

2013 FEB 13 PM 1:41
OFFICE OF THE
MAYOR

VINCENT C. GRAY
MAYOR

Feb 13 2013

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, NW, Suite: 504
Washington, DC 20004

Dear Chairman Mendelson:

I am writing to transmit the "Captive Property Insurance Emergency Amendment Act of 2013," the "Captive Property Insurance Emergency Declaration Resolution of 2013," the "Captive Property Insurance Temporary Amendment Act of 2013" and the "Captive Property Insurance Amendment Act of 2013." This legislation will allow the District of Columbia to receive reimbursement from the Federal Emergency Management Agency (FEMA) for damages sustained by the District during the August 2011 earthquake.

The August 2011 5.8 magnitude earthquake caused \$6,800,000 in damage to District owned property, including 31 school buildings. On November 8, 2011, President Barack Obama signed a disaster declaration for the District of Columbia, making the District eligible to receive public assistance from FEMA equal to seventy-five percent of the total cost to repair the damage to District buildings. Federal law requires that in order to receive FEMA assistance, the District must obtain and maintain insurance equal to the amount of the eligible and paid funding, which is approximately \$5,100,000. In order to receive reimbursement from FEMA, the attached emergency legislation needs to be effective by FEMA's March 2013 deadline. If the legislation is not approved, the District could miss the opportunity to secure the currently available public assistance. Delay also may further expose the District to loss of future FEMA public assistance should another disaster occur prior to the satisfaction of the FEMA insurance requirements.

On the advice of the Office of Risk Management, Homeland Security and Emergency Management Agency, Department of General Services, and Department of Insurance, Securities and Banking, I have concluded that the most cost effective strategy for meeting the federally mandated insurance requirement is to authorize the District's existing Captive insurance agency to issue property insurance policies. To do so, the Captive's enacting statute needs to be amended. The Captive Property Insurance Emergency Amendment Act of 2013 makes two material amendments to the Captive's enacting statute. The first amendment expands the Agency's authority to provide property insurance for risks to District real property assets for various hazards, including earthquakes. The second amendment authorizes the Agency, by delegation from the Mayor, to enter into contracts with other insurance companies and re-

insurers. This amendment would allow the Agency to employ risk transfer strategies to further minimize risk to District owned property.

The attached legislation not only addresses the District's short-term needs with respect to reimbursement for the earthquake-related damage, but also creates a long-term vision for a comprehensive property insurance structure for District property assets. It will improve the District's overall risk management strategies by reducing the probability, occurrence and cost of risk to the District government.

If you have any questions, your staff may contact Ms. Amy Mauro, General Counsel at the Office of Risk management, at (202) 727-9514. Thank you in advance for your support of this important legislation.

Sincerely,

A handwritten signature in black ink that reads "Vincent C. Gray". The signature is written in a cursive style with a large, looped "G" at the end.

Vincent C. Gray

Mayor

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Chairman Phil Mendelson, at the request of the Mayor, introduced the following bill, which was referred to the Committee on _____.

To amend, on a temporary basis, the Medical Liability Captive Insurance Agency Establishment Act of 2008 to change the name of the Medical Liability Captive Insurance Agency to the Captive Insurance Agency, to provide property insurance for risks to District real property assets for various hazards, to authorize the Captive to enter into contracts with other insurance companies and re-insurers, to require that the Advisory Council include members with property insurance and re-insurance expertise, to change the submission due date of the Captive's annual report to December 15, and to require the plan of operation to be modified to include procedures for offering property insurance.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Captive Property Insurance Temporary Amendment Act of 2013".

Sec. 2. The Medical Liability Captive Insurance Agency Establishment Act of 2008, effective July 18, 2008 (D.C. Law 17-196; D.C. Official Code § 1-307.81 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 1-307.81) is amended as follows:

(1) A new paragraph (2A) is added to read as follows:

“(2A) An act of terrorism has the same definition as the definition in DC Official Code § 22-3152.”.

(2) Paragraph (2) is amended by striking the phrase “Medical Liability”.

1 (3) A new paragraph (4A) is added to read as follows:

2 “(4A) “District” means District of Columbia.”

3 (4) A new paragraph (4B) is added to read as follows:

4 “(4B) “District Real Property Asset” means real property titled in the name of the
5 District or in which the District has an interest or jurisdiction and includes all structures of a
6 permanent character erected thereon or affixed thereto, any natural resources located thereon or
7 thereunder, all riparian rights attached thereto, or any air space located above or below the
8 property or any street or alley under the jurisdiction of the Mayor.”.

9 (5) Paragraph (5) is amended by striking the phrase “Medical Liability” and
10 inserting the phrase “District of Columbia” in its place.

11 (6) A new paragraph (8A) is added to read as follows:

12 “(8A) “Medical malpractice” means professional negligence by act or omission by a
13 health care provider in which the treatment provided falls below the accepted standard of
14 practice in the medical community and causes injury or death to the patient, with most cases
15 involving medical error.”.

16 (7) A new paragraph (9A) is added to read as follows:

17 “(9A) “Property insurance” means an insurance policy that protects against most risks
18 to property such as earthquake, flood, acts of terrorism, fire, boiler, machinery, and weather
19 damage. Property is insured under an open peril or named peril policy. Open perils cover all the
20 causes of loss not specifically excluded in the policy. Named perils require the actual cause of
21 loss to be listed in the policy for insurance to be provided.”.

22 (b) Section 3 (DC Official Code § 1-307.82) is amended to read as follows:

1 “(a) There is established, as a subordinate agency under the Mayor, the District of
2 Columbia Captive Insurance Agency.

3 “(b) The purpose of the Agency is to:

4 (1) Provide medical malpractice liability insurance policies for health centers,
5 including coverage for the staff, contractors, and volunteer service providers for the services
6 provided at the health centers.; and

7 (2) Provide property insurance, including earthquake, flood, acts of terrorism,
8 inland marine, boiler, and machinery insurance for District real property assets and other
9 personal property including equipment, content, and vehicles.

10 “(c) The liability of the Agency for property and medical malpractice liability
11 insurance policies shall be limited to the funds in the District of Columbia Captive Trust Fund.”.

12 (c) Section 4(a) (DC Official Code § 1-307.83(a)) is amended follows:

13 (1) Paragraph (1) is amended to read as follows:

14 “(1) Enter into contracts as are necessary or proper to carry out the provisions and
15 purposes of this part, including the authority to enter into contracts:

16 (A) With other insurance companies and re-insurers;

17 (B) With similar captives of other states for the joint performance of
18 common administrative functions; and

19 (C) With persons or other entities for the performance of organizational,
20 management, or administrative functions;”.

21 (2) A new paragraph (4A) is added to read as follows:

22 “(4A) Issue policies of property insurance, including earthquake, flood, acts of
23 terrorism, inland marine, boiler, and machinery insurance for District real property assets and

1 other personal property, including equipment, content, and vehicles, in accordance with the
2 requirements of the plan of operation under § 1-307.87;”.

3 (d) Section 6 (DC Official Code § 1-307.85) is amended as follows:

4 (1) Subsection (b) is amended to read as follows:

5 “(b) The Advisory Council shall consist of 7 members appointed by the Risk
6 Officer. One member shall represent the District of Columbia Primary Care Association, 2
7 members shall represent District of Columbia health centers, 2 members shall have expertise in
8 general property insurance and re-insurance, and 2 members shall have general insurance
9 expertise, whether medical malpractice or general property insurance.”.

10 (2) Subsection (i) is amended by inserting a new paragraph (2A) to read as
11 follows:

12 “(2A) Assess the needs and interests of the District with respect to obtaining property
13 insurance through the Agency, and”.

14 (e) Section 7(b) (DC Official Code § 1-307.86(b)) is amended by striking the phrase
15 “March 2” and inserting the phrase “December 15” in its place.

16 (f) Section 8(b) (DC Official Code § 1-307.87(b)) is amended by inserting a new
17 paragraph (4A) to read as follows:

18 “(4A) Establish procedures for the offering of property insurance, including
19 earthquake, flood, acts of terrorism, inland marine, boiler, and machinery insurance for District
20 real property assets, including equipment, content, and vehicles;”.

21 (g) Section 11 (DC Official Code § 1-307.90) is amended to read as follows:

1 “(a) The Agency shall offer:

2 (1) Health centers medical malpractice insurance that is consistent with coverage
3 offered in the market; and

4 (2) Property insurance for the benefit of the District, including earthquake, flood,
5 acts of terrorism, inland marine, boiler, and machinery for District real property assets, including
6 equipment, content, and vehicles that is consistent with coverage offered in the market.

7 “(b) The insurance policies offered pursuant to this section shall be established by the
8 Risk Officer with the advice of the Advisory Council and subject to the approval of the
9 Commissioner.

10 “(c) Any policy offered by the Agency shall state that the liability of the Agency shall
11 be limited to the funds in the District of Columbia Captive Trust Fund.

12 “(d) The coverage to be issued to the health centers shall be established by the Risk
13 Officer with the advice of the Advisory Council and subject to the approval of the
14 Commissioner.”.

15 (h) Section 12(a) (DC Official Code § 1-307.91(a)) is amended by striking the phrase
16 “Medical Liability”.

17 Sec. 3. The Council adopts the fiscal impact statement in the committee report as the
18 fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule
19 Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 2-206.02 (c)(3)).

20 Sec. 4.

21 (a) This act shall take effect following approval by the Mayor (or in the event of

1 veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional
2 review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved
3 December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the
4 District of Columbia Register.

5 (b) This act shall expire after 225 days of its having taken effect.

6

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



Legal Counsel Division

MEMORANDUM

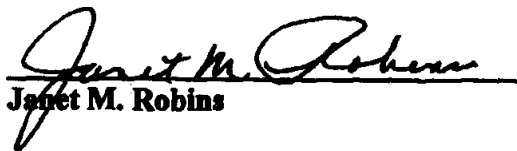
TO: Lolita S. Alston
Director
Office of Legislative Support

FROM: Janet M. Robins
Deputy Attorney General
Legal Counsel Division

DATE: January 16, 2013

SUBJECT: Legal Sufficiency Review of Emergency, Temporary, and Permanent
Versions of the "Captive Property Insurance Amendment Act of 2013"
(AE-12-1009)

This is to Certify that this Office has reviewed the above-referenced legislation and found it to be legally sufficient. If you have any questions in this regard, please do not hesitate to call me at 724-5524.


Janet M. Robins