

106TH CONGRESS
1ST SESSION

H. R. 3303

To provide for the establishment of the Natural Disaster Insurance Solvency Fund to ensure adequate private insurance reserves in the event of catastrophic natural disasters.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 10, 1999

Mr. BURR of North Carolina introduced the following bill; which was referred to the Committee on Banking and Financial Services, and in addition to the Committees on Ways and Means, and the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for the establishment of the Natural Disaster Insurance Solvency Fund to ensure adequate private insurance reserves in the event of catastrophic natural disasters.

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.**

4 This Act may be cited as the “Natural Disaster In-
5 surance Solvency Act of 1999”.

1 **SEC. 2. CONGRESSIONAL FINDINGS.**

2 The Congress makes the following findings:

3 (1) The risk of a truly catastrophic natural dis-
4 aster threatens the homeowners and small busi-
5 nesses of this Nation and jeopardizes the solvency of
6 our private insurance industry.

7 (2) It is critical that insurance companies and
8 State insurance pools have adequate risk manage-
9 ment plans in place that will allow them to remain
10 solvent when a truly catastrophic event occurs.

11 (3) State insurance regulators in the United
12 States must be assured that our property and cas-
13 ualty companies and insurance pools have adequate
14 capital reserves to pay out insurance claims when a
15 catastrophe occurs.

16 (4) The Congress must assist State insurance
17 regulators in their efforts to help private property
18 and casualty insurance companies to afford suffi-
19 cient reserves to remain solvent after a catastrophic
20 natural disaster.

21 (5) The creation of a private natural disaster
22 insurance solvency fund will encourage private insur-
23 ance companies and State pools to set aside reserves
24 for future events and will assist State insurance reg-
25 ulators when monitoring these companies for sol-
26 vency purposes.

1 (6) Creating private sector, rather than govern-
2 ment, solutions to the issue of natural disaster fi-
3 nancing will encourage companies to put in place
4 risk management plans that will result in a healthier
5 and more vibrant insurance marketplace, and most
6 importantly will result in increased availability of
7 property and casualty insurance in disaster-prone
8 areas.

9 **SEC. 3. NATURAL DISASTER SOLVENCY INSURANCE FUND.**

10 (a) ESTABLISHMENT.—There is established the Nat-
11 ural Disaster Insurance Solvency Fund (in this Act re-
12 ferred to as the “NDISF”). The NDISF shall be a body
13 corporate under the direction of a Board of Directors.

14 (b) PRIVATE INSURANCE STATUS.—The NDISF
15 shall—

16 (1) not be considered a Federal agency;

17 (2) have employees appointed without regard to
18 the provisions of title 5, United States Code, gov-
19 erning appointments in the competitive service, and
20 paid without regard to the provisions of chapter 51
21 and subchapter III of chapter 53 of that title relat-
22 ing to classification and General Schedule pay rates;
23 and

1 (3) not be subject to the Federal Advisory Com-
2 mittee Act or any other Federal law governing the
3 operation of Federal agencies.

4 (c) PURPOSE.—The purpose of the NDISF shall be
5 to hold, invest, and distribute private insurance solvency
6 reserve amounts for rare catastrophic events, in accord-
7 ance with this Act. Such solvency reserves may be included
8 on the annual statements of participating companies for
9 accounting purposes to assist State insurance regulators
10 in monitoring and maintaining the solvency of such com-
11 panies.

12 (d) POWERS.—The NDISF—

13 (1) shall have perpetual succession;

14 (2) may sue and be sued, make contracts, and
15 acquire, hold, and dispose of real and personal prop-
16 erty, as may be necessary for its corporate purposes;

17 (3) may adopt and alter a corporate seal;

18 (4) may conduct any and all acts necessary and
19 proper to carry out the purposes of this Act.

20 (e) MEMBERSHIP.—The NDISF shall provide for
21 membership, which shall consist of only those insurance
22 companies that make contributions of solvency reserve
23 amounts to the NDISF in accordance with section 4.

24 (f) BOARD OF DIRECTORS.—

1 (1) MEMBERSHIP.—The Board of Directors of
2 the NDISF shall consist of 15 persons, who shall be
3 selected as follows:

4 (A) 7 directors shall be elected by the
5 members of the NDISF, but not more than 1
6 employee of any single private insurer may
7 serve on the Board at any time.

8 (B) 7 directors shall be persons who serve
9 as insurance regulators of a State and shall be
10 appointed by any national association which
11 represents the insurance regulatory authorities
12 of all the States, except that if an insufficient
13 number of such insurance regulators are willing
14 to serve or such association fails to make such
15 appointments, any remaining deficit in the
16 members of the Board shall be selected by the
17 members of the NDISF in the manner that
18 elections are conducted pursuant to subpara-
19 graph (A), except that such individuals may not
20 be employed by any private insurer that is a
21 member of the NDISF.

22 (C) The Secretary of Commerce.

23 (2) ELECTION.—In any election for members of
24 the Board of Directors of the NDISF, the vote of
25 each member of the NDISF shall be weighted ac-

1 cording to the proportion of the reserves of the
2 NDISF contributed by the member. The Board shall
3 reevaluate such proportions on not less than an an-
4 nual basis.

5 (3) TERMS.—The Board shall establish the
6 number of years of service for terms of members of
7 the Board, and shall select a chairperson and offi-
8 cers as appropriate.

9 (4) VOTING.—Each member of the Board shall
10 have 1 vote and the Board shall set policy and de-
11 cide all matters by a simple majority of the votes
12 cast.

13 (5) FIDUCIARY DUTY.—For carrying out the
14 duties of the Board, the members of the Board that
15 are not State insurance regulators shall have a fidu-
16 ciary duty to the NDISF that shall supersede any
17 duty to an employer or other special interest that
18 the member may otherwise represent.

19 (6) LIMITATIONS ON LIABILITY.—Individual
20 members of the NDISF shall not be liable, or in any
21 way responsible, for the obligations of the NDISF.

22 (7) INITIAL ORGANIZATION.—Beginning on the
23 date of the enactment of this Act and until such
24 time that at least 2 members of the Board are ap-
25 pointed, the Secretary of Commerce shall act for all

1 purposes and with full powers of the Board. The
2 Secretary may utilize the services of the employees
3 from the Department of Commerce to perform serv-
4 ices for the Board during such transition period.
5 During such period, the Secretary shall establish ini-
6 tial standards for membership in the NDISF and
7 shall call an initial meeting of the NDISF for pur-
8 poses of organization.

9 (g) TREATMENT FOR PURPOSE OF SUITS.—

10 (1) JURISDICTION AND REMOVAL.—The United
11 States district courts shall have original but not ex-
12 clusive jurisdiction over all actions brought by or
13 against the NDISF. Any action brought in a State
14 court to which the NDISF is a party may be re-
15 moved to the appropriate United States district
16 court under the provision of chapter 89 of title 28,
17 United States Code.

18 (2) PROCESS, VENUE, AND TIME LIMITA-
19 TIONS.—The provisions of title 28, United States
20 Code, relating to service of process, venue, and limi-
21 tations of time for bringing action in suits in which
22 the United States, its officers, or employees are par-
23 ties, and the rules of procedure adopted under title
24 28 for suits in which the United States, its officers,
25 or employees are parties, shall apply in like manner

1 to suits in which the NDISF, its officers, or employ-
2 ees are parties.

3 (3) CLAIMS.—The provisions of chapter 171
4 and all other provisions of title 28 relating to tort
5 claims shall apply to tort claims arising out of activi-
6 ties of the NDISF.

7 (4) REPRESENTATION.—The Department of
8 Justice shall furnish the NDISF such legal rep-
9 resentation as it may require, but with the prior con-
10 sent of the Attorney General the NDISF may em-
11 ploy attorneys by contract or otherwise to conduct
12 litigation brought by or against the NDISF or its of-
13 ficers or employees in matters affecting the NDISF.

14 (5) JUDGMENTS.—A judgment against the
15 NDISF or the Government of the United States
16 arising out of activities of the NDISF shall be paid
17 by the NDISF out of any funds available to the
18 NDISF.

19 **SEC. 4. CONTRIBUTIONS AND DISTRIBUTIONS.**

20 (a) DEVELOPMENT.—The Board shall adopt bylaws
21 for the NDISF that provide for the NDISF to make con-
22 tracts to receive insurers' contributions and make distribu-
23 tions in accordance with this Act.

24 (b) SOLVENCY CONTRIBUTIONS.—

1 (1) LIMITATION ON AMOUNT.—The amount of
2 solvency reserves contributed to the NDISF by any
3 member insurer may not exceed the sum of—

4 (A) 10 percent of any surplus of the mem-
5 ber as of the date of the beginning of the com-
6 panies' fiscal year related to covered perils; and

7 (B) an amount not exceeding the lesser
8 of—

9 (i) 20 percent of any surplus of the
10 member as of the date of the beginning of
11 the companies' fiscal year related to cov-
12 ered perils; or

13 (ii) the aggregate premium amount of
14 any insurance coverage for covered perils
15 under insurance contracts written by the
16 member after such date.

17 (2) TRANSFER.—The acquisition of the assets
18 of a member of the NDISF by another entity, in-
19 cluding the right to any reserves of the original
20 member held by the NDISF and the right to any
21 distributions under subsection (c) of this section,
22 shall not affect the treatment of such reserves under
23 this Act or section 832 of the Internal Revenue
24 Code.

25 (c) DISTRIBUTIONS.—

1 (1) IN GENERAL.—A distribution under this
2 paragraph may be made only upon the request of a
3 member pursuant to a loss that—

4 (A) proximately results from a rare cata-
5 strophic event; or

6 (B) the State insurance regulator for the
7 State involved determines—

8 (i) is the result of a covered peril
9 under section 5; and

10 (ii) occurs to a member that (I) is in-
11 solvent upon such occurrence; or (II) will
12 result in the insolvency of the member, ex-
13 cept that any such distribution not exceed
14 the amount necessary to avoid such insol-
15 vency.

16 (2) LIMITATION ON AMOUNT.—In no case may
17 a distribution under this paragraph exceed—

18 (A) the sum of the amount of the mem-
19 ber's solvency contributions to the NDISF and
20 any interest accumulated on such amounts pur-
21 suant to section 6(d), except that if some or all
22 of the solvency reserves of a member of the
23 NDISF are transferred to another entity, the
24 amount of the distribution to such entity may
25 not exceed the amount transferred to such enti-

1 ty plus any interest attributable to such amount
2 transferred; or

3 (B) for an event—

4 (i) the amount of losses and loss ad-
5 justment expenses incurred, net of reinsur-
6 ance, as reported in the member’s annual
7 statement for the taxable year, that are at-
8 tributable to the event;

9 (ii) any nonrecoverable assessments,
10 surcharges, or other liabilities that are
11 borne by the member and are attributable
12 to such event.

13 (d) TAX TREATMENT.—

14 (1) DEDUCTION FOR CONTRIBUTIONS.—Sub-
15 section (c) of section 832 of the Internal Revenue
16 Code of 1986 (relating to the taxable income of in-
17 surance companies other than life insurance compa-
18 nies) is amended by striking “and” at the end of
19 paragraph (12), by striking the period at the end of
20 paragraph (13) and inserting in lieu thereof “; and”,
21 and by adding at the end the following new para-
22 graph:

23 “(14) the qualified contributions during the
24 taxable year to the NDISF Catastrophe Emergency
25 Solvency Reserve Account established under section

1 6 of the Natural Disaster Insurance Solvency Act of
2 1999.”.

3 (2) GROSS INCOME.—Paragraph (1) of section
4 832(b) of such Code is amended by striking “and”
5 at the end of subparagraph (D), by striking the pe-
6 riod at the end of subparagraph (E) and inserting
7 in lieu thereof “, and”, and by adding at the end the
8 following new subparagraph:

9 “(F) the amount of any distributions from
10 the NDISF during the taxable year, except that
11 a distribution made to return to the insurance
12 company any contribution which is not a quali-
13 fied contribution (as defined in subsection (h))
14 for a taxable year shall not be included in gross
15 income if such distribution is made prior to the
16 filing of the tax return for such taxable year.”.

17 (3) DEFINITION.—Section 832 of such Code
18 (relating to insurance company taxable income) is
19 amended by adding at the end the following new
20 subsection:

21 “(h) DEFINITIONS RELATING TO NATURAL DIS-
22 ASTER INSURANCE SOLVENCY FUND.—For purposes of
23 subsections (b)(1)(F) and (c)(14), the term ‘qualified con-
24 tribution’ has the meaning given such term in section 9
25 of the Natural Disaster Insurance Solvency Act of 1999.”.

1 (e) PROPRIETARY INFORMATION.—The Board may
2 classify information submitted to the NDISF for the de-
3 termination of contributions and distributions to be pro-
4 prietary information, which shall not be made public ex-
5 cept as required by State or Federal law.

6 **SEC. 5. COVERED PERILS.**

7 For purposes of this Act, the term “covered peril”
8 means—

- 9 (1) earthquakes;
- 10 (2) perils ensuing from earthquakes, including
11 fire and tsunami;
- 12 (3) hurricanes and windstorms;
- 13 (4) volcanic eruptions;
- 14 (5) wildfires; and
- 15 (6) such other natural disasters as the Board
16 deems appropriate.

17 **SEC. 6. CATASTROPHE EMERGENCY SOLVENCY RESERVE**
18 **ACCOUNT.**

19 (a) ESTABLISHMENT.—The NDISF shall establish
20 and maintain a Catastrophe Emergency Solvency Reserve
21 Account as a custodial account, trust, or other appropriate
22 arrangement, to hold all contributions of solvency reserve
23 amounts submitted to the NDISF in accordance with sec-
24 tion 4. Such funds shall be exempt from all taxation im-

1 posed by the Federal Government or any State, county,
2 municipality, or local taxing authority.

3 (b) ACCOUNT DEPOSITS.—The Board shall deposit in
4 the Account any contributions of solvency reserves and
5 any interest income accrued on such reserves pursuant to
6 subsection (d).

7 (c) AVAILABILITY OF AMOUNTS.—Amounts in the
8 Account shall be available only—

9 (1) for distribution to members in accordance
10 with section 4;

11 (2) for expenses of the NDISF; and

12 (3) for activities of the NDISF, in coordination
13 with private insurance companies and State insur-
14 ance regulators, to provide for mitigation of dam-
15 ages resulting from covered perils but in an amount
16 not to exceed 1 percent of the annual interest in the
17 Catastrophic Emergency Solvency Reserve Account
18 in subsection (d) less any amount provided under
19 paragraph (2).

20 (d) INVESTMENTS.—The Board shall invest amounts
21 in the Catastrophe Emergency Solvency Reserve Account
22 that are not required to meet current financial commit-
23 ments, as the Board considers appropriate, but only in in-
24 terest-bearing securities issued by the United States hav-
25 ing such maturities as the Board considers appropriate.

1 Any interest from such investments shall be exempt from
2 all taxation imposed by the Federal Government or any
3 State, county, municipality, or local taxing authority.

4 **SEC. 7. GAO AUDITS.**

5 Not later than 1 year after the NDISF first com-
6 mences receipt of contributions in accordance with section
7 4, and once every 3 years for the 12-year period beginning
8 upon the expiration of such 1-year period, the Comptroller
9 General of the United States shall audit activities of the
10 NDISF to ensure that it is complying with the provisions
11 of this Act and shall submit a report regarding each such
12 audit to the Congress.

13 **SEC. 8. OFF-BUDGET STATUS AND DEFICIT REDUCTION.**

14 (a) IN GENERAL.—Notwithstanding any other provi-
15 sion of law, the receipts and disbursements of the NDISF,
16 including the Trust Account, shall not be counted as new
17 budget authority or outlays for purposes of—

18 (1) the budget of the United States Govern-
19 ment as submitted by the President,

20 (2) the congressional budget, or

21 (3) the Balanced Budget and Emergency Def-
22 icit Control Act of 1985.

23 (b) PUBLIC ENTERPRISE REVOLVING FUND.—The
24 financial position of the NDISF shall be reflected in the
25 appendix to the budget of the United States Government

1 as a public enterprise revolving fund and shall be treated
2 as a public enterprise revolving fund for budget accounting
3 purposes.

4 (c) DEFICIT REDUCTION.—Notwithstanding any
5 other provision of law, amounts received and held by the
6 NDISF shall not be subject to sequestration or apporportion-
7 ment for the purpose of chapter 15 of title 31, United
8 States Code, or under any other authority.

9 **SEC. 9. DEFINITIONS.**

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

12 (1) ACCOUNT.—The term “Account” means the
13 Catastrophe Emergency Solvency Reserve Account
14 established by the NDISF pursuant to section 6.

15 (2) BOARD.—The term “Board” means the
16 Board of Directors of the NDISF.

17 (3) MEMBER.—The term “member” means any
18 state insurance pool or private insurer that makes
19 qualified contributions to the NDISF.

20 (4) NDISF.—The term “NDISF” means the
21 National Disaster Insurance Solvency Fund estab-
22 lished under section 3.

23 (5) QUALIFIED CONTRIBUTION.—The term
24 “qualified contribution” means a contribution to the

1 NDISF in accordance with the limitations of this
2 Act.

3 (6) RARE CATASTROPHIC EVENT.—The term
4 “rare catastrophic event” means a covered peril that
5 occurs no more frequently than once every 250 years
6 that causes at least \$10,000,000,000 in insured
7 losses, except that the Board shall annually adjust
8 such amount (as it may have been previously ad-
9 justed) to provide for inflation in accordance with
10 the Consumer Price Index prepared by the Bureau
11 of Labor Statistics of the Department of Labor.

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

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