111TH CONGRESS
1ST SESSION

S. 505

To establish a National Catastrophe Risks Consortium and a National Homeowners' Insurance Stabilization Program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 27, 2009

Mr. NELSON of Florida (for himself, Mr. MARTINEZ, and Ms. LANDRIEU) 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 National Catastrophe Risks Consortium and a National Homeowners' Insurance Stabilization Program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Homeowners' Defense Act of 2009".

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

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the United States has a history of catastrophic natural disasters, including hurricanes, tornadoes, flood, fire, earthquakes, and volcanic eruptions;

(2) although catastrophic natural disasters occur infrequently, they will continue to occur and are predictable;

(3) such disasters generate large economic losses and a major component of those losses comes from damage and destruction to homes;

(4) for the majority of Americans, their investment in their home represents their single biggest asset and the protection of that investment is paramount to economic and social stability;

(5) historically, when a natural disaster eclipses the ability of the private industry and a State to manage the loss, the Federal Government has stepped in to provide the funding and services needed for recovery;

(6) the cost of such Federal ''bail-outs'' are borne by all taxpayers equally, as there is no provision to repay the money and resources provided, which thereby unfairly burdens citizens who live in lower risk communities;

(7) as the risk of catastrophic losses grows, so do the risks that any premiums collected by private insurers for extending coverage will be insufficient to cover future catastrophes (known as timing risk), and private insurers, in an effort to protect their shareholders and policyholders (in the case of mutually-owned companies), have thus significantly raised premiums and curtailed insurance coverage in States exposed to major catastrophes;

(8) such effects on the insurance industry have been harmful to economic activity in States exposed to major catastrophes and have placed significant burdens on existing residents of such States;

(9) Hurricanes Katrina, Rita, and Wilma struck the United States in 2005, causing over

$200,000,000,000 in total economic losses, and insured losses to homeowners in excess of $50,000,000,000;

(10) since 2004, the Congress has appropriated more than $58,000,000,000 in disaster relief to the States affected by natural catastrophes;

(11) the Federal Government has provided and will continue to provide resources to pay for losses from future catastrophes;

(12) when Federal assistance is provided to the States, accountability for Federal funds disbursed is paramount;

(13) the Government Accountability Office or other appropriate agencies must have the means in place to confirm that Federal funds for catastrophe relief have reached the appropriate victims and have contributed to the recovery effort as efficiently as possible so that taxpayer funds are not wasted and citizens are enabled to rebuild and resume productive activities as quickly as possible;

(14) States that are recipients of Federal funds must be responsible to account for and provide an efficient means for distribution of funds to homeowners to enable the rapid rebuilding of local economies after a catastrophic event without unduly bur-

dening taxpayers who live in areas seldom affected by natural disasters;

(15) State insurance and reinsurance programs can provide a mechanism for States to exercise that responsibility if they appropriately underwrite and price risk, and if they pay claims quickly and within established contractual terms; and

(16) State insurers and reinsurers, if appropriately backstopped themselves, can absorb catastrophic risk borne by private insurers without bearing timing risk, and thus enable all insurers (whether State-operated or privately owned) to underwrite and price insurance without timing risk and in such a way to encourage property owners to pay for the appropriate insurance to protect themselves and to take steps to mitigate against the risks of disaster by locally appropriate methods.

(b) PURPOSES.—The purposes of this Act are to establish a program to provide a Federal backstop for State-sponsored insurance programs to help homeowners prepare for and recover from the damages caused by natural catastrophes, to encourage mitigation and prevention for such catastrophes, to promote the use of private market capital as a means to insure against such catastrophes, to expedite the payment of claims and better assist in the financial recovery from such catastrophes.

SEC. 3. QUALIFIED REINSURANCE PROGRAMS.

(a) IN GENERAL.—For purposes of this Act only, a program shall be considered to be a qualified reinsurance program if the program—

(1) is authorized by State law for the purposes described in this section;

(2) is an entity in which the authorizing State maintains a material, financial interest;

(3) provides reinsurance or retrocessional coverage to underlying primary insurers or reinsurers for losses arising from all personal residential lines of insurance, as defined in the Uniform Property & Casualty Product Coding Matrix published and maintained by the National Association of Insurance Commissioners;

(4) has a governing body, a majority of whose members are public officials;

(5) provides reinsurance or retrocessional coverage to underlying primary insurers or reinsurers for losses in excess of such amount that the Secretary has determined represents a catastrophic event in that particular State;

(6) is authorized by a State that has in effect such laws, regulations, or other requirements, as the Secretary shall by regulation provide, that—

(A) ensure, to the extent that reinsurance coverage made available under the qualified reinsurance program results in any cost savings in providing insurance coverage for risks in such State, such cost savings are reflected in premium rates charged to consumers for such coverage;

(B) require that any new construction, substantial rehabilitation, and renovation insured or reinsured by the program complies with applicable State or local government building, fire, and safety codes;

(C) require State authorized insurance entities within that State to establish an insurance rate structure that takes into account measures to mitigate insurance losses;

(D) require State authorized insurance and reinsurance entities within that State to establish rates at a level that annually produces expected premiums that shall be sufficient to pay the expected annualized cost of all claims, loss adjustment expenses, and all administrative costs of reinsurance coverage offered; and

(E) encourage State authorized insurance and reinsurance entities within that State to establish rates that do not involve cross-subsidization between any separate property and casualty lines covered under the State authorized insurance or reinsurance entity; and

(7) complies with such additional organizational, underwriting, and financial requirements as the Secretary shall, by regulation, provide to carry out the purposes of this Act.

(b) TRANSITIONAL MECHANISMS.—For the 5-year period beginning on the date of enactment of this Act, in the case of a State that does not have a qualified reinsurance program for the State, a State residual insurance market entity for such State shall be considered to be a qualified reinsurance program, but only if such State residual insurance market entity was in existence before such date of enactment.

(c) PRECERTIFICATION.—The Secretary shall establish procedures and standards for State and regional reinsurance programs and the State residual insurance market entities described in subsection (b) to apply to the Secretary at any time for certification (and recertification) as qualified reinsurance programs.

(d) REINSURANCE TO COVER EXPOSURE.—This section may not be construed to limit or prevent any insurer from obtaining reinsurance coverage for insured losses retained by insurers pursuant to this section, nor shall the obtaining of such coverage affect the calculation of the amount of any loan under this Act.

SEC. 4. DEFINITIONS.

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

(1) CEILING COVERAGE LEVEL.—The term ''ceiling coverage level'' means, with respect to a qualified reinsurance program, the maximum liability, under law, that could be incurred at any time by the qualified reinsurance program.

(2) COMMISSION.—The term ''Commission'' means the National Commission on Natural Catastrophe Preparation and Protection established under title II.

(3) CONSORTIUM.—The term ''Consortium'' means the National Catastrophic Risk Consortium established under title I.

(4) INSURED LOSS.—The term "insured loss" means any loss insured by a qualified reinsurance program.

(5) QUALIFIED REINSURANCE PROGRAM.—The term "qualified reinsurance program" means a State or regional program that meets the requirements of section 3.

(6) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(7) STATE.—The term "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, and American Samoa.

SEC. 5. REGULATIONS.

The Secretary shall issue such regulations as may be necessary to carry out this Act.

TITLE I—NATIONAL CATASTROPHE RISK CONSORTIUM

SEC. 101. ESTABLISHMENT; STATUS; PRINCIPAL OFFICE; MEMBERSHIP.

(a) ESTABLISHMENT.—There is established an entity to be known as the "National Catastrophe Risk Consortium".

(b) STATUS.—The Consortium is not a department, agency, or instrumentality of the United States Government.

(c) PRINCIPAL OFFICE.—The principal office and place of business of the Consortium shall be such location within the United States determined by the Board of Directors to be the most advantageous for carrying out the purpose and functions of the Consortium.

(d) MEMBERSHIP.—Any State that has established a reinsurance fund or has authorized the operation of a State residual insurance market entity shall be eligible to participate in the Consortium.

SEC. 102. FUNCTIONS.

The Consortium shall—

(1) work with all States, particularly those participating in the Consortium, to gather and maintain an inventory of catastrophe risk obligations held by State reinsurance funds and State residual insurance market entities;

(2) at the discretion of the affected members and on a conduit basis, issue securities and other financial instruments linked to the catastrophe risks insured or reinsured through members of the Consortium in the capital markets;

(3) coordinate reinsurance contracts between participating, qualified reinsurance funds and private parties;

(4) act as a centralized repository of State risk information that can be accessed by private-market participants seeking to participate in the transactions described in paragraphs (2) and (3) of this section;

(5) use a catastrophe risk database to perform research and analysis that encourages standardization of the risk-linked securities market;

(6) perform any other functions, other than assuming risk or incurring debt, that are deemed necessary to aid in the transfer of catastrophe risk from participating States to private parties; and

(7) submit annual reports to Congress describing the activities of the Consortium for the preceding year.

SEC. 103. POWERS.

The Consortium—

(1) may make and perform such contracts and other agreements with any individual or other private or public entity however designated and wherever situated, as may be necessary for carrying out the functions of the Consortium; and

(2) shall have such other powers, other than the power to assume risk or incur debt, as may be necessary and incident to carrying out this Act.

SEC. 104. NONPROFIT ENTITY; CONFLICTS OF INTEREST; AUDITS.

(a) NONPROFIT ENTITY.—The Consortium shall be a nonprofit entity and no part of the net earnings of the Consortium shall inure to the benefit of any member, founder, contributor, or individual.

(b) CONFLICTS OF INTEREST.—No director, officer, or employee of the Consortium shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting his or her personal interests or the interests of any Consortium, partnership, or organization in which he or she is directly or indirectly interested.

(c) AUDITS.—

(1) ANNUAL AUDIT.—The financial statements of the Consortium shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants.

(2) REPORTS.—The report of each annual audit pursuant to paragraph (1) shall be included in the annual report submitted in accordance with section 102(7).

SEC. 105. MANAGEMENT.

(a) BOARD OF DIRECTORS; MEMBERSHIP; DESIGNATION OF CHAIRPERSON.—

(1) BOARD OF DIRECTORS.—The management of the Consortium shall be vested in a board of directors (referred to in this title as the ''Board'') composed of not fewer than 3 members.

(2) CHAIRPERSON.—The Secretary, or the designee of the Secretary, shall serve as the chairperson of the Board.

(3) MEMBERSHIP.—The members of the Board shall include—

(A) the Secretary of Homeland Security and the Secretary of Commerce, or the designees of such Secretaries, respectively, but only during such times as there are fewer than 2 States participating in the Consortium; and

(B) a member from each State participating in the Consortium, who shall be appointed by such State.

(b) BYLAWS.—The Board may prescribe, amend, and repeal such bylaws as may be necessary for carrying out the functions of the Consortium.

(c) COMPENSATION, ACTUAL, NECESSARY, AND TRANSPORTATION EXPENSES.—

(1) NON-FEDERAL EMPLOYEES.—A member of the Board who is not otherwise employed by the Federal Government shall be entitled to receive the daily equivalent of the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code, as in effect from time to time, for each day (including travel time) during which such member is engaged in the actual performance of duties of the Consortium.

(2) FEDERAL EMPLOYEES.—A member of the Board who is an officer or employee of the Federal Government shall serve without additional pay (or benefits in the nature of compensation) for service as a member of the Consortium.

(3) TRAVEL EXPENSES.—Members of the Consortium shall be entitled to receive travel expenses, including per diem in lieu of subsistence, equivalent to those set forth in subchapter I of chapter 57 of title 5, United States Code.

(d) QUORUM.—A majority of the Board shall constitute a quorum.

(e) EXECUTIVE DIRECTOR.—The Board shall appoint an executive director of the Consortium, on such terms as the Board may determine.

SEC. 106. STAFF; EXPERTS AND CONSULTANTS.

(a) STAFF.—

(1) APPOINTMENT.—The Board of the Consortium may appoint and terminate such other staff as are necessary to enable the Consortium to perform its duties.

(2) COMPENSATION.—The Board of the Consortium may fix the compensation of the executive director and other staff.

(b) EXPERTS AND CONSULTANTS.—The Board shall procure the services of experts and consultants as the Board considers appropriate.

SEC. 107. FEDERAL LIABILITY.

The Federal Government and the Consortium shall not bear any liabilities arising from the actions of the Consortium. Participating States shall retain all catastrophe risk until the completion of a transaction described in paragraphs (2) and (3) of section 102.

SEC. 108. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this title $20,000,000 for each of fiscal years 2010 through 2015.

TITLE II—NATIONAL HOMEOWNERS' INSURANCE STABILIZATION PROGRAM

SEC. 201. ESTABLISHMENT.

The Secretary shall carry out a program under this title to make liquidity loans and catastrophic loans under section 202 to qualified reinsurance programs to ensure the solvency of such programs, to improve the availability and affordability of homeowners' insurance, to provide incentive for risk transfer to the private capital and reinsurance markets, and to spread the risk of catastrophic financial loss resulting from natural disasters and catastrophic events.

SEC. 202. LIQUIDITY LOANS AND CATASTROPHIC LOANS FOR STATE AND REGIONAL REINSURANCE PROGRAMS.

(a) CONTRACTS.—The Secretary may enter into a contract with a qualified reinsurance program to carry out this title, as the Secretary may deem appropriate. The contract shall include, at a minimum, the conditions for loan eligibility set forth in this section.

(b) CONDITIONS FOR LOAN ELIGIBILITY.—A loan under this section may be made only to a qualified reinsurance program and only if—

(1) before the loan is made—

(A) the State or regional reinsurance program submits to the Secretary a report setting forth, in such form and including such information as the Secretary shall require, how the program plans to repay the loan; and

(B) based upon the report of the program, the Secretary determines that the program can meet its repayment obligation under the loan and certifies that the program can meet such obligation;

(2) the program cannot access capital in the private market, including through catastrophe bonds and other securities sold through the facility created in title I of this Act, as determined by the Secretary, and a loan may be made to such a qualified reinsurance program only to the extent that such program cannot access capital in the private market;

(3) the Secretary determines that an event has resulted in insured losses in a State with a qualified reinsurance program;

(4) the loan complies with the requirements under subsection (d) and or (e), as applicable; and

(5) the loan is afforded the full faith and credit of the State and the State demonstrates to the Secretary that it has the ability to repay the loans.

(c) MANDATORY ASSISTANCE FOR QUALIFIED REINSURANCE PROGRAMS.—The Secretary shall, upon the request of a qualified reinsurance program and subject to subsection (b), make a loan under subsection (d) or (e) for such program in the amount requested by such program (subject to the limitations under subsections (d)(2) and (e)(2), respectively).

(d) LIQUIDITY LOANS.—A loan under this subsection for a qualified reinsurance program shall be subject to the following requirements:

(1) PRECONDITIONS.—The Secretary shall have determined that the qualified reinsurance program—

(A) has a capital liquidity shortage, in accordance with regulations that the Secretary shall establish; and

(B) cannot access capital markets at effective rates of interest lower than those provided in paragraph (3).

(2) AMOUNT.—The principal amount of the loan may not exceed the ceiling coverage level for the qualified reinsurance program.

(3) RATE OF INTEREST.—The loan shall bear interest at an annual rate 3 percentage points higher than marketable obligations of the Treasury having the same term to maturity as the loan and

issued during the most recently completed month, as determined by the Secretary, or such higher rate as may be necessary to ensure that the amounts of interest paid under such loans exceed the sum of the costs (as such term is defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) of such loans, the administrative costs involved in carrying out a program under this title for such loans, and any incidental effects on governmental receipts and outlays.

(4) TERM.—The loan shall have a term to maturity of not less than 5 years and not more than 10 years.

(e) CATASTROPHIC LOANS.—A loan under this subsection for a qualified reinsurance program shall be subject to the following requirements:

(1) PRECONDITIONS.—The Secretary shall have determined that an event has resulted in insured losses in a State with a qualified reinsurance program and that such insured losses in such State are in excess of 150 percent of the aggregate amount of direct written premium for privately issued property and casualty insurance, for risks located in that State, over the calendar year preceding such event,

in accordance with regulations that the Secretary shall establish.

(2) AMOUNT.—The principal amount of the loan made pursuant to an event referred to in paragraph (1) may not exceed the amount by which the insured losses sustained as a result of such event exceed the ceiling coverage level for the qualified reinsurance program.

(3) RATE OF INTEREST.—The loan shall bear interest at an annual rate 0.20 percentage points higher than marketable obligations of the United States Treasury having a term to maturity of not less than 10 years and issued during the most recently completed month, as determined by the Secretary, or such higher rate as may be necessary to ensure that the amounts of interest paid under such loans exceed the sum of the costs (as such term is defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) of such loans, the administrative costs involved in carrying out a program under this title for such loans, and any incidental effects on governmental receipts and outlays.

(4) TERM.—The loan shall have a term to maturity of not less than 10 years.

(f) USE OF FUNDS.—Amounts from a loan under this section shall only be used to provide reinsurance or retrocessional coverage to underlying primary insurers or reinsurers for losses arising from all personal real property or homeowners' lines of insurance, as defined in the Uniform Property & Casualty Product Coding Matrix published and maintained by the National Association of Insurance Commissioners. Such amounts shall not be used for any other purpose.

SEC. 203. REPORTS AND AUDITS.

The Secretary shall submit a report to the President and the Congress annually that identifies and describes any loans made under this title during such year and any repayments during such year of loans made under this title, and describes actions taken to ensure accountability of loan funds. The Secretary shall provide for regular audits to be conducted for each loan made under this title, and shall make the results of such audits publicly available.

SEC. 204. FUNDING.

(a) PROGRAM FEE.—

(1) IN GENERAL.—The Secretary may establish and collect, from qualified reinsurance programs that are precertified pursuant to section 3(c), a reasonable fee, as may be necessary to offset the ex-

penses of the Secretary in connection with carrying out the responsibilities of the Secretary under this title, including—

(A) costs of developing, implementing, and carrying out the program under this title; and

(B) costs of providing for precertification pursuant to section 3(c) of State and regional reinsurance programs as qualified reinsurance programs.

(2) ADJUSTMENT.—The Secretary may, from time to time, adjust the fee under paragraph (1) as appropriate based on expenses of the Secretary referred to in such paragraph.

(3) USE.—Any fees collected pursuant to this subsection shall be credited as offsetting collections of the Department of the Treasury and shall be available to the Secretary only for expenses referred to in paragraph (1).

(b) COSTS OF LOANS; ADMINISTRATIVE COSTS.—To the extent that amounts of negative credit subsidy are received by the Secretary in any fiscal year pursuant to loans made under this title, such amounts shall be available for costs (as such term is defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) of such loans and for costs of carrying out the program under this title for such loans.

(c) FULL TAXPAYER REPAYMENT.—The Secretary shall require the full repayment of all loans made under this title. If the Secretary determines at any time that such full repayment will not made, or is likely not to be made, the Secretary shall promptly submit a report to the Congress explaining why such full repayment will not be made or is likely not to be made.

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