OF MEMBERS OR AGENTS OF THE
21 COMMISSION.—Any member or agent of the Commission
22 may, if authorized by the Commission, take any action
23 which the Commission is authorized to take by this Act.

24 (d) OBTAINING OFFICIAL DATA.—

1 (1) AUTHORITY.—Notwithstanding any provi-
2 sion of section 552a of title 5, United States Code,
3 the Commission may secure directly from any de-
4 partment or agency of the United States any infor-
5 mation necessary to enable the Commission to carry
6 out the purposes of this Act.

7 (2) PROCEDURE.—Upon request of the Chair-
8 person of the Commission, the head of that depart-
9 ment or agency shall furnish the information re-
10 quested to the Commission.

11 (e) POSTAL SERVICES.—The Commission may use
12 the United States mails in the same manner and under
13 the same conditions as other departments and agencies of
14 the Federal Government.

15 (f) ADMINISTRATIVE SUPPORT SERVICES.—Upon the
16 request of the Commission, the Administrator of General
17 Services shall provide to the Commission, on a reimburs-
18 able basis, any administrative support services necessary
19 for the Commission to carry out its responsibilities under
20 this Act.

21 (g) GIFTS.—

22 (1) IN GENERAL.—The Commission may ac-
23 cept, use, and dispose of gifts or donations of serv-
24 ices or property.

1 (2) REGULATIONS.—The Commission shall
2 adopt internal regulations governing the receipt of
3 gifts or donations of services or property similar to
4 those described in part 2601 of title 5, Code of Fed-
5 eral Regulations.

6 **SEC. 8. COMMISSION PERSONNEL MATTERS.**

7 (a) COMPENSATION OF MEMBERS.—Each member of
8 the Commission who is not an officer or employee of the
9 Federal Government shall be compensated at a rate equal
10 to the daily equivalent of the annual rate of basic pay pre-
11 scribed for GS–18 of the General Schedule under section
12 5332 of title 5, United States Code, for each day (includ-
13 ing travel time) during which such member is engaged in
14 the performance of the duties of the Commission. All
15 members of the Commission who are officers or employees
16 of the United States shall serve without compensation in
17 addition to that received for their services as officers or
18 employees of the United States.

19 (b) TRAVEL EXPENSES.—The members of the Com-
20 mission shall be allowed travel expenses, including per
21 diem in lieu of subsistence, at rates authorized for employ-
22 ees of agencies under subchapter I of chapter 57 of title
23 5, United States Code, while away from their homes or
24 regular places of business in the performance of services
25 for the Commission.

1 (c) SUBCOMMITTEES.—The Commission may estab-
2 lish subcommittees and appoint persons to such sub-
3 committees as the Commission considers appropriate.

4 (d) STAFF.—Subject to such policies as the Commis-
5 sion may prescribe, the Chairperson of the Commission
6 may appoint and fix the pay of such additional personnel
7 as the Chairperson considers appropriate to carry out the
8 duties of the Commission.

9 (e) APPLICABILITY OF CERTAIN CIVIL SERVICE
10 LAWS.—Subcommittee members and staff of the Commis-
11 sion may be—

12 (1) appointed without regard to the provisions
13 of title 5, United States Code, governing appoint-
14 ments in the competitive service; and

15 (2) paid without regard to the provisions of
16 chapter 51 and subchapter III of chapter 53 of that
17 title relating to classification and General Schedule
18 pay rates, except that an individual so appointed
19 may not receive pay in excess of the annual rate of
20 basic pay prescribed for GS–18 of the General
21 Schedule under section 5332 of that title.

22 (f) EXPERTS AND CONSULTANTS.—In carrying out
23 its objectives, the Commission may procure temporary and
24 intermittent services of consultants and experts under sec-
25 tion 3109(b) of title 5, United States Code, at rates for

1 individuals which do not exceed the daily equivalent of the
2 annual rate of basic pay prescribed for GS-18 of the Gen-
3 eral Schedule under section 5332 of that title.

4 (g) **DETAIL OF GOVERNMENT EMPLOYEES.**—Upon
5 request of the Chairperson of the Commission, any Fed-
6 eral Government employee may be detailed to the Commis-
7 sion to assist in carrying out the duties of the Commis-
8 sion—

9 (1) on a reimbursable basis; and

10 (2) such detail shall be without interruption or
11 loss of civil service status or privilege.

12 **SEC. 9. TERMINATION.**

13 The Commission shall terminate 60 days after the
14 date on which the Commission submits its report under
15 section 6.

16 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

17 There are authorized to be appropriated \$5,000,000
18 to carry out the purposes of this Act.

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