

[SUBCOMMITTEE PRINT]

JANUARY 29, 1998

[Text is a complete substitute for text of H.R. 219, as introduced in the House on January 7, 1997]

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Homeowners’ Insur-
3 ance Availability Act of 1997”.

4 **SEC. 2. CONGRESSIONAL FINDINGS.**

5 The Congress finds that—

6 (1) the rising costs resulting from natural dis-
7 asters in recent years have placed a strain on home-
8 owners’ insurance markets in many areas, jeopardiz-
9 ing the ability of many consumers to adequately in-
10 sure their homes and possessions;

11 (2) the lack of sufficient insurance capacity
12 threatens to increase the number of uninsured home-
13 owners, which, in turn, increases the risk of mort-
14 gage defaults and the strain on the Federal banking
15 system;

16 (3) some States have intervened to ensure the
17 continued availability of homeowners’ insurance for
18 all residents;

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

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

9 (6) Federal reinsurance for State disaster in-
10 surance programs will improve the effectiveness of
11 such State initiatives and increase the likelihood that
12 homeowners' insurance claims will be fully paid in
13 the event of a large natural catastrophe; and

14 (7) any Federal reinsurance program must be
15 founded upon sound actuarial principles and priced
16 in a manner that minimizes the potential impact on
17 the Treasury.

18 **SEC. 3. PROGRAM AUTHORITY.**

19 (a) IN GENERAL.—The Secretary of the Treasury
20 shall carry out a program under this Act to make reinsur-
21 ance coverage available for purchase by eligible State pro-
22 grams under section 4. The reinsurance coverage shall be
23 designed to improve the availability of homeowners' insur-
24 ance for the purpose of facilitating the pooling, and
25 spreading the risk, of catastrophic financial losses from

1 natural disasters and to improve the solvency of home-
2 owners' insurance markets.

3 (b) CONTRACTS.—Under the program under this Act,
4 the Secretary shall offer reinsurance coverage through
5 contracts with covered purchasers, which contracts—

6 (1) shall provide coverage based solely on insur-
7 ance industry losses within the State of the eligible
8 State program purchasing the contract;

9 (2) shall not interfere in private markets; and

10 (3) shall minimize the administrative costs of
11 the Federal Government.

12 **SEC. 4. ELIGIBLE STATE PROGRAMS.**

13 (a) STATE COVERAGE PROGRAMS.—Only State pro-
14 grams meeting the following requirements shall be eligible
15 to purchase a contract for reinsurance coverage made
16 available under this Act:

17 (1) STATE INSURANCE AND REINSURANCE PRO-
18 GRAMS.—The program shall be—

19 (A) a State-operated insurance program,
20 which offers coverage for homes (including
21 dwellings owned under condominium and coop-
22 erative ownership arrangements) and the con-
23 tents of apartments to State residents because
24 of the finding of the State insurance commis-
25 sioner that such a program is necessary in

1 order to provide for the continued availability of
2 such residential coverage for all residents; or

3 (B) a State-operated reinsurance program,
4 which is designed to improve private insurance
5 markets which offer coverage for homes (includ-
6 ing dwellings owned under condominium and
7 cooperative ownership arrangements) and the
8 contents of apartments because of the finding
9 of the State insurance commissioner that such
10 a program is necessary in order to provide for
11 the continued availability of such residential
12 coverage for all residents.

13 (2) PROGRAM CHARACTERISTICS.—The pro-
14 gram shall—

15 (A) be structured and carried out in a
16 manner so that the program is exempt from all
17 Federal taxation;

18 (B) cover a single peril; and

19 (C) include mitigation provisions that re-
20 quire that not less than 5 percent of the net in-
21 vestment income of the State insurance or rein-
22 surance program be used for programs to miti-
23 gate losses from natural disasters for which the
24 State insurance or reinsurance program was es-
25 tablished.

1 (3) NEW PROGRAM REQUIREMENTS.—For any
2 program which, after January 1, 1998, commences
3 offering insurance or reinsurance coverage described
4 in subparagraph (A) or (B), respectively, of para-
5 graph (1), the program—

6 (A) may not provide for the inuring of any
7 part of any net earnings of the program to the
8 benefit of any insurer that participates in the
9 program;

10 (B) may not involve cross-subsidization be-
11 tween any separate property and casualty lines
12 covered under the program; and

13 (C) shall include provisions that authorize
14 the State insurance commissioner to terminate
15 the program if the insurance commissioner de-
16 termines that the program is no longer nec-
17 essary to ensure the availability of homeowners'
18 insurance for all State residents.

19 (b) STATE AUCTION PROGRAMS.—Notwithstanding
20 subsection (a), contracts for reinsurance coverage made
21 available under this Act may be purchased by a State-op-
22 erated auction program that—

23 (1) auctions all such coverage purchased to cov-
24 ered purchasers who are private insurers or reinsur-
25 ers operating in the State;

1 (2) is exempt from all Federal taxation;

2 (3) covers only a single peril;

3 (4) provides that, of any revenues to the State
4 auction program derived from auctioning the rein-
5 surance coverage made available under this Act that
6 exceed the amount paid by the State program for
7 such coverage—

8 (A) 95 percent shall be covered into Disas-
9 ter Reinsurance Fund established under section
10 9; and

11 (B) 5 percent shall be used by the State
12 for programs to mitigate losses from natural
13 disasters for which the State program was es-
14 tablished; and

15 (5) if under the program auctions of reinsur-
16 ance coverage commence after January 1, 1998, is
17 subject to subparagraphs (A) and (C) of subsection
18 (a)(3).

19 **SEC. 5. QUALIFIED LINES OF COVERAGE.**

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

1 **SEC. 6. COVERED PERILS.**

2 A contract for reinsurance coverage made available
3 under this Act shall cover losses that are proximately
4 caused by—

5 (1) earthquakes;

6 (2) perils ensuing from earthquakes, including
7 fire and tsunami; and

8 (3) tropical cyclones having maximum sustained
9 winds of at least 74 miles per hour, including hurri-
10 canes and typhoons.

11 The Secretary shall, by regulation, define such natural dis-
12 aster perils.

13 **SEC. 7. TERMS OF REINSURANCE CONTRACTS.**

14 A contract for reinsurance coverage made available
15 under this Act shall include the following terms and condi-
16 tions:

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

19 (2) PAYMENT CONDITION.—The contract shall
20 authorize claims payments for eligible losses only to
21 covered purchasers.

22 (3) RETAINED LOSSES REQUIREMENT.—The
23 contract shall pay eligible losses only if the total
24 amount of insurance claims for losses from covered
25 perils to properties, which are located within the
26 State covered by the contract and covered by quali-

1 fied lines, exceeds the amount of retained losses pro-
2 vided under the contract (pursuant to section 8(a))
3 purchased by the eligible State program.

4 (4) CALCULATING ELIGIBLE LOSSES.—Eligible
5 losses under the contract shall include only insur-
6 ance claims for property covered by qualified lines
7 that are paid within the 3-year period beginning
8 upon the event for which payment under the con-
9 tract is made.

10 (5) PRICING.—The cost of reinsurance coverage
11 under the contract shall be established by the Sec-
12 retary based upon the recommendations of the Na-
13 tional Commission on Catastrophe Risks and Insur-
14 ance Loss Costs established under section 10 and
15 shall consist of the following components:

16 (A) RISK-BASED PRICE.—A risk-based
17 price, which shall reflect the anticipated payout
18 of the contract according to the actuarial analy-
19 sis and recommendations of the Commission.

20 (B) RISK LOAD.—A risk load, determined
21 by the Secretary, of an amount that is not less
22 than the risk-based price under subparagraph
23 (A).

24 (C) ADMINISTRATIVE COSTS.—A sum suf-
25 ficient to provide for the operation of the Com-

1 mission and the administrative expenses in-
2 curred by the Secretary in carrying out this
3 Act.

4 The rates for reinsurance coverage shall produce ex-
5 pected premiums which shall be sufficient to pay for
6 all claims, loss adjustment expense, and all adminis-
7 trative costs due to the reinsurance coverage for the
8 Fund under section 9.

9 (6) REPAYMENT TERMS.—The contract shall
10 include a condition that requires that, in the event
11 that a covered purchaser receives payments for
12 qualifying claims that consist of amounts derived
13 from obligations issued under section 9(d), each eli-
14 gible State program that has purchased coverage
15 which is in force at such time shall continue to pur-
16 chase the reinsurance coverage provided under this
17 Act, at levels which are at least as great as the level
18 immediately before the Fund was credited with
19 amounts borrowed under section 9(d), until such
20 borrowed monies, including interest, are repaid pur-
21 suant to section 9(d)(3)(C).

22 (7) INFORMATION.—The contract shall contain
23 a condition providing that the National Commission
24 on Catastrophe Risks and Insurance Loss Costs may
25 require the State program to submit to the Commis-

1 sion all information on the State program relevant
2 to the duties of the Commission, as determined by
3 the Secretary.

4 (8) OTHERS.—The contract shall contain such
5 other terms as the Secretary considers necessary to
6 ensure the long-term financial integrity of the pro-
7 gram under this Act.

8 **SEC. 8. LEVEL OF RETAINED LOSSES AND MAXIMUM FED-**
9 **ERAL LIABILITY.**

10 (a) AVAILABLE LEVELS OF RETAINED LOSSES.—In
11 making reinsurance coverage available under this Act, the
12 Secretary shall make available for purchase (subject to
13 subsection (b)) contracts for reinsurance coverage that re-
14 quires the sustainment of retained losses (as required
15 under section 7(3) for payment of eligible losses) in var-
16 ious amounts, as the Secretary determines appropriate.

17 (b) MINIMUM LEVEL OF RETAINED LOSSES.—

18 (1) IN GENERAL.—Subject to paragraph (2)
19 and notwithstanding any other provision of this Act,
20 a contract for reinsurance coverage under this Act
21 may not be made available or sold to an eligible
22 State program unless the contract requires retained
23 losses in the following amount:

24 (A) EXISTING STATE COVERAGE PRO-
25 GRAMS.—For any eligible State program under

1 section 4(a) which, upon January 1, 1998, is
2 offering insurance or reinsurance coverage de-
3 scribed in subparagraph (A) or (B), respec-
4 tively, of such section, the State program shall
5 sustain an amount of retained losses of not less
6 than the greater of—

- 7 (i) \$2,000,000,000; or
8 (ii) the current claims paying capac-
9 ity, as of the date of the enactment of this
10 Act, of the eligible State program, as de-
11 termined by the Secretary.

12 (B) NEW STATE COVERAGE PROGRAMS.—

13 For any eligible State program under section
14 4(a) which, after January 1, 1998, commences
15 offering insurance or reinsurance coverage de-
16 scribed in subparagraph (A) or (B), respec-
17 tively, of such section, the State program shall
18 sustain an amount of retained losses of not less
19 than the greater of—

- 20 (i) \$2,000,000,000;
21 (ii) the current claims paying capac-
22 ity, as of the date of the commencement of
23 the program under this Act, of the eligible
24 State program, as determined by the Sec-
25 retary; or

1 (iii) an amount, determined by the
2 Secretary in consultation with the National
3 Commission on Catastrophe Risks and In-
4 surance Loss Costs established under sec-
5 tion 10, which is sufficient to cover eligible
6 losses in the State for all events having a
7 likelihood of occurrence in any 12-month
8 period that is greater than one percent.

9 (C) NEW STATE AUCTION PROGRAMS.—
10 For any eligible State program under section
11 4(b) which, after January 1, 1998, commences
12 auctions of reinsurance coverage purchased
13 under this Act, the insurance industry in that
14 State shall sustain a cumulative amount of re-
15 tained losses (in covered lines resulting from
16 covered perils) of not less the greater of—

17 (i) \$2,000,000,000 ; or

18 (ii) an amount, determined by the
19 Secretary in consultation with the National
20 Commission on Catastrophe Risks and In-
21 surance Loss Costs established under sec-
22 tion 10, which is sufficient to cover eligible
23 losses in the State for all events having a
24 likelihood of occurrence in any 12-month
25 period that is greater than one percent.—

1 (2) ANNUAL ADJUSTMENT.—The Secretary
2 may annually raise the minimum level of retained
3 losses for an eligible State program to reflect, as de-
4 termined by the Secretary—

5 (A) the growth in claims paying capacity
6 of the eligible State program; or

7 (B) the growth of capacity in the private
8 insurance and reinsurance market.

9 (3) CLAIMS PAYING CAPACITY.—For purposes
10 of this subsection, the claims paying capacity of a
11 State-operated insurance or reinsurance program
12 under section 4(a) shall be determined taking into
13 consideration retained losses to private insurers in
14 the State in an amount assigned by the State insur-
15 ance commissioner, the cash surplus of the program,
16 and the lines of credit, reinsurance, and other fi-
17 nancing mechanisms of the program established by
18 law.

19 (c) MAXIMUM FEDERAL LIABILITY.—

20 (1) IN GENERAL.—Except as provided in para-
21 graph (2) and notwithstanding any other provision
22 of law, the maximum amount paid in any single year
23 by the Secretary pursuant to claims under all con-
24 tracts for reinsurance under this Act shall not ex-
25 ceed \$25,000,000,000. If, in any single year, claims

1 under existing contracts for reinsurance exceed
2 \$25,000,000,000 or the amount determined pursu-
3 ant to paragraph (2) (as applicable), each claimant
4 shall receive a prorated portion of the amount avail-
5 able for payment of claims.

6 (2) **TRANSITION LIMITATION.**—During the 4-
7 year period beginning on the date that contracts for
8 reinsurance coverage under this Act are first made
9 available for purchase, the Secretary shall establish
10 and annually revise a dollar amount which shall be
11 the maximum amount that may be paid for all
12 events in any single year during such period pursu-
13 ant to claims under all contracts for reinsurance
14 under this Act. Such dollar amount limitation may
15 not in any event exceed \$25,000,000,000. If, in any
16 single year during such period, claims under existing
17 contracts for reinsurance exceed the dollar amount
18 limitation established for such year pursuant to this
19 paragraph, each claimant shall receive a prorated
20 portion of the amount available for payment of
21 claims.

22 **SEC. 9. DISASTER REINSURANCE FUND.**

23 (a) **ESTABLISHMENT.**—There is established within
24 the Treasury of the United States a fund to be known

1 as the Disaster Reinsurance Fund (in this section referred
2 to as the “Fund”).

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

4 (1) amounts received annually from the sale of
5 contracts for reinsurance coverage under this Act;

6 (2) any amounts borrowed under subsection
7 (d);

8 (3) any amounts earned on investments of the
9 Fund pursuant to subsection (e); and

10 (4) such other amounts as may be credited to
11 the Fund.

12 (c) USES.—Amounts in the Fund may be used only
13 to the extent approved in appropriation Acts and only for
14 the following purposes:

15 (1) CONTRACT PAYMENTS.—For payments to
16 covered purchasers under contracts for reinsurance
17 coverage for eligible losses under such contracts.

18 (2) COMMISSION COSTS.—To pay for the oper-
19 ating costs of the National Commission on Cata-
20 trophe Risks and Insurance Loss Costs established
21 under section 10.

22 (3) ADMINISTRATIVE EXPENSES.—To pay for
23 the administrative expenses incurred by the Sec-
24 retary in carrying out the reinsurance program
25 under this Act.

1 (d) BORROWING.—

2 (1) AUTHORITY.—To the extent that the
3 amounts in the Fund are insufficient to pay claims
4 and expenses under subsection (c), the Secretary
5 may issue such notes and other obligations as may
6 be necessary to cover the insufficiency.

7 (2) INTEREST RATES.—Any such obligations
8 shall bear interest at a rate determined by the Sec-
9 retary, taking into consideration the current market
10 yields on outstanding marketable obligations of the
11 United States of comparable maturities.

12 (3) CONDITIONS.—The following conditions
13 shall apply to any obligations issued under this sub-
14 section:

15 (A) The total amount of outstanding obli-
16 gations at any given time shall not exceed the
17 capacity of the Fund to repay such obligations
18 within 20 years.

19 (B) The Secretary may issue such obliga-
20 tions only to such extent and in such amounts
21 as are provided in appropriation Acts.

22 (C) Any obligations issued under this sub-
23 section shall be repaid, including interest, from
24 the Fund and shall be recouped from premiums

1 charged for reinsurance coverage provided
2 under this Act.

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

8 (f) PROHIBITION OF FEDERAL FUNDS.—Except for
9 amounts made available pursuant to subsection (d) and
10 section 10(g), no Federal funds shall be authorized or ap-
11 propriated for the Fund or for carrying out the reinsur-
12 ance program under this Act.

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

15 (a) ESTABLISHMENT.—The Secretary shall establish
16 a commission to be known as the National Commission
17 on Catastrophe Risks and Insurance Loss Costs (in this
18 section referred to as the “Commission”).

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
22 available under this Act.

23 (c) MEMBERS.—The Commission shall consist of not
24 more than 15 members, who shall be appointed by and
25 at the discretion of the Secretary, except that the members

1 shall at all times include at least 4 professional actuaries,
2 2 representatives of State insurance departments, 2 ex-
3 perts in the field of disaster modeling, a structural engi-
4 neer, a meteorologist, and a seismologist.

5 (d) EXPERTISE.—Each member appointed to the
6 Commission shall be recognized as qualified in a field re-
7 lated to natural disaster risk assessment or insurance.

8 (e) TREATMENT OF NON-FEDERAL MEMBERS.—
9 Each member of the Commission who is not otherwise em-
10 ployed by the Federal Government shall be considered a
11 special Government employee for purposes of section 202
12 of title 18, United States Code.

13 (f) COMPENSATION.—Each member of the Commis-
14 sion who is not an officer or employee of the Federal Gov-
15 ernment shall be compensated at a rate of basic pay pay-
16 able for level V of the Executive Schedule, for each day
17 (including travel time) during which such member is en-
18 gaged in the performance of the duties of the Commission.
19 All members of the Commission who are officers or em-
20 ployees of the United States shall serve without compensa-
21 tion in addition to that received for their services as offi-
22 cers or employees of the United States.

23 (g) FUNDING.—

24 (1) AUTHORIZATION OF APPROPRIATIONS.—

25 There are authorized to be appropriated—

1 (A) \$1,000,000 for fiscal year 1998 for the
2 initial expenses in establishing the Commission
3 and the initial activities of the Commission, as
4 determined by the Secretary of the Treasury;
5 and

6 (B) such additional sums as may be nec-
7 essary to carry out subsequent activities of the
8 Commission.

9 (2) OFFSET.—The Secretary shall provide, to
10 the maximum extent practicable, that an amount
11 equal to any amount appropriated under paragraph
12 (1) is obtained from purchasers of reinsurance cov-
13 erage under this Act and deposited in the Fund es-
14 tablished under section 9. Such amounts shall be ob-
15 tained by inclusion of a provision for the Commis-
16 sion’s expenses incorporated into the pricing of the
17 contracts for such reinsurance coverage, pursuant to
18 section 7(5)(C).

19 **SEC. 11. REPORT ON SECONDARY MARKET MECHANISM**
20 **FOR REINSURANCE CONTRACTS.**

21 Not later than the expiration of the 18-month period
22 beginning on the date of the enactment of this Act, the
23 Secretary shall submit to the Congress a report that—

1 (1) analyzes the extent of the market for resale
2 of reinsurance contracts under this Act by the Sec-
3 retary in the capital markets;

4 (2) proposes a program or system for making
5 not less than 20 percent of the total written dollar
6 value of such contracts available for purchase; and

7 (3) contains recommendations for any statutory
8 changes necessary to operate such a program or sys-
9 tem.

10 **SEC. 12. DEFINITIONS.**

11 For purposes of this Act, the following definitions
12 shall apply:

13 (1) COVERED PERILS.—The term “covered per-
14 ils” means the natural disaster perils under section
15 6.

16 (2) COVERED PURCHASER.—The term “covered
17 purchaser” means—

18 (A) with respect to reinsurance coverage
19 made available under this Act that is purchased
20 by an eligible State program under section 4(a),
21 the State-operated insurance or reinsurance
22 program that purchases such coverage; and

23 (B) with respect to reinsurance coverage
24 made available under this Act that is purchased
25 by a State auction program under section 4(b),

1 the entity that purchases such coverage from
2 the eligible State program pursuant to an auc-
3 tion.

4 (3) **ELIGIBLE STATE PROGRAM.**—The term “eli-
5 gible State program” means a State program that,
6 pursuant to section 4, is eligible to purchase reinsur-
7 ance coverage made available under this Act.

8 (4) **QUALIFIED LINES.**—The term “qualified
9 lines” means lines of insurance coverage for which
10 losses are covered under section 5 by reinsurance
11 coverage under this Act.

12 (5) **SECRETARY.**—The term “Secretary” means
13 the Secretary of the Treasury.

14 (6) **STATE.**—The term “State” means the
15 States of the United States, the District of Colum-
16 bia, the Commonwealth of Puerto Rico, the Com-
17 monwealth of the Northern Mariana Islands, Guam,
18 the Virgin Islands, American Samoa, and any other
19 territory or possession of the United States.