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HOUSE OF REPRESENTATIVES

FLOOR AMENDMENT NO. _____

BY: _____

Amend C.S.S.B. No. 615 (house committee report) by adding the following appropriately numbered SECTIONS to the bill and renumbering SECTIONS of the bill accordingly:

SECTION _____. Subtitle G, Title 10, Insurance Code, is amended by adding Chapter 2214 to read as follows:

CHAPTER 2214. TEXAS TORNADO AND WILDFIRE INSURANCE ASSOCIATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2214.001. PURPOSE. The primary purpose of the Texas Tornado and Wildfire Insurance Association is the provision of an adequate market for property insurance to provide coverage for losses from tornado and wildfire in this state. The legislature finds that the provision of adequate tornado and wildfire insurance is necessary to the economic welfare of this state, and without that insurance, the orderly growth and development of this state would be severely impeded. This chapter provides a method by which adequate tornado and wildfire insurance may be obtained in this state. The association is intended to serve as a residual insurer of last resort for tornado and wildfire insurance in this state. The association shall:

(1) function in such a manner as to not be a direct competitor in the private market; and

(2) provide tornado and wildfire insurance coverage to those who are unable to obtain that coverage in the private market.

Sec. 2214.002. SHORT TITLE; COVERAGE AVAILABLE. (a) This chapter may be cited as the Texas Tornado and Wildfire Insurance Association Act.

(b) This chapter authorizes the association to issue only tornado and wildfire insurance.

Sec. 2214.003. GENERAL DEFINITIONS. In this chapter,

1 unless the context clearly indicates otherwise:

2 (1) "Association" means the Texas Tornado and Wildfire
3 Insurance Association.

4 (2) "Board of directors" means the board of directors
5 of the association.

6 (3) "Net direct premium" means gross direct written
7 premium less return premium on each canceled contract, regardless
8 of assumed or ceded reinsurance, that is written on property in this
9 state, as defined by the board of directors.

10 (4) "Plan of operation" means the plan adopted under
11 this chapter for the operation of the association.

12 (5) "Tornado and wildfire insurance" means deductible
13 insurance against:

14 (A) direct loss to insurable property incurred as
15 a result of tornado or wildfire, as those terms are defined and
16 limited in policies and forms approved by the department; and

17 (B) indirect losses resulting from the direct
18 loss.

19 (6) "Wildfire" means an uncontrolled blaze fueled by
20 weather, wind, and dry underbrush, trees, grasses, or other
21 flammable material.

22 Sec. 2214.004. DEFINITION OF INSURABLE PROPERTY. For
23 purposes of this chapter and subject to this section, "insurable
24 property" has the meaning assigned by the plan of operation.

25 Sec. 2214.005. DESIGNATION AS CATASTROPHE AREA; REVOCATION
26 OF DESIGNATION. An area of this state may be designated as a
27 catastrophe area in the plan of operation. The commissioner by rule
28 may revoke the designation.

29 Sec. 2214.006. APPLICABILITY OF CHAPTER TO CERTAIN
30 INSURERS. (a) Except as provided by Subsection (b), this chapter
31 applies to each insurer authorized to engage in the business of

1 property insurance in this state, including a county mutual
2 insurance company, a Lloyd's plan, and a reciprocal or
3 interinsurance exchange.

4 (b) This chapter does not apply to:

5 (1) a farm mutual insurance company operating under
6 Chapter 911;

7 (2) a nonaffiliated county mutual fire insurance
8 company described by Section 912.310 that is writing exclusively
9 industrial fire insurance policies as described by Section
10 912.310(a)(2); or

11 (3) a mutual insurance company or a statewide mutual
12 assessment company engaged in business under Chapter 12 or 13,
13 Title 78, Revised Statutes, respectively, before those chapters'
14 repeal by Section 18, Chapter 40 (S.B. 37), Acts of the 41st
15 Legislature, 1st Called Session, 1929, as amended by Section 1,
16 Chapter 60 (S.B. 106), General Laws, Acts of the 41st Legislature,
17 2nd Called Session, 1929, that retains the rights and privileges
18 under the repealed law to the extent provided by those sections.

19 Sec. 2214.007. DEPARTMENT ORDERS; GENERAL RULEMAKING
20 AUTHORITY. (a) The commissioner may issue any orders that the
21 commissioner considers necessary to implement this chapter.

22 (b) The commissioner may adopt rules in the manner
23 prescribed by Subchapter A, Chapter 36, as reasonable and necessary
24 to implement this chapter.

25 Sec. 2214.008. LIST OF PRIVATE INSURERS; INCENTIVE PLAN.

26 (a) The department shall maintain a list of all insurers that
27 engage in the business of property and casualty insurance in the
28 voluntary market in this state.

29 (b) The department shall develop incentive programs to
30 encourage authorized insurers to write insurance on a voluntary
31 basis and to minimize the use of the association as a means to

1 obtain insurance.

2 SUBCHAPTER B. ADMINISTRATION OF THE ASSOCIATION

3 Sec. 2214.051. COMPOSITION OF ASSOCIATION; REQUIRED
4 MEMBERSHIP. (a) The association is composed of all property
5 insurers authorized to engage in the business of property insurance
6 in this state, other than insurers prevented by law from writing on
7 a statewide basis coverages available through the association.

8 (b) As a condition of the insurer's authority to engage in
9 the business of insurance in this state, each insurer subject to
10 Subsection (a) must be a member of the association and must remain a
11 member for the duration of the association's existence. An insurer
12 that ceases to be a member of the association remains liable on
13 insurance contracts entered into during the insurer's membership in
14 the association to the same extent and effect as if the insurer's
15 membership in the association had not been terminated.

16 (c) An insurer that becomes authorized to write and is
17 engaged in writing insurance that requires the insurer to be a
18 member of the association shall become a member of the association
19 on the January 1 following the effective date of that
20 authorization. The determination of the insurer's participation in
21 the association is made as of the date of the insurer's membership
22 in the manner used to determine participation for all other members
23 of the association.

24 Sec. 2214.052. MEMBER PARTICIPATION IN ASSOCIATION. (a)
25 Each member of the association shall participate in insured losses
26 and operating expenses of the association, in excess of premium and
27 other revenue of the association, in the proportion that the net
28 direct premiums of that member during the preceding calendar year
29 bears to the aggregate net direct premiums by all members of the
30 association, as determined using the information provided under
31 Subsection (b).

1 **(b) The department shall review annual statements, other**
2 **reports, and other statistics that the department considers**
3 **necessary to obtain the information required under Subsection (a)**
4 **and shall provide that information to the association. The**
5 **department is entitled to obtain the annual statements, other**
6 **reports, and other statistics from any member of the association.**

7 **(c) Each member's participation in the association shall be**
8 **determined annually in the manner provided by the plan of**
9 **operation. For purposes of determining participation in the**
10 **association, two or more members that are subject to common**
11 **ownership or that operate in this state under common management or**
12 **control shall be treated as a single member. The determination**
13 **shall also include the net direct premiums of an affiliate that is**
14 **under that common management or control, including an affiliate**
15 **that is not authorized to engage in the business of property**
16 **insurance in this state.**

17 **(d) Notwithstanding Subsection (a), a member, in accordance**
18 **with the plan of operation, is entitled to receive credit for**
19 **similar insurance voluntarily written in areas designated by the**
20 **commissioner. The member's participation in the insured losses and**
21 **operating expenses of the association in excess of premium and**
22 **other revenue of the association shall be reduced in accordance**
23 **with the plan of operation.**

24 **(e) Notwithstanding Subsections (a)-(d), an insurer that**
25 **becomes a member of the association and that has not previously been**
26 **a member of the association is not subject to participation in any**
27 **insured losses and operating expenses of the association in excess**
28 **of premium and other revenue of the association until the second**
29 **anniversary of the date on which the insurer first becomes a member**
30 **of the association.**

31 **Sec. 2214.053. OPERATION OF ASSOCIATION. The association**

1 shall operate in accordance with the plan of operation.

2 Sec. 2214.054. ANNUAL STATEMENT. (a) The association
3 shall file annually with the department and the state auditor's
4 office a statement covering periods designated by the department
5 that summarizes the transactions, conditions, operations, and
6 affairs of the association during the preceding year.

7 (b) The statement must:

8 (1) be filed at times designated by the department;

9 (2) contain the information prescribed by the
10 department; and

11 (3) be in the form prescribed by the department.

12 Sec. 2214.055. USE OF ASSOCIATION ASSETS. (a) The
13 association's net earnings may only be used in accordance with the
14 plan of operation.

15 (b) On dissolution of the association, all assets of the
16 association, other than assets pledged for the repayment of public
17 securities issued under this chapter, revert to this state.

18 Sec. 2214.056. EXAMINATION OF ASSOCIATION. (a) The
19 association is subject to Sections 401.051, 401.052,
20 401.054-401.062, 401.151, 401.152, 401.155, and 401.156 and
21 Subchapter A, Chapter 86.

22 (b) A final examination report of the association resulting
23 from an examination as provided by this section is a public record
24 and is available to the public at the offices of the department in
25 accordance with Chapter 552, Government Code.

26 Sec. 2214.057. AUDIT OF ASSOCIATION. (a) The association
27 is subject to audit by the state auditor and shall pay the costs
28 incurred by the state auditor in performing an audit under this
29 section.

30 (b) The association shall pay the costs described by
31 Subsection (a) promptly after receipt of a statement from the state

1 auditor's office regarding the amount of those costs.

2 Sec. 2214.058. CLAIMS PRACTICES AUDIT. The commissioner,
3 in the manner and at the time the commissioner determines to be
4 necessary, may conduct a random audit of claim files concerning
5 claims the bases of which are damage to property insured under this
6 chapter.

7 SUBCHAPTER C. PAYMENT OF LOSSES

8 Sec. 2214.101. PAYMENT OF LOSSES. The association shall
9 pay insured losses and operating expenses of the association from
10 premium and other revenue of the association in accordance with the
11 plan of operation.

12 Sec. 2214.102. ASSESSMENTS. (a) Losses not paid under
13 Section 2214.101 shall be paid from member insurer assessments.

14 (b) A member of the association may not recoup an assessment
15 paid under this section through a premium surcharge or tax credit.

16 SUBCHAPTER D. BOARD OF DIRECTORS; POWERS AND DUTIES

17 Sec. 2214.151. ACCOUNTABLE TO COMMISSIONER. The board of
18 directors is responsible and accountable to the commissioner.

19 Sec. 2214.152. COMPOSITION. (a) The board of directors is
20 composed of nine members appointed by the governor.

21 (b) All members must have demonstrated experience in
22 insurance, general business, or actuarial principles sufficient to
23 make the success of the association probable.

24 Sec. 2214.153. TERMS. (a) Members of the board of
25 directors serve six-year staggered terms, with the terms of three
26 members expiring on February 1 of each odd-numbered year.

27 (b) A person may serve on the board of directors for not more
28 than three consecutive full terms, not to exceed 18 years.

29 (c) A member of the board of directors may be removed by the
30 commissioner with cause stated in writing and posted on the
31 association's Internet website. The commissioner shall appoint the

1 replacement for a director who leaves or is removed from the board
2 of directors.

3 Sec. 2214.154. OFFICERS. The board of directors shall
4 elect from the board's membership an executive committee consisting
5 of a presiding officer, assistant presiding officer, and
6 secretary-treasurer.

7 Sec. 2214.155. MEETINGS. (a) Except for an emergency
8 meeting, the association shall call and conduct its meetings in
9 accordance with the plan of operation.

10 (b) Except for a closed meeting authorized by Subchapter D,
11 Chapter 551, Government Code, a meeting of the board of directors or
12 of the members of the association is open to the public.

13 (c) Notice of a meeting of the board of directors or the
14 association must be given as provided by Chapter 551, Government
15 Code.

16 Sec. 2214.156. OPEN MEETINGS AND OPEN RECORDS. (a) Except
17 as specifically provided by this chapter or another law, the board
18 of directors and the association are subject to Chapters 551 and
19 552, Government Code.

20 (b) A settlement agreement to which the association is a
21 party is public information and is not exempted from required
22 disclosure under Chapter 552, Government Code.

23 (c) Subsection (b) may not be construed to limit or
24 otherwise restrict the categories of information that are public
25 information under Section 552.022, Government Code.

26 SUBCHAPTER E. PLAN OF OPERATION

27 Sec. 2214.201. ADOPTION OF PLAN OF OPERATION. With the
28 advice of the board of directors, the commissioner by rule shall
29 adopt the plan of operation to provide tornado and wildfire
30 insurance in this state.

31 Sec. 2214.202. CONTENTS OF PLAN OF OPERATION. (a) The plan

1 of operation must:

2 (1) provide for the efficient, economical, fair, and
3 nondiscriminatory administration of the association; and

4 (2) include other provisions as considered necessary
5 by the department to implement the purposes of this chapter.

6 (b) The plan of operation may provide for liability limits
7 for an insured structure and for the corporeal movable property
8 located in the structure.

9 Sec. 2214.203. AMENDMENTS TO PLAN OF OPERATION. (a) The
10 association may present a recommendation for a change in the plan of
11 operation to the department at:

12 (1) periodic hearings conducted by the department for
13 that purpose; or

14 (2) hearings relating to property and casualty
15 insurance rates.

16 (b) The association must present a proposed change to the
17 department in writing in the manner prescribed by the commissioner.
18 A proposed change does not take effect unless adopted by the
19 commissioner by rule.

20 (c) An interested person may, in accordance with Chapter
21 2001, Government Code, petition the commissioner to modify the plan
22 of operation.

23 SUBCHAPTER F. INSURANCE COVERAGE; APPLICATION AND INSPECTION

24 Sec. 2214.251. DEFINITION OF INSURABLE INTEREST. In this
25 subchapter, "insurable interest" includes any lawful and
26 substantial economic interest in the safety or preservation of
27 property from loss, destruction, or pecuniary damage.

28 Sec. 2214.252. APPLICATION FOR COVERAGE. (a) A person who
29 has an insurable interest in insurable property may apply to the
30 association for insurance coverage provided under the plan of
31 operation and an inspection of the property, subject to any rules

1 established by the board of directors and approved by the
2 commissioner. The association shall make insurance available in
3 accordance with the plan of operation to each applicant in this
4 state whose property is insurable property but who, after diligent
5 efforts, is unable to obtain property insurance through the
6 voluntary market, as evidenced by one declination from an insurer
7 authorized to engage in the business of, and writing, property
8 insurance providing tornado and wildfire coverage in this state.

9 (b) A property and casualty agent must submit an application
10 for initial insurance coverage on behalf of the applicant on forms
11 prescribed by the association. The association shall develop a
12 simplified renewal process that allows for the acceptance of an
13 application for renewal coverage, and payment of premiums, from a
14 property and casualty agent or a person insured under this chapter.
15 An application for initial or renewal coverage must comply with the
16 requirements of the plan of operation.

17 Sec. 2214.253. ISSUANCE OF COVERAGE; TERM; RENEWAL. (a) If
18 the association determines that the property for which an
19 application for initial insurance coverage is made is insurable
20 property, the association, on payment of the premium, shall direct
21 the issuance of an insurance policy as provided by the plan of
22 operation.

23 (b) A policy issued under this section is for a one-year
24 term.

25 (c) A policy may be renewed annually on application for
26 renewal as long as the property continues to be insurable property.

27 (d) The commissioner, after receiving a recommendation from
28 the board of directors, shall approve a commission structure for
29 payment of an agent who submits an application for coverage to the
30 association on behalf of a person who has an insurable interest in
31 insurable property. The commission structure adopted by the

1 commissioner must be fair and reasonable, taking into consideration
2 the amount of work performed by an agent in submitting an
3 application to the association and the prevailing commission
4 structure in the private insurance market.

5 Sec. 2214.254. CANCELLATION OF CERTAIN COVERAGE. (a) An
6 agent or insured may request cancellation of the insurance coverage
7 by:

8 (1) returning the policy, with proof that the insured
9 was notified of the return; or

10 (2) requesting the association to cancel the insurance
11 coverage by a notice mailed to the insured and to any others shown
12 in the policy as having an insurable interest in the property.

13 (b) On completion of cancellation under Subsection (a), the
14 association shall refund the unearned premium, less any minimum
15 retained premium set forth in the plan of operation, to the person,
16 firm, or corporation to whom the unpaid balance is due.

17 (c) If an insured requests cancellation of the insurance
18 coverage, the association shall refund the unearned premium, less
19 any minimum retained premium set forth in the plan of operation,
20 payable to the insured and the holder of an unpaid balance. The
21 property and casualty agent who received a commission as the result
22 of the issuance of an association policy providing the canceled
23 coverage shall refund the agent's commission on any unearned
24 premium in the same manner.

25 Sec. 2214.255. POLICY PROVISIONS. A tornado and wildfire
26 insurance policy issued by the association must comply with the
27 requirements of the plan of operation.

28 Sec. 2214.256. INSPECTION REQUIREMENT. (a) To be
29 considered insurable property eligible for insurance coverage from
30 the association, a structure must be inspected or approved by the
31 department for compliance with the plan of operation.

1 (b) The department shall issue a certificate of compliance
2 for each structure that qualifies for coverage. The certificate is
3 evidence of insurability of the structure by the association. The
4 decision whether to issue a certificate of compliance for a
5 structure is wholly within the discretion of the department.

6 (c) The department may enter into agreements and contracts
7 as necessary to implement this section.

8 (d) The department may charge reasonable fees to cover the
9 cost of implementing this section.

10 SUBCHAPTER G. RATES

11 Sec. 2214.301. ASSOCIATION FILINGS. (a) The association
12 must file with the department each manual of classifications,
13 rules, rates, including condition charges, and each rating plan,
14 and each modification of those items that the association proposes
15 to use.

16 (b) A filing under this section must indicate the character
17 and the extent of the coverage contemplated and must be accompanied
18 by the policy and endorsement forms proposed to be used. The forms
19 may be designed specifically for use by the association without
20 regard to other forms filed with, approved by, or prescribed by the
21 department for use in this state.

22 (c) As soon as reasonably possible after the filing has been
23 made, the commissioner in writing shall approve or disapprove the
24 filing. A filing is considered approved unless disapproved on or
25 before the 30th day after the date of the filing. If the
26 commissioner disapproves a filing, the commissioner shall state in
27 writing the reasons for the disapproval and the criteria the
28 association is required to meet to obtain approval.

29 (d) The department shall value the loss and loss adjustment
30 expense data to be used for a filing not earlier than March 31 of the
31 year before the year in which the filing is to be made.

1 Sec. 2214.302. MANUAL RATE FILINGS: ANNUAL FILING. (a) Not
2 later than August 15 of each year, the association shall file with
3 the department a proposed manual rate for all types and classes of
4 risks written by the association.

5 (b) Before approving or disapproving a filing under this
6 section, the commissioner shall provide all interested persons a
7 reasonable opportunity to:

8 (1) review the filing;

9 (2) obtain copies of the filing on payment of any
10 legally required copying cost; and

11 (3) submit to the commissioner written comments or
12 information related to the filing.

13 (c) The commissioner shall approve or disapprove the filing
14 in writing not later than October 15 of the year in which the filing
15 was made. If the filing is not approved or disapproved on or before
16 that date, the filing is considered approved.

17 (d) If the commissioner disapproves a filing, the
18 commissioner shall state in writing the reasons for the disapproval
19 and the criteria the association is required to meet to obtain
20 approval.

21 Sec. 2214.303. MANUAL RATE FILINGS: AMENDED ANNUAL FILING.

22 (a) Not later than the 30th day after the date the association
23 receives the commissioner's written disapproval under Section
24 2214.302, the association may file with the commissioner an amended
25 annual filing that conforms to all criteria stated in that written
26 disapproval.

27 (b) Not later than the 30th day after the date an amended
28 filing made under Subsection (a) is received, the commissioner
29 shall approve or disapprove the amended filing. If the filing is
30 not disapproved on or before the 30th day after the date of receipt,
31 the filing is considered approved. If the commissioner disapproves

1 a filing, the commissioner shall state in writing the reasons for
2 the disapproval and the criteria the association is required to
3 meet to obtain approval.

4 (c) Before approving or disapproving an amended annual
5 filing under this section, the commissioner shall, in the manner
6 provided by Section 2214.302, provide all interested persons a
7 reasonable opportunity to:

8 (1) review the amended annual filing;

9 (2) obtain copies of the amended annual filing on
10 payment of any legally required copying cost; and

11 (3) submit to the commissioner written comments or
12 information related to the amended annual filing.

13 Sec. 2214.304. MANUAL RATE FILINGS: ADDITIONAL SUPPORTING
14 INFORMATION. (a) In conjunction with the review of a filing under
15 Section 2214.302:

16 (1) the commissioner may request the association to
17 provide additional supporting information relating to the filing;
18 and

19 (2) any interested person may file a written request
20 with the commissioner, during a period specified by the
21 commissioner by rule, for additional supporting information
22 relating to the filing.

23 (b) A request under this section must be reasonable and must
24 be directly related to the filing.

25 (c) The commissioner shall submit to the association all
26 requests for additional supporting information made under this
27 section for the commissioner's use and the use of any interested
28 person not later than the 21st day after the date of receipt of the
29 filing.

30 (d) Unless a different period is requested by the
31 association and approved by the commissioner, the association shall

1 provide the information to the commissioner not later than the
2 fifth day after the date the written request for additional
3 supporting information is delivered to the association.

4 Sec. 2214.305. GENERAL RATE REQUIREMENTS; RATE STANDARDS.

5 (a) Rates for coverage under this chapter must be made in
6 accordance with the plan of operation.

7 (b) Rates must be reasonable, adequate, not unfairly
8 discriminatory, and nonconfiscatory as to any class of insurer.

9 (c) For the establishment of rates and minimum premiums, the
10 risks may be grouped by classification.

11 (d) A commission paid to an agent for a tornado and wildfire
12 insurance policy issued by the association must comply with the
13 commission structure established in the plan of operation and be
14 reasonable, adequate, not unfairly discriminatory, and
15 nonconfiscatory.

16 (e) The association may establish rating territories and
17 may vary rates among the territories as provided by the plan of
18 operation.

19 Sec. 2214.306. RATE CLASSIFICATIONS. All premiums written
20 and losses paid under this chapter, as appropriate, must be
21 included in applicable classifications for general ratemaking
22 purposes.

23 SUBCHAPTER H. LIABILITY LIMITS

24 Sec. 2214.351. MAXIMUM LIABILITY LIMITS. The maximum
25 liability limits under a tornado and wildfire insurance policy
26 issued by the association under this chapter are established by the
27 plan of operation and may be adjusted by amendment to the plan of
28 operation.

29 SECTION _____. (a) The governor shall appoint the members of
30 the board of directors of the Texas Tornado and Wildfire Insurance
31 Association under Chapter 2214, Insurance Code, as added by this

1 Act, effective November 1, 2019. The initial directors shall draw
2 lots to achieve staggered terms, with three of the directors
3 serving two-year terms, three of the directors serving four-year
4 terms, and three of the directors serving six-year terms.

5 (b) The plan of operation adopted under Chapter 2214,
6 Insurance Code, as added by this Act, must provide that the Texas
7 Tornado and Wildfire Insurance Association issue insurance
8 policies under that chapter not later than January 1, 2020.

9 (c) The commissioner of insurance shall adopt rules
10 necessary to ensure that the Texas Tornado and Wildfire Insurance
11 Association issue insurance policies under Chapter 2214, Insurance
12 Code, as added by this Act, not later than January 1, 2020.