

ASSEMBLY, No. 2198

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED FEBRUARY 25, 2008

Sponsored by:

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington and Camden)

Assemblywoman PAMELA R. LAMPITT

District 6 (Camden)

SYNOPSIS

The “New Jersey Consumer Catastrophe Preparedness and Protection Act”; creates “New Jersey Catastrophe Fund”; appropriates \$10,000,000.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT establishing the New Jersey Catastrophe Fund,
2 supplementing Title 17 of the Revised Statutes and making an
3 appropriation therefor.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. This act shall be known and may be cited as the “New Jersey
9 Consumer Catastrophe Preparedness and Protection Act.”

10
11 2. The Legislature finds and declares that:

12 a. The exposure in New Jersey to major catastrophes is greater
13 than commonly understood, particularly catastrophes involving
14 hurricanes, earthquakes and other natural disasters.

15 b. All New Jersey residents, regardless of location, are
16 susceptible to the devastating and unpredictable consequences of
17 catastrophes, thereby necessitating a Statewide preparedness and
18 proactive program of catastrophe management.

19 c. There is a compelling State interest in maintaining a viable
20 and orderly private sector market for property insurance in this
21 State. To the extent that the private sector is unable to maintain a
22 viable and orderly market for property insurance in this State,
23 encouraging and assisting such a viable and orderly market are valid
24 and necessary exercises of the police power.

25 d. The failure of the State to properly prepare for a potential
26 catastrophe could result in a devastating impact on New Jersey
27 families, as well as the entire State’s economy.

28 e. The current approach to dealing with catastrophes is an after-
29 the-fact response model that is inadequate to protect New Jersey
30 residents from catastrophic loss. New Jersey consumers need a
31 public-private partnership which improves the means to provide
32 financial assistance to families that are victims of catastrophes,
33 enhances prevention and mitigation measures, improves recovery
34 and rebuilding processes and educates homeowners on issues
35 surrounding catastrophe management.

36 f. The result of unprecedented levels of insured losses from
37 natural catastrophes in recent years, as evidenced by Hurricane
38 Andrew, the 2004 four-storm hurricane season in Florida, tsunamis
39 in Asia, the Northridge Earthquake in California, Hurricane Wilma
40 in Florida and the most recent devastation in Louisiana, Mississippi,
41 Alabama and Texas from hurricanes Katrina and Rita, have resulted
42 in numerous insurers determining that in order to protect their solvency,
43 it is necessary for them to reduce their exposure to catastrophic
44 losses. The instability of the global reinsurance market which leads
45 to increased reinsurance costs, also caused in part by these events,
46 has also increased the pressure on insurers to reduce their exposure to
47 catastrophic loss. This pressure will result in an increase in

1 reinsurance costs and could force an increase in homeowners
2 insurance premiums.

3 g. The State of New Jersey is commonly viewed as one of the
4 states in the region that is exposed to catastrophic events. Given the
5 scope and magnitude of hurricanes Katrina and Rita, and given that
6 New Jersey is the most densely populated state in the nation and
7 because of the size of New Jersey, it is likely that a Category 3 or
8 better storm could devastate the State.

9 h. Mortgage lenders require reliable property insurance, and the
10 unavailability of reliable property insurance would therefore make
11 most real estate transactions impossible. In addition, the public health,
12 safety and welfare demand that structures damaged or destroyed in
13 a catastrophe be repaired or reconstructed as soon as possible.
14 Therefore, the potential inability of the private sector insurance and
15 reinsurance markets to maintain sufficient capacity to enable
16 residents of this State to obtain property insurance coverage in the
17 private sector endangers the economy of the State and endangers the
18 public health, safety and welfare. Accordingly, State action to
19 correct for this inability of the private sector constitutes a valid and
20 necessary public and governmental purpose.

21 i. Insurer insolvencies and financial impairments resulting from
22 Hurricane Andrew and other events in other states demonstrate that
23 many property insurers have not collected and retained premiums
24 sufficient to maintain reserves, surplus and reinsurance in amounts
25 to enable the insurers to pay all claims in full in the event of a major
26 catastrophe. Consequently, these extraterritorial insolvencies and
27 financial pressures may serve as an impediment to New Jersey's
28 preparedness for catastrophic events.

29 j. A public-private partnership that strengthens and builds on the
30 existing private insurance market through the creation of a State
31 catastrophe fund will result in additional insurance capacity
32 sufficient to ameliorate the current dangers to the State's economy
33 and to the public health, safety and welfare.

34 k. Successful public-private partnerships recognize that
35 government has an important and appropriate role to take
36 reasonable steps to enhance the ability of the private sector to meet
37 critical public needs.

38 l. It is essential to the efficient functioning of a State program to
39 increase insurance capacity that revenues received by a State
40 catastrophe fund be exempt from State and federal taxation. It is
41 therefore the intent of the Legislature that this program be
42 structured as a State trust fund under the direction and control of the
43 State Treasurer and operate exclusively for the purpose of
44 protecting and advancing the State's interest in maintaining
45 insurance capacity in this State.

46 m. It is therefore appropriate for the Legislature to better
47 prepare and protect New Jersey residents from the perils of
48 catastrophes by creating a public-private partnership to protect the

1 economic integrity of the homeowners insurance market; ensure
2 proper consumer education; improve rebuilding and recovery
3 processes; and recognize the need for continuous recognition and
4 implementation of improved catastrophe management programs.

5

6 3. As used in this act:

7 "Actuarially indicated" means, with respect to premiums paid by
8 insurers for reimbursement provided by the fund, an amount
9 determined according to principles of actuarial science to be
10 adequate, but not excessive, in the aggregate, to pay current and future
11 obligations and expenses of the fund, including additional amounts
12 if needed to retire bonds issued under section 7 of this act, and
13 determined according to principles of actuarial science to reflect
14 each insurer's relative exposure to losses from covered events.

15 "Authority" means the New Jersey Economic Development
16 Authority.

17 "Commissioner" means the Commissioner of Banking and
18 Insurance, unless otherwise specified.

19 "Council" means the New Jersey Catastrophe Fund Advisory
20 Council established pursuant to section 9 of this act.

21 "Covered event" means:

22 (1) All storms, regardless of quantity, that occur in a calendar
23 year, that are declared to be hurricanes by the National Hurricane
24 Center, which storms cause insured losses in this State;

25 (2) All earthquakes, regardless of quantity, that occur in a
26 calendar year, that are declared to be earthquakes by the United
27 States Geological Survey, which earthquakes cause insured losses
28 in this State; and

29 (3) All ice storms, regardless of quantity, that occur in a calendar
30 year, which storms cause insured losses in this State.

31 "Covered loss" means loss under a covered policy resulting from
32 a covered event.

33 "Covered policy" means any insurance policy covering
34 residential property in this State, including, but not limited to, any
35 homeowner's, mobile home owner's, farm owner's, condominium
36 association, condominium unit owner's, tenant's, or apartment
37 building policy, or any other policy covering a residential structure
38 or its contents issued by any authorized insurer, including the New
39 Jersey Insurance Underwriting Association, created pursuant to P.L.
40 1968, c.129 (C.17:37A-1 et seq.), or any other similar entity created
41 pursuant to law. "Covered policy" does not include any reinsurance
42 agreement or any policy that excludes coverage for covered losses.

43 "Fund" means the New Jersey Catastrophe Fund created pursuant
44 to section 4 of this act.

45 "Losses" means direct incurred losses under covered policies in a
46 calendar year, including losses attributable to additional living
47 expense coverage not to exceed 40 percent of the insured value of a
48 residential structure or its contents, and excluding loss adjustment

1 expenses and fair rental value losses and business interruption
2 losses.

3 "Retention" means the minimum amount of losses below which
4 an insurer is not entitled to reimbursement from the fund. An
5 insurer's retention shall be calculated as follows:

6 (1) The Treasurer shall calculate and report to each insurer the
7 retention multiples for each year. For the contract year beginning in
8 2009, the retention multiple shall be equal to \$2.0 billion, divided
9 by the total estimated reimbursement premium for the contract year;
10 for subsequent years, the retention multiple shall be equal to \$2.0
11 billion adjusted to reflect the percentage growth in insured values
12 for covered policies since 2009, divided by the total estimated
13 reimbursement premium for the contract year.

14 (2) The retention multiple determined under paragraph (1) of this
15 definition shall be adjusted to reflect the coverage level elected by
16 the insurer. For insurers electing the 90-percent coverage level, the
17 adjusted retention multiple is 100 percent of the amount determined
18 under paragraph (1). For insurers electing the 75-percent coverage
19 level, the retention multiple is 120 percent of the amount
20 determined under paragraph (1). For insurers electing the 45-
21 percent coverage level, the adjusted retention multiple is 200
22 percent of the amount determined under paragraph (1).

23 (3) An insurer shall determine its provisional retention by
24 multiplying its provisional reimbursement premium by the
25 applicable adjusted retention multiple, and shall determine its actual
26 retention by multiplying its actual reimbursement premium by the
27 applicable adjusted retention multiple.

28 (4) To the extent that the New Jersey Catastrophe Fund collects
29 federal backstop or reinsurance monies designed to provide
30 protection above the financial capacity of the fund as provided by
31 this act, the insurer elected coverage levels shall automatically
32 become 100 percent.

33
34 4. There is created the New Jersey Catastrophe Fund to be
35 administered by the Treasurer. Moneys in the fund may not be
36 expended, loaned, or appropriated except to pay obligations of the
37 fund arising out of reimbursement contracts entered into pursuant to
38 section 5 of this act; payment of debts including obligations arising
39 out of bonds issued under section 7 of this act; costs of the
40 mitigation programs under section 8 of this act; costs of procuring
41 reinsurance; and costs of administration of the fund. The Treasurer
42 shall invest the moneys in the fund. Except as otherwise provided
43 in this act, earnings from all investments shall be retained in the
44 fund. The Treasurer may employ or contract with such staff and
45 professionals, as the Treasurer deems necessary for the
46 administration of the fund.

1 5. a. The Treasurer shall enter into an annual, calendar year
2 contract with each insurer writing covered policies in this State to
3 provide to the insurer the reimbursement described in subsection b.
4 of this section, in exchange for the reimbursement premium paid to
5 the fund pursuant to section 6 of this act. Insurers writing covered
6 policies shall enter into the contract as a condition of doing business
7 in this State.

8 b. (1) The contract shall contain a promise by the Treasurer to
9 reimburse the insurer for 45 percent, 75 percent, or 90 percent of its
10 losses from each covered loss in excess of the insurer's retention,
11 plus 10 percent of the reimbursed losses to cover loss adjustment
12 expenses, subject to the provisions of paragraph (4) of the definition
13 of retention in section 3 of this act.

14 (2) The insurer shall elect one of the payment percentages
15 specified in this subsection and may, upon renewal of a
16 reimbursement contract:

17 (a) Elect a lower payment percentage if no bonds issued under
18 subsection a. of section 7 of this act after a covered event are
19 outstanding; or

20 (b) Elect a higher payment percentage if it pays to the fund an
21 actuarially appropriate equalization charge as determined by the
22 Treasurer.

23 (3) All members of an insurer group shall elect the same
24 payment percentage. The New Jersey Insurance Underwriting
25 Association or any other similar plan or other residual market entity
26 shall elect the 90 percent payment percentage.

27 (4) The contract shall provide that reimbursement amounts shall
28 not be reduced by reinsurance paid or payable to the insurer from
29 other sources; however, recoveries from such other sources, taken
30 together with reimbursements under the contract, may not exceed
31 100 percent of the insurer's losses from covered events. If those
32 recoveries and reimbursements exceed 100 percent of the insurer's
33 losses from covered events, and if there is no agreement between
34 the insurer and the reinsurer to the contrary, any amount in excess
35 of 100 percent of the insurer's losses shall be returned to the fund.

36 c. The contract shall also provide that the obligation of the
37 Treasurer with respect to all contracts covering a particular year
38 shall not exceed the current balance of the fund, together with the
39 maximum amount that the Treasurer is able to raise through the
40 issuance of bonds under section 7 of this act. The contract shall
41 require the Treasurer to annually notify insurers of the fund's
42 anticipated borrowing capacity for the next year, the current balance of
43 the fund, and the insurer's estimated share of total reimbursement to
44 be paid to the fund. For all regulatory and reinsurance purposes, an
45 insurer may calculate its projected payout from the fund as its share
46 of the total fund premium multiplied by the sum of current fund
47 balance and bonding capacity as reported under this subsection. In
48 May and October of each year, the Treasurer shall publish in the

1 New Jersey Register a statement of the fund's anticipated borrowing
2 capacity and the current balance of the fund.

3 d. (1) The contract shall require the insurer to report the
4 insurer's losses from covered events for the year to the Treasurer on
5 December 31 of each year, and quarterly thereafter. The contract
6 shall require the Treasurer to determine and pay, as soon as
7 practicable after receiving these reports, the initial amount of
8 reimbursement due and adjustments to this amount based on later
9 loss information. The adjustments to reimbursement amounts shall
10 require the Treasurer to pay, or the insurer to return, amounts
11 reflecting the most recent calculation of losses.

12 (2) If the Treasurer determines that the current balance of the
13 fund, together with the amount that the Treasurer determines that it
14 is possible to raise through bonds issued under section 7 of this act,
15 are insufficient to pay reimbursement to all insurers at the level
16 promised in the contract, the Treasurer shall:

17 (a) Pay to each insurer the amount of reimbursement it is owed,
18 up to an amount equal to the projected payout determined under
19 subsection c. of this section; and

20 (b) Thereafter, establish the prorated reimbursement level at the
21 highest level for which any remaining fund balance or bond
22 proceeds are sufficient.

23 e. The contract shall provide that if an insurer demonstrates to
24 the Treasurer that it is likely to qualify for reimbursement under the
25 contract, and demonstrates to the Treasurer that the immediate
26 receipt of moneys is likely to prevent the insurer from becoming
27 insolvent, the Treasurer shall loan the insurer, at market interest
28 rates, the amounts necessary to maintain the solvency of the insurer,
29 up to 50 percent of the Treasurer's estimate of the reimbursement
30 due the insurer. The insurer's reimbursement shall be reduced by an
31 amount equal to the amount of the loan and interest thereon.

32 f. The contract shall provide that in the event of the insolvency
33 of an insurer, the fund shall pay directly to the New Jersey
34 Property-Liability Insurance Guaranty Association, established
35 pursuant to P.L.1974, c.17 (C.17:30A-1 et seq.), the net amount of
36 reimbursement moneys owed to the insurer. As used in this
37 subsection, the "net amount of reimbursement moneys" means that
38 amount which remains after reimbursement for preliminary or
39 duplicate payments owed to private reinsurers or other reinsurance
40 payments inuring to private reinsurers that satisfy statutory or
41 contractual obligations of the insolvent insurer attributable to
42 covered events to those reinsurers. Private reinsurers shall be
43 reimbursed or otherwise paid prior to payment to the New Jersey
44 Property-Liability Insurance Guaranty Association, notwithstanding
45 any law to the contrary. The New Jersey Property-Liability
46 Insurance Guaranty Association shall pay all claims up to the
47 maximum amount permitted by law. Thereafter, any remaining
48 moneys shall be paid pro rata to claims not fully satisfied.

1 g. The Treasurer shall adopt the initial contract form no later
2 than September 1, 2008 and shall adopt the initial premium formula
3 no later than October 1, 2008. Initial reimbursement contracts under
4 this act shall be entered into no earlier than November 1, 2008 and
5 no later than December 15, 2008.

6
7 6. a. Each reimbursement contract shall require the insurer to
8 annually pay to the fund an actuarially indicated premium for the
9 reimbursement promised.

10 b. The Treasurer shall select an independent consultant to
11 develop a formula for determining the actuarially indicated
12 premium to be paid to the fund. The formula shall specify, for each
13 zip code or other limited geographical area, the amount to be paid
14 by an insurer for each \$1,000 of insured value under covered
15 policies in that zip code or other area. In establishing premiums, the
16 Treasurer shall consider the coverage level elected under subsection b.
17 of section 5 of this act and any factors that tend to enhance the actuarial
18 sophistication of ratemaking for the fund, including deductibles,
19 type of construction, type of coverage provided, relative
20 concentration of risks, a factor providing for more rapid cash
21 buildup in the fund until the fund capacity for a single covered
22 season is fully funded and other factors determined by the Treasurer
23 to be appropriate. The Treasurer may, at any time, revise the
24 formula pursuant to the procedure provided in this subsection.

25 c. No later than September 1 of each year, each insurer shall
26 notify the Treasurer of its insured values under covered policies by zip
27 code, as of June 30 of that year. On the basis of these reports, the
28 Treasurer shall calculate the premium due from the insurer, based
29 on the formula adopted under subsection b. of this section. The
30 insurer shall pay the required annual premium pursuant to a
31 periodic payment plan specified in the contract. The Treasurer shall
32 provide for payment of reimbursement premium in periodic
33 installments and for the adjustment of provisional premium
34 installments collected prior to submission of the exposure report to
35 reflect data in the exposure report.

36 d. All premiums paid to the fund under reimbursement contracts
37 shall be treated as premiums for approved reinsurance for all
38 accounting and regulatory purposes.

39 e. In order to provide startup moneys for the administration of
40 the fund, each insurer subject to this section shall pay to the fund an
41 advance premium payment of \$1,000 no later than January 1, 2009.
42 The commissioner shall collect the advance premium payment
43 required by this subsection on behalf of the Treasurer. The insurer
44 shall receive a credit against future premiums for the advance
45 payment.

46
47 7. a. Upon the occurrence of a covered event and a
48 determination that the moneys in the fund are or will be insufficient

1 to pay reimbursement at the levels promised in the reimbursement
2 contracts, the Treasurer, upon authorization of the Governor, shall
3 enter into agreements with the New Jersey Economic Development
4 Authority, hereinafter the “authority” for the issuance of bonds for the
5 benefit of the fund.

6 b. Any agreement entered into or any payments made or to be made
7 thereunder may be assigned and pledged by the authority as security
8 for its bonds notes, or other obligations.

9 c. Any such agreements shall provide that the obligation of the
10 Treasurer or of the State to fund or to pay the amounts therein provided
11 for shall not constitute a debt of the State within the meaning of Article
12 VIII of the New Jersey Constitution or any other constitutional or
13 statutory provision if the authority assigns or pledges the service
14 contract payments as security for its bonds, notes, or other obligations,
15 and shall be deemed executory only to the extent monies are available
16 and then no liability shall be incurred by the State beyond the monies
17 available for that purpose, and that such obligation is subject to annual
18 appropriations by the Legislature.

19 d. Any agreement entered into pursuant to this section shall
20 provide for State commitments to provide annually to the authority
21 a sum or sums, upon terms and conditions as determined to be
22 appropriate by the Treasurer, to fund the principal, interest, or other
23 related payments required for any bonds, notes, or other obligations
24 of the authority issued pursuant to this section.

25 e. To obtain funds for the purposes of this section, the authority
26 shall have power from time to time to issue negotiable bonds or
27 notes. Unless the context clearly indicates otherwise, whenever the
28 word “bond” or “bonds” are used in this section, those words shall
29 include a note or notes of the authority.

30 f. The State of New Jersey hereby covenants with the
31 purchasers, holders, and owners from time to time of the bonds of
32 the authority issued pursuant to this section that it will not repeal,
33 revoke, rescind, modify or amend the provisions of this section
34 which relate to the making of annual agreement payments to the
35 authority with respect to those bonds so as to limit, impair or
36 impede the rights and remedies granted to bondholders under “The
37 New Jersey Economic Development Authority Act,” P.L.1974, c.80
38 (C.34:1B-1 et seq.) or otherwise diminish the security pledged to
39 the purchasers, holders, and owners or significantly impair the
40 prospect of payment of any such bond.

41 g. If the Treasurer determines that the amount of revenue
42 produced under section 6 of this act is insufficient to fund bonds to
43 pay reimbursement at the levels promised in the reimbursement
44 contracts, the Treasurer shall direct the commissioner to levy an
45 emergency assessment on direct premiums for all property and
46 casualty lines of business in this State, except for policies written
47 under the National Flood Insurance Program, medical malpractice,
48 workers’ compensation and accident and health insurance. The

1 assessment shall be specified as a percentage of future premium
2 collections and is subject to annual adjustments by the Treasurer to
3 reflect changes in premiums subject to assessments collected under
4 this subsection in order to meet debt obligations. The same
5 percentage shall apply to all policies in lines of business subject to
6 the assessment issued or renewed during the 12-month period
7 beginning on the effective date of the assessment. A premium is
8 not subject to an annual assessment under this subsection in excess
9 of six percent of premium with respect to obligations arising out of
10 losses attributable to any one contract year, and a premium is not
11 subject to an aggregate annual assessment under this subsection in
12 excess of 10 percent of premium. An annual assessment under this
13 subsection shall continue until the bonds issued with respect to
14 which the assessment was imposed are no longer outstanding,
15 including any bonds the proceeds of which were used to refund the
16 bonds, unless adequate provision has been made for the payment of
17 the bonds under the documents authorizing issuance of the bonds.

18 With respect to each insurer collecting premiums that are subject to
19 the assessment, the insurer shall collect the assessment at the same
20 time as it collects the premium payment for each policy and shall
21 remit the assessment collected to the fund or authority as provided
22 in the order issued by the commissioner. The commissioner shall
23 verify the accurate and timely collection and remittance of
24 emergency assessments and shall maintain reports and report his
25 findings to the Treasurer. Each insurer collecting assessments shall
26 provide the information with respect to premiums and collections as
27 may be required by the commissioner to enable him to monitor and
28 verify compliance with this subsection.

29

30 8. a. The Treasurer may procure reinsurance from licensed
31 reinsurers for the purpose of maximizing the capacity of the fund.

32 b. In each fiscal year in which there are no outstanding
33 obligations of the fund, the Legislature shall appropriate from the
34 investment income of the fund an amount of not less than 10
35 percent and not more than 35 percent of the investment income
36 from the prior fiscal year for the purpose of providing funding for
37 local governments, State agencies, public and private educational
38 institutions, and nonprofit organizations to support programs
39 including, but not limited to "first responders," intended to improve
40 catastrophe preparedness, prevent and reduce potential losses from a
41 covered loss, provide research into means to prevent and reduce
42 such losses, educate or inform the public as to means to reduce
43 losses from covered events, assist the public in determining the
44 appropriateness of particular upgrades to structures or in the
45 financing of those upgrades, providing funding for the enforcement
46 of catastrophe appropriate building codes, or protect local
47 infrastructure from potential damage from a covered loss. Moneys
48 shall first be available for appropriation pursuant to this subsection

1 in fiscal year 2010. Moneys in excess of the 10 percent specified in
2 this subsection shall not be available for appropriation under this
3 subsection if the Treasurer determines that the appropriation of
4 investment income from the fund would jeopardize the actuarial
5 soundness of the fund.

6 c. The Treasurer may allow insurers to comply with reporting
7 requirements and reporting format requirements using alternative
8 methods of reporting if the proper administration of the fund is not
9 impaired as a result and if the alternative methods produce data that
10 is consistent for the purposes of this act.

11 d. In order to assure the equitable operation of the fund, the
12 Treasurer may impose a reasonable fee on an insurer to recover
13 costs involved in reprocessing inaccurate, incomplete, or untimely
14 exposure data submitted by the insurer.

15

16 9. a. There is established in, but not of, the Department of
17 Banking and Insurance, the New Jersey Catastrophe Fund Advisory
18 Council. The council shall consist of 13 members, appointed by the
19 Governor, after consultation with the Speaker of the General
20 Assembly and the President of the Senate, and with the advice and
21 consent of the Senate. Each of these members shall be appointed
22 for a term of three years, except that, of the members first
23 appointed, four shall serve for terms of one year, four shall serve
24 for terms of two years and five shall serve for terms of three years.
25 Of these members, one shall be an actuary, one shall be a
26 meteorologist, one shall be an engineer, one shall be a
27 representative of insurers, one shall be a representative of insurance
28 producers, one shall be a representative of reinsurers, one shall be a
29 consumer representative, one shall be a representative of organized
30 labor, one shall be a representative of law enforcement, one shall be
31 a representative of firefighters, one shall be a representative, ex
32 officio from the Division of Codes and Standards in the Department
33 of Community Affairs, one shall be a representative of the State
34 Office of Emergency Management, and one shall be a member of
35 the public at large.

36 b. A majority of the membership of the council shall constitute a
37 quorum for the transaction of council business. Action may be
38 taken and motions and resolutions adopted by the council at any
39 meeting thereof by the affirmative vote of a majority of the full
40 membership of the council.

41 c. The council shall meet regularly as it may determine, and
42 shall also meet at the call of the commissioner.

43 d. The council shall appoint a chairperson from among its
44 members and such other officers as may be necessary. The council
45 may, within the limits of any funds appropriated or otherwise made
46 available to it for this purpose, appoint such staff or hire such
47 experts as it may require.

1 e. Members of the council shall serve without compensation, but
2 the council may, within the limits of funds appropriated or
3 otherwise made available for such purposes, reimburse its members
4 for necessary expenses incurred in the discharge of their official
5 duties.

6 f. In addition to providing the Treasurer with information and
7 advice in connection with his duties with respect to the fund
8 generally, the council shall be specifically charged with developing
9 prevention and mitigation standards to include:

10 (1) The development and implementation of State mandated
11 building codes appropriate for the risk, with no allowance for
12 weaker codes to be adopted by local units;

13 (2) Adequate enforcement of risk appropriate building codes;

14 (3) Building materials that prevent or significantly reduce
15 potential damage from the natural or manmade covered loss;

16 (4) Building methods that prevent or significantly reduce the
17 potential damage from the natural or manmade covered loss; and

18 (5) Focus on prevention and mitigation for any substantially
19 damaged structure;

20 as well as developing and recommending ideas that will aid in the
21 recovery, rebuilding and renewal process, and in analyzing and
22 developing ways to continuously improve the administration and
23 purpose of the fund.

24 g. The council shall also analyze, study and develop actuarially
25 appropriate insurance discounts to be offered to individuals who
26 perform mitigation and prevention improvements to structures. The
27 council shall report its findings to the Treasurer, who shall, in
28 consultation with the commissioner, implement those discounts.

29 h. The Treasurer shall consider, and to the extent possible
30 implement, the findings of the council, and annually report to the
31 Legislature on any and all recommendations of the council that are
32 consistent with the purposes and goals of this act.

33

34 10. Upon the creation of a federal or multi-state catastrophic
35 insurance or reinsurance program intended to serve purposes similar
36 to the purposes of the fund created by this act, the Treasurer shall
37 promptly make recommendations to the Legislature as to how the
38 fund can coordinate with the federal or multi-state program and for
39 such other actions as the Treasurer determines are appropriate under
40 the circumstances.

41

42 11. The fund and the duties of the Treasurer under this act may
43 be terminated only by law. Upon termination of the fund, any and
44 all assets remaining in the fund shall be returned to those insurers
45 who have made contributions to the funds in proportion to the
46 amount each contributed.

1 12. The Treasurer shall, pursuant to the “Administrative
 2 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules
 3 necessary to implement the provisions of this act. The rules
 4 promulgated by the Treasurer shall: conform to the Legislature's
 5 specific intent in establishing the fund as expressed in section 2 of
 6 this act; enhance the fund's potential ability to respond to claims for
 7 covered events; contain general provisions so that they may be
 8 applied with reasonable flexibility so as to accommodate insurers in
 9 situations of an unusual nature or where undue hardship may result,
 10 except that such flexibility may not in any way impair, override,
 11 supersede or constrain the public purpose of the fund; and be
 12 consistent with sound insurance practices.

13
 14 13. There is appropriated to the Department of the Treasury
 15 from the General Fund the sum of \$10 million dollars for deposit in
 16 the New Jersey Catastrophe Fund for the purposes of the fund as
 17 provided pursuant to this act.

18
 19 14. This act shall take effect immediately.

20
 21
 22 STATEMENT

23
 24 This bill, the “New Jersey Consumer Catastrophe Preparedness
 25 and Protection Act,” establishes the New Jersey Catastrophe Fund
 26 to help pay covered residential property damage insurance claims in
 27 the aftermath of a true catastrophe which affects New Jersey
 28 homeowners and their property/casualty insurers. The fund, which
 29 will consist of premiums paid by insurers, bond revenues, and
 30 appropriated State funds, will provide a backstop for companies to
 31 insure against covered catastrophic losses to avoid the collapse of
 32 the property insurance market in the wake of a major natural
 33 disaster or other catastrophe in the State, as specified by the bill.

34 Premiums will be set by the Treasurer, who shall select an
 35 independent consultant to develop a formula for determining the
 36 actuarially indicated premium. The Treasurer will calculate
 37 premiums based upon the insured values under the insurer's
 38 covered policies, as reported annually to the Treasurer.

39 In exchange for the reimbursement premium paid to the fund by
 40 insurers, the State Treasurer will enter into a contract with each
 41 insurer, promising to reimburse the insurer for a percentage of its
 42 losses in excess of the insurer's retention, plus 10% of that amount
 43 to cover loss adjustment expenses. The insurer will select the
 44 reimbursement percentage, at 45%, 75% or 90%, which may be
 45 adjusted under certain circumstances. Reimbursement amounts
 46 from the fund shall not be reduced by reinsurance paid or payable to
 47 the insurer, but the insurer's total recovery shall not exceed 100%

1 of the insurer's losses from covered events, and any excess shall be
2 returned to the fund, unless there is an agreement to the contrary.

3 The bill further authorizes the issuance of bonds by the New
4 Jersey Economic Development Authority if moneys in the fund are
5 insufficient to pay reimbursement at the levels agreed to in the
6 reimbursement contracts, upon the occurrence of a covered event.
7 The Treasurer may procure reinsurance from licensed reinsurers to
8 maximize the fund's capacity, and may borrow from other market
9 sources at prevailing interest rates.

10 The bill also requires, in fiscal years in which there are no
11 outstanding obligations of the fund, an annual appropriation of 10%
12 to 35% of the fund's investment income for the purpose of
13 providing funding for local governments, State agencies, public and
14 private educational institutions, and nonprofit organizations to
15 support programs including, but not limited to "first responders,"
16 intended to improve catastrophe preparedness, prevent and reduce
17 potential losses from a covered loss, provide research into means to
18 prevent and reduce such losses, educate or inform the public as to
19 means to reduce losses from covered events, assist the public in
20 determining the appropriateness of particular upgrades to structures
21 or in the financing of those upgrades, providing funding for the
22 enforcement of catastrophe appropriate building codes, or protect
23 local infrastructure from potential damage from a covered loss.

24 The "New Jersey Catastrophe Fund Advisory Council" is
25 established in but not of the Department of Banking and Insurance
26 to assist the Treasurer with the administration of the fund and to
27 develop prevention and mitigation standards, including:

28 (1) the development and implementation of State mandated
29 building codes appropriate for the risk, with no allowance for
30 weaker codes to be adopted by local units;

31 (2) adequate enforcement of risk appropriate building codes;

32 (3) building materials that prevent or significantly reduce
33 potential damage from the natural or manmade covered loss;

34 (4) building methods that prevent or significantly reduce the
35 potential damage from the natural or manmade covered loss; and

36 (5) focus on prevention and mitigation for any substantially
37 damaged structure;

38 as well as developing and recommending ideas that will aid in the
39 recovery, rebuilding and renewal process, and in analyzing and
40 developing ways to continuously improve the administration and
41 purpose of the fund.

42 In anticipation of the creation of a federal or multi-state
43 catastrophic insurance fund or reinsurance program, the bill
44 requires the Treasurer, following the creation of such fund or
45 program, to make recommendations to the Legislature as to how the
46 fund can coordinate with the federal or multi-state program and for
47 such other actions as the Treasurer determines are appropriate under
48 the circumstances.

1 Finally, the bill appropriates to the Department of the Treasury
2 \$10 million from the General Fund for deposit in the New Jersey
3 Catastrophe Fund for the purposes of the fund. This State
4 appropriation to the fund ensures tax-exempt status for premiums
5 paid to the fund pursuant to the federal Internal Revenue Code of
6 1986.