

110TH CONGRESS
1ST SESSION

S. 2310

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

NOVEMBER 6, 2007

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

A BILL

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

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Homeowners’ Defense Act of 2007”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Qualified reinsurance programs.
- Sec. 4. Definitions.

Sec. 5. Regulations.

TITLE I—NATIONAL CATASTROPHE RISK CONSORTIUM

Sec. 101. Establishment; status; principal office; membership.

Sec. 102. Functions.

Sec. 103. Powers.

Sec. 104. Nonprofit entity; conflicts of interest; audits.

Sec. 105. Management.

Sec. 106. Staff; experts and consultants.

Sec. 107. Federal liability.

Sec. 108. Authorization of appropriations.

TITLE II—NATIONAL HOMEOWNERS' INSURANCE STABILIZATION PROGRAM

Sec. 201. Establishment.

Sec. 202. Liquidity loans and catastrophic loans for State and regional reinsurance programs.

Sec. 203. Reports and audits.

Sec. 204. Funding.

1 SEC. 2. FINDINGS AND PURPOSES.

2 (a) FINDINGS.—The Congress finds that—

3 (1) the United States has a history of cata-
4 strophic natural disasters, including hurricanes, tor-
5 nadoes, flood, fire, earthquakes, and volcanic erup-
6 tions;

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

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

13 (4) for the majority of Americans, their invest-
14 ment in their home represents their single biggest
15 asset and the protection of that investment is para-
16 mount to economic and social stability;

1 (5) historically, when a natural disaster eclipses
2 the ability of the private industry and a State to
3 manage the loss, the Federal Government has
4 stepped in to provide the funding and services need-
5 ed for recovery;

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

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

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

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

1 \$200,000,000,000 in total economic losses, and in-
2 sured losses to homeowners in excess of
3 \$50,000,000,000;

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

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

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

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

21 (14) States that are recipients of Federal funds
22 must be responsible to account for and provide an
23 efficient means for distribution of funds to home-
24 owners to enable the rapid rebuilding of local econo-
25 mies after a catastrophic event without unduly bur-

1 denying taxpayers who live in areas seldom affected
2 by natural disasters;

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

8 (16) State insurers and reinsurers, if appro-
9 priately backstopped themselves, can absorb cata-
10 strophic risk borne by private insurers without bear-
11 ing timing risk, and thus enable all insurers (wheth-
12 er State-operated or privately owned) to underwrite
13 and price insurance without timing risk and in such
14 a way to encourage property owners to pay for the
15 appropriate insurance to protect themselves and to
16 take steps to mitigate against the risks of disaster
17 by locally appropriate methods.

18 (b) PURPOSES.—The purposes of this Act are to es-
19 tablish a program to provide a Federal backstop for State-
20 sponsored insurance programs to help homeowners pre-
21 pare for and recover from the damages caused by natural
22 catastrophes, to encourage mitigation and prevention for
23 such catastrophes, to promote the use of private market
24 capital as a means to insure against such catastrophes,

1 to expedite the payment of claims and better assist in the
2 financial recovery from such catastrophes.

3 **SEC. 3. QUALIFIED REINSURANCE PROGRAMS.**

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

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

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

11 (3) provides reinsurance or retrocessional cov-
12 erage to underlying primary insurers or reinsurers
13 for losses arising from all personal residential lines
14 of insurance, as defined in the Uniform Property &
15 Casualty Product Coding Matrix published and
16 maintained by the National Association of Insurance
17 Commissioners;

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

20 (5) provides reinsurance or retrocessional cov-
21 erage to underlying primary insurers or reinsurers
22 for losses in excess of such amount that the Sec-
23 retary has determined represents a catastrophic
24 event in that particular State;

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

4 (A) ensure, to the extent that reinsurance
5 coverage made available under the qualified re-
6 insurance program results in any cost savings
7 in providing insurance coverage for risks in
8 such State, such cost savings are reflected in
9 premium rates charged to consumers for such
10 coverage;

11 (B) require that any new construction,
12 substantial rehabilitation, and renovation in-
13 sured or reinsured by the program complies
14 with applicable State or local government build-
15 ing, fire, and safety codes;

16 (C) require State authorized insurance en-
17 tities within that State to establish an insur-
18 ance rate structure that takes into account
19 measures to mitigate insurance losses;

20 (D) require State authorized insurance and
21 reinsurance entities within that State to estab-
22 lish rates at a level that annually produces ex-
23 pected premiums that shall be sufficient to pay
24 the expected annualized cost of all claims, loss

1 adjustment expenses, and all administrative
2 costs of reinsurance coverage offered; and

3 (E) encourage State authorized insurance
4 and reinsurance entities within that State to es-
5 tablish rates that do not involve cross-subsidiza-
6 tion between any separate property and cas-
7 ualty lines covered under the State authorized
8 insurance or reinsurance entity; and

9 (7) complies with such additional organiza-
10 tional, underwriting, and financial requirements as
11 the Secretary shall, by regulation, provide to carry
12 out the purposes of this Act.

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

21 (c) PRECERTIFICATION.—The Secretary shall estab-
22 lish procedures and standards for State and regional rein-
23 surance programs and the State residual insurance market
24 entities described in subsection (b) to apply to the Sec-

1 retary at any time for certification (and recertification)
2 as qualified reinsurance programs.

3 (d) REINSURANCE TO COVER EXPOSURE.—This sec-
4 tion may not be construed to limit or prevent any insurer
5 from obtaining reinsurance coverage for insured losses re-
6 tained by insurers pursuant to this section, nor shall the
7 obtaining of such coverage affect the calculation of the
8 amount of any loan under this Act.

9 **SEC. 4. DEFINITIONS.**

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

12 (1) CEILING COVERAGE LEVEL.—The term
13 “ceiling coverage level” means, with respect to a
14 qualified reinsurance program, the maximum liabil-
15 ity, under law, that could be incurred at any time
16 by the qualified reinsurance program.

17 (2) COMMISSION.—The term “Commission”
18 means the National Commission on Natural Catas-
19 trophe Preparation and Protection established under
20 title II.

21 (3) CONSORTIUM.—The term “Consortium”
22 means the National Catastrophic Risk Consortium
23 established under title I.

1 (4) INSURED LOSS.—The term “insured loss”
2 means any loss insured by a qualified reinsurance
3 program.

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

8 (6) SECRETARY.—The term “Secretary” means
9 the Secretary of the Treasury.

10 (7) STATE.—The term “State” includes the
11 several States, the District of Columbia, the Com-
12 monwealth of Puerto Rico, Guam, the Common-
13 wealth of the Northern Mariana Islands, the United
14 States Virgin Islands, and American Samoa.

15 **SEC. 5. REGULATIONS.**

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

18 **TITLE I—NATIONAL CATAS-**
19 **TROPHE RISK CONSORTIUM**

20 **SEC. 101. ESTABLISHMENT; STATUS; PRINCIPAL OFFICE;**
21 **MEMBERSHIP.**

22 (a) ESTABLISHMENT.—There is established an entity
23 to be known as the “National Catastrophe Risk Consor-
24 tium”.

1 (b) STATUS.—The Consortium is not a department,
2 agency, or instrumentality of the United States Govern-
3 ment.

4 (c) PRINCIPAL OFFICE.—The principal office and
5 place of business of the Consortium shall be such location
6 within the United States determined by the Board of Di-
7 rectors to be the most advantageous for carrying out the
8 purpose and functions of the Consortium.

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

13 **SEC. 102. FUNCTIONS.**

14 The Consortium shall—

15 (1) work with all States, particularly those par-
16 ticipating in the Consortium, to gather and maintain
17 an inventory of catastrophe risk obligations held by
18 State reinsurance funds and State residual insur-
19 ance market entities;

20 (2) at the discretion of the affected members
21 and on a conduit basis, issue securities and other fi-
22 nancial instruments linked to the catastrophe risks
23 insured or reinsured through members of the Con-
24 sortium in the capital markets;

1 (3) coordinate reinsurance contracts between
2 participating, qualified reinsurance funds and pri-
3 vate parties;

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

9 (5) use a catastrophe risk database to perform
10 research and analysis that encourages standardiza-
11 tion of the risk-linked securities market;

12 (6) perform any other functions, other than as-
13 suming risk or incurring debt, that are deemed nec-
14 essary to aid in the transfer of catastrophe risk from
15 participating States to private parties; and

16 (7) submit annual reports to Congress describ-
17 ing the activities of the Consortium for the pre-
18 ceding year.

19 **SEC. 103. POWERS.**

20 The Consortium—

21 (1) may make and perform such contracts and
22 other agreements with any individual or other pri-
23 vate or public entity however designated and wher-
24 ever situated, as may be necessary for carrying out
25 the functions of the Consortium; and

1 **SEC. 105. MANAGEMENT.**

2 (a) BOARD OF DIRECTORS; MEMBERSHIP; DESIGNA-
3 TION OF CHAIRPERSON.—

4 (1) BOARD OF DIRECTORS.—The management
5 of the Consortium shall be vested in a board of di-
6 rectors (referred to in this title as the “Board”)
7 composed of not fewer than 3 members.

8 (2) CHAIRPERSON.—The Secretary, or the des-
9 ignee of the Secretary, shall serve as the chairperson
10 of the Board.

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

13 (A) the Secretary of Homeland Security
14 and the Secretary of Commerce, or the des-
15 ignees of such Secretaries, respectively, but only
16 during such times as there are fewer than 2
17 States participating in the Consortium; and

18 (B) a member from each State partici-
19 pating in the Consortium, who shall be ap-
20 pointed by such State.

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

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

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

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

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

20 (d) QUORUM.—A majority of the Board shall con-
21 stitute a quorum.

22 (e) EXECUTIVE DIRECTOR.—The Board shall ap-
23 point an executive director of the Consortium, on such
24 terms as the Board may determine.

1 **SEC. 106. STAFF; EXPERTS AND CONSULTANTS.**

2 (a) STAFF.—

3 (1) APPOINTMENT.—The Board of the Consor-
4 tium may appoint and terminate such other staff as
5 are necessary to enable the Consortium to perform
6 its duties.

7 (2) COMPENSATION.—The Board of the Con-
8 sortium may fix the compensation of the executive
9 director and other staff.

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

13 **SEC. 107. FEDERAL LIABILITY.**

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

19 **SEC. 108. AUTHORIZATION OF APPROPRIATIONS.**

20 There are authorized to be appropriated to carry out
21 this title \$20,000,000 for each of fiscal years 2008
22 through 2013.

1 **TITLE II—NATIONAL HOME-**
 2 **OWNERS’ INSURANCE STA-**
 3 **BILIZATION PROGRAM**

4 **SEC. 201. ESTABLISHMENT.**

5 The Secretary shall carry out a program under this
 6 title to make liquidity loans and catastrophic loans under
 7 section 202 to qualified reinsurance programs to ensure
 8 the solvency of such programs, to improve the availability
 9 and affordability of homeowners’ insurance, to provide in-
 10 centive for risk transfer to the private capital and reinsur-
 11 ance markets, and to spread the risk of catastrophic finan-
 12 cial loss resulting from natural disasters and catastrophic
 13 events.

14 **SEC. 202. LIQUIDITY LOANS AND CATASTROPHIC LOANS**
 15 **FOR STATE AND REGIONAL REINSURANCE**
 16 **PROGRAMS.**

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

22 (b) **CONDITIONS FOR LOAN ELIGIBILITY.**—A loan
 23 under this section may be made only to a qualified reinsur-
 24 ance program and only if—

25 (1) before the loan is made—

1 (A) the State or regional reinsurance pro-
2 gram submits to the Secretary a report setting
3 forth, in such form and including such informa-
4 tion as the Secretary shall require, how the pro-
5 gram plans to repay the loan; and

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

11 (2) the program cannot access capital in the
12 private market, including through catastrophe bonds
13 and other securities sold through the facility created
14 in title I of this Act, as determined by the Secretary,
15 and a loan may be made to such a qualified reinsur-
16 ance program only to the extent that such program
17 cannot access capital in the private market;

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

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

23 (5) the loan is afforded the full faith and credit
24 of the State and the State demonstrates to the Sec-
25 retary that it has the ability to repay the loans.

1 (c) MANDATORY ASSISTANCE FOR QUALIFIED REIN-
2 SURANCE PROGRAMS.—The Secretary shall, upon the re-
3 quest of a qualified reinsurance program and subject to
4 subsection (b), make a loan under subsection (d) or (e)
5 for such program in the amount requested by such pro-
6 gram (subject to the limitations under subsections (d)(2)
7 and (e)(2), respectively).

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

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

13 (A) has a capital liquidity shortage, in ac-
14 cordance with regulations that the Secretary
15 shall establish; and

16 (B) cannot access capital markets at effec-
17 tive rates of interest lower than those provided
18 in paragraph (3).

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

22 (3) RATE OF INTEREST.—The loan shall bear
23 interest at an annual rate 3 percentage points high-
24 er than marketable obligations of the Treasury hav-
25 ing the same term to maturity as the loan and

1 issued during the most recently completed month, as
2 determined by the Secretary, or such higher rate as
3 may be necessary to ensure that the amounts of in-
4 terest paid under such loans exceed the sum of the
5 costs (as such term is defined in section 502 of the
6 Federal Credit Reform Act of 1990 (2 U.S.C.
7 661a)) of such loans, the administrative costs in-
8 volved in carrying out a program under this title for
9 such loans, and any incidental effects on govern-
10 mental receipts and outlays.

11 (4) TERM.—The loan shall have a term to ma-
12 turity of not less than 5 years and not more than
13 10 years.

14 (e) CATASTROPHIC LOANS.—A loan under this sub-
15 section for a qualified reinsurance program shall be sub-
16 ject to the following requirements:

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

1 in accordance with regulations that the Secretary
2 shall establish.

3 (2) AMOUNT.—The principal amount of the
4 loan made pursuant to an event referred to in para-
5 graph (1) may not exceed the amount by which the
6 insured losses sustained as a result of such event ex-
7 ceed the ceiling coverage level for the qualified rein-
8 surance program.

9 (3) RATE OF INTEREST.—The loan shall bear
10 interest at an annual rate 0.20 percentage points
11 higher than marketable obligations of the United
12 States Treasury having a term to maturity of not
13 less than 10 years and issued during the most re-
14 cently completed month, as determined by the Sec-
15 retary, or such higher rate as may be necessary to
16 ensure that the amounts of interest paid under such
17 loans exceed the sum of the costs (as such term is
18 defined in section 502 of the Federal Credit Reform
19 Act of 1990 (2 U.S.C. 661a)) of such loans, the ad-
20 ministrative costs involved in carrying out a program
21 under this title for such loans, and any incidental ef-
22 fects on governmental receipts and outlays.

23 (4) TERM.—The loan shall have a term to ma-
24 turity of not less than 10 years.

1 (f) USE OF FUNDS.—Amounts from a loan under this
2 section shall only be used to provide reinsurance or
3 retrocessional coverage to underlying primary insurers or
4 reinsurers for losses arising from all personal real property
5 or homeowners' lines of insurance, as defined in the Uni-
6 form Property & Casualty Product Coding Matrix pub-
7 lished and maintained by the National Association of In-
8 surance Commissioners. Such amounts shall not be used
9 for any other purpose.

10 **SEC. 203. REPORTS AND AUDITS.**

11 The Secretary shall submit a report to the President
12 and the Congress annually that identifies and describes
13 any loans made under this title during such year and any
14 repayments during such year of loans made under this
15 title, and describes actions taken to ensure accountability
16 of loan funds. The Secretary shall provide for regular au-
17 dits to be conducted for each loan made under this title,
18 and shall make the results of such audits publicly avail-
19 able.

20 **SEC. 204. FUNDING.**

21 (a) PROGRAM FEE.—

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

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

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

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

10 (2) ADJUSTMENT.—The Secretary may, from
11 time to time, adjust the fee under paragraph (1) as
12 appropriate based on expenses of the Secretary re-
13 ferred to in such paragraph.

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

19 (b) COSTS OF LOANS; ADMINISTRATIVE COSTS.—To
20 the extent that amounts of negative credit subsidy are re-
21 ceived by the Secretary in any fiscal year pursuant to
22 loans made under this title, such amounts shall be avail-
23 able for costs (as such term is defined in section 502 of
24 the Federal Credit Reform Act of 1990 (2 U.S.C. 661a))

1 of such loans and for costs of carrying out the program
2 under this title for such loans.

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

○