

111TH CONGRESS
1ST SESSION

S. 886

To establish a program to provide guarantees for debt issued by State catastrophe insurance programs to assist in the financial recovery from natural catastrophes.

IN THE SENATE OF THE UNITED STATES

APRIL 23, 2009

Mr. NELSON of Florida introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To establish a program to provide guarantees for debt issued by State catastrophe insurance programs to assist in the financial recovery from natural catastrophes.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Catastrophe Obligation Guarantee Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Establishment of debt guarantee program.
- Sec. 4. Effect of guarantee.

- Sec. 5. Eligible State programs.
- Sec. 6. Full faith and credit.
- Sec. 7. Fees for guarantees; amount; collection.
- Sec. 8. Payment of losses.
- Sec. 9. Budgetary impact.
- Sec. 10. Regulations.
- Sec. 11. Definitions.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—Congress finds that—

3 (1) the United States has a history of cata-
4 strophic natural disasters including earthquakes,
5 hurricanes, tornadoes, fires, and volcanic eruptions;

6 (2) the United States needs to take and support
7 State actions to be better prepared for and better
8 protected from catastrophes;

9 (3) the hurricane seasons of 2004, 2005, and
10 2008 were startling reminders of both the human
11 and economic devastation that natural catastrophes
12 can cause;

13 (4) if the deadly 1900 Galveston hurricane were
14 to occur again it could cause over \$36,000,000,000
15 in insured loss;

16 (5) if the 1906 San Francisco earthquake and
17 fire were to occur again it could cause over
18 \$400,000,000,000 in insured loss;

19 (6) if a Category 5 hurricane were to hit Miami
20 it could cause over \$50,000,000,000 in insured loss;

21 (7) if the 1938 “Long Island Express” hurri-
22 cane were to occur again it could cause over

1 \$30,000,000,000 in insured loss, and if a hurricane
2 that powerful were to hit Manhattan directly, it
3 could cause over \$150,000,000,000 in insured loss
4 and cause irreparable harm to our Nation's econ-
5 omy;

6 (8) the inability of private insurers to build ade-
7 quate capital in a short amount of time and the re-
8 sulting lack of sufficient insurance capacity threaten
9 to increase the number of uninsured residential
10 properties, which, in turn, will increase the risk of
11 mortgage and other credit defaults and their strain
12 on the Nation's banking system;

13 (9) it is appropriate that efforts to improve in-
14 surance availability be designed and implemented at
15 the State level, but even active and experienced
16 State programs struggle with issues of capital ade-
17 quacy and financial strength;

18 (10) some States have acted to ensure the con-
19 tinued availability or affordability, or both, of resi-
20 dential property insurance for their residents;

21 (11) while State catastrophe insurance pro-
22 grams may be well designed and adequate to cover
23 insured losses from most natural disasters, a small
24 but significant number of catastrophic events are
25 likely to exceed the combined financial capacity of

1 such State programs and the local insurance mar-
2 kets;

3 (12) today's historic financial-market turmoil
4 calls into question the ability of even the most cred-
5 itworthy State programs to secure adequate financ-
6 ing following a catastrophic event;

7 (13) making available Federal guarantees to en-
8 hance the capability of eligible State programs to
9 issue debt will minimize the exposure of State and
10 Federal taxpayers who otherwise may bear the con-
11 sequences of underfunded programs or under-in-
12 sured communities following catastrophic events, es-
13 pecially during today's historic market turmoil; and

14 (14) it is the proper role of the Federal Govern-
15 ment to prepare for and protect its citizens from ca-
16 tastrophes and to facilitate consumer protection, vic-
17 tim assistance, and recovery, including financial re-
18 covery.

19 (b) PURPOSES.—The purposes of this Act are to es-
20 tablish a program—

21 (1) to promote the availability of private capital
22 to provide liquidity and capacity to State catas-
23 trophe insurance programs; and

24 (2) to expedite the payment of claims under
25 State catastrophe insurance programs and better as-

1 sist the financial recovery from significant natural
2 catastrophes by authorizing the Secretary of the
3 Treasury to guarantee debt for such purposes.

4 **SEC. 3. ESTABLISHMENT OF DEBT GUARANTEE PROGRAM.**

5 (a) **AUTHORITY OF SECRETARY.**—The Secretary is
6 authorized and shall have the powers and authorities nec-
7 essary to guarantee, and to enter into commitments to
8 guarantee, holders of debt against loss of principal or in-
9 terest, or both, on any such debt issued by eligible State
10 programs for purposes of this Act, provided that the total
11 principal amount of debt obligations guaranteed by the
12 Secretary—

13 (1) for eligible State programs that cover earth-
14 quake peril shall not exceed \$5,000,000,000; and

15 (2) for eligible State programs that cover all
16 other perils shall not exceed \$20,000,000,000.

17 (b) **FUNDING.**—

18 (1) **FEDERAL PAYMENTS.**—Subject to para-
19 graphs (1) and (2) of subsection (a), there are here-
20 by appropriated, out of funds in the Treasury not
21 otherwise appropriated, such sums as may be nec-
22 essary to satisfy debt guarantee commitments ex-
23 tended to eligible State programs under this Act.

24 (2) **ADMINISTRATIVE EXPENSES.**—Any funds
25 expended or obligated by the Secretary for the pay-

1 ment of administrative expenses for conduct of the
2 guarantee program authorized by this Act shall be
3 deemed appropriated at the time of such expenditure
4 or obligation.

5 (c) CONDITIONS FOR GUARANTEE ELIGIBILITY.—A
6 debt guarantee under this section may be made only if
7 the Secretary has issued a commitment to guarantee to
8 an eligible State program. The commitment to guarantee
9 shall be for a period of 3 years and may be extended by
10 the Secretary for a period of 1 year on each annual anni-
11 versary of the issuance of the commitment to guarantee.
12 The commitment to guarantee and each extension of such
13 commitment may be issued by the Secretary only if the
14 following requirements are satisfied:

15 (1) The eligible State program submits to the
16 Secretary a report setting forth, in such form and
17 including such information as the Secretary shall re-
18 quire, how the eligible State program plans to repay
19 the debt.

20 (2) Based upon the eligible State program's re-
21 port submitted pursuant to paragraph (1), the Sec-
22 retary determines there is reasonable assurance that
23 the eligible State program can meet its repayment
24 obligation under the debt.

1 (3) The eligible State program enters into an
2 agreement with the Secretary, as the Secretary shall
3 require, that the eligible State program will not use
4 Federal funds of any kind or from any Federal
5 source (including any disaster or other financial as-
6 sistance, loan proceeds, and any other assistance or
7 subsidy) to repay the debt.

8 (4) The commitment to guarantee shall specify
9 the fees for debt guarantee coverage.

10 (5) The maximum term of the debt that shall
11 be specified in a commitment issued under this sec-
12 tion may not exceed 30 years.

13 (d) MANDATORY ASSISTANCE FOR ELIGIBLE STATE
14 PROGRAMS.—The Secretary shall upon the request of an
15 eligible State program and pursuant to a commitment to
16 guarantee issued under subsection (c), provide a guar-
17 antee under subsection (e) for such eligible State program
18 in the amount requested by such eligible State program,
19 subject to the limitation under subsection (e)(2).

20 (e) CATASTROPHIC DEBT GUARANTEE.—A debt
21 guarantee under this subsection for an eligible State pro-
22 gram shall be subject to the following requirements:

23 (1) PRECONDITIONS.—The eligible State pro-
24 gram shows to the satisfaction of the Secretary that
25 insured losses in the State to the eligible State pro-

1 gram arising from the event or events covered by the
2 commitment to guarantee are likely to exceed the eli-
3 gible State program's available cash resources, as
4 calculated on the date of the event.

5 (2) AMOUNT.—The aggregate principal amount
6 of the debt guaranteed following an event or events
7 referred to in paragraph (1) may not exceed the
8 amount by which the insured losses expected to be
9 sustained by the State program as a result of such
10 event or events exceed 80 percent of the qualifying
11 assets of the eligible State program as stated in the
12 most recent quarterly financial statement filed with
13 the domiciliary regulator of the program prior to the
14 event or events, except that, for eligible State pro-
15 grams that are not required to file such quarterly fi-
16 nancial statements, the aggregate principal amount
17 of the debt guaranteed may not exceed the amount
18 by which insured losses sustained by the State pro-
19 gram as a result of such event or events exceed 80
20 percent of the unrestricted net assets as stated in
21 the annual financial statement for the program's fis-
22 cal year ending immediately prior to the event or
23 events.

24 (3) USE OF FUNDS.—Amounts of debt guaran-
25 teed under this section shall be used only to pay the

1 costs of issuing debt and to pay the insured losses
2 and loss adjustment expenses incurred by an eligible
3 State program. Such amounts shall not be used for
4 any other purpose.

5 **SEC. 4. EFFECT OF GUARANTEE.**

6 The issuance of any guarantee by the Secretary
7 under this Act shall be conclusive evidence that—

- 8 (1) the guarantee has been properly obtained;
- 9 (2) the underlying debt qualified for such guar-
10 antee; and
- 11 (3) the guarantee is valid, legal, and enforce-
12 able.

13 **SEC. 5. ELIGIBLE STATE PROGRAMS.**

14 (a) **ELIGIBLE STATE PROGRAMS.**—A State program
15 shall be considered an “eligible State program” for pur-
16 poses of this Act if the State program or the other State
17 entity authorized to make such determinations certifies to
18 the Secretary, in accordance with the procedures estab-
19 lished under subsection (b), that the State program com-
20 plies with the following requirements:

- 21 (1) **STATE PROGRAM DESIGN.**—The State pro-
22 gram is established and authorized by State law—
 - 23 (A) as an insurance program that offers
24 residential property insurance coverage for in-
25 sured losses to property, contents, and addi-

1 tional living expenses, and which is not a State
2 program that requires insurers to pool re-
3 sources to provide property insurance coverage
4 for covered perils; or

5 (B) as a reinsurance program that is de-
6 signed to improve private insurance markets
7 and that offers residential property insurance
8 coverage for insured losses to property, con-
9 tents, and additional living expenses because of
10 a finding by the State insurance commissioner
11 or other State entity authorized to make such
12 a determination that such State program is
13 necessary in order to provide for the continued
14 availability of such insurance coverage for all
15 residents of the State.

16 (2) OPERATION.—The State program shall
17 meet the following requirements:

18 (A) A majority of the members of the gov-
19 erning body of the State program shall be pub-
20 lic officials or appointed by public officials.

21 (B) The State shall have a financial inter-
22 est in the State program.

23 (C) If the State has at any time appro-
24 priated amounts from the State program's
25 funds for any purpose other than payments for

1 losses insured under the State program, or pay-
2 ments made in connection with any of the State
3 program's authorized activities, the State shall
4 have returned such amounts to the State fund,
5 together with interest on such amounts.

6 (3) TAX STATUS.—The State program shall
7 have received from the Secretary (or the Secretary's
8 designee) a written determination, within the mean-
9 ing of section 6110(b) of the Internal Revenue Code
10 of 1986, that the State program either—

11 (A) constitutes an “integral part” of the
12 State that has created it; or

13 (B) is otherwise exempt from Federal in-
14 come taxation.

15 (4) COVERED PERILS.—

16 (A) FOR STATE PROGRAMS.—The State
17 program shall insure or reinsure losses that are
18 proximately caused by any of the following per-
19 ils:

20 (i) Earthquakes.

21 (ii) Perils ensuing from earthquakes,
22 including fire and tsunamis.

23 (iii) Tropical cyclones having max-
24 imum sustained winds of at least 74 miles

1 per hour, including hurricanes and ty-
2 phoons.

3 (iv) Tornadoes.

4 (v) Volcanic eruptions.

5 (vi) Catastrophic winter storms.

6 (vii) Hail.

7 (viii) Any other natural catastrophe
8 (not including any flood) insured or rein-
9 sured under the State program.

10 (B) AUTHORITY OF THE SECRETARY TO
11 DEFINE.—The Secretary shall, by regulation,
12 define the natural catastrophe perils under this
13 subsection.

14 (5) EARNINGS.—The State program may not
15 provide for any distribution of any part of any net
16 profits of the State program to any insurer that par-
17 ticipates in the State program.

18 (6) PREVENTION AND MITIGATION.—

19 (A) MITIGATION OF LOSSES.—The State
20 program shall include provisions designed to en-
21 courage and support programs to mitigate
22 losses from natural catastrophes for which the
23 State insurance or reinsurance program was es-
24 tablished to provide insurance coverage.

1 (B) OPERATIONAL REQUIREMENTS.—The
2 State program shall operate in a State that—

3 (i) has in effect and enforces, or the
4 appropriate local governments within the
5 State have in effect and enforce, nationally
6 recognized model building, fire, and safety
7 codes and consensus-based standards that
8 offer risk responsive resistance that is sub-
9 stantially equivalent to or greater than the
10 resistance to earthquakes or high winds;
11 and

12 (ii) has taken actions to establish an
13 insurance rate structure that takes into ac-
14 count measures to mitigate insured losses.

15 (7) REQUIREMENTS REGARDING COVERAGE.—
16 The State program—

17 (A) may not, except for charges or assess-
18 ments related to post-event financing or bond-
19 ing, involve cross-subsidization between any
20 separate property and casualty insurance lines
21 covered under the State program pursuant to
22 paragraph (1);

23 (B) shall be subject to a requirement
24 under State law that for any insurance coverage
25 made available under the State insurance pro-

1 gram or for any reinsurance coverage for such
2 insurance coverage made available under the
3 State reinsurance program, the premium rates
4 charged shall be actuarially sound or actuarially
5 indicated; and

6 (C) shall make available to all qualifying
7 policyholders insurance or reinsurance coverage,
8 as applicable, and mitigation services on a basis
9 that is not unfairly discriminatory.

10 (b) ANNUAL CERTIFICATION.—The Secretary shall
11 establish procedures for initial certification and annual re-
12 certification as an eligible State program.

13 **SEC. 6. FULL FAITH AND CREDIT.**

14 The full faith and credit of the United States is
15 pledged to the payment of all guarantees issued under this
16 Act with respect to principal and interest.

17 **SEC. 7. FEES FOR GUARANTEES; AMOUNT; COLLECTION.**

18 The Secretary shall charge and collect fees for each
19 guarantee in amounts specified in the commitment to
20 guarantee, which shall be in amounts sufficient in the
21 judgment of the Secretary at the time of issuance of the
22 commitment to guarantee to cover applicable administra-
23 tive costs and probable losses on the guaranteed obliga-
24 tions covered by the commitment to guarantee, but in any
25 event not to exceed one-half of 1 per centum per annum

1 of the outstanding indebtedness covered by each guar-
2 antee.

3 **SEC. 8. PAYMENT OF LOSSES.**

4 (a) IN GENERAL.—The Secretary agrees to pay to
5 the duly appointed paying agent or trustee (in this section
6 referred to as the “Fiscal Agent”) for the eligible State
7 program that portion of the principal and interest on any
8 debt guaranteed under this Act that shall become due for
9 payment but shall be unpaid by the eligible State program
10 as a result of such program having provided insufficient
11 funds to the Fiscal Agent to make such payments. The
12 Secretary shall make such payments on the date such
13 principal or interest becomes due for payment or on the
14 business day next following the day on which the Secretary
15 shall receive notice of failure on the part of the eligible
16 State program to provide sufficient funds to the Fiscal
17 Agent to make such payments, whichever is later. Upon
18 making such payment, the Secretary shall be subrogated
19 to all the rights of the ultimate recipient of the payment.
20 The Secretary shall be entitled to recover from the eligible
21 State program the amount of any payments made pursu-
22 ant to any guarantee entered into under this Act.

23 (b) ROLE OF THE ATTORNEY GENERAL.—The Attor-
24 ney General shall take such action as may be appropriate

1 to enforce any right accruing to the United States as a
2 result of the issuance of any guarantee under this Act.

3 (c) **RULE OF CONSTRUCTION.**—Nothing in this sec-
4 tion shall be construed to preclude any forbearance for the
5 benefit of the eligible State program which may be agreed
6 upon by the parties to the guaranteed debt and approved
7 by the Secretary, provided that budget authority for any
8 resulting cost, as such term is defined under the Federal
9 Credit Reform Act of 1990, is available.

10 (d) **RIGHT OF THE SECRETARY.**—Notwithstanding
11 any other provision of law relating to the acquisition, han-
12 dling, or disposal of property by the United States, the
13 Secretary shall have the right in the discretion of the Sec-
14 retary to complete, recondition, reconstruct, renovate, re-
15 pair, maintain, operate, or sell any property acquired by
16 the Secretary pursuant to the provisions of this Act.

17 **SEC. 9. BUDGETARY IMPACT.**

18 (a) **COSTS.**—For purposes of section 502(5) of the
19 Federal Credit Reform Act of 1990, the cost of guarantees
20 to be issued under this Act shall be calculated by adjusting
21 the discount rate in section 502(5)(E) of such Act for
22 market risk.

23 (b) **SCORING.**—For purposes of the Budget Scoring
24 Rules of the Senate and the House of Representatives, the
25 cost of the guarantees to be issued under this Act shall

1 be no greater than the discounted cost calculated under
2 subsection (a) reduced by all projected fees and other in-
3 come under this Act.

4 **SEC. 10. REGULATIONS.**

5 The Secretary shall issue any regulations necessary
6 to carry out the debt-guarantee program established under
7 this Act.

8 **SEC. 11. DEFINITIONS.**

9 In this Act, the following definitions shall apply:

10 (1) **COMMITMENT TO GUARANTEE.**—The term
11 “commitment to guarantee” means a commitment to
12 make debt guarantees to an eligible State program
13 pursuant to subsection 3(e).

14 (2) **COVERED PERILS.**—The term “covered per-
15 ils” means 1 or more of the natural catastrophe per-
16 ils enumerated in section 5(a)(4).

17 (3) **DISASTER AREA.**—The term “disaster area”
18 means a geographical area, with respect to which—

19 (A) an event of a covered peril specified in
20 section 5(a)(4) has occurred; and

21 (B) a declaration that a disaster exists as
22 a result of the occurrence of such peril has been
23 made by the President of the United States.

24 (4) **ELIGIBLE STATE PROGRAM.**—The term “eli-
25 gible State program” means a State program that,

1 pursuant to section 5, is eligible to receive a debt
2 guarantee under this Act.

3 (5) INSURED LOSS.—The term “insured loss”
4 means any loss resulting from a covered peril that
5 is determined by an eligible State program as being
6 covered by insurance or reinsurance made available
7 under that eligible State program.

8 (6) QUALIFYING ASSETS.—The term “quali-
9 fying assets” means the policyholder surplus of the
10 eligible State program as stated in the most recent
11 quarterly financial statement filed by the program
12 with the domiciliary regulator of the program in the
13 last quarter ending prior to the event or events.

14 (7) RESIDENTIAL PROPERTY INSURANCE.—The
15 term “residential property insurance” means insur-
16 ance coverage for—

17 (A) individually owned residential struc-
18 tures of not more than 4 dwelling units, individ-
19 ually owned condominium units, or individually
20 owned mobile homes, and their contents, located
21 in the State and used exclusively for residential
22 purposes or a tenant’s policy written to include
23 personal contents of a residential unit located in
24 the State, but shall not include—

1 (i) insurance for real property or its
2 contents used for any commercial, indus-
3 trial, or business purpose, except a struc-
4 ture of not more than 4 dwelling units
5 rented for individual residential purposes;
6 or

7 (ii) a policy that does not include any
8 of the perils insured against in a standard
9 fire policy or any of the perils enumerated
10 in section 5(a)(4); or

11 (B) commercial residential property, which
12 includes property owned by a condominium as-
13 sociation or its members, property owned by a
14 cooperative association, or an apartment build-
15 ing.

16 (8) SECRETARY.—The term “Secretary” means
17 the Secretary of the Department of Treasury.

18 (9) STATE.—The term “State” means each of
19 the several States of the United States, the District
20 of Columbia, the Commonwealth of Puerto Rico, the
21 Commonwealth of the Northern Mariana Islands,
22 Guam, the United States Virgin Islands, American
23 Samoa, and any other territory or possession of the
24 United States.

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1 Guam, the United States Virgin Islands, American
2 Samoa, and any other territory or possession of the
3 United States.

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