

**ASSEMBLY, No. 2198**

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**STATE OF NEW JERSEY**

**213th LEGISLATURE**

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INTRODUCED FEBRUARY 25, 2008

**Sponsored by:**

**Assemblyman HERB CONAWAY, JR.**

**District 7 (Burlington and Camden)**

**Assemblywoman PAMELA R. LAMPITT**

**District 6 (Camden)**

**Co-Sponsored by:**

**Assemblyman Diegnan, Assemblywoman Oliver and Assemblyman Giblin**

**SYNOPSIS**

The “New Jersey Consumer Catastrophe Preparedness and Protection Act”; creates “New Jersey Catastrophe Fund”; appropriates \$10,000,000.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 9/16/2008)**

1 AN ACT establishing the New Jersey Catastrophe Fund,  
2 supplementing Title 17 of the Revised Statutes and making an  
3 appropriation therefor.

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

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

10  
11 2. The Legislature finds and declares that:

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

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

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

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

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

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

1 reinsurance costs and could force an increase in homeowners  
2 insurance premiums.

3 g. The State of New Jersey is commonly viewed as one of the  
4 states in the region that is exposed to catastrophic events. Given the  
5 scope and magnitude of hurricanes Katrina and Rita, and given that  
6 New Jersey is the most densely populated state in the nation and  
7 because of the size of New Jersey, it is likely that a Category 3 or  
8 better storm could devastate the State.

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

21 i. Insurer insolvencies and financial impairments resulting from  
22 Hurricane Andrew and other events in other states demonstrate that  
23 many property insurers have not collected and retained premiums  
24 sufficient to maintain reserves, surplus and reinsurance in amounts  
25 to enable the insurers to pay all claims in full in the event of a major  
26 catastrophe. Consequently, these extraterritorial insolvencies and  
27 financial pressures may serve as an impediment to New Jersey's  
28 preparedness for catastrophic events.

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

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

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

46 m. It is therefore appropriate for the Legislature to better  
47 prepare and protect New Jersey residents from the perils of  
48 catastrophes by creating a public-private partnership to protect the

1 economic integrity of the homeowners insurance market; ensure  
2 proper consumer education; improve rebuilding and recovery  
3 processes; and recognize the need for continuous recognition and  
4 implementation of improved catastrophe management programs.

5

6 3. As used in this act:

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

15 "Authority" means the New Jersey Economic Development  
16 Authority.

17 "Commissioner" means the Commissioner of Banking and  
18 Insurance, unless otherwise specified.

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

21 "Covered event" means:

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

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

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

31 "Covered loss" means loss under a covered policy resulting from  
32 a covered event.

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

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

45 "Losses" means direct incurred losses under covered policies in a  
46 calendar year, including losses attributable to additional living  
47 expense coverage not to exceed 40 percent of the insured value of a  
48 residential structure or its contents, and excluding loss adjustment

1 expenses and fair rental value losses and business interruption  
2 losses.

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

6 (1) The Treasurer shall calculate and report to each insurer the  
7 retention multiples for each year. For the contract year beginning in  
8 2009, the retention multiple shall be equal to \$2.0 billion, divided  
9 by the total estimated reimbursement premium for the contract year;  
10 for subsequent years, the retention multiple shall be equal to \$2.0  
11 billion adjusted to reflect the percentage growth in insured values  
12 for covered policies since 2009, divided by the total estimated  
13 reimbursement premium for the contract year.

14 (2) The retention multiple determined under paragraph (1) of this  
15 definition shall be adjusted to reflect the coverage level elected by  
16 the insurer. For insurers electing the 90-percent coverage level, the  
17 adjusted retention multiple is 100 percent of the amount determined  
18 under paragraph (1). For insurers electing the 75-percent coverage  
19 level, the retention multiple is 120 percent of the amount  
20 determined under paragraph (1). For insurers electing the 45-  
21 percent coverage level, the adjusted retention multiple is 200  
22 percent of the amount determined under paragraph (1).

23 (3) An insurer shall determine its provisional retention by  
24 multiplying its provisional reimbursement premium by the  
25 applicable adjusted retention multiple, and shall determine its actual  
26 retention by multiplying its actual reimbursement premium by the  
27 applicable adjusted retention multiple.

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

33  
34 4. There is created the New Jersey Catastrophe Fund to be  
35 administered by the Treasurer. Moneys in the fund may not be  
36 expended, loaned, or appropriated except to pay obligations of the  
37 fund arising out of reimbursement contracts entered into pursuant to  
38 section 5 of this act; payment of debts including obligations arising  
39 out of bonds issued under section 7 of this act; costs of the  
40 mitigation programs under section 8 of this act; costs of procuring  
41 reinsurance; and costs of administration of the fund. The Treasurer  
42 shall invest the moneys in the fund. Except as otherwise provided  
43 in this act, earnings from all investments shall be retained in the  
44 fund. The Treasurer may employ or contract with such staff and  
45 professionals, as the Treasurer deems necessary for the  
46 administration of the fund.

1       5. a. The Treasurer shall enter into an annual, calendar year  
2 contract with each insurer writing covered policies in this State to  
3 provide to the insurer the reimbursement described in subsection b.  
4 of this section, in exchange for the reimbursement premium paid to  
5 the fund pursuant to section 6 of this act. Insurers writing covered  
6 policies shall enter into the contract as a condition of doing business  
7 in this State.

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

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

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

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

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

27       (4) The contract shall provide that reimbursement amounts shall  
28 not be reduced by reinsurance paid or payable to the insurer from  
29 other sources; however, recoveries from such other sources, taken  
30 together with reimbursements under the contract, may not exceed  
31 100 percent of the insurer's losses from covered events. If those  
32 recoveries and reimbursements exceed 100 percent of the insurer's  
33 losses from covered events, and if there is no agreement between  
34 the insurer and the reinsurer to the contrary, any amount in excess  
35 of 100 percent of the insurer's losses shall be returned to the fund.

36       c. The contract shall also provide that the obligation of the  
37 Treasurer with respect to all contracts covering a particular year  
38 shall not exceed the current balance of the fund, together with the  
39 maximum amount that the Treasurer is able to raise through the  
40 issuance of bonds under section 7 of this act. The contract shall  
41 require the Treasurer to annually notify insurers of the fund's  
42 anticipated borrowing capacity for the next year, the current balance of  
43 the fund, and the insurer's estimated share of total reimbursement to  
44 be paid to the fund. For all regulatory and reinsurance purposes, an  
45 insurer may calculate its projected payout from the fund as its share  
46 of the total fund premium multiplied by the sum of current fund  
47 balance and bonding capacity as reported under this subsection. In  
48 May and October of each year, the Treasurer shall publish in the

1 New Jersey Register a statement of the fund's anticipated borrowing  
2 capacity and the current balance of the fund.

3 d. (1) The contract shall require the insurer to report the  
4 insurer's losses from covered events for the year to the Treasurer on  
5 December 31 of each year, and quarterly thereafter. The contract  
6 shall require the Treasurer to determine and pay, as soon as  
7 practicable after receiving these reports, the initial amount of  
8 reimbursement due and adjustments to this amount based on later  
9 loss information. The adjustments to reimbursement amounts shall  
10 require the Treasurer to pay, or the insurer to return, amounts  
11 reflecting the most recent calculation of losses.

12 (2) If the Treasurer determines that the current balance of the  
13 fund, together with the amount that the Treasurer determines that it  
14 is possible to raise through bonds issued under section 7 of this act,  
15 are insufficient to pay reimbursement to all insurers at the level  
16 promised in the contract, the Treasurer shall:

17 (a) Pay to each insurer the amount of reimbursement it is owed,  
18 up to an amount equal to the projected payout determined under  
19 subsection c. of this section; and

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

23 e. The contract shall provide that if an insurer demonstrates to  
24 the Treasurer that it is likely to qualify for reimbursement under the  
25 contract, and demonstrates to the Treasurer that the immediate  
26 receipt of moneys is likely to prevent the insurer from becoming  
27 insolvent, the Treasurer shall loan the insurer, at market interest  
28 rates, the amounts necessary to maintain the solvency of the insurer,  
29 up to 50 percent of the Treasurer's estimate of the reimbursement  
30 due the insurer. The insurer's reimbursement shall be reduced by an  
31 amount equal to the amount of the loan and interest thereon.

32 f. The contract shall provide that in the event of the insolvency  
33 of an insurer, the fund shall pay directly to the New Jersey  
34 Property-Liability Insurance Guaranty Association, established  
35 pursuant to P.L.1974, c.17 (C.17:30A-1 et seq.), the net amount of  
36 reimbursement moneys owed to the insurer. As used in this  
37 subsection, the "net amount of reimbursement moneys" means that  
38 amount which remains after reimbursement for preliminary or  
39 duplicate payments owed to private reinsurers or other reinsurance  
40 payments inuring to private reinsurers that satisfy statutory or  
41 contractual obligations of the insolvent insurer attributable to  
42 covered events to those reinsurers. Private reinsurers shall be  
43 reimbursed or otherwise paid prior to payment to the New Jersey  
44 Property-Liability Insurance Guaranty Association, notwithstanding  
45 any law to the contrary. The New Jersey Property-Liability  
46 Insurance Guaranty Association shall pay all claims up to the  
47 maximum amount permitted by law. Thereafter, any remaining  
48 moneys shall be paid pro rata to claims not fully satisfied.

1 g. The Treasurer shall adopt the initial contract form no later  
2 than September 1, 2008 and shall adopt the initial premium formula  
3 no later than October 1, 2008. Initial reimbursement contracts under  
4 this act shall be entered into no earlier than November 1, 2008 and  
5 no later than December 15, 2008.

6  
7 6. a. Each reimbursement contract shall require the insurer to  
8 annually pay to the fund an actuarially indicated premium for the  
9 reimbursement promised.

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

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

36 d. All premiums paid to the fund under reimbursement contracts  
37 shall be treated as premiums for approved reinsurance for all  
38 accounting and regulatory purposes.

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

46  
47 7. a. Upon the occurrence of a covered event and a  
48 determination that the moneys in the fund are or will be insufficient



1 to pay reimbursement at the levels promised in the reimbursement  
2 contracts, the Treasurer, upon authorization of the Governor, shall  
3 enter into agreements with the New Jersey Economic Development  
4 Authority, hereinafter the “authority” for the issuance of bonds for the  
5 benefit of the fund.

6 b. Any agreement entered into or any payments made or to be made  
7 thereunder may be assigned and pledged by the authority as security  
8 for its bonds notes, or other obligations.

9 c. Any such agreements shall provide that the obligation of the  
10 Treasurer or of the State to fund or to pay the amounts therein provided  
11 for shall not constitute a debt of the State within the meaning of Article  
12 VIII of the New Jersey Constitution or any other constitutional or  
13 statutory provision if the authority assigns or pledges the service  
14 contract payments as security for its bonds, notes, or other obligations,  
15 and shall be deemed executory only to the extent monies are available  
16 and then no liability shall be incurred by the State beyond the monies  
17 available for that purpose, and that such obligation is subject to annual  
18 appropriations by the Legislature.

19 d. Any agreement entered into pursuant to this section shall  
20 provide for State commitments to provide annually to the authority  
21 a sum or sums, upon terms and conditions as determined to be  
22 appropriate by the Treasurer, to fund the principal, interest, or other  
23 related payments required for any bonds, notes, or other obligations  
24 of the authority issued pursuant to this section.

25 e. To obtain funds for the purposes of this section, the authority  
26 shall have power from time to time to issue negotiable bonds or  
27 notes. Unless the context clearly indicates otherwise, whenever the  
28 word “bond” or “bonds” are used in this section, those words shall  
29 include a note or notes of the authority.

30 f. The State of New Jersey hereby covenants with the  
31 purchasers, holders, and owners from time to time of the bonds of  
32 the authority issued pursuant to this section that it will not repeal,  
33 revoke, rescind, modify or amend the provisions of this section  
34 which relate to the making of annual agreement payments to the  
35 authority with respect to those bonds so as to limit, impair or  
36 impede the rights and remedies granted to bondholders under “The  
37 New Jersey Economic Development Authority Act,” P.L.1974, c.80  
38 (C.34:1B-1 et seq.) or otherwise diminish the security pledged to  
39 the purchasers, holders, and owners or significantly impair the  
40 prospect of payment of any such bond.

41 g. If the Treasurer determines that the amount of revenue  
42 produced under section 6 of this act is insufficient to fund bonds to  
43 pay reimbursement at the levels promised in the reimbursement  
44 contracts, the Treasurer shall direct the commissioner to levy an  
45 emergency assessment on direct premiums for all property and  
46 casualty lines of business in this State, except for policies written  
47 under the National Flood Insurance Program, medical malpractice,  
48 workers’ compensation and accident and health insurance. The

1 assessment shall be specified as a percentage of future premium  
2 collections and is subject to annual adjustments by the Treasurer to  
3 reflect changes in premiums subject to assessments collected under  
4 this subsection in order to meet debt obligations. The same  
5 percentage shall apply to all policies in lines of business subject to  
6 the assessment issued or renewed during the 12-month period  
7 beginning on the effective date of the assessment. A premium is  
8 not subject to an annual assessment under this subsection in excess  
9 of six percent of premium with respect to obligations arising out of  
10 losses attributable to any one contract year, and a premium is not  
11 subject to an aggregate annual assessment under this subsection in  
12 excess of 10 percent of premium. An annual assessment under this  
13 subsection shall continue until the bonds issued with respect to  
14 which the assessment was imposed are no longer outstanding,  
15 including any bonds the proceeds of which were used to refund the  
16 bonds, unless adequate provision has been made for the payment of  
17 the bonds under the documents authorizing issuance of the bonds.

18 With respect to each insurer collecting premiums that are subject to  
19 the assessment, the insurer shall collect the assessment at the same  
20 time as it collects the premium payment for each policy and shall  
21 remit the assessment collected to the fund or authority as provided  
22 in the order issued by the commissioner. The commissioner shall  
23 verify the accurate and timely collection and remittance of  
24 emergency assessments and shall maintain reports and report his  
25 findings to the Treasurer. Each insurer collecting assessments shall  
26 provide the information with respect to premiums and collections as  
27 may be required by the commissioner to enable him to monitor and  
28 verify compliance with this subsection.

29

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

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

1 in fiscal year 2010. Moneys in excess of the 10 percent specified in  
2 this subsection shall not be available for appropriation under this  
3 subsection if the Treasurer determines that the appropriation of  
4 investment income from the fund would jeopardize the actuarial  
5 soundness of the fund.

6 c. The Treasurer may allow insurers to comply with reporting  
7 requirements and reporting format requirements using alternative  
8 methods of reporting if the proper administration of the fund is not  
9 impaired as a result and if the alternative methods produce data that  
10 is consistent for the purposes of this act.

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

15

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

36 b. A majority of the membership of the council shall constitute a  
37 quorum for the transaction of council business. Action may be  
38 taken and motions and resolutions adopted by the council at any  
39 meeting thereof by the affirmative vote of a majority of the full  
40 membership of the council.

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

43 d. The council shall appoint a chairperson from among its  
44 members and such other officers as may be necessary. The council  
45 may, within the limits of any funds appropriated or otherwise made  
46 available to it for this purpose, appoint such staff or hire such  
47 experts as it may require.

1 e. Members of the council shall serve without compensation, but  
2 the council may, within the limits of funds appropriated or  
3 otherwise made available for such purposes, reimburse its members  
4 for necessary expenses incurred in the discharge of their official  
5 duties.

6 f. In addition to providing the Treasurer with information and  
7 advice in connection with his duties with respect to the fund  
8 generally, the council shall be specifically charged with developing  
9 prevention and mitigation standards to include:

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

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

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

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

18 (5) Focus on prevention and mitigation for any substantially  
19 damaged structure;

20 as well as developing and recommending ideas that will aid in the  
21 recovery, rebuilding and renewal process, and in analyzing and  
22 developing ways to continuously improve the administration and  
23 purpose of the fund.

24 g. The council shall also analyze, study and develop actuarially  
25 appropriate insurance discounts to be offered to individuals who  
26 perform mitigation and prevention improvements to structures. The  
27 council shall report its findings to the Treasurer, who shall, in  
28 consultation with the commissioner, implement those discounts.

29 h. The Treasurer shall consider, and to the extent possible  
30 implement, the findings of the council, and annually report to the  
31 Legislature on any and all recommendations of the council that are  
32 consistent with the purposes and goals of this act.

33

34 10. Upon the creation of a federal or multi-state catastrophic  
35 insurance or reinsurance program intended to serve purposes similar  
36 to the purposes of the fund created by this act, the Treasurer shall  
37 promptly make recommendations to the Legislature as to how the  
38 fund can coordinate with the federal or multi-state program and for  
39 such other actions as the Treasurer determines are appropriate under  
40 the circumstances.

41

42 11. The fund and the duties of the Treasurer under this act may  
43 be terminated only by law. Upon termination of the fund, any and  
44 all assets remaining in the fund shall be returned to those insurers  
45 who have made contributions to the funds in proportion to the  
46 amount each contributed.

1       12. The Treasurer shall, pursuant to the “Administrative  
2 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules  
3 necessary to implement the provisions of this act. The rules  
4 promulgated by the Treasurer shall: conform to the Legislature's  
5 specific intent in establishing the fund as expressed in section 2 of  
6 this act; enhance the fund's potential ability to respond to claims for  
7 covered events; contain general provisions so that they may be  
8 applied with reasonable flexibility so as to accommodate insurers in  
9 situations of an unusual nature or where undue hardship may result,  
10 except that such flexibility may not in any way impair, override,  
11 supersede or constrain the public purpose of the fund; and be  
12 consistent with sound insurance practices.

13  
14       13. There is appropriated to the Department of the Treasury  
15 from the General Fund the sum of \$10 million dollars for deposit in  
16 the New Jersey Catastrophe Fund for the purposes of the fund as  
17 provided pursuant to this act.

18  
19       14. This act shall take effect immediately.

20  
21  
22                                    STATEMENT

23  
24       This bill, the “New Jersey Consumer Catastrophe Preparedness  
25 and Protection Act,” establishes the New Jersey Catastrophe Fund  
26 to help pay covered residential property damage insurance claims in  
27 the aftermath of a true catastrophe which affects New Jersey  
28 homeowners and their property/casualty insurers. The fund, which  
29 will consist of premiums paid by insurers, bond revenues, and  
30 appropriated State funds, will provide a backstop for companies to  
31 insure against covered catastrophic losses to avoid the collapse of  
32 the property insurance market in the wake of a major natural  
33 disaster or other catastrophe in the State, as specified by the bill.

34       Premiums will be set by the Treasurer, who shall select an  
35 independent consultant to develop a formula for determining the  
36 actuarially indicated premium. The Treasurer will calculate  
37 premiums based upon the insured values under the insurer’s  
38 covered policies, as reported annually to the Treasurer.

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

1 of the insurer's losses from covered events, and any excess shall be  
2 returned to the fund, unless there is an agreement to the contrary.

3 The bill further authorizes the issuance of bonds by the New  
4 Jersey Economic Development Authority if moneys in the fund are  
5 insufficient to pay reimbursement at the levels agreed to in the  
6 reimbursement contracts, upon the occurrence of a covered event.  
7 The Treasurer may procure reinsurance from licensed reinsurers to  
8 maximize the fund's capacity, and may borrow from other market  
9 sources at prevailing interest rates.

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

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

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

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

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

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

36 (5) focus on prevention and mitigation for any substantially  
37 damaged structure;

38 as well as developing and recommending ideas that will aid in the  
39 recovery, rebuilding and renewal process, and in analyzing and  
40 developing ways to continuously improve the administration and  
41 purpose of the fund.

42 In anticipation of the creation of a federal or multi-state  
43 catastrophic insurance fund or reinsurance program, the bill  
44 requires the Treasurer, following the creation of such fund or  
45 program, to make recommendations to the Legislature as to how the  
46 fund can coordinate with the federal or multi-state program and for  
47 such other actions as the Treasurer determines are appropriate under  
48 the circumstances.

1       Finally, the bill appropriates to the Department of the Treasury  
2 \$10 million from the General Fund for deposit in the New Jersey  
3 Catastrophe Fund for the purposes of the fund. This State  
4 appropriation to the fund ensures tax-exempt status for premiums  
5 paid to the fund pursuant to the federal Internal Revenue Code of  
6 1986.