

SENATE, No. 2089

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED OCTOBER 2, 2008

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

Senator JEFF VAN DREW

District 1 (Cape May, Atlantic and Cumberland)

SYNOPSIS

The “New Jersey Consumer Catastrophe Preparedness and Protection Act”; creates “New Jersey Catastrophe Fund.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/9/2008)

1 AN ACT establishing the New Jersey Catastrophe Fund and
2 supplementing Title 17 of the Revised Statutes.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. This act shall be known and may be cited as the “New Jersey
8 Consumer Catastrophe Preparedness and Protection Act.”

9

10 2. The Legislature finds and declares that:

11 a. The exposure in New Jersey to major catastrophes is greater
12 than commonly understood, particularly catastrophes involving
13 hurricanes, earthquakes and other natural disasters.

14 b. All New Jersey residents, regardless of location, are
15 susceptible to the devastating and unpredictable consequences of
16 catastrophes, thereby necessitating a Statewide preparedness and
17 proactive program of catastrophe management.

18 c. There is a compelling State interest in maintaining a viable
19 and orderly private sector market for property insurance in this
20 State. To the extent that the private sector is unable to maintain a
21 viable and orderly market for property insurance in this State,
22 encouraging and assisting such a viable and orderly market are valid
23 and necessary exercises of the police power.

24 d. The failure of the State to properly prepare for a potential
25 catastrophe could result in a devastating impact on New Jersey
26 families, as well as the entire State’s economy.

27 e. The current approach to dealing with catastrophes is an
28 after-the-fact response model that is inadequate to protect New
29 Jersey residents from catastrophic loss. New Jersey consumers need
30 a public-private partnership which improves the means to provide
31 financial assistance to families that are victims of catastrophes,
32 enhances prevention and mitigation measures, improves recovery
33 and rebuilding processes and educates homeowners on issues
34 surrounding catastrophe management.

35 f. The result of unprecedented levels of insured losses from
36 natural catastrophes in recent years, as evidenced by Hurricane
37 Andrew, the 2004 four-storm hurricane season in Florida, tsunamis
38 in Asia, the Northridge Earthquake in California, Hurricane Wilma
39 in Florida and the most recent devastation in Louisiana, Mississippi,
40 Alabama and Texas from hurricanes Katrina and Rita, have resulted
41 in numerous insurers determining that in order to protect their solvency,
42 it is necessary for them to reduce their exposure to catastrophic
43 losses. The instability of the global reinsurance market which leads
44 to increased reinsurance costs, also caused in part by these events,
45 has also increased the pressure on insurers to reduce their exposure to
46 catastrophic loss. This pressure will result in an increase in
47 reinsurance costs and could force an increase in homeowners
48 insurance premiums.

1 g. The State of New Jersey is commonly viewed as one of the
2 states in the region that is exposed to catastrophic events. Given the
3 scope and magnitude of hurricanes Katrina and Rita, and given that
4 New Jersey is the most densely populated state in the nation and
5 because of the size of New Jersey, it is likely that at least a
6 Category 3 storm may eventually hit New Jersey and cause
7 widespread devastation throughout the State.

8 h. Mortgage lenders require reliable property insurance, and
9 the unavailability of reliable property insurance would therefore make
10 most real estate transactions impossible. In addition, the public health,
11 safety and welfare demand that structures damaged or destroyed in
12 a catastrophe be repaired or reconstructed as soon as possible.
13 Therefore, the potential inability of the private sector insurance and
14 reinsurance markets to maintain sufficient capacity to enable
15 residents of this State to obtain property insurance coverage in the
16 private sector endangers the economy of the State and endangers the
17 public health, safety and welfare. Accordingly, State action to
18 correct for this inability of the private sector constitutes a valid and
19 necessary public and governmental purpose.

20 i. Insurer insolvencies and financial impairments resulting
21 from catastrophes in New Jersey or in other states could have
22 serious consequences for consumers in New Jersey. Relying on the
23 New Jersey Property-Liability Insurance Guaranty Association or
24 other state guaranty funds and associations is insufficient to protect
25 consumers.

26 j. A public-private partnership that strengthens and builds on
27 the existing private insurance market through the creation of a State
28 catastrophe fund will result in additional insurance capacity and
29 greater market stability to ameliorate the current dangers to the
30 State's economy and to the public health, safety and welfare.

31 k. Successful public-private partnerships recognize that
32 government has an important and appropriate role to take
33 reasonable steps to enhance the ability of the private sector to meet
34 critical public needs.

35 l. It is essential to the efficient functioning of a State program
36 to increase insurance capacity that revenues received by a State
37 catastrophe fund be exempt from State and federal taxation. It is
38 therefore the intent of the Legislature that this program be
39 structured as a State trust fund under the direction and control of the
40 State Treasurer and operate exclusively for the purpose of
41 protecting and advancing the State's interest in improving
42 catastrophe preparedness, increasing insurance capacity and
43 improving market stability in this State.

44 m. Investment income earned from the catastrophe fund shall be
45 distributed to various municipal organizations by the State
46 Treasurer in consultation with the New Jersey Catastrophe Fund
47 Advisory Council for the purposes of State disaster preparedness
48 programs as specified in this act.

1 n. The fund shall be operated on an actuarially sound basis,
2 taking into account all costs associated with the transfer of risk, and
3 operated in a way to protect policyholders and taxpayers against
4 subsidy.

5 o. It is therefore appropriate for the Legislature to better
6 prepare and protect New Jersey residents from the perils of
7 catastrophes by creating a public-private partnership to protect the
8 economic integrity of the homeowners insurance market; ensure
9 proper consumer education; improve rebuilding and recovery
10 processes; and recognize the need for continuous recognition and
11 implementation of improved catastrophe management programs.

12

13 3. As used in this act:

14 "Actuarially indicated" means, with respect to premiums paid by
15 insurers for reimbursement provided by the fund, an amount
16 determined according to principles of actuarial science to be
17 adequate, but not excessive, in the aggregate, to pay current and future
18 obligations and expenses of the fund, including additional amounts
19 if needed to retire bonds issued under section 7 of this act, and
20 determined according to principles of actuarial science to reflect
21 each insurer's relative exposure to losses from covered events.

22 "Authority" means the New Jersey Economic Development
23 Authority.

24 "Commissioner" means the Commissioner of Banking and
25 Insurance, unless otherwise specified.

26 "Council" means the New Jersey Catastrophe Fund Advisory
27 Council established pursuant to section 9 of this act.

28 "Covered event" means:

29 (1) All storms, regardless of quantity, that occur in a calendar
30 year, that are declared to be hurricanes by the National Hurricane
31 Center, which storms cause insured losses in this State;

32 (2) All earthquakes, regardless of quantity, that occur in a
33 calendar year, that are declared to be earthquakes by the United
34 States Geological Survey, which earthquakes cause insured losses
35 in this State; and

36 (3) All ice storms, regardless of quantity, that occur in a calendar
37 year, which storms cause insured losses in this State.

38 "Covered loss" means loss under a covered policy resulting from
39 a covered event.

40 "Covered policy" means any insurance policy covering
41 residential property in this State, including, but not limited to, any
42 homeowner's, mobile home owner's, farm owner's, condominium
43 association, condominium unit owner's, tenant's, or apartment
44 building policy, or any other policy covering a residential structure
45 or its contents issued by any authorized insurer, including the New
46 Jersey Insurance Underwriting Association, created pursuant to P.L.
47 1968, c.129 (C.17:37A-1 et seq.), or any other similar entity created
48 pursuant to law. "Covered policy" does not include any reinsurance
49 agreement or any policy that excludes coverage for covered losses.

1 "Fund" means the New Jersey Catastrophe Fund created pursuant
2 to section 4 of this act.

3 "Losses" means direct incurred losses under covered policies in a
4 calendar year, including losses attributable to additional living
5 expense coverage not to exceed 40 percent of the insured value of a
6 residential structure or its contents, and excluding loss adjustment
7 expenses and fair rental value losses and business interruption
8 losses.

9 "Reinsurance" means coverage whereby a reinsurer, also known
10 as "assuming company," for consideration known as the
11 "reinsurance premium," agrees to indemnify an insurer known as
12 the "ceding company," or a state catastrophe fund or both, for all or
13 a portion of losses incurred by the ceding company or fund, also
14 known as amounts above or below the retention, if applicable. The
15 reinsurer accepts a defined element of underwriting and timing risk
16 on policies covered by the contract. The essential ingredient of a
17 reinsurance contract is the transfer of risk from the ceding company
18 or fund, or both, to the reinsurer.

19 "Retention" means the minimum amount of losses below which
20 an insurer is not entitled to reimbursement from the fund. An
21 insurer's retention shall be calculated as follows:

22 (1) The Treasurer shall calculate and report to each insurer the
23 retention multiples for each year. For the contract year beginning in
24 2009, the retention multiple shall be equal to \$2.0 billion, divided
25 by the total estimated reimbursement premium for the contract year;
26 for subsequent years, the retention multiple shall be equal to \$2.0
27 billion adjusted to reflect the percentage growth in insured values
28 for covered policies since 2009, divided by the total estimated
29 reimbursement premium for the contract year.

30 (2) The retention multiple determined under paragraph (1) of this
31 definition shall be adjusted to reflect the coverage level elected by
32 the insurer. For insurers electing the 90-percent coverage level, the
33 adjusted retention multiple is 100 percent of the amount determined
34 under paragraph (1). For insurers electing the 75-percent coverage
35 level, the retention multiple is 120 percent of the amount
36 determined under paragraph (1). For insurers electing the 45-
37 percent coverage level, the adjusted retention multiple is 200
38 percent of the amount determined under paragraph (1).

39 (3) An insurer shall determine its provisional retention by
40 multiplying its provisional reimbursement premium by the
41 applicable adjusted retention multiple, and shall determine its actual
42 retention by multiplying its actual reimbursement premium by the
43 applicable adjusted retention multiple.

44 (4) To the extent that the New Jersey Catastrophe Fund collects
45 federal backstop or reinsurance monies designed to provide
46 protection above the financial capacity of the fund as provided by
47 this act, the insurer elected coverage levels shall automatically
48 become 100 percent.

1 4. a. There is created the New Jersey Catastrophe Fund to be
2 administered by the Treasurer. Moneys in the fund may not be
3 expended, loaned, or appropriated except to pay obligations of the
4 fund arising out of reimbursement contracts entered into pursuant to
5 section 5 of this act; payment of debts including obligations arising
6 out of bonds issued under section 7 of this act; costs of the
7 mitigation program under section 8 of this act; costs of procuring
8 reinsurance; and costs of administration of the fund.

9 b. The Treasurer shall invest the moneys in the fund. Earnings
10 from all investments shall be retained in the fund, except that the
11 Treasurer, in consultation with the council, shall distribute up to 35
12 percent of investment income earned from the fund, but not less
13 than 10 percent in any one year beginning with the second year of
14 the fund's operation or the second year following events for which
15 the fund is triggered to cover losses as defined in section 3 of this
16 act, to various municipal and county organizations for catastrophe
17 loss prevention, catastrophe preparedness, loss mitigation and
18 consumer and public catastrophe education programs as identified
19 below:

20 (1) \$1 million to disaster prevention and mitigation programs
21 administered by volunteer firefighters;

22 (2) \$2 million for programs administered by professional
23 firefighters;

24 (3) \$2 million for programs administered by the Division of the
25 State Police;

26 (4) \$2 million for local law enforcement;

27 (5) \$1 million to county and municipal organizations;

28 (6) \$1 million for affordable housing programs to mitigate and
29 retrofit homes from catastrophes; and

30 (7) \$1 million for flood plain management, flood hazard
31 mitigation, preparedness, warning and recovery programs.

32 c. The Treasurer may employ or contract with staff and
33 professionals as the Treasurer deems necessary for the
34 administration of the fund.

35

36 5. a. The Treasurer shall enter into an annual, calendar year
37 contract with each insurer writing covered policies in this State to
38 provide to the insurer the reimbursement described in subsection b.
39 of this section, in exchange for the reimbursement premium paid to
40 the fund pursuant to section 6 of this act. Insurers writing covered
41 policies shall enter into the contract as a condition of doing business
42 in this State.

43 b. (1) The contract shall contain a promise by the Treasurer to
44 reimburse the insurer for 45 percent, 75 percent, or 90 percent of its
45 losses from each covered loss in excess of the insurer's retention,
46 plus 10 percent of the reimbursed losses to cover loss adjustment
47 expenses, subject to the provisions of paragraph (4) of the definition
48 of retention in section 3 of this act.

1 (2) The insurer shall elect one of the payment percentages
2 specified in this subsection and may, upon renewal of a
3 reimbursement contract:

4 (a) Elect a lower payment percentage if no bonds issued under
5 subsection a. of section 7 of this act after a covered event are
6 outstanding; or

7 (b) Elect a higher payment percentage if it pays to the fund an
8 actuarially appropriate equalization charge as determined by the
9 Treasurer.

10 (3) All members of an insurer group shall elect the same
11 payment percentage. The New Jersey Insurance Underwriting
12 Association or any other similar plan or other residual market entity
13 shall elect the 90 percent payment percentage.

14 (4) The contract shall provide that reimbursement amounts shall
15 not be reduced by reinsurance paid or payable to the insurer from
16 other sources; however, recoveries from these other sources, taken
17 together with reimbursements under the contract, may not exceed
18 100 percent of the insurer's losses from covered events. If those
19 recoveries and reimbursements exceed 100 percent of the insurer's
20 losses from covered events, and if there is no agreement between
21 the insurer and the reinsurer to the contrary, any amount in excess
22 of 100 percent of the insurer's losses shall be returned to the fund.

23 c. The contract shall also provide that the obligation of the
24 Treasurer with respect to all contracts covering a particular year
25 shall not exceed the current balance of the fund, together with the
26 maximum amount that the Treasurer is able to raise through the
27 issuance of bonds under section 7 of this act. The contract shall
28 require the Treasurer to annually notify insurers of the fund's
29 anticipated borrowing capacity for the next year, the current balance
30 of the fund, and the insurer's estimated share of total reimbursement
31 to be paid to the fund. For all regulatory and reinsurance purposes,
32 an insurer may calculate its projected payout from the fund as its
33 share of the total fund premium multiplied by the sum of current
34 fund balance and bonding capacity as reported under this
35 subsection. In May and October of each year, the Treasurer shall
36 publish in the New Jersey Register a statement of the fund's
37 anticipated borrowing capacity and the current balance of the fund.

38 d. (1) The contract shall require the insurer to report the
39 insurer's losses from covered events for the year to the Treasurer on
40 December 31 of each year, and quarterly thereafter. The contract
41 shall require the Treasurer to determine and pay, as soon as
42 practicable after receiving these reports, the initial amount of
43 reimbursement due and adjustments to this amount based on later
44 loss information. The adjustments to reimbursement amounts shall
45 require the Treasurer to pay, or the insurer to return, amounts
46 reflecting the most recent calculation of losses.

47 (2) If the Treasurer determines that the current balance of the
48 fund, together with the amount that the Treasurer determines that it
49 is possible to raise through bonds issued under section 7 of this act,

1 are insufficient to pay reimbursement to all insurers at the level
2 promised in the contract, the Treasurer shall:

3 (a) Pay to each insurer the amount of reimbursement it is owed,
4 up to an amount equal to the projected payout determined under
5 subsection b. of this section; and

6 (b) Thereafter, establish the prorated reimbursement level at the
7 highest level for which any remaining fund balance or bond
8 proceeds are sufficient.

9 e. The contract shall provide that if an insurer demonstrates to
10 the Treasurer that it is likely to qualify for reimbursement under the
11 contract, and demonstrates to the Treasurer that the immediate
12 receipt of moneys is likely to prevent the insurer from becoming
13 insolvent, the Treasurer shall loan the insurer, at market interest
14 rates, the amounts necessary to maintain the solvency of the insurer,
15 up to 50 percent of the Treasurer's estimate of the reimbursement
16 due the insurer. The insurer's reimbursement shall be reduced by an
17 amount equal to the amount of the loan and interest thereon.

18 f. The contract shall provide that in the event of the insolvency
19 of an insurer, the fund shall pay directly to the New Jersey
20 Property-Liability Insurance Guaranty Association, established
21 pursuant to P.L.1974, c.17 (C.17:30A-1 et seq.), the net amount of
22 reimbursement moneys owed to the insurer. As used in this
23 subsection, the "net amount of reimbursement moneys" means that
24 amount which remains after reimbursement for preliminary or
25 duplicate payments owed to private reinsurers or other reinsurance
26 payments inuring to private reinsurers that satisfy statutory or
27 contractual obligations of the insolvent insurer attributable to
28 covered events to those reinsurers. Private reinsurers shall be
29 reimbursed or otherwise paid prior to payment to the New Jersey
30 Property-Liability Insurance Guaranty Association, notwithstanding
31 any law to the contrary. The New Jersey Property-Liability
32 Insurance Guaranty Association shall pay all claims up to the
33 maximum amount permitted by law. Thereafter, any remaining
34 moneys shall be paid pro rata to claims not fully satisfied.

35 g. The Treasurer shall adopt the initial contract form no later
36 than September 1, 2009 and shall adopt the initial premium formula
37 no later than October 1, 2009. Initial reimbursement contracts
38 under this act shall be entered into no earlier than November 1,
39 2009 and no later than December 15, 2009.

40
41 6. a. Each reimbursement contract shall require the insurer to
42 annually pay to the fund an actuarially indicated premium for the
43 reimbursement promised. Premiums shall be determined consistent
44 with the Casualty Actuarial Society Statement of Principles
45 Regarding Property and Casualty Insurance Ratemaking. Further,
46 all insurers writing policies in this State shall complete a thorough
47 actuarial review of their property insurance rates associated with
48 catastrophe coverage for perils included within the scope of this act
49 and which are consistent with the Casualty Actuarial Society

1 Statement of Principles Regarding Property and Casualty Insurance
2 Ratemaking, and shall adjust their rates to reflect all reinsurance
3 expense savings and reductions in loss costs due to the provisions
4 of this act. Each insurer shall provide an actuarial certification to
5 the New Jersey Department of Banking and Insurance that it has
6 complied with provisions of this subsection.

7 b. The Treasurer shall select an independent consultant to
8 develop a formula for determining the actuarially indicated
9 premium to be paid to the fund. The formula shall specify, for each
10 zip code or other limited geographical area, the amount to be paid
11 by an insurer for each \$1,000 of insured value under covered
12 policies in that zip code or other area. In establishing premiums, the
13 Treasurer shall consider the coverage level elected under subsection
14 b. of section 5 of this act and any factors that tend to enhance the
15 actuarial sophistication of ratemaking for the fund, including
16 deductibles, type of construction, type of coverage provided,
17 relative concentration of risks, a factor providing for more rapid
18 cash buildup in the fund until the fund capacity for a single covered
19 season is fully funded and other factors determined by the Treasurer
20 to be appropriate. The Treasurer may, at any time, revise the
21 formula pursuant to the procedure provided in this subsection.

22 c. No later than September 1 of each year, each insurer shall
23 notify the Treasurer of its insured values under covered policies by
24 zip code, as of June 30 of that year. On the basis of these reports,
25 the Treasurer shall calculate the premium due from the insurer,
26 based on the formula adopted under subsection b. of this section.
27 The insurer shall pay the required annual premium pursuant to a
28 periodic payment plan specified in the contract. The Treasurer shall
29 provide for payment of reimbursement premium in periodic
30 installments and for the adjustment of provisional premium
31 installments collected prior to submission of the exposure report to
32 reflect data in the exposure report.

33 d. All premiums paid to the fund under reimbursement
34 contracts shall be treated as premiums for approved reinsurance for
35 all accounting and regulatory purposes.

36 e. In order to provide startup moneys for the administration of
37 the fund, each insurer subject to this section shall pay to the fund an
38 advance premium payment of \$1,000 no later than January 1, 2009.
39 The commissioner shall collect the advance premium payment
40 required by this subsection on behalf of the Treasurer. The insurer
41 shall receive a credit against future premiums for the advance
42 payment.

43

44 7. a. Upon the occurrence of a covered event and a
45 determination that the moneys in the fund are or will be insufficient
46 to pay reimbursement at the levels promised in the reimbursement
47 contracts, the Treasurer, upon authorization of the Governor, shall
48 enter into agreements with the New Jersey Economic Development
49 Authority for the issuance of bonds for the benefit of the fund.

- 1 b. Any agreement entered into or any payments made or to be
2 made thereunder may be assigned and pledged by the authority as
3 security for its bonds notes, or other obligations.
- 4 c. Any agreements shall provide that the obligation of the
5 Treasurer or of the State to fund or to pay the amounts therein
6 provided for shall not constitute a debt of the State within the
7 meaning of Article VIII of the New Jersey Constitution or any other
8 constitutional or statutory provision if the authority assigns or
9 pledges the service contract payments as security for its bonds,
10 notes, or other obligations, and shall be deemed executory only to
11 the extent monies are available and then no liability shall be
12 incurred by the State beyond the monies available for that purpose,
13 and that such obligation is subject to annual appropriations by the
14 Legislature.
- 15 d. Any agreement entered into pursuant to this section shall
16 provide for State commitments to provide annually to the authority
17 a sum or sums, upon terms and conditions as determined to be
18 appropriate by the Treasurer, to fund the principal, interest, or other
19 related payments required for any bonds, notes, or other obligations
20 of the authority issued pursuant to this section.
- 21 e. To obtain funds for the purposes of this section, the
22 authority shall have power from time to time to issue negotiable
23 bonds or notes. Unless the context clearly indicates otherwise,
24 whenever the word “bond” or “bonds” are used in this section, those
25 words shall include a note or notes of the authority.
- 26 f. The State of New Jersey hereby covenants with the
27 purchasers, holders, and owners from time to time of the bonds of
28 the authority issued pursuant to this section that it will not repeal,
29 revoke, rescind, modify or amend the provisions of this section
30 which relate to the making of annual agreement payments to the
31 authority with respect to those bonds so as to limit, impair or
32 impede the rights and remedies granted to bondholders under “The
33 New Jersey Economic Development Authority Act,” P.L.1974, c.80
34 (C.34:1B-1 et seq.) or otherwise diminish the security pledged to
35 the purchasers, holders, and owners or significantly impair the
36 prospect of payment of any bond.
- 37 g. If the Treasurer determines that the amount of revenue
38 produced under section 6 of this act is insufficient to fund bonds to
39 pay reimbursement at the levels promised in the reimbursement
40 contracts, the Treasurer shall direct the commissioner to levy an
41 emergency assessment on direct premiums for all property and
42 casualty lines of business in this State, except for policies written
43 under the National Flood Insurance Program, medical malpractice,
44 workers’ compensation and accident and health insurance. The
45 assessment shall be specified as a percentage of future premium
46 collections and is subject to annual adjustments by the Treasurer to
47 reflect changes in premiums subject to assessments collected under
48 this subsection in order to meet debt obligations. The same
49 percentage shall apply to all policies in lines of business subject to

1 the assessment issued or renewed during the 12-month period
2 beginning on the effective date of the assessment. A premium is
3 not subject to an annual assessment under this subsection in excess
4 of six percent of premium with respect to obligations arising out of
5 losses attributable to any one contract year, and a premium is not
6 subject to an aggregate annual assessment under this subsection in
7 excess of 10 percent of premium. An annual assessment under this
8 subsection shall continue until the bonds issued with respect to
9 which the assessment was imposed are no longer outstanding,
10 including any bonds the proceeds of which were used to refund the
11 bonds, unless adequate provision has been made for the payment of
12 the bonds under the documents authorizing issuance of the bonds.
13 With respect to each insurer collecting premiums that are subject to
14 the assessment, the insurer shall collect the assessment at the same
15 time as it collects the premium payment for each policy and shall
16 remit the assessment collected to the fund or authority as provided
17 in the order issued by the commissioner. The commissioner shall
18 verify the accurate and timely collection and remittance of
19 emergency assessments and shall maintain reports and report his
20 findings to the Treasurer. Each insurer collecting assessments shall
21 provide the information with respect to premiums and collections as
22 may be required by the commissioner to enable him to monitor and
23 verify compliance with this subsection.

24

25 8. a. The Treasurer may procure reinsurance from licensed
26 reinsurers for the purpose of maximizing the capacity of the fund.

27 b. In each fiscal year in which there are no outstanding
28 obligations of the fund, the Legislature shall appropriate from the
29 investment income of the fund an amount not less than 10 percent
30 and not more than 35 percent of the investment income from the
31 prior fiscal year for the purpose of providing funding for local
32 governments, State agencies, public and private educational
33 institutions, and nonprofit organizations to support programs
34 including, but not limited to "first responders," intended to improve
35 catastrophe preparedness, prevent and reduce potential losses from
36 a covered loss, provide research into means to prevent and reduce
37 these losses, educate or inform the public as to means to reduce
38 losses from covered events, assist the public in determining the
39 appropriateness of particular upgrades to structures or in the
40 financing of those upgrades, providing funding for the enforcement
41 of catastrophe appropriate building codes, or protect local
42 infrastructure from potential damage from a covered loss. Moneys
43 shall first be available for appropriation pursuant to this subsection
44 in fiscal year 2010. Moneys in excess of the 10 percent specified in
45 this subsection shall not be available for appropriation under this
46 subsection if the Treasurer determines that the appropriation of
47 investment income from the fund would jeopardize the actuarial
48 soundness of the fund.

1 c. The Treasurer may allow insurers to comply with reporting
2 requirements and reporting format requirements using alternative
3 methods of reporting if the proper administration of the fund is not
4 impaired as a result and if the alternative methods produce data that
5 is consistent for the purposes of this act.

6 d. In order to assure the equitable operation of the fund, the
7 Treasurer may impose a reasonable fee on an insurer to recover
8 costs involved in reprocessing inaccurate, incomplete, or untimely
9 exposure data submitted by the insurer.

10
11 9. a. There is established in, but not of, the Department of
12 Banking and Insurance, the New Jersey Catastrophe Fund Advisory
13 Council. The council shall consist of 13 members, appointed by the
14 Governor, after consultation with the Speaker of the General
15 Assembly and the President of the Senate, and with the advice and
16 consent of the Senate. Each of these members shall be appointed
17 for a term of three years, except that, of the members first
18 appointed, four shall serve for terms of one year, four shall serve
19 for terms of two years and five shall serve for terms of three years.
20 Of these members, one shall be an actuary, one shall be a
21 meteorologist, one shall be an engineer, one shall be a
22 representative of insurers, one shall be a representative of insurance
23 producers, one shall be a representative of reinsurers, one shall be a
24 consumer representative, one shall be a representative of organized
25 labor, one shall be a representative of law enforcement, one shall be
26 a representative of firefighters, one shall be a representative, ex
27 officio from the Division of Codes and Standards in the Department
28 of Community Affairs, one shall be a representative of the State
29 Office of Emergency Management, and one shall be a member of
30 the public at large.

31 b. A majority of the membership of the council shall constitute
32 a quorum for the transaction of council business. Action may be
33 taken and motions and resolutions adopted by the council at any
34 meeting thereof by the affirmative vote of a majority of the full
35 membership of the council.

36 c. The council shall meet regularly as it may determine, and
37 shall also meet at the call of the commissioner.

38 d. The council shall appoint a chairperson from among its
39 members and other officers as may be necessary. The council may,
40 within the limits of any funds appropriated or otherwise made
41 available to it for this purpose, appoint any staff or hire experts as it
42 may require.

43 e. Members of the council shall serve without compensation,
44 but the council may, within the limits of funds appropriated or
45 otherwise made available, reimburse its members for necessary
46 expenses incurred in the discharge of their official duties.

47 f. In addition to providing the Treasurer with information and
48 advice in connection with his duties with respect to the fund

1 generally, the council shall be specifically charged with developing
2 prevention and mitigation standards to include:

3 (1) The development and implementation of State mandated
4 building codes appropriate for the risk, with no allowance for
5 weaker codes to be adopted by local units;

6 (2) Adequate enforcement of risk appropriate building codes;

7 (3) Building materials that prevent or significantly reduce
8 potential damage from the natural or manmade covered loss;

9 (4) Building methods that prevent or significantly reduce the
10 potential damage from the natural or manmade covered loss; and

11 (5) Focus on prevention and mitigation for any substantially
12 damaged structure;

13 as well as developing and recommending ideas that will aid in the
14 recovery, rebuilding and renewal process, and in analyzing and
15 developing ways to continuously improve the administration and
16 purpose of the fund.

17 g. The council shall also analyze, study and develop actuarially
18 appropriate insurance discounts to be offered to individuals who
19 perform mitigation and prevention improvements to structures. The
20 council shall report its findings to the Treasurer, who shall, in
21 consultation with the commissioner, implement those discounts.

22 h. The Treasurer shall consider, and to the extent possible
23 implement, the findings of the council, and annually report to the
24 Legislature on any and all recommendations of the council that are
25 consistent with the purposes and goals of this act.

26

27 10. Upon the creation of a federal or multi-state catastrophic
28 insurance or reinsurance program intended to serve purposes similar
29 to the purposes of the fund created by this act, the Treasurer shall
30 promptly make recommendations to the Legislature as to how the
31 fund can coordinate with the federal or multi-state program and for
32 any other actions as the Treasurer determines are appropriate under
33 the circumstances.

34

35 11. The fund and the duties of the agency referred to as the New
36 Jersey Catastrophe Fund Advisory Council under this act may be
37 terminated only by law. Upon termination of the fund, all assets of
38 the fund shall be deposited in the State General Fund.

39

40 12. The Treasurer shall, pursuant to the "Administrative
41 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules
42 necessary to implement the provisions of this act. The rules
43 promulgated by the Treasurer shall: conform to the Legislature's
44 specific intent in establishing the fund as expressed in section 2 of
45 this act; enhance the fund's potential ability to respond to claims for
46 covered events; contain general provisions so that they may be
47 applied with reasonable flexibility so as to accommodate insurers in
48 situations of an unusual nature or where undue hardship may result,
49 except that this flexibility may not in any way impair, override,

1 supersede or constrain the public purpose of the fund; and be
2 consistent with sound insurance practices.

3

4 13. This act shall take effect immediately.

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6

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STATEMENT

8

9 This bill, the “New Jersey Consumer Catastrophe Preparedness
10 and Protection Act,” establishes the New Jersey Catastrophe Fund
11 to help pay covered residential property damage insurance claims in
12 the aftermath of a true catastrophe which affects New Jersey
13 homeowners and their property/casualty insurers. The fund, which
14 will consist of premiums paid by insurers, and bond revenues, will
15 provide a backstop for companies to insure against covered
16 catastrophic losses to avoid the collapse of the property insurance
17 market in the wake of a major natural disaster or other catastrophe
18 in the State, as specified by the bill.

19 Premiums will be set by the Treasurer, who shall select an
20 independent consultant to develop a formula for determining the
21 actuarially indicated premium. The Treasurer will calculate
22 premiums based upon the insured values under the insurer’s
23 covered policies, as reported annually to the Treasurer. Premiums
24 shall be determined consistent with the Casualty Actuarial Society
25 Statement of Principles Regarding Property and Casualty Insurance
26 Ratemaking. Further, all insurers writing policies in this State shall
27 complete a thorough actuarial review of their property insurance
28 rates associated with catastrophe coverage for perils included within
29 the scope of the bill and which are consistent with the Casualty
30 Actuarial Society Statement of Principles Regarding Property and
31 Casualty Insurance Ratemaking, and shall adjust their rates to
32 reflect all reinsurance expense savings and reductions in loss costs
33 due to the provisions of the bill.

34 In exchange for the reimbursement premium paid to the fund by
35 insurers, the State Treasurer will enter into a contract with each
36 insurer, promising to reimburse the insurer for a percentage of its
37 losses in excess of the insurer’s retention, plus 10% of that amount
38 to cover loss adjustment expenses. The insurer will select the
39 reimbursement percentage, at 45%, 75% or 90%, which may be
40 adjusted under certain circumstances. Reimbursement amounts
41 from the fund shall not be reduced by reinsurance paid or payable to
42 the insurer, but the insurer’s total recovery shall not exceed 100%
43 of the insurer’s losses from covered events, and any excess shall be
44 returned to the fund, unless there is an agreement to the contrary.

45 The bill further authorizes the issuance of bonds by the New
46 Jersey Economic Development Authority if moneys in the fund are
47 insufficient to pay reimbursement at the levels agreed to in the
48 reimbursement contracts, upon the occurrence of a covered event.
49 The Treasurer may procure reinsurance from licensed reinsurers to

1 maximize the fund's capacity, and may borrow from other market
2 sources at prevailing interest rates.

3 The bill also requires, in fiscal years in which there are no
4 outstanding obligations of the fund, an annual appropriation of up
5 to 35% of the fund's investment income for the purpose of
6 providing funding for local governments, State agencies, public and
7 private educational institutions, and nonprofit organizations to
8 support programs including, but not limited to "first responders,"
9 intended to improve catastrophe preparedness, prevent and reduce
10 potential losses from a covered loss, provide research into means to
11 prevent and reduce such losses, educate or inform the public as to
12 means to reduce losses from covered events, assist the public in
13 determining the appropriateness of particular upgrades to structures
14 or in the financing of those upgrades, providing funding for the
15 enforcement of catastrophe appropriate building codes, or protect
16 local infrastructure from potential damage from a covered loss.

17 The "New Jersey Catastrophe Fund Advisory Council" is
18 established in, but not of, the Department of Banking and Insurance
19 to assist the Treasurer with the administration of the fund and to
20 develop prevention and mitigation standards, including:

21 (1) the development and implementation of State mandated
22 building codes appropriate for the risk, with no allowance for
23 weaker codes to be adopted by local units;

24 (2) adequate enforcement of risk appropriate building codes;

25 (3) building materials that prevent or significantly reduce
26 potential damage from the natural or manmade covered loss;

27 (4) building methods that prevent or significantly reduce the
28 potential damage from the natural or manmade covered loss; and

29 (5) focus on prevention and mitigation for any substantially
30 damaged structure;

31 as well as developing and recommending ideas that will aid in the
32 recovery, rebuilding and renewal process, and in analyzing and
33 developing ways to continuously improve the administration and
34 purpose of the fund.

35 In anticipation of the creation of a federal or multi-state
36 catastrophic insurance fund or reinsurance program, the bill
37 requires the Treasurer, following the creation of such fund or
38 program, to make recommendations to the Legislature as to how the
39 fund can coordinate with the federal or multi-state program and for
40 such other actions as the Treasurer determines are appropriate under
41 the circumstances.

42 The fund and the duties of the agency referred to as the New
43 Jersey Catastrophe Fund Advisory Council under this act may be
44 terminated only by law. Upon termination of the fund, all assets of
45 the fund shall be deposited in the State General Fund.