



Legislative Bulletin.....November 8, 2007

Contents:

H.R. 3355—Amendments to the Homeowners’ Defense Act

H.R. 3355, the Homeowners’ Defense Act (sponsored by Rep. Ron Klein, D-FL), is scheduled to be considered on the House floor on Thursday, November 8, 2007, subject to a modified open rule ([H.Res. 802](#)), making in order any germane amendment that was pre-filed in the *Congressional Record* or any pro forma amendment for the purposes of debate only.

The rule waives all points of order against consideration of the bill, except those regarding PAYGO and earmarks, waives all points of order against the bill itself—except the earmarks rule—and allows the Chair to postpone consideration of the legislation at any time during its consideration. The rule allows one motion to recommit with or without instructions.

Note: For a summary of the underlying bill, see a separate RSC document released earlier in the week.

RSC Staff Contact: Paul Teller; paul.teller@mail.house.gov; 202-226-9718

AMENDMENTS PRE-FILED IN THE *CONGRESSIONAL RECORD*

1. Manzullo (R-IL). Conditions a state reinsurance program’s eligibility for the new loan programs established by this bill on the reinsurance program and the state authorizing the program not being delinquent, as determined by the Secretary, with respect to any payment due under any loan previously made under this legislation or under any other loan provided by any federal agency or establishment to the program or the state for assistance in connection with a natural or other major disaster.

2. Castor (D-FL). Conditions a state reinsurance program’s eligibility for any provision of this legislation on the state having such laws, regulations, or other requirements that:

- limit new development and increases in density, intensity, or range of use allowances in zoning and planning programs in coastal and other areas subject to a higher risk of catastrophic financial loss from natural disasters and catastrophic events, as such areas are determined in accordance with standards established by the Secretary, in consultation with the Administrator of the Federal Emergency Management Agency and other appropriate agency heads; and

- limit rebuilding of substantially demolished structures after catastrophic events to current density, intensity, use, and structural limits.

3. Campbell (R-CA). Applies this legislation, in addition to homeowners and real property, to business owners and all property.

4. Matheson (D-UT). Requires that the first annual report of the National Catastrophe Risk Consortium created by the bill include an assessment of the costs to states and regions associated with catastrophe risk and an analysis of the costs and benefits, for states not participating in the Consortium, of such nonparticipation.

5. Shays (R-CT). Amendment in the Nature of a Substitute. Strikes the entire underlying bill and replaces it with language creating a 16-member Commission on Natural Catastrophe Risk Management and Insurance, authorized at “such sums as may be necessary.” The Commission would be tasked with examining and reporting to Congress on the natural catastrophe insurance marketplace, which factors the federal government can and should address to increase catastrophe insurance availability and competitiveness, and any actions the federal government could undertake to achieve this goal without requiring a long-term cross-subsidy from the taxpayers. The Commission would terminate 90 days after it submits its report.

6. Roskam (R-IL). Replaces the requirement for a state reinsurance program that any new construction, substantial rehabilitation, and renovation insured or reinsured by the program comply with applicable state or local government building, fire, and safety codes, with a requirement that the program develop, maintain, and enforce best practices in building codes that the Secretary deems adequate to address the natural disaster exposures of the state, taking into consideration the geography, catastrophe risk, and building patterns in the state.

7. Price (R-GA). Conditions a state reinsurance program’s eligibility for this legislation on the Secretary of the Treasury certifying that the program does not significantly reduce or displace private sector competition.

8. Price (R-GA). Prohibits any loan from being made under this legislation unless the Secretary determines that a natural disaster, or series of natural disasters, has occurred causing homeowners insurance losses that either:

- exceed the capacity of the insurance industry for that region; or
- exceed the losses that are so extreme that they would be projected to occur less than once every 100 years.

9. Price (R-GA). Provides that no amounts made available by this legislation, authorization of appropriations made by this legislation, or any other provision of this legislation that results in costs to the federal government shall be effective, except to the extent that this legislation provides for offsetting decreases in federal spending, such that the net effect of this legislation neither increases the federal deficit nor reduces the federal surplus.

10. Roskam (R-IL). Conditions a state reinsurance program’s eligibility for the catastrophic loans on the program having retained “sufficient” losses to cover a catastrophe so extreme that it has a one-percent chance of happening in any given year, as determined by the Secretary.

11. Putnam (R-FL). Prohibits any federal funds of any kind or from any source (including any disaster or other financial assistance, loan proceeds, and any other assistance or subsidy) from being used to repay any loan made under this legislation.

12. Brown-Waite (R-FL). Conditions a state reinsurance program's eligibility for this legislation on the state's prohibition of "price gouging" in any disaster area located within the state. The amendment would explicitly define "price gouging" as "the providing of any consumer good or service by a supplier related to repair or restoration of property damaged from a catastrophe for a price that the supplier knows or has reason to know is greater, by at least the percentage set forth in a State law or regulation prohibiting such act (notwithstanding any real cost increase due to any attendant business risk and other reasonable expenses that result from the major catastrophe involved), than the price charged by the supplier for such consumer good or service immediately before the disaster."

13. Roskam (R-IL). Conditions a state reinsurance program's eligibility for the catastrophic loans on the program having retained losses to cover a catastrophe so extreme that it has a one-percent chance of happening in any given year, as determined by the Secretary.

14. Murphy (D-CT). *NOTE: This amendment contains some drafting errors and thus may not be offered as is.* Replaces the requirement for a state reinsurance program that any new construction, substantial rehabilitation, and renovation insured or reinsured by the program comply with applicable state or local government building, fire, and safety codes, with a requirement that an appropriate public body within the state adopt "adequate" mitigation measures (with "effective" enforcement provisions) which the Secretary finds are consistent with the criteria for construction described in the International Code Council building codes.

The amendment would also condition a state reinsurance program's eligibility for this legislation on:

- the program's seeking, to the extent possible, to encourage appropriate state and local government units to develop comprehensive land use and zoning plans that include natural hazard mitigation; and
- the Secretary of the Treasury annually certifying that all the conditions for program eligibility (as detailed in the underlying bill and in this amendment) have been met.

15. Putnam (R-FL). Conditions a state reinsurance program's eligibility for the loan programs in the bill on the state or regional reinsurance program entering into an agreement with the Secretary of the Treasury that the state will not use federal funds of any kind or from any federal source (including any disaster or other financial assistance, loan proceeds, and any other assistance or subsidy) to repay the loan. The Secretary could not accept any repayment of any loan made under this bill that does not comply with the agreement for such loan.

16. Klein (D-FL). Makes a variety of changes throughout the bill, as follows:

- Directs the Secretary of the Treasury to make available for purchase by qualified reinsurance programs (as such defined in the bill) contracts for reinsurance coverage. Such contracts for federal reinsurance coverage could not displace or compete with the private insurance or reinsurance markets or the capital market; would have to minimize the administrative costs

- of the federal government; and would have to provide coverage based solely on insured losses covered by the qualified reinsurance program purchasing the contract.
- Details the terms of such reinsurance program as the following:
 - requires that the qualified reinsurance program sustain an amount of retained losses from events in an amount, as determined by the Secretary, that is equal to the amount of losses projected to be incurred from a single event of such magnitude that it has a 0.5% chance of being equaled or exceeded in any year;
 - limits payments to 90% of the amount of insured losses of the qualified reinsurance program in excess of the amount of retained losses that the contract requires to be incurred by such program;
 - provides reinsurance on an annualized aggregate basis, not on a per-event basis;
 - requires that claims for reinsurance be made within three years of the applicable event;
 - requires actuarial pricing to cover all costs of the reinsurance program;
 - caps the maximum federal liability at \$200 billion per year; and
 - creates the Federal Natural Catastrophe Reinsurance Fund in the U.S. Treasury to capitalize this new reinsurance program, yet prohibits federal funds from being authorized or appropriated to such fund.
 - Clarifies that a state reinsurance program's eligibility for loans under this bill depends in part on the program's inability to access capital in the private market *at a commercially reasonable rate* (though does not define such term).
 - Provides that, as one of the preconditions for making catastrophic loans, insured losses in a state are in excess of 150% of the aggregate amount of direct written premium for **ALL** property and casualty insurance. (The underlying bill specified just privately issued property and casualty insurance.)
 - Replaces the requirement for a state reinsurance program that any new construction, substantial rehabilitation, and renovation insured or reinsured by the program comply with applicable state or local government building, fire, and safety codes, with a requirement that an appropriate public body within the state adopt adequate mitigation measures (with effective enforcement provisions) which the Secretary finds are consistent with the criteria for construction described in the International Code Council building codes.
 - Adds to the requirement that state insurance and reinsurance entities establish rates at a level that annually yields premiums to cover all claims, loss adjustment expenses, and administrative costs with a requirement that such rates cover the costs of "any such outwards reinsurance as the program administrator deems prudent."
 - Adds as a new eligibility requirement for state reinsurance programs that they maintain risk-based capital in accordance with requirements established by the Secretary of the Treasury, in consultation with the National Association of Insurance Commissioners and consistent with the Risk-Based Capital Model Act of the National Association of Insurance Commissioners, and take into consideration asset risk, credit risk, underwriting risk, and such other relevant risk as determined by the Secretary. The amendment lays out further details of such risk-based capital requirements.
 - Allows the application of this legislation to insured losses of a qualified reinsurance program for losses arising from commercial insurance policies that provide coverage for properties that are composed predominantly of residential rental units. The amendment requires a study of the effects of such an expansion of the program.
 - Makes a variety of technical, clarifying, and conforming changes.

17. **Klein (D-FL)**. Same amendment as number 16, except it:

- Allows federal funds to be authorized or appropriated to the Federal Natural Catastrophe Reinsurance Fund in the U.S. Treasury to capitalize the new reinsurance program created by the amendment. Amendment number 16 prohibits such federal funding.
- Does NOT replace the requirement for a state reinsurance program that any new construction, substantial rehabilitation, and renovation insured or reinsured by the program comply with applicable state or local government building, fire, and safety codes, with a requirement that an appropriate public body within the state adopt adequate mitigation measures (with effective enforcement provisions) which the Secretary finds are consistent with the criteria for construction described in the International Code Council building codes. Amendment number 16 makes such a replacement. Presumably this change was made because of the presence of amendment number 14 above.

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