To amend the Internal Revenue Code of 1986 to allow private insurers and reinsurers to increase their financial capacity for responding to catastrophes through the creation of disaster protection funds in the District of Columbia that are exempt from federal income taxation.

IN THE HOUSE OF REPRESENTATIVES

Ms. NORTON introduced the following bill; which was referred to the Committee on

A BILL

To ensure and enhance the continued financial capacity of private insurers to provide coverage for catastrophic risks, both natural and man-made, and to manage such risks across State and national borders without the need for taxpayer backstops.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘National Disaster Insurance Protection Act’.

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) The scale and frequency of disasters, both natural and man-made, has increased dramatically in recent years, and will likely continue to increase in the future.

(2) The private insurance market plays a major role in compensating victims of such disasters by providing coverage for catastrophe risks, thus enabling rapid recovery and protecting against economic and social dislocation that otherwise might follow a disaster.

(3) The financial capacity of private insurers to meet the challenge of increasingly expensive disasters has been strained by recent wind
storms, wild fires, floods and terrorist attacks, although thus far the private market has been able to meet its obligations.

(4) To make sure that private insurance against future catastrophic risk will continue to be available and affordable, insurers and reinsurers must be able to set aside funds needed to pay for future disasters—whether such events occur two years from now, five years, or ten and twenty years in the future—without having those reserves taxed as current income, as they are under the current federal tax code.

(5) To avoid U.S. taxation of long term catastrophe reserves as current income, insurers and reinsurers today typically keep those funds in companies based in no- or low-tax jurisdictions in the Caribbean and elsewhere outside the jurisdiction of the United States and the reach of U.S. courts.

(6) Revising the tax code to permit insurers and reinsurers to accumulate carefully controlled long term catastrophe reserves in the United States, subject to the jurisdiction of the District of Columbia—a federal entity under the direct authority of Congress—and not taxed as income, will encourage the long-term growth of such reserves within the United States, thus holding down the cost and increasing the availability of insurance protection for all Americans.

SEC. 3. NATIONAL DISASTER PROTECTION FUNDS.

(a) Contributions to National Disaster Protection Funds- Subsection (c) of section 832 of the Internal Revenue Code of 1986 (relating to the taxable income of insurance companies other than life insurance companies) is amended by striking ‘and’ at the end of paragraph (12), by striking the period at the end of paragraph (13) and inserting ‘; and’, and by adding at the end the following new paragraph:

‘(14) the qualified contributions during the taxable year to a national disaster protection fund.’

(b) National Disaster Protection Fund Gross Income- Subsection (b) of section 832 of such Code is amended by adding at the end the following new paragraph:

‘(9) SPECIAL RULE FOR ASSETS HELD IN NATIONAL DISASTER PROTECTION FUND- For purposes of determining gross income under this subsection, any items of income, gain, loss, or deduction derived from or attributable to any assets held in a national disaster protection fund shall not be taken into account.’

(c) Distributions From National Disaster Protection Funds- Paragraph (1) of section 832(b) of such Code is amended by striking ‘and’ at the end of subparagraph (D), by striking the period at the end of subparagraph (E) and inserting ‘, and’, and by adding at the end the following new subparagraph:
(F) the aggregate amount of all distributions during the taxable year from a national disaster protection fund, except that a distribution made to return to the qualified insurance company any contribution that is not a qualified contribution for a taxable year shall not be included in gross income if such distribution is made prior to the filing by the qualified insurance company of its tax return for such taxable year.'

(d) Definitions and Other Rules Relating to National Disaster Protection Funds- Section 832 of such Code is amended by adding at the end the following new subsection:

(h) Definitions and Other Rules Relating to National Disaster Protection Funds- For purposes of this section--

(1) NATIONAL DISASTER PROTECTION FUND- The term 'national disaster protection fund' (hereafter in this subsection referred to as the 'fund') means any money, securities, or other property held by a qualified insurance company that is identified and maintained in a segregated account--

(A) which is designated as a 'national disaster protection fund' and held in a bank or bank branch that is licensed and regulated by the Comptroller of the Currency or the banking regulator of the insurer’s domestic regulator,

(B) under the terms of which--

(i) the assets in the fund are required to be invested in a manner consistent with the investment requirements applicable to all insurance companies under the laws of the insurer’s state or jurisdiction of domicile,

(ii) an excess balance drawdown amount is required to be distributed to the qualified insurance company no later than the close of the taxable year following the taxable year with respect to which such amount is determined, and

(iii) no portion of the assets of the fund may be paid or distributed from the fund except for a qualified distribution.

(2) QUALIFIED INSURANCE COMPANY- The term 'qualified insurance company' means an insurer or reinsurer that--

(A) is incorporated and domiciled in the District of Columbia or in any state,

(B) is subject to supervision by the District of Columbia Commissioner of Insurance, Securities, and Banking, or the chief insurance regulator of its state of domicile,
(C) is subject, for purposes of qualifying for the tax treatment provided in this section, to regulatory and budget oversight by the Congress of the United States, (D) is subject to premium taxes and any other taxes and fees imposed by the District of Columbia or its state of domicile on all domestic insurance companies, and (E) is subject to such additional tax as may be imposed by the District of Columbia or its state of domicile, subject to approval by the Congress of the United States, provided that such tax does not exceed the rate of Federal excise tax imposed by section 4371(3) of the U.S. tax code on a premium paid on a contract of reinsurance issued by any foreign insurer or reinsurer.

(3) QUALIFIED CONTRIBUTION- The term `qualified contribution' means a contribution to a fund established by a qualified insurance company of not more than the total of net premiums or other payments received during a taxable year for coverage of qualified losses, but only to the extent such contribution, when added to all previous contributions to the fund (including net investment earnings of the fund) and after subtracting all qualified distributions from the fund, does not exceed the amount reasonably at risk for the payment of qualified losses insured through the fund, less reinsurance on those risks, as determined actuarially on a multi-year basis.

(4) QUALIFIED DISTRIBUTION- The term `qualified distribution' means any amount paid or distributed for--
(A) any payment of a qualified loss pursuant to an insurance policy or policy of reinsurance issued by the qualified insurance company,
(B) any payment made to reinsure or otherwise spread the risk of catastrophe risk written by the qualified insurance company,
(C) any excess balance drawdown amount,
(D) any administrative expenses directly related to the maintenance and investment of the fund, and
(E) any claims investigation and adjustments relating to a qualified loss.

(5) QUALIFIED LOSS- The term `qualified loss' means an insured loss on a risk that satisfies subparagraphs (A) and (B).
(A) EVENT- An insured loss satisfies this subparagraph if the loss is attributable to one or more of the following events:
(i) Wind (including hurricanes and tornados).
(ii) Earthquake (including any fire following).
(iii) Flood.
(iv) Tsunami or tidal wave.
(v) Volcanic eruption.
(vi) Wildfire.
(vii) Hail.
(viii) Snow, ice, freezing, or other winter catastrophes.
(ix) Pandemic or other public health catastrophe.
(x) Terrorism risk, domestic or foreign, provided that such risk is not eligible for federal reimbursement—in whole or in part—by any federal statute or regulation.

(B) CATASTROPHE DESIGNATION OR MINIMUM AGGREGATE INSURED LOSS- An insured loss, with respect to an event described in subparagraph (A), satisfies this subparagraph if at least one of the following occurs:
(i) Total insured losses from the event or from more than one event happening simultaneously or immediately following, exceeds $1,000,000,000 on an industry-wide basis.
(ii) The President of the United States declares a disaster or state of emergency because of the event.
(iii) The Governor or chief executive of a State, possession or territory of the United States, or of the District of Columbia, or of any foreign nation, declares a disaster or state of emergency because of such event.
(iv) The Property Claims Services unit of Insurance Services Office, Inc., declares a catastrophic industry-wide loss because of one or more events.

(6) EXCESS BALANCE DRAWDOWN AMOUNT- The term 'excess balance drawdown amount' means the excess (if any) of--
(A) the amount of the fund balance as of the end of the taxable year, over
(B) the total amount of exposure of the fund to qualified losses at the end of the taxable year under policies written by the qualified insurance company, as determined actuarially on a multi-year basis.
(7) EXCLUSION OF PREMIUMS AND LOSSES ON CERTAIN PUERTO RICAN RISKS- Notwithstanding any other provision of this subsection, premiums and losses with respect to risks covered by a catastrophe reserve established under the laws or regulations of the Commonwealth of Puerto Rico shall not be taken into account under this subsection in determining the amount of the qualified contributions allowed or the amount of qualified losses.

(9) CONTRIBUTIONS IN KIND- A transfer of property other than money to a fund shall be treated as a sale or exchange of such property for an amount equal to its fair market value as of the date of transfer, and appropriate adjustment shall be made to the basis of such property. Section 267 shall apply to any loss realized upon such a transfer.

(10) DISTRIBUTIONS IN KIND- A distribution of property other than money from a fund to a qualified insurance company shall be treated as a sale or exchange of such property, and any gain or loss realized on such sale or exchange shall be excluded from the gross income of the qualified insurance company.

(11) REGULATIONS- The Secretary shall prescribe regulations as may be necessary or appropriate to carry out the purposes of this subsection.'

(e) Additional Tax on Certain Distributions From a National Disaster Protection Fund- Subsection (d) of section 831 of such Code (relating to the tax on insurance companies other than life insurance companies) is amended by redesignating subsection (d) as subsection (e) and inserting after subsection (c) the following new subsection:

(d) Tax on Nonqualified Distributions-
‘(1) IN GENERAL- In the case of a qualified insurance company, the tax imposed by this section for the current year shall be increased by an amount equal to 20 percent of the aggregate amount of nonqualified distributions made by such company during such year from a natural disaster protection fund.

(2) DEFINITIONS-
‘(A) NONQUALIFIED DISTRIBUTIONS- The term `nonqualified distributions' means any distribution from a national disaster protection fund other than a qualified distribution (as defined in section 832(h)(4)).

(B) OTHER DEFINITIONS- The terms `qualified insurance company' and `national disaster protection
fund’ shall have the meanings ascribed to such terms in section 832(h).’

(f) Effective Date- The amendments made by this bill shall apply to taxable years beginning after December 31, 2014.