

Union Calendar No. 389

105TH CONGRESS
2^D SESSION

H. R. 219

[Report No. 105-687]

A BILL

To establish a Federal program to provide reinsurance for State disaster insurance programs.

AUGUST 7, 1998

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 1997

Mr. LAZIO of New York (for himself, Mr. FAZIO of California, and Mr. McCOLLUM) introduced the following bill; which was referred to the Committee on Banking and Financial Services

AUGUST 7, 1998

Additional sponsors: Mr. SOLOMON, Mr. CASTLE, Mr. ACKERMAN, Mr. FOX of Pennsylvania, Mr. CAMPBELL, Mr. CHRISTENSEN, Mr. FATTAH, Ms. LOFGREN, Mr. BILBRAY, Ms. CHRISTIAN-GREEN, Mr. DAVIS of Virginia, Mr. ENSIGN, Mr. MATSUI, Mr. FRANKS of New Jersey, Mr. JONES, Mr. DOOLEY of California, Mr. WEXLER, Mr. FRELINGHUYSEN, Mr. RADANOVICH, Mr. JOHN, Mr. FROST, Mr. GEJDENSON, Mr. WATKINS, Mr. DELAHUNT, Mr. BUNNING, Ms. ESHOO, Ms. NORTON, Mr. COMBEST, Mr. FILNER, Mr. YOUNG of Alaska, Mr. KNOLLENBERG, Mr. LOBIONDO, Mrs. MEEK of Florida, Mr. PRICE of North Carolina, Mr. CANADY of Florida, Mr. METCALF, Mrs. EMERSON, Mr. CUNNINGHAM, Mr. ANDREWS, Mr. SHERMAN, Mr. WELDON of Florida, Mr. DICKEY, and Mr. BERMAN

Deleted sponsor: Ms. KILPATRICK (added May 22, 1997; deleted July 15, 1998)

AUGUST 7, 1998

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on January 7, 1997]

A BILL

To establish a Federal program to provide reinsurance for
State disaster insurance programs.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Homeowners’ Insurance*
5 *Availability Act of 1998”.*

6 **SEC. 2. CONGRESSIONAL FINDINGS.**

7 *The Congress finds that—*

8 *(1) the rising costs resulting from natural disas-*
9 *ters have placed a strain on homeowners’ insurance*
10 *markets in many areas, jeopardizing the ability of*
11 *many consumers to adequately insure their homes*
12 *and possessions;*

13 *(2) the lack of sufficient insurance capacity*
14 *threatens to increase the number of uninsured home-*
15 *owners, which, in turn, increases the risk of mortgage*
16 *defaults and the strain on the Nation’s banking sys-*
17 *tem;*

1 (3) some States have intervened to ensure the
2 continued availability of homeowners' insurance for
3 all residents;

4 (4) it is appropriate that efforts to improve in-
5 surance availability be designed and implemented at
6 the State level;

7 (5) while State insurance programs may be ade-
8 quate to cover losses from most natural disasters, a
9 small percentage of events are likely to exceed the fi-
10 nancial capacity of these programs and the local in-
11 surance markets;

12 (6) limited Federal reinsurance will improve the
13 effectiveness of State insurance programs and private
14 insurance markets and will increase the likelihood
15 that homeowners' insurance claims will be fully paid
16 in the event of a large natural catastrophe;

17 (7) it is necessary to provide, on a temporary
18 basis, a Federal reinsurance program that will pro-
19 mote stability in the homeowners' insurance market
20 in the short run and encourage the growth of reinsur-
21 ance capacity by the private and capital markets as
22 soon as practical;

23 (8) such Federal reinsurance program should not
24 remain in existence longer than necessary for the pri-
25 vate entities or the capital markets, or both, to pro-

1 *vide adequate reinsurance capacity to address the*
2 *current homeowners' insurance market dislocations*
3 *caused by various disasters; and*

4 *(9) any Federal reinsurance program must be*
5 *founded upon sound actuarial principles and priced*
6 *in a manner that minimizes the potential impact on*
7 *the Treasury.*

8 **SEC. 3. PROGRAM AUTHORITY.**

9 *(a) IN GENERAL.—The Secretary of the Treasury shall*
10 *carry out a program under this Act to make reinsurance*
11 *coverage available through—*

12 *(1) contracts for reinsurance coverage under sec-*
13 *tion 6, which shall be made available for purchase*
14 *only by eligible State programs; and*

15 *(2) contracts for reinsurance coverage under sec-*
16 *tion 7, which shall be made available for purchase by*
17 *purchasers under section 7(a)(1) only through auc-*
18 *tions under section 7(a).*

19 *(b) PURPOSE.—The program shall be designed to make*
20 *reinsurance coverage under this Act available to improve*
21 *the availability of homeowners' insurance for the purpose*
22 *of facilitating the pooling, and spreading the risk, of cata-*
23 *strophic financial losses from natural disasters and to im-*
24 *prove the solvency of homeowners' insurance markets.*

1 (c) *CONTRACT PRINCIPLES.*—Under the program
2 under this Act, the Secretary shall offer reinsurance cov-
3 erage through contracts with covered purchasers, which con-
4 tracts—

5 (1) shall not displace or compete with the private
6 insurance or reinsurance markets or capital markets;

7 (2) shall minimize the administrative costs of the
8 Federal Government;

9 (3) shall, in the case of any contract under sec-
10 tion 6 for eligible State programs, provide coverage
11 based solely on insured losses within the State of the
12 eligible State program purchasing the contract; and

13 (4) shall, in the case of any contract under sec-
14 tion 7 for purchase at auction, provide coverage based
15 solely on insured losses within the region established
16 pursuant to section 7(a) for which the auction is held.

17 **SEC. 4. QUALIFIED LINES OF COVERAGE.**

18 Each contract for reinsurance coverage made available
19 under this Act shall provide insurance coverage against res-
20 idential property losses to homes (including dwellings
21 owned under condominium and cooperative ownership ar-
22 rangements) and the contents of apartment buildings.

23 **SEC. 5. COVERED PERILS.**

24 Each contract for reinsurance coverage made available
25 under this Act shall cover losses that are—

1 (1) *proximately caused by—*

2 (A) *earthquakes;*

3 (B) *perils ensuing from earthquakes, includ-*
4 *ing fire and tsunami;*

5 (C) *tropical cyclones having maximum sus-*
6 *tained winds of at least 74 miles per hour, in-*
7 *cluding hurricanes and typhoons; or*

8 (D) *volcanic eruptions; and*

9 (2) *in the case only of a contract under section*
10 *6, insured by the eligible State program purchasing*
11 *the contract.*

12 *The Secretary shall, by regulation, define the natural disas-*
13 *ter perils under paragraph (1).*

14 **SEC. 6. CONTRACTS FOR REINSURANCE COVERAGE FOR EL-**
15 **IGIBLE STATE PROGRAMS.**

16 (a) *ELIGIBLE STATE PROGRAMS.—A program shall be*
17 *eligible to purchase a contract under this section for rein-*
18 *surance coverage under this Act only if the program is a*
19 *State-operated program that complies with the following re-*
20 *quirements:*

21 (1) *PROGRAM DESIGN.—The program shall be a*
22 *State-operated—*

23 (A) *insurance program that offers coverage*
24 *for homes (which may include dwellings owned*
25 *under condominium and cooperative ownership*

1 *arrangements) and the contents of apartments to*
2 *State residents because of a finding by the State*
3 *insurance commissioner or other State entity au-*
4 *thorized to make such determination that such a*
5 *program is necessary in order to provide for the*
6 *continued availability of such residential cov-*
7 *erage for all residents; or*

8 *(B) reinsurance program that is designed to*
9 *improve private insurance markets which offer*
10 *coverage for homes (which may include dwellings*
11 *owned under condominium and cooperative own-*
12 *ership arrangements) and the contents of apart-*
13 *ments because of a finding by the State insur-*
14 *ance commissioner or other State entity author-*
15 *ized to make such determination that such a pro-*
16 *gram is necessary in order to provide for the*
17 *continued availability of such residential cov-*
18 *erage for all residents.*

19 (2) *TAX STATUS.*—*The program shall be struc-*
20 *tured and carried out in a manner so that the pro-*
21 *gram is exempt from all Federal taxation.*

22 (3) *COVERAGE.*—*The program shall cover only a*
23 *single peril.*

24 (4) *EARNINGS.*—*The program may not provide*
25 *for the redistribution of any part of any net profits*

1 of the program to any insurer that participates in the
2 program.

3 (5) *MITIGATION.*—

4 (A) *IN GENERAL.*—*The program shall in-*
5 *clude mitigation provisions that require that not*
6 *less than 10 percent of the net investment income*
7 *of the State insurance or reinsurance program be*
8 *used for programs to mitigate losses from natu-*
9 *ral disasters for which the State insurance or re-*
10 *insurance program was established. For purposes*
11 *of this paragraph, mitigation shall include meth-*
12 *ods to reduce losses of life and property.*

13 (B) *EXCEPTION.*—*Notwithstanding sub-*
14 *paragraph (A), in the case of any State for*
15 *which the Secretary has determined, pursuant to*
16 *a request by the State insurance commissioner,*
17 *that the 10 percent requirement under subpara-*
18 *graph (A) will jeopardize the actuarial sound-*
19 *ness of the State program, subparagraph (A)*
20 *shall be applied by substituting “5 percent” for*
21 *“10 percent”.*

22 (6) *REQUIREMENTS REGARDING COVERAGE.*—

23 (A) *IN GENERAL.*—*The program—*

1 (i) may not involve cross-subsidization
2 between any separate property and casualty
3 lines covered under the program;

4 (ii) shall include provisions that au-
5 thorize the State insurance commissioner or
6 other State entity authorized to make such
7 a determination to terminate the program if
8 the insurance commissioner or other such
9 entity determines that the program is no
10 longer necessary to ensure the availability
11 of homeowners' insurance for all State resi-
12 dents; and

13 (iii) shall provide that, for any insur-
14 ance coverage for homes (which may include
15 dwellings owned under condominium and
16 cooperative ownership arrangements) and
17 the contents of apartments that is made
18 available under the State insurance pro-
19 gram and for any reinsurance coverage for
20 such insurance coverage made available
21 under the State reinsurance program, the
22 premium rates charged shall be amounts
23 that, at a minimum, are sufficient to cover
24 the full actuarial costs of such coverage,
25 based on consideration of the risks involved

1 *and accepted actuarial and rate making*
2 *principles, anticipated administrative ex-*
3 *penses, and loss and loss-adjustment ex-*
4 *penses.*

5 *(B) APPLICABILITY.—This paragraph shall*
6 *apply to any program which, after January 1,*
7 *1998, commences offering insurance or reinsur-*
8 *ance coverage described in subparagraph (A) or*
9 *(B), respectively, of paragraph (1), or effective 2*
10 *years after the date of enactment for any existing*
11 *State program described in section 8.*

12 *(7) OTHER QUALIFICATIONS.—*

13 *(A) IN GENERAL.—The program shall have*
14 *been certified (for the year for which the coverage*
15 *is in effect) by the Secretary as in compliance*
16 *with regulations that shall be issued under this*
17 *paragraph by the Secretary, in consultation with*
18 *the National Commission on Catastrophe Risks*
19 *and Insurance Loss Costs established under sec-*
20 *tion 10. The regulations shall establish criteria*
21 *for State programs to qualify to purchase rein-*
22 *surance under this section, which are in addition*
23 *to the requirements under the other paragraphs*
24 *of this subsection.*

1 (B) *CONTENTS.—The regulations issued*
2 *under this paragraph shall include requirements*
3 *that—*

4 (i) *the State program have public*
5 *members on its board of directors or have*
6 *an advisory board with public members;*

7 (ii) *insurance coverage made available*
8 *through the State program not supplant*
9 *coverage that is otherwise reasonably avail-*
10 *able and affordable in the private insurance*
11 *market;*

12 (iii) *the State program provide ade-*
13 *quate insurance protection for the peril cov-*
14 *ered, which shall include a range of*
15 *deductibles and premium costs that reflect*
16 *the applicable risk to eligible properties;*

17 (iv) *the insurance protection provided*
18 *by the State program is made available on*
19 *a nondiscriminatory basis to all qualifying*
20 *residents;*

21 (v) *the State, or the appropriate local*
22 *governments within the State, have certified*
23 *that new construction insured by the pro-*
24 *gram complies with applicable building,*
25 *fire, and safety codes;*

1 (vi) *the State, or appropriate local*
2 *governments within the State, have in effect*
3 *building, fire, and safety codes generally*
4 *consistent with Federal Emergency Manage-*
5 *ment Agency guidelines designed to reduce*
6 *losses from the peril covered;*

7 (vii) *the State has taken actions to es-*
8 *tablish an insurance rate structure that*
9 *takes into account measures to mitigate in-*
10 *surance losses; and*

11 (viii) *the State program complies with*
12 *such other requirements that the Secretary*
13 *considers necessary to carry out the pur-*
14 *poses of this Act.*

15 (b) *TERMS OF CONTRACTS.—Each contract under this*
16 *section for reinsurance coverage under this Act shall be sub-*
17 *ject to the following terms and conditions:*

18 (1) *MATURITY.—The term of the contract shall*
19 *not exceed 1 year.*

20 (2) *PAYMENT CONDITION.—The contract shall*
21 *authorize claims payments for eligible losses only to*
22 *the eligible State program purchasing the coverage.*

23 (3) *RETAINED LOSSES REQUIREMENT.—The con-*
24 *tract shall pay eligible losses only if the total amount*
25 *of insurance claims for losses, which are covered by*

1 *qualified lines, occur to properties located within the*
2 *State covered by the contract, and result from a single*
3 *event of a covered peril, exceeds the amount of re-*
4 *tained losses provided under the contract (pursuant to*
5 *section 8(a)) purchased by the eligible State program.*

6 (4) *MULTIPLE EVENTS.—The contract shall cover*
7 *any eligible losses from one or more covered events*
8 *that may occur during the term of the contract.*

9 (5) *TIMING OF ELIGIBLE LOSSES.—Eligible*
10 *losses under the contract shall include only insurance*
11 *claims for property covered by qualified lines that are*
12 *reported to the eligible State program within the 3-*
13 *year period beginning upon the event or events for*
14 *which payment under the contract is made.*

15 (6) *PRICING.—*

16 (A) *DETERMINATION.—The cost of reinsur-*
17 *ance coverage under the contract shall be an*
18 *amount established by the Secretary as follows:*

19 (i) *RECOMMENDATIONS.—The Sec-*
20 *retary shall take into consideration the rec-*
21 *ommendations of the Commission in estab-*
22 *lishing the cost, but the cost may not be less*
23 *than the amount recommended by the Com-*
24 *mission.*

1 (ii) *FAIRNESS TO TAXPAYERS.*—*The*
2 *cost shall be established at a level that is de-*
3 *signed to return to the Federal Government*
4 *fair compensation for the risks being borne*
5 *by the people of the United States and that*
6 *takes into consideration the developmental*
7 *stage of empirical models of natural disas-*
8 *ters and the capacity of private markets to*
9 *absorb insured losses from natural disasters.*

10 (iii) *SELF-SUFFICIENCY.*—*The rates*
11 *for reinsurance coverage shall be established*
12 *at a level that annually produces expected*
13 *premiums which shall be sufficient to pay*
14 *the annualized cost of all claims, loss ad-*
15 *justment expenses, and all administrative*
16 *costs of reinsurance coverage offered under*
17 *this section.*

18 (B) *COMPONENTS.*—*The cost shall consist of*
19 *the following components:*

20 (i) *RISK-BASED PRICE.*—*A risk-based*
21 *price, which shall reflect the anticipated*
22 *annualized payout of the contract according*
23 *to the actuarial analysis and recommenda-*
24 *tions of the Commission.*

1 (ii) *RISK LOAD*.—A risk load in an
2 amount that is not less than the risk-based
3 price under clause (i).

4 (iii) *ADMINISTRATIVE COSTS*.—A sum
5 sufficient to provide for the operation of the
6 Commission and the administrative ex-
7 penses incurred by the Secretary in carry-
8 ing out this Act.

9 (7) *REPAYMENT TERMS*.—The contract shall in-
10 clude a condition that requires that, in the event that
11 a covered purchaser receives payments for qualifying
12 claims that consist of amounts derived from obliga-
13 tions issued under section 9(d), such covered pur-
14 chaser shall continue to purchase the reinsurance cov-
15 erage provided under this Act, in amounts that are
16 at least as great as those immediately before the Fund
17 was credited with amounts borrowed under section
18 9(d), until such borrowed moneys, including interest,
19 are repaid pursuant to section 9(d)(5)(B).

20 (8) *INFORMATION*.—The contract shall contain a
21 condition providing that the Commission may require
22 the State program that is covered to submit to the
23 Commission all information on the State program
24 relevant to the duties of the Commission, as deter-
25 mined by the Secretary.

1 (9) *EXHAUSTION OF COVERAGE.*—

2 (A) *IN GENERAL.*—*Each contract shall pro-*
3 *vide that, if during the term of the contract the*
4 *coverage under the contract is exhausted because*
5 *of payment for losses from a covered event, the*
6 *covered purchaser shall, during the 15-day pe-*
7 *riod beginning upon the covered event that*
8 *causes exhaustion of the coverage under the origi-*
9 *nal contract, have an option to make a single*
10 *purchase of similar coverage for the remaining*
11 *term of the contract under terms and conditions*
12 *similar to the original contract, but reflecting a*
13 *new loss cost estimate and at a cost prorated*
14 *based upon the remaining term.*

15 (B) *DISCRETION.*—*To facilitate making*
16 *available contracts pursuant to the exercise of*
17 *options under subparagraph (A), the Secretary*
18 *may make—*

19 (i) *any estimates and determinations*
20 *that may be necessary regarding whether*
21 *coverage under a contract is exhausted and*
22 *the amount of losses retained by a State*
23 *program;*

24 (ii) *any estimates and assumptions*
25 *necessary to establish the price, terms, and*

1 *conditions of a contract provided pursuant*
2 *to such an option; and*

3 (iii) *any subsequent adjustments to a*
4 *contract provided pursuant to the exercise of*
5 *such an option (including cancellation of*
6 *the contract) to conform the price, terms,*
7 *and conditions in accordance with findings*
8 *by the Secretary regarding issues previously*
9 *estimated and assumed by the Secretary*
10 *pursuant to clause (ii).*

11 (10) *OTHERS.—The contract shall contain such*
12 *other terms as the Secretary considers necessary to*
13 *carry out this Act and to ensure the long-term finan-*
14 *cial integrity of the program under this Act.*

15 (c) *PRICE GOUGING PROTECTIONS.—Notwithstanding*
16 *any other provision of this section, a State-operated pro-*
17 *gram that otherwise meets the requirements of this section*
18 *shall be eligible to purchase a contract under this section*
19 *for reinsurance coverage made available under this Act only*
20 *if the Secretary determines that there are in effect, in such*
21 *State, laws or regulations sufficient to prohibit price*
22 *gouging, during the term of such reinsurance coverage, in*
23 *any disaster area located within the State.*

1 **SEC. 7. AUCTION OF CONTRACTS FOR REINSURANCE COV-**
2 **ERAGE.**

3 (a) *AUCTION PROGRAM REQUIREMENTS.*—*The Sec-*
4 *retary shall carry out a program to auction contracts for*
5 *reinsurance coverage under this Act made available pursu-*
6 *ant to section 3(a)(2), which shall comply with the follow-*
7 *ing requirements:*

8 (1) *PURCHASERS.*—*The auction program shall*
9 *provide for auctioning all contracts made available*
10 *under this section to private insurers and reinsurers,*
11 *State insurance and reinsurance programs, and other*
12 *interested entities.*

13 (2) *REGIONAL AUCTIONS.*—*The auction program*
14 *shall provide for auctions on a regional basis. The*
15 *Secretary shall divide the States into not less than 6*
16 *regions for the purpose of holding such regional auc-*
17 *tions, which shall include separate regions for all or*
18 *part of the State of California and all or part of the*
19 *State of Florida. Auctions for each region shall be*
20 *conducted not less often than annually.*

21 (3) *RESERVE PRICE.*—*In auctioning a contract*
22 *under this section for reinsurance coverage, the Sec-*
23 *retary shall set a reserve price as the lowest base price*
24 *for that contract, based upon the recommendations of*
25 *the Commission. The reserve price shall be determined*
26 *on the basis of the following components:*

1 (A) *RISK-BASED PRICE*.—A risk-based
2 price, which shall reflect the anticipated
3 annualized payout of the contract according to
4 the actuarial analysis and recommendations of
5 the Commission.

6 (B) *RISK LOAD*.—A risk load in an amount
7 that is not less than the risk-based price under
8 subparagraph (A).

9 (C) *ADMINISTRATIVE COSTS*.—A sum suffi-
10 cient to provide for the operation of the Commis-
11 sion and the administrative expenses incurred by
12 the Secretary in carrying out this section.

13 (D) *MITIGATION*.—An adjustment that takes
14 into account any efforts that are being made to
15 reduce losses to property in the region in which
16 the contract is being sold.

17 (4) *OTHER REQUIREMENTS*.—The Secretary may
18 establish such other requirements for the auction pro-
19 gram as the Secretary considers necessary to carry
20 out this Act.

21 (b) *CONTRACT TERMS AND CONDITIONS*.—Each con-
22 tract for reinsurance coverage auctioned under the program
23 under this section shall include the following terms and con-
24 ditions:

1 (1) *MATURITY.*—*The term of each such contract*
2 *shall not exceed 1 year.*

3 (2) *TRANSFERABILITY.*—*The contract shall at all*
4 *times be fully transferable, assignable, and divisible.*

5 (3) *MULTIPLE EVENTS.*—*The contract shall con-*
6 *tain the provisions described in section 6(b)(4).*

7 (4) *THRESHOLD OF COVERAGE.*—*Each contract*
8 *auctioned in a region established under subsection*
9 *(a)(2) shall provide that the covered purchaser may*
10 *receive a payment for losses covered under the con-*
11 *tract if, under a process specified in the contract, the*
12 *Secretary determines that the insurance industry will,*
13 *as a result of a single event of a covered peril, incur*
14 *losses within the coverage area for such region that*
15 *are covered by one or more lines of insurance under*
16 *section 5 in an aggregate amount, for such event,*
17 *greater than the level of retained losses specified in*
18 *section 8.*

19 (5) *EXHAUSTION OF COVERAGE.*—*Each contract*
20 *shall contain the provisions described in section*
21 *6(b)(9).*

22 (6) *OTHERS.*—*The contract shall contain such*
23 *other terms as the Secretary considers necessary to*
24 *carry out this Act and to ensure the long-term finan-*
25 *cial integrity of the program under this Act.*

1 (c) *PRICE GOUGING PROTECTIONS.*—Notwithstanding
2 any other provision of this section, a contract for reinsur-
3 ance auctioned under this section shall provide reinsurance
4 coverage only for losses incurred for property located in a
5 State for which the Secretary of the Treasury has deter-
6 mined that there are in effect, in such State, laws or regula-
7 tions sufficient to prohibit price gouging, during the term
8 of such reinsurance coverage, in any disaster area located
9 within the State.

10 **SEC. 8. MINIMUM LEVEL OF RETAINED LOSSES AND MAXI-**
11 **MUM FEDERAL LIABILITY.**

12 (a) *AVAILABLE LEVELS OF RETAINED LOSSES.*—In
13 making reinsurance coverage available under this Act, the
14 Secretary shall make available for purchase contracts for
15 such coverage that require the sustainment of retained losses
16 from a single event of a covered peril (as required under
17 sections 6(b)(3) and 7(b)(4) for payment of eligible losses)
18 in various amounts, as the Secretary determines appro-
19 priate and subject to the requirements under subsection (b).

20 (b) *MINIMUM LEVEL OF RETAINED LOSSES.*—

21 (1) *CONTRACTS FOR STATE PROGRAMS.*—Subject
22 to paragraph (3) and notwithstanding any other pro-
23 vision of this Act, a contract for reinsurance coverage
24 under section 6 for an eligible State program that of-
25 fers insurance or reinsurance coverage described in

1 subparagraph (A) or (B), respectively, of section
2 6(a)(1) may not be made available or sold unless the
3 contract requires retained losses from a single event of
4 a covered peril in the following amount:

5 (A) *IN GENERAL.*—The State program shall
6 sustain an amount of retained losses of not less
7 than the greater of—

8 (i) \$2,000,000,000;

9 (ii) the claims-paying capacity of the
10 eligible State program, as determined by the
11 Secretary; and

12 (iii) an amount, determined by the
13 Secretary in consultation with the Commis-
14 sion which is sufficient to cover eligible
15 losses in the State during a 12-month pe-
16 riod for all events having a likelihood of oc-
17 currence of once every 100 years.

18 (B) *TRANSITION RULE FOR EXISTING STATE*
19 *PROGRAMS.*—

20 (i) *CLAIMS-PAYING CAPACITY.*—Subject
21 to clause (ii), in the case of any eligible
22 State program that was offering insurance
23 or reinsurance coverage on the date of the
24 enactment of this Act and the claims-paying
25 capacity of which is greater than

1 \$2,000,000,000 but less than an amount de-
2 termined for the State under subparagraph
3 (A)(iii), the minimum level of retained
4 losses applicable under this paragraph shall
5 be the claims-paying capacity of such State
6 program.

7 (ii) *AGREEMENT.*—Clause (i) shall
8 apply to a State program only if the State
9 program enters into a written agreement
10 with the Secretary that shall provide a
11 schedule for increasing the claims-paying
12 capacity of the State program to the
13 amount determined sufficient by the Sec-
14 retary under subparagraph (A)(iii) of this
15 subsection over a period not to exceed 5
16 years. The Secretary may extend the 5-year
17 period for not more than 2 additional one-
18 year periods if the Secretary determines
19 that losses incurred by the State program as
20 a result of covered perils create excessive
21 hardship on the State program. The Sec-
22 retary shall consult with the appropriate of-
23 ficials of the State program regarding the
24 required schedule and any potential one-
25 year extensions.

1 (C) *TRANSITION RULE FOR NEW STATE*
2 *PROGRAMS.—*

3 (i) *100-YEAR EVENT.—The Secretary*
4 *may provide that, in the case of an eligible*
5 *State program that, after January 1, 1998,*
6 *commences offering insurance or reinsur-*
7 *ance coverage, during the 5-year period be-*
8 *ginning on the date that reinsurance cov-*
9 *erage under section 6 is first made avail-*
10 *able, the minimum level of retained losses*
11 *applicable under this paragraph shall be the*
12 *amount determined for the State under sub-*
13 *paragraph (A)(iii), except that such mini-*
14 *imum level shall be adjusted annually as*
15 *provided in clause (ii) of this subpara-*
16 *graph.*

17 (ii) *ANNUAL ADJUSTMENT.—Each an-*
18 *nuual adjustment under this clause shall in-*
19 *crease the minimum level of retained losses*
20 *applicable under this subparagraph to an*
21 *eligible State program described in clause*
22 *(i) in a manner such that—*

23 (I) *during the course of such 5-*
24 *year period, the applicable minimum*
25 *level of retained losses approaches the*

1 *minimum level that, under subpara-*
2 *graph (A), will apply to the eligible*
3 *State program upon the expiration of*
4 *such period; and*

5 *(II) each such annual increase is*
6 *a substantially similar amount, to the*
7 *extent practicable.*

8 *(D) REDUCTION BECAUSE OF REDUCED*
9 *CLAIMS-PAYING CAPACITY.—*

10 *(i) AUTHORITY.—Notwithstanding sub-*
11 *paragraphs (A), (B), and (C) or the terms*
12 *contained in a contract for reinsurance*
13 *pursuant to such subparagraphs, if the Sec-*
14 *retary determines that the claims-paying*
15 *capacity of an eligible State program has*
16 *been reduced because of payment for losses*
17 *due to an event, the Secretary may reduce*
18 *the minimum level of retained losses for the*
19 *State commensurate with the current capac-*
20 *ity of the State program, as determined by*
21 *the Secretary, but in no case may such min-*
22 *imum level be less than \$2,000,000,000.*

23 *(ii) TERM OF REDUCTION.—If the min-*
24 *imum level of retained losses for an eligible*
25 *State program is reduced pursuant to*

1 *clause (i), upon the expiration of the 5-year*
2 *period beginning upon such reduction the*
3 *minimum level of retained losses applicable*
4 *to such State program under a contract for*
5 *reinsurance coverage under section 6 shall*
6 *be increased to an amount not less than the*
7 *amount applicable to such State program*
8 *immediately before such reduction.*

9 *(E) CLAIMS-PAYING CAPACITY.—For pur-*
10 *poses of this paragraph, the claims-paying ca-*
11 *capacity of a State-operated insurance or reinsur-*
12 *ance program under section 6(a)(1) shall be de-*
13 *termined by the Secretary, in consultation with*
14 *the Commission, taking into consideration re-*
15 *tained losses to private insurers in the State in*
16 *an amount assigned by the State insurance com-*
17 *missioner, the cash surplus of the program, and*
18 *the lines of credit, reinsurance, and other financ-*
19 *ing mechanisms of the program established by*
20 *law.*

21 *(2) AUCTION CONTRACTS.—Subject to paragraph*
22 *(3) and notwithstanding any other provision of this*
23 *Act, a contract for reinsurance coverage may not be*
24 *made available or sold under section 7 through a re-*
25 *gional auction unless the insurance industry in the*

1 *region for which the auction was conducted sustains*
2 *a cumulative amount of retained losses (in covered*
3 *lines resulting from covered perils) of not less than the*
4 *greater of—*

5 *(A) \$2,000,000,000; and*

6 *(B) an amount, determined by the Sec-*
7 *retary in consultation with the Commission,*
8 *which is sufficient to cover eligible losses in the*
9 *region during a 12-month period for all events*
10 *having a likelihood of occurrence of once every*
11 *100 years.*

12 *(3) ANNUAL ADJUSTMENT.—The Secretary may*
13 *annually raise the minimum level of retained losses*
14 *established under paragraph (1) for an eligible State*
15 *program or under paragraph (2) for a region to re-*
16 *flect, as determined by the Secretary—*

17 *(A) in the case of an eligible State program,*
18 *changes to the claims-paying capacity of the pro-*
19 *gram;*

20 *(B) changes in the capacity of the private*
21 *insurance and reinsurance market;*

22 *(C) increases in the market value of prop-*
23 *erties; or*

24 *(D) such other situations as the Secretary*
25 *considers appropriate.*

1 *In making any determination under this paragraph*
2 *in the minimum level of retained losses, the Secretary*
3 *shall establish such level at an amount such that the*
4 *program under this Act for making reinsurance cov-*
5 *erage available does not displace or compete with the*
6 *private insurance or reinsurance markets or capital*
7 *markets, as determined by the Secretary.*

8 (4) *OPTIONAL ANNUAL INFLATIONARY ADJUST-*
9 *MENT.—The Secretary may, on an annual basis,*
10 *raise the minimum level of retained losses established*
11 *under paragraph (1) for each eligible State program*
12 *and under paragraph (2) for each region to reflect the*
13 *annual rate of inflation. Any such raise shall be made*
14 *in accordance with an inflation index that the Sec-*
15 *retary determines to be appropriate. The first such*
16 *raise may be made one year after contracts for rein-*
17 *surance coverage under this Act are first made avail-*
18 *able for purchase.*

19 (c) *MAXIMUM FEDERAL LIABILITY.—*

20 (1) *IN GENERAL.—Notwithstanding any other*
21 *provision of law, the maximum amount paid for all*
22 *events in any single year by the Secretary pursuant*
23 *to claims under all contracts for reinsurance coverage*
24 *under this Act shall not exceed the applicable maxi-*
25 *mum amount for such year determined under para-*

1 *graph (2). If, in any single year, claims under exist-*
2 *ing contracts for reinsurance coverage exceed the ap-*
3 *plicable maximum amount, each claimant shall re-*
4 *ceive a prorated portion of the amount available for*
5 *payment of claims.*

6 (2) *APPLICABLE MAXIMUM AMOUNT.—For pur-*
7 *poses of paragraph (1), the applicable maximum*
8 *amount shall be—*

9 (A) *for any year not referred to in subpara-*
10 *graph (B), \$25,000,000,000, except that the Sec-*
11 *retary shall annually adjust such amount (as it*
12 *may have been previously adjusted) to provide*
13 *for inflation in accordance with an inflation*
14 *index that the Secretary determines to be appro-*
15 *priate; or*

16 (B) *for any year during the 4-year period*
17 *beginning on the date that contracts for reinsur-*
18 *ance coverage under this Act are first made*
19 *available for purchase, the dollar amount that*
20 *the Secretary shall establish and annually revise,*
21 *which may not in any event exceed*
22 *\$25,000,000,000.*

23 (d) *LIMITATION ON PERCENTAGE OF RISK IN EXCESS*
24 *OF RETAINED LOSSES.—*

1 (1) *IN GENERAL.*—*The Secretary may not make*
2 *available for purchase contracts for reinsurance cov-*
3 *erage under this Act that represent more than 50 per-*
4 *cent of the risk of insured losses in excess of retained*
5 *losses—*

6 (A) *in the case of a contract under section*
7 *6 for an eligible State program, for such State;*
8 *and*

9 (B) *in the case of a contract made available*
10 *through a regional auction under section 7, for*
11 *such region.*

12 (2) *PAYOUT.*—*For purposes of this subsection,*
13 *the amount of payout from a reinsurance contract*
14 *shall be the amount of eligible losses multiplied by the*
15 *percentage in effect at the time under paragraph (1).*

16 **SEC. 9. DISASTER REINSURANCE FUND.**

17 (a) *ESTABLISHMENT.*—*There is established within the*
18 *Treasury of the United States a fund to be known as the*
19 *Disaster Reinsurance Fund (in this section referred to as*
20 *the “Fund”).*

21 (b) *CREDITS.*—*The Fund shall be credited with—*

22 (1) *amounts received annually from the sale of*
23 *contracts for reinsurance coverage under this Act;*

24 (2) *any amounts borrowed under subsection (d);*

1 (3) *any amounts earned on investments of the*
2 *Fund pursuant to subsection (e); and*

3 (4) *such other amounts as may be credited to the*
4 *Fund.*

5 (c) *USES.—Amounts in the Fund may be used only*
6 *to the extent approved in appropriation Acts and only for*
7 *the following purposes:*

8 (1) *CONTRACT PAYMENTS.—For payments to*
9 *covered purchasers under contracts for reinsurance*
10 *coverage for eligible losses under such contracts.*

11 (2) *COMMISSION COSTS.—To pay for the operat-*
12 *ing costs of the Commission.*

13 (3) *ADMINISTRATIVE EXPENSES.—To pay for the*
14 *administrative expenses incurred by the Secretary in*
15 *carrying out the reinsurance program under this Act.*

16 (4) *TERMINATION.—Upon termination under*
17 *section 12, as provided in such section.*

18 (d) *BORROWING.—*

19 (1) *AUTHORITY.—To the extent that the amounts*
20 *in the Fund are insufficient to pay claims and ex-*
21 *penditures under subsection (c), the Secretary may issue*
22 *such obligations of the Fund as may be necessary to*
23 *cover the insufficiency and shall purchase any such*
24 *obligations issued.*

1 (2) *PUBLIC DEBT TRANSACTION.*—*For the pur-*
2 *pose of purchasing any such obligations, the Secretary*
3 *may use as a public debt transaction the proceeds*
4 *from the sale of any securities issued under chapter*
5 *31 of title 31, United States Code, and the purposes*
6 *for which securities are issued under such chapter are*
7 *hereby extended to include any purchase by the Sec-*
8 *retary of such obligations under this subsection.*

9 (3) *CHARACTERISTICS OF OBLIGATIONS.*—*Obli-*
10 *gations issued under this subsection shall be in such*
11 *forms and denominations, bear such maturities, bear*
12 *interest at such rate, and be subject to such other*
13 *terms and conditions, as the Secretary shall deter-*
14 *mine.*

15 (4) *TREATMENT.*—*All redemptions, purchases,*
16 *and sales by the Secretary of obligations under this*
17 *subsection shall be treated as public debt transactions*
18 *of the United States.*

19 (5) *CONDITIONS.*—*The following conditions shall*
20 *apply to any obligations issued under this subsection:*

21 (A) *The Secretary may issue such obliga-*
22 *tions only to such extent and in such amounts*
23 *as are provided in appropriation Acts.*

24 (B) *Any obligations issued under this sub-*
25 *section shall be repaid, including interest, from*

1 *the Fund and shall be recouped from premiums*
2 *charged for reinsurance coverage provided under*
3 *this Act.*

4 *(e) INVESTMENT.—If the Secretary determines that the*
5 *amounts in the Fund are in excess of current needs, the*
6 *Secretary may invest such amounts as the Secretary consid-*
7 *ers advisable in obligations issued or guaranteed by the*
8 *United States.*

9 *(f) PROHIBITION OF FEDERAL FUNDS.—Except for*
10 *amounts made available pursuant to subsection (d) and sec-*
11 *tion 10(h), no Federal funds shall be authorized or appro-*
12 *priated for the Fund or for carrying out the reinsurance*
13 *program under this Act.*

14 **SEC. 10. NATIONAL COMMISSION ON CATASTROPHE RISKS**
15 **AND INSURANCE LOSS COSTS.**

16 *(a) ESTABLISHMENT.—The Secretary shall establish a*
17 *commission to be known as the National Commission on*
18 *Catastrophe Risks and Insurance Loss Costs.*

19 *(b) DUTIES.—The Commission shall meet for the sole*
20 *purpose of advising the Secretary regarding the estimated*
21 *loss costs associated with the contracts for reinsurance cov-*
22 *erage available under this Act and carrying out the func-*
23 *tions specified in this Act.*

24 *(c) MEMBERS.—The Commission shall consist of not*
25 *more than 5 members, who shall be appointed by the Sec-*

1 *retary and shall be broadly representative of the public in-*
2 *terest. Members shall have no personal, professional, or fi-*
3 *nancial interest at stake in the deliberations of the Commis-*
4 *sion. The membership of the Commission shall at all times*
5 *include at least 1 representative of a nationally recognized*
6 *consumer organization.*

7 *(d) TREATMENT OF NON-FEDERAL MEMBERS.—Each*
8 *member of the Commission who is not otherwise employed*
9 *by the Federal Government shall be considered a special*
10 *Government employee for purposes of sections 202 and 208*
11 *of title 18, United States Code.*

12 *(e) EXPERTS AND CONSULTANTS.— The Commission*
13 *may procure temporary and intermittent services under*
14 *section 3109(b) of title 5, United States Code, but at a rates*
15 *not in excess of the daily equivalent of the annual rate of*
16 *basic pay payable for level V of the Executive Schedule, for*
17 *each day during which the individual procured is perform-*
18 *ing such services for the Commission.*

19 *(f) COMPENSATION.—Each member of the Commission*
20 *who is not an officer or employee of the Federal Government*
21 *shall be compensated at a rate of basic pay payable for level*
22 *V of the Executive Schedule, for each day (including travel*
23 *time) during which such member is engaged in the perform-*
24 *ance of the duties of the Commission. All members of the*
25 *Commission who are officers or employees of the United*

1 *States shall serve without compensation in addition to that*
2 *received for their services as officers or employees of the*
3 *United States.*

4 *(g) OBTAINING DATA.—The Commission and the Sec-*
5 *retary may solicit loss exposure data and such other infor-*
6 *mation either deems necessary to carry out its responsibil-*
7 *ities from governmental agencies and bodies and organiza-*
8 *tions that act as statistical agents for the insurance indus-*
9 *try. The Commission and the Secretary shall take such ac-*
10 *tions as are necessary to ensure that information that either*
11 *deems is confidential or proprietary is disclosed only to au-*
12 *thorized individuals working for the Commission or the Sec-*
13 *retary. No company which refuses to provide information*
14 *requested by the Commission or the Secretary may partici-*
15 *pate in the program for reinsurance coverage authorized*
16 *under this Act, nor may any State participate if any gov-*
17 *ernmental agency within that State has refused to provide*
18 *information requested by the Commission or the Secretary.*

19 *(h) FUNDING.—*

20 *(1) AUTHORIZATION OF APPROPRIATIONS.—*

21 *There are authorized to be appropriated—*

22 *(A) \$1,000,000 for fiscal year 1999 for the*
23 *initial expenses in establishing the Commission*
24 *and the initial activities of the Commission that*
25 *cannot timely be covered by amounts obtained*

1 pursuant to sections 6(b)(6)(B)(iii) and
2 7(a)(4)(C), as determined by the Secretary; and
3 (B) such additional sums as may be nec-
4 essary to carry out subsequent activities of the
5 Commission.

6 (2) *OFFSET.*—The Secretary shall provide, to the
7 maximum extent practicable, that an amount equal to
8 any amount appropriated under paragraph (1) is ob-
9 tained from purchasers of reinsurance coverage under
10 this Act and deposited in the Fund established under
11 section 9. Such amounts shall be obtained by inclu-
12 sion of a provision for the Commission’s expenses in-
13 corporated into the pricing of the contracts for such
14 reinsurance coverage, pursuant to sections
15 6(b)(6)(B)(iii) and 7(a)(4)(C).

16 (i) *TERMINATION.*—The Commission shall terminate
17 upon the effective date of the repeal under section 12(c).

18 **SEC. 11. DEFINITIONS.**

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

21 (1) *COMMISSION.*—The term “Commission”
22 means the National Commission on Catastrophe Risks
23 and Insurance Loss Costs established under section
24 10.

1 (2) *COVERED PERILS.*—The term “covered per-
2 ils” means the natural disaster perils under section 5.

3 (3) *COVERED PURCHASER.*—The term “covered
4 purchaser” means—

5 (A) with respect to reinsurance coverage
6 made available under a contract under section 6,
7 the eligible State-operated insurance or reinsur-
8 ance program that purchases such coverage; and

9 (B) with respect to reinsurance coverage
10 made available under a contract under section 7,
11 the purchaser of the contract auctioned under
12 such section or any subsequent holder or holders
13 of the contract.

14 (4) *DISASTER AREA.*—The term “disaster area”
15 means a geographical area, with respect to which—

16 (A) a covered peril specified in section 5 has
17 occurred; and

18 (B) a declaration that a major disaster ex-
19 ists, as a result of the occurrence of such peril—

20 (i) has been made by the President of
21 the United States; and

22 (ii) is in effect.

23 (5) *ELIGIBLE LOSSES.*—The term “eligible
24 losses” shall be defined by the Secretary, after con-
25 sultation with the Commission.

1 (6) *ELIGIBLE STATE PROGRAM.*—The term “*eli-*
2 *gible State program*” means a State program that,
3 pursuant to section 6(a), is eligible to purchase rein-
4 surance coverage made available through contracts
5 under section 6.

6 (7) *PRICE GOUGING.*—The term “*price gouging*”
7 means the providing of any consumer good or service
8 by a supplier for a price that the supplier knows or
9 has reason to know is greater, by at least the percent-
10 age set forth in a State law or regulation prohibiting
11 such act (notwithstanding any real cost increase due
12 to any attendant business risk and other reasonable
13 expenses that result from the major disaster involved),
14 than the price charged by the supplier for such con-
15 sumer good or service immediately before the disaster.

16 (8) *QUALIFIED LINES.*—The term “*qualified*
17 *lines*” means lines of insurance coverage for which
18 losses are covered under section 4 by reinsurance cov-
19 erage under this Act.

20 (9) *REINSURANCE COVERAGE.*—The term “*rein-*
21 *surance coverage under this Act*” includes coverage
22 under contracts made available under sections 6
23 and 7.

24 (10) *SECRETARY.*—The term “*Secretary*” means
25 the Secretary of the Treasury.

1 (11) *STATE*.—The term “State” means the States
2 of the United States, the District of Columbia, the
3 Commonwealth of Puerto Rico, the Commonwealth of
4 the Northern Mariana Islands, Guam, the Virgin Is-
5 lands, American Samoa, and any other territory or
6 possession of the United States.

7 **SEC. 12. TERMINATION.**

8 (a) *IN GENERAL*.—Except as provided in subsection
9 (b), the Secretary may not provide any reinsurance cov-
10 erage under this Act covering any period after the expira-
11 tion of the 10-year period beginning on the date of the en-
12 actment of this Act.

13 (b) *EXTENSION*.—If upon the expiration of the period
14 under subsection (a) the Secretary, in consultation with the
15 Commission, determines that continuation of the program
16 for reinsurance coverage under this Act is necessary to
17 carry out the purpose of this Act under section 3(b) because
18 of insufficient growth of capacity in the private home-
19 owners’ insurance market, the Secretary shall continue to
20 provide reinsurance coverage under this Act until the expi-
21 ration of the 5-year period beginning upon the expiration
22 of the period under subsection (a).

23 (c) *REPEAL*.—Effective upon the date that reinsurance
24 coverage under this Act is no longer available or in force

1 *pursuant to subsection (a) or (b), this title (except for this*
2 *section) is repealed.*

3 *(d) DEFICIT REDUCTION.—The Secretary shall cover*
4 *into the General Fund of the Treasury any amounts re-*
5 *maining in the Fund under section 9 upon the repeal of*
6 *this title.*

7 **SEC. 13. ANNUAL STUDY OF COST AND AVAILABILITY OF**
8 **DISASTER INSURANCE AND PROGRAM NEED.**

9 *(a) IN GENERAL.—The Secretary shall, on an annual*
10 *basis, conduct a study and submit to the Congress a public*
11 *report on the cost and availability of homeowners' insur-*
12 *ance for losses resulting from catastrophic natural disasters*
13 *covered by the reinsurance program under this Act.*

14 *(b) CONTENTS.—Each annual study under this section*
15 *shall determine and identify, on an aggregate basis—*

16 *(1) for each State or region, the capacity of the*
17 *private homeowners' insurance market with respect to*
18 *coverage for losses from catastrophic natural disasters;*

19 *(2) for each State or region, the percentage of*
20 *homeowners who have such coverage, the disasters cov-*
21 *ered, and the average cost of such coverage;*

22 *(3) for each State or region, the progress that*
23 *private reinsurers and capital markets have made in*
24 *providing reinsurance for such homeowners' insur-*
25 *ance;*

1 (4) *for each State or region, the effects of the*
2 *Federal reinsurance program under this Act on the*
3 *availability and affordability of such insurance; and*

4 (5) *the appropriate time for termination of the*
5 *Federal reinsurance program under this Act.*

6 (c) *TIMING.—Each annual report under this section*
7 *shall be submitted not later than March 30 of the year after*
8 *the year for which the study was conducted.*

9 (d) *COMMENCEMENT OF REPORTING REQUIREMENT.—*
10 *The Secretary shall first submit an annual report under*
11 *this section 2 years after the date of the enactment of this*
12 *Act.*