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Legislative Bulletin……………………………………..………November 8, 2007

Contents:

Summary of the Bill Under Consideration Today:

Total Number of New Government Programs: 2

Total Cost of Discretionary Authorizations: $120 million over six years

Effect on Revenue: $0

Total Change in Mandatory Spending: $0

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 0

Number of *Bills* Without Committee Reports: 0

Number of *Reported* Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

H.R. 3355—Homeowners' Defense Act (*Klein, D-FL*)

Order of Business: The bill is (reportedly) scheduled to be considered on Thursday, November 8th, subject to a modified open rule, making in order any germane amendment that was pre-filed in the *Congressional Record*. Summaries of pre-filed amendments will be provided in a separate RSC document.

Summary: H.R. 3355 would create a National Catastrophe Risk Consortium and a National Homeowners Insurance Stabilization Program, with details as follows:

- Authorizes $120 million over six years to establish a voluntary, nonprofit National Catastrophe Risk Consortium consisting of qualified state catastrophe reinsurance programs.

- Affirmatively states that the consortium would not be a department, agency, or instrumentality of the federal government.

- Sets seven functions of the consortium, including:

  - maintaining an inventory of catastrophe risk obligations held by participating states;
  - issuing securities and other financial instruments linked to catastrophe risks in the capital markets;
  - coordinating reinsurance contracts between reinsurance funds and private parties;
  - maintaining a central database of state catastrophe risk information that can be accessed by private participants;
  - performing research and analysis that encourages standardization of the risk-linked securities market;
  - performing any other functions necessary to aid in catastrophe risk transfer from states to private entities; and
  - submitting an annual report to Congress describing its ongoing activities.

- Prohibits the consortium from itself assuming risk or incurring debt.

- Explicitly prohibits conflicts of interest by participants of the consortium.

- Requires that the consortium's financial statements be audited annually by independent certified public accountants. The audit would have to be included in the consortium's annual report to Congress.

- Provides that the consortium would be managed by a Board of Directors consisting of no fewer than three members, chaired by the Secretary of the Treasury or his designee. Designees of the Secretaries of Homeland Security and Commerce would also serve as board members, but only during such times when there are fewer than two states participating in the consortium.

- Allows the board to appoint an executive director; makes eligible for compensation only non-federal employees on the board; allows the board to appoint, set the compensation for, and terminate staff; and allows the board to procure the services of experts and consultants.

- Shields the federal government and the consortium from any liability arising from the actions of the consortium.

- Establishes a National Homeowners Insurance Stabilization Program to make liquidity loans and catastrophic loans to qualified reinsurance programs "to ensure the solvency of such programs, to improve the availability and affordability of homeowners' insurance, to incent risk transfer to the private capital and reinsurance markets, and to spread the risk of catastrophic financial loss resulting from natural disasters and catastrophic events."

- Deems that a qualified state reinsurance program would be eligible for this loan program if it has a funding shortage after a disaster and cannot access capital in the private market, if the state program files a report with the U.S. Secretary of the Treasury explaining how it will repay the loan, and if the Secretary certifies that the state program will be able to meet the loan terms.

- Liquidity loans could not be for higher than the ceiling coverage level (the maximum liability that could be incurred at any time) for the qualified reinsurance program, would have a maturity of between five and ten years, and would have an interest rate set at three percentage-points higher than Treasury obligations of comparable maturity (or higher if necessary to ensure the interest paid under a loan exceeds the sum of costs for that loan).

- Catastrophic loans, made only after the U.S. Treasury Secretary determines that an event has occurred in the affected state resulting in insured losses in excess of 150% of that state's aggregate direct written premium for privately issued property and casualty insurance, could not be for higher than the amount by which the insured losses exceed the ceiling coverage level of the qualified reinsurance program, would have a maturity of at least ten years, and would have an annual interest rate 0.20 percentage-points higher than marketable obligations of the Treasury (or higher if necessary to ensure the interest paid under a loan exceeds the sum of costs for that loan).

- Requires that the loan proceeds under this program be used to pay claims made to qualified reinsurance programs.

- Directs the Treasury Secretary to submit an annual report to the President and Congress that identifies and describes loans made under this program.

- Directs the Treasury Secretary to collect a "reasonable" fee from qualified reinsurance programs in order to offset the expenses associated with the loan program. The Secretary would have to require the full repayment of loans made under this program and must "promptly" submit a report to Congress when it is determined that any loan will not, or is not likely to, be repaid.

- Provides that any amounts of negative credit subsidies (i.e. excess receipts from loan payments) would be available for the administrative costs of the loan program.

- Defines a qualified state reinsurance program for the purposes of this legislation as, among other things, an entity authorized by a state, and in which a state has a material, financial interest, that provides reinsurance or retrocessional coverage to underlying primary insurers or reinsurers for losses arising from all personal residential lines of insurance.

- Deems that authorizing states must require that such state programs pass any cost savings onto insurance consumers, ensure compliance with building codes, use a rate structure that reflects loss mitigation, and set rates at a level that generates sufficient premium to pay expected annualized claims.

- Provides that, in the case of states that do not have a qualified reinsurance program, state residual insurance programs could be considered qualified reinsurance programs for five years after this bill's enactment.

- Allows the District of Columbia and the U.S. territories to participate as "states" in this legislation's programs.

Committee Action: On August 3, 207, the bill was referred to the Financial Services Committee. In September, hearings were held on the bill in two subcommittees. On September 25 and 26, 2007, the full committee marked up and ordered the bill reported to the full House by a vote of 36-27, mostly along party lines (with the exception of some coastal Republicans).

Possible Conservative Concerns: Some conservatives have expressed concerns that this legislation would spread a concentrated risk (i.e. risk of natural catastrophes, which is higher along coastal areas) to a wider population, therefore weakening market disincentives to build (and insure such buildings) in disaster-prone corridors.

Additionally, some conservatives have asserted that the loan program would provide federally subsidized loans to the insurance company of one state at the expense of taxpayers across the country (so that taxpayers in non-disaster-prone areas are subsidizing loans for people in disaster-prone areas).

Financial Services Committee Ranking Member Spencer Bachus (R-AL), an RSC Member, noted the duplicative nature of this legislation, writing that, "States already can and do purchase reinsurance and sell catastrophe bonds through their risk pools and funds … It is dubious whether regional pooling facilitated by a consortium would have any benefit in reducing costs over pooling through the global reinsurance markets. Florida and other states with catastrophe risks have already met and discussed on numerous occasions pooling their risks, but without generating any new synergies."

Rep. Bachus also noted with concern that, although the catastrophic loans have an aggregate trigger level below which no such loans could be offered, the liquidity loans have no trigger.

Furthermore, some conservatives have noted that the legislation could serve to displace private-sector reinsurance efforts, the exact opposite of the stated intent of this bill.

Administration Position: The Administration "strongly opposes" this legislation, primarily because it would displace the private market, promote riskier behavior, and be an unfair cost spread across all taxpayers. See the testimony of Treasury Assistant Secretary for Economic Policy Phillip Swagel here:
http://www.house.gov/apps/list/hearing/financialsvcs_dem/swagel.pdf.

Cost to Taxpayers: CBO confirms that H.R. 3355 would authorize $20 million a year over six years and would not affect mandatory spending or revenues.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the bill would create two new loan programs, plus a federally subsidized nonprofit entity.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The Financial Services Committee, in House Report 110-419, asserts that, "H.R. 3355 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI."

Constitutional Authority: The Financial Services Committee, in House Report 110-419, cites constitutional authority in Article I, Section 8, Clauses 1 and 3 (general welfare and interstate commerce, respectively).

Outside Organizations: The Property Casualty Insurers Association of America, the National Taxpayers Union, and the American Insurance Association are opposing the bill in its current form. The National Association of Insurance Commissioners had not expressed an official position at press time for this Legislative Bulletin, however NAIC staff had indicated informally to RSC that NAIC would either support or remain neutral on the bill.

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