

112TH CONGRESS  
1ST SESSION

# S. 1429

To establish a bipartisan commission on insurance reform.

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IN THE SENATE OF THE UNITED STATES

JULY 27, 2011

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

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## 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 2011”.

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  
10       more than \$200,000,000,000 in total economic  
11       losses, including insured and uninsured losses.

1           (2) Although private sector insurance is cur-  
2           rently available to spread some catastrophe-related  
3           losses throughout the United States and internation-  
4           ally, most experts believe there will be significant in-  
5           surance 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 the peo-  
13          ple of the United States.

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 people in the United States to obtain property

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

4 (5) Multiple proposals have been introduced in  
5 Congress during the past decade to address cata-  
6 strophic risk insurance, including proposals to create  
7 a national catastrophic reinsurance fund and revise  
8 the Federal tax code to allow insurers to use tax-de-  
9 ferred catastrophe funds, yet Congress has failed to  
10 act on any of these proposals.

11 (6) To the extent that the United States faces  
12 high risks from catastrophe exposure, essential tech-  
13 nical information on financial structures and innova-  
14 tions in the catastrophe insurance market is needed.

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

1 **SEC. 3. ESTABLISHMENT.**

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

5 **SEC. 4. MEMBERSHIP.**

6       (a) MEMBERS.—The Commission shall be composed  
7 of the following:

8           (1) The Administrator of the Federal Emer-  
9 gency Management Agency or a designee of the Ad-  
10 ministrator.

11           (2) The Administrator of the National Oceanic  
12 and Atmospheric Administration or a designee of the  
13 Administrator.

14           (3) Twelve additional members, of whom—

15               (A) 1 shall be a representative of a con-  
16 sumer group;

17               (B) 1 shall be a representative of a pri-  
18 mary insurance company;

19               (C) 1 shall be a representative of a rein-  
20 surance company;

21               (D) 1 shall be an independent insurance  
22 agent with experience in writing property and  
23 casualty insurance policies;

24               (E) 1 shall be a State insurance regulator;

25               (F) 1 shall be a State emergency oper-  
26 ations official;

1 (G) 1 shall be a scientist;

2 (H) 1 shall be a faculty member of an ac-  
3 credited university with experience in risk man-  
4 agement;

5 (I) 1 shall be a member of nationally rec-  
6 ognized think tank with experience in risk man-  
7 agement;

8 (J) 1 shall be a homebuilder with experi-  
9 ence in structural engineering;

10 (K) 1 shall be a mortgage lender; and

11 (L) 1 shall be a nationally recognized ex-  
12 pert in antitrust law.

13 (b) MANNER OF APPOINTMENT.—

14 (1) IN GENERAL.—Each member of the Com-  
15 mission described in subsection (a)(3) shall be ap-  
16 pointed jointly by, and only upon unanimous agree-  
17 ment of—

18 (A) the majority leader of the Senate;

19 (B) the minority leader of the Senate;

20 (C) the Speaker of the House of Rep-  
21 resentatives; and

22 (D) the minority leader of the House of  
23 Representatives.

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

4           (c) ELIGIBILITY LIMITATION.—Except as provided in  
5           subsection (a), no member or officer of Congress, or other  
6           officer of the Executive Branch of the United States Gov-  
7           ernment or any State government may be appointed to  
8           be a member of the Commission.

9           (d) PERIOD OF APPOINTMENT.—

10           (1) IN GENERAL.—Each member of the Com-  
11           mission shall be appointed to serve until the termi-  
12           nation of the Commission.

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

16           (e) QUORUM.—

17           (1) MAJORITY.—A majority of the members of  
18           the Commission shall constitute a quorum, but a  
19           lesser number may hold hearings.

20           (2) APPROVAL ACTIONS.—All recommendations  
21           and reports of the Commission required under this  
22           Act shall be approved by a majority vote of a  
23           quorum of the Commission.

24           (f) CHAIRPERSON.—The majority leader of the Sen-  
25           ate, the minority leader of the Senate, the Speaker of the

1 House of Representatives, and the minority leader of the  
2 House of Representatives shall jointly select 1 member ap-  
3 pointed pursuant to subsection (a) to serve as the Chair-  
4 person of the Commission.

5 (g) MEETINGS.—The Council shall meet at the call  
6 of the Chairperson or a majority of the members of the  
7 Commission then serving.

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

9 (a) ASSESSMENT.—The Commission shall assess—

10 (1) the condition of the property and casualty  
11 insurance and reinsurance markets in the aftermath  
12 of Hurricane Katrina of 2005, Hurricane Rita of  
13 2005, Hurricane Wilma of 2005, and the 4 major  
14 hurricanes that struck the United States in 2004;  
15 and

16 (2) the ongoing exposure of the United States  
17 to earthquakes, volcanic eruptions, tsunamis, and  
18 floods.

19 (b) RECOMMENDATIONS.—

20 (1) DEVELOPMENT OF RECOMMENDATIONS.—

21 The Commission shall develop recommendations for  
22 any legislative or regulatory changes necessary to—

23 (A) improve the domestic and international  
24 financial health and competitiveness of the

1 property and casualty insurance and reinsur-  
2 ance markets; and

3 (B) ensure that consumers have—

4 (i) adequate insurance coverage avail-  
5 able when an insured event occurs; and

6 (ii) the best possible range of insur-  
7 ance products at competitive prices.

8 (2) CONSIDERATIONS.—In developing any rec-  
9 ommendations under paragraph (1), the Commission  
10 shall consider—

11 (A) the structure of the catastrophic insur-  
12 ance and reinsurance markets and the relevant  
13 commercial practices in such markets for pro-  
14 viding insurance protection to different types of  
15 people in the United States;

16 (B) the constraints of and opportunities  
17 for implementing a catastrophic insurance sys-  
18 tem that could resolve key obstacles that im-  
19 pede broader implementation of catastrophe  
20 risk management and financing;

21 (C) methods to improve risk underwriting  
22 practices, including—

23 (i) analysis of modalities of risk trans-  
24 fer for potential financial losses;

1 (ii) assessment of private securitiza-  
2 tion of insurances risks;

3 (iii) private-public partnerships to in-  
4 crease insurance capacity in constrained  
5 markets; and

6 (iv) the financial feasibility and sus-  
7 tainability of a national catastrophe pool or  
8 regional catastrophe pools designed to pro-  
9 vide adequate insurance coverage and in-  
10 creased underwriting capacity to insurers  
11 and reinsurers;

12 (D) approaches for implementing a public  
13 insurance scheme for low-income communities,  
14 in order to promote risk reduction and explicit  
15 insurance coverage in such communities;

16 (E) methods to strengthen regulatory re-  
17 quirements for insurance and supervision of  
18 such requirements, including solvency for cata-  
19 strophic risk reserves;

20 (F) methods to promote public insurance  
21 policies linked to programs for loss reduction  
22 among people in the United States without in-  
23 surance;

24 (G) methods to strengthen the risk assess-  
25 ment and enforcement of structural mitigation

1 and vulnerability reduction measures, such as  
2 zoning and building code compliance; and

3 (H) the appropriate role for the Federal  
4 Government in stabilizing the property and cas-  
5 ualty insurance and reinsurance markets, with  
6 an analysis of—

7 (i) options such as—

8 (I) a reinsurance mechanism;

9 (II) the modernization of Federal  
10 taxation policies; and

11 (III) an “insurance of last re-  
12 sort” mechanism; and

13 (ii) how to fund the options described  
14 in clause (i).

15 **SEC. 6. REPORT.**

16 Not later than 180 days after the date on which all  
17 members of the Commission are appointed, the Commis-  
18 sion shall submit to the President and Congress a final  
19 report containing a detailed statement of the results of  
20 the assessment and the recommendations required under  
21 section 5.

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

23 (a) HEARINGS.—The Commission or, at the direction  
24 of the Commission, any subcommittee or member of the

1 Commission, may, for the purpose of carrying out this  
2 Act—

3           (1) hold such public hearings in such cities and  
4           countries, sit and act at such times and places, take  
5           such testimony, receive such evidence, and admin-  
6           ister such oaths or affirmations as the Commission  
7           or such subcommittee or member considers advis-  
8           able; and

9           (2) require, by subpoena or otherwise, the at-  
10          tendance and testimony of such witnesses and the  
11          production of such books, records, correspondence,  
12          memoranda, papers, documents, tapes, and materials  
13          as the Commission or such subcommittee or member  
14          considers advisable.

15          (b) ISSUANCE AND ENFORCEMENT OF SUB-  
16          POENAS.—

17               (1) ISSUANCE.—Subpoenas issued under sub-  
18               section (a) shall bear the signature of the Chair-  
19               person of the Commission and shall be served by any  
20               person or class of persons designated by the Chair-  
21               person for that purpose.

22               (2) ENFORCEMENT.—In the case of contumacy  
23               or failure to obey a subpoena issued under sub-  
24               section (a), the United States district court for the  
25               judicial district in which the subpoenaed person re-

1 sides, is served, or may be found may issue an order  
2 requiring such person to appear at any designated  
3 place to testify or to produce documentary or other  
4 evidence. Any failure to obey the order of the court  
5 may be punished by the court as a contempt of that  
6 court.

7 (3) CONFIDENTIALITY.—

8 (A) IN GENERAL.—Information obtained  
9 under a subpoena issued under subsection (a)  
10 which is deemed confidential, or with reference  
11 to which a request for confidential treatment is  
12 made by the person furnishing such informa-  
13 tion—

14 (i) shall be exempt from disclosure  
15 under section 552 of title 5, United States  
16 Code; and

17 (ii) shall not be published or disclosed  
18 unless the Commission determines that the  
19 withholding of such information is contrary  
20 to the interest of the United States.

21 (B) EXCEPTION.—The requirements of  
22 subparagraph (A) shall not apply to the publi-  
23 cation or disclosure of any data aggregated in  
24 a manner that ensures protection of the identity  
25 of the person furnishing such data.

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

5           (d) OBTAINING OFFICIAL DATA.—

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

12               (2) PROCEDURE.—Upon request of the Chair-  
13 person of the Commission, the head of that depart-  
14 ment or agency shall furnish the information re-  
15 quested to the Commission.

16           (e) POSTAL SERVICES.—The Commission may use  
17 the United States mails in the same manner and under  
18 the same conditions as other departments and agencies of  
19 the Federal Government.

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

1 (g) GIFTS.—

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

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

10 **SEC. 8. COMMISSION PERSONNEL MATTERS.**

11 (a) COMPENSATION OF MEMBERS.—Each member of  
12 the Commission who is not an officer or employee of the  
13 Federal Government shall be compensated at a rate equal  
14 to the daily equivalent of the annual rate of basic pay pre-  
15 scribed for level IV of the Executive Schedule under sec-  
16 tion 5315 of title 5, United States Code, for each day (in-  
17 cluding travel time) during which such member is engaged  
18 in the performance of the duties of the Commission. All  
19 members of the Commission who are officers or employees  
20 of the United States shall serve without compensation in  
21 addition to that received for their services as officers or  
22 employees of the United States.

23 (b) TRAVEL EXPENSES.—The members of the Com-  
24 mission shall be allowed travel expenses, including per  
25 diem in lieu of subsistence, at rates authorized for employ-

1 ees of agencies under subchapter I of chapter 57 of title  
2 5, United States Code, while away from their homes or  
3 regular places of business in the performance of services  
4 for the Commission.

5 (c) SUBCOMMITTEES.—The Commission may estab-  
6 lish subcommittees and appoint members of the Commis-  
7 sion to such subcommittees as the Commission considers  
8 appropriate.

9 (d) STAFF.—Subject to such policies as the Commis-  
10 sion may prescribe, the Chairperson of the Commission  
11 may appoint and fix the pay of such additional personnel  
12 as the Chairperson considers appropriate to carry out the  
13 duties of the Commission.

14 (e) APPLICABILITY OF CERTAIN CIVIL SERVICE  
15 LAWS.—Employees of the Commission may be—

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

19 (2) paid without regard to the provisions of  
20 chapter 51 and subchapter III of chapter 53 of title  
21 5, United States Code, relating to classification and  
22 General Schedule pay rates, except that an indi-  
23 vidual so appointed may not receive pay in excess of  
24 the annual rate of basic pay prescribed for level IV

1 of the Executive Schedule under section 5315 of  
2 that title.

3 (f) EXPERTS AND CONSULTANTS.—In carrying out  
4 the duties of the Commission, the Commission may pro-  
5 cure temporary and intermittent services of consultants  
6 and experts under section 3109(b) of title 5, United States  
7 Code, at rates for individuals which do not exceed the daily  
8 equivalent of the annual rate of basic pay prescribed for  
9 level IV of the Executive Schedule under section 5315 of  
10 that title.

11 (g) DETAIL OF GOVERNMENT EMPLOYEES.—Upon  
12 request of the Chairperson of the Commission—

13 (1) any Federal Government employee may be  
14 detailed to the Commission to assist in carrying out  
15 the duties of the Commission on a reimbursable  
16 basis; and

17 (2) a detail under paragraph (1) shall be with-  
18 out interruption or loss of civil service status or  
19 privilege.

20 **SEC. 9. TERMINATION.**

21 The Commission shall terminate 60 days after the  
22 date on which the Commission submits the report required  
23 under section 6.

1 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

2       There are authorized to be appropriated \$5,000,000

3 to carry out this Act.

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