

S 1487 IS

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.

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Commission on Catastrophic Disaster Risk and Insurance Act of 2009'.

**SEC. 2. FINDINGS.**

Congress finds the following:

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

(2) Although private sector insurance is currently available to spread some catastrophe-related losses throughout the Nation and internationally, most experts believe there will be significant insurance and reinsurance shortages, resulting in dramatic rate increases for consumers and businesses, and the unavailability of catastrophe insurance.

(3) The Federal Government has provided and will continue to provide billions of dollars and resources to pay for losses from catastrophes, including hurricanes, volcanic eruptions, tsunamis, tornados, and other disasters, at huge costs to American taxpayers.

(4) The Federal Government has a critical interest in ensuring appropriate and fiscally responsible risk management of catastrophes. Mortgages require reliable property insurance, and the unavailability of reliable property insurance would make most real estate transactions impossible. In addition, the public health, safety, and welfare demand that structures damaged or destroyed in a catastrophe be reconstructed as soon as possible. Therefore, the inability of the private sector insurance and reinsurance markets to maintain sufficient capacity to enable Americans to obtain property insurance coverage in the private sector endangers the national economy and the public health, safety, and welfare.

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

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

(7) The most efficient and effective approach to assessing the catastrophe insurance problem in the public policy context is to establish a bipartisan commission of experts to study the management of catastrophic disaster risk, and to require such commission to timely report its recommendations to Congress so that Congress can quickly craft a solution to protect the American people.

### **SEC. 3. ESTABLISHMENT.**

There is established a bipartisan Commission on Catastrophic Disaster Risk and Insurance (in this Act referred to as the `Commission').

### **SEC. 4. MEMBERSHIP.**

(a) Members- The Commission shall be composed of the following:

(1) The Administrator of the Federal Emergency Management Agency or a designee of the Administrator.

(2) The Administrator of the National Oceanic and Atmospheric

Administration or a designee of the Administrator.

(3) Twelve additional members or their designees of whom one shall be--

- (A) a representative of a consumer group;
- (B) a representative of a primary insurance company;
- (C) a representative of a reinsurance company;
- (D) an independent insurance agent with experience in writing property and casualty insurance policies;
- (E) a State insurance regulator;
- (F) a State emergency operations official;
- (G) a scientist;
- (H) a faculty member of an accredited university with experience in risk management;
- (I) a member of nationally recognized think tank with experience in risk management;
- (J) a homebuilder with experience in structural engineering;
- (K) a mortgage lender; and
- (L) a nationally recognized expert in antitrust law.

(b) Manner of Appointment-

(1) IN GENERAL- Any member of the Commission described under subsection (a)(3) shall be appointed only upon unanimous agreement of-

- (A) the majority leader of the Senate;
- (B) the minority leader of the Senate;
- (C) the Speaker of the House of Representatives; and
- (D) the minority leader of the House of Representatives.

(2) CONSULTATION- In making any appointment under paragraph (1), each individual described in paragraph (1) shall consult with the

President.

(c) Eligibility Limitation- Except as provided in subsection (a), no member or officer of the Congress, or other member or officer of the Executive Branch of the United States Government or any State government may be appointed to be a member of the Commission.

(d) Period of Appointment-

(1) IN GENERAL- Each member of the Commission shall be appointed for the life of the Commission.

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

(e) Quorum-

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

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

(f) Chairperson- The majority leader of the Senate, the minority leader of the Senate, the Speaker of the House of Representatives, and the minority leader of the House of Representatives shall jointly select 1 member appointed pursuant to subsection (a) to serve as the Chairperson of the Commission.

(g) Meetings- The Council shall meet at the call of its Chairperson or a majority of its members at any time.

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

The Commission shall--

(1) assess--

(A) the condition of the property and casualty insurance and reinsurance markets in the aftermath of Hurricanes Katrina, Rita, and Wilma in 2005, and the 4 major hurricanes that struck the United States in 2004; and

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

(2) recommend and report, as required under section 6, any necessary legislative and regulatory changes that will--

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

(B) assure consumers of the--

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

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

## **SEC. 6. REPORT.**

(a) In General- Not later than 90 days after the appointment of Commission members under section 4, the Commission shall submit to the President and the Congress a final report containing a detailed statement of its findings, together with any recommendations for legislation or administrative action that the Commission considers appropriate, in accordance with the requirements of section 5.

(b) Considerations- In developing any recommendations under subsection (a), the Commission shall consider--

(1) the catastrophic insurance and reinsurance market structures and the relevant commercial practices in such insurance industries in providing insurance protection to different sectors of the American population;

(2) the constraints and opportunities in implementing a catastrophic insurance system that can resolve key obstacles currently impeding broader implementation of catastrophe risk management and financing with insurance;

(3) methods to improve risk underwriting practices, including--

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

(B) assessment of private securitization of insurances risks;

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

(D) the financial feasibility and sustainability of a national catastrophe pool or regional catastrophe pools designed to provide

adequate insurance coverage and increased underwriting capacity to insurers and reinsurers;

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

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

(6) methods to promote public insurance policies linked to programs for loss reduction in the uninsured sectors of the American population;

(7) methods to strengthen the risk assessment and enforcement of structural mitigation and vulnerability reduction measures, such as zoning and building code compliance;

(8) the appropriate role for the Federal Government in stabilizing the property and casualty insurance and reinsurance markets, with an analysis--

(A) of options such as--

(i) a reinsurance mechanism;

(ii) the modernization of Federal taxation policies; and

(iii) an 'insurance of last resort' mechanism; and

(B) how to fund such options; and

(9) the merits of 3 principle legislative proposals introduced in the 109th Congress, namely:

(A) The creation of a Federal catastrophe fund to act as a backup to State catastrophe funds (S. 3117).

(B) Tax-deferred catastrophe accounts for insurers (S. 3115).

(C) Tax-free catastrophe accounts for policyholders (S. 3116).

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

(a) Hearings- The Commission or, at the direction of the Commission, any subcommittee or member of the Commission, may, for the purpose of carrying out this Act--

(1) hold such public hearings in such cities and countries, sit and act at such times and places, take such testimony, receive such evidence, and administer such oaths or affirmations as the Commission or such subcommittee or member considers advisable; and

(2) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, documents, tapes, and materials as the Commission or such subcommittee or member considers advisable.

(b) Issuance and Enforcement of Subpoenas-

(1) ISSUANCE- Subpoenas issued under subsection (a) shall bear the signature of the Chairperson of the Commission and shall be served by any person or class of persons designated by the Chairperson for that purpose.

(2) ENFORCEMENT- In the case of contumacy or failure to obey a subpoena issued under subsection (a), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(3) CONFIDENTIALITY-

(A) IN GENERAL- Information obtained under a subpoena issued under subsection (a) which is deemed confidential, or with reference to which a request for confidential treatment is made by the person furnishing such information--

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

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

(B) EXCEPTION- The requirements of subparagraph (A) shall not apply to the publication or disclosure of any data aggregated in a manner that ensures protection of the identity of the person furnishing such data.

(c) Authority of Members or Agents of the Commission- Any member or agent of the Commission may, if authorized by the Commission, take any action

which the Commission is authorized to take by this Act.

(d) Obtaining Official Data-

(1) AUTHORITY- Notwithstanding any provision of section 552a of title 5, United States Code, the Commission may secure directly from any department or agency of the United States any information necessary to enable the Commission to carry out the purposes of this Act.

(2) PROCEDURE- Upon request of the Chairperson of the Commission, the head of that department or agency shall furnish the information requested to the Commission.

(e) Postal Services- The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(f) Administrative Support Services- Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, any administrative support services necessary for the Commission to carry out its responsibilities under this Act.

(g) Gifts-

(1) IN GENERAL- The Commission may accept, use, and dispose of gifts or donations of services or property.

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

## **SEC. 8. COMMISSION PERSONNEL MATTERS.**

(a) Compensation of Members- Each member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for GS-18 of the General Schedule under section 5332 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(b) Travel Expenses- The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the

performance of services for the Commission.

(c) Subcommittees- The Commission may establish subcommittees and appoint persons to such subcommittees as the Commission considers appropriate.

(d) Staff- Subject to such policies as the Commission may prescribe, the Chairperson of the Commission may appoint and fix the pay of such additional personnel as the Chairperson considers appropriate to carry out the duties of the Commission.

(e) Applicability of Certain Civil Service Laws- Subcommittee members and staff of the Commission may be--

(1) appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service; and

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

(f) Experts and Consultants- In carrying out its objectives, the Commission may procure temporary and intermittent services of consultants and experts under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for GS-18 of the General Schedule under section 5332 of that title.

(g) Detail of Government Employees- Upon request of the Chairperson of the Commission, any Federal Government employee may be detailed to the Commission to assist in carrying out the duties of the Commission--

(1) on a reimbursable basis; and

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

## **SEC. 9. TERMINATION.**

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

## **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

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

*END*

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