

TEXAS SOCIETY OF PROFESSIONAL SURVEYORS

BOARD OF DIRECTORS MEETING
FEBRUARY 7, 2009
AUSTIN, TEXAS

LEGAL COUNSEL'S REPORT

Listed below are the developments/activities which have occurred since our October, 2008 Annual Meeting.

- (1) **Continuing Education Seminars** – Served as co-presenter for two (2) continuing education seminars during the October 2008 TSPS Convention to Cozumel. Topics included *“The Anatomy of a Trial”* and a legal update regarding *“Texas Laws Applicable to the Practice of Professional Surveying.”*
- (2) **Chapter 8 – Central East Texas** – Presented a Legislative Update to the TSPS Central East Texas Chapter 8 on December 4, 2008. Significant legislative issues for the 2009 Legislative Session are as follows:
 - (a) **GIS** – Support legislation which provides that a governmental body which provides geographic information systems/mapping products to the public that appear to represent property boundaries, such as appraisal district maps, shall also provide the following disclaimer:

“This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and only represents the approximate relative location of property boundaries.”
 - (b) **Frivolous Complaints** – Support legislation requiring that complaints filed with the TBPLS remain *“confidential.”*
 - (c) **Continuing Education** – Support legislation which will increase the annual CE requirement for an RPLS from 8 hours to 16 hours.
 - (d) **Sales Tax** – Support legislation which will repeal the sales tax on surveying services.
 - (e) **Taxation** – Support equitable revisions to the new state franchise tax.

- (f) **Agency Consolidation** – Oppose the consolidation of state licensing agencies in a manner that would adversely impact the TBPLS as an independent decision maker.
 - (g) **Sunset Review** – Monitor legislation recommended by the Sunset Advisory Commission (and take corrective action as necessary) regarding the Texas Department of Transportation and the Texas Department of Insurance.
 - (h) **TBPLS** – Support reasonable and necessary budget requests for the 2008-2009 Biennium as submitted by the agency.
- (3) **Draft Legislation** – In response to the actions taken by the TSPS Governmental Affairs Committee at its meeting on February 2, 2008, the following proposed legislation for the 2009 Legislative Session has been drafted (see attachments):
- requiring a “*disclaimer*” by governmental entities that publish GIS products;
 - requiring that frivolous complaints filed with the TBPLS remain “*confidential*,” and
 - changing the TBPLS continuing education structure with an increase in hours.
- (4) **Sunset Review** – Agencies subject to Sunset review during the 2008-2009 Biennium include the Texas Department of Transportation, the Texas Residential Construction Commission, and the Texas Department of Insurance. The TSPS Governmental Affairs Committee continues to monitor actions taken by the Sunset Advisory Commission regarding the agencies currently under review.
- (5) **Sales Tax** – On November 21, 2008, the Tax Policy Division, Texas Comptroller of Public Accounts, advised TSPS that a new publication clarifying the application of sales tax to surveying services would soon be available in draft form for TSPS to review and comment. On December 9, 2008, I attended a meeting with Dennis Walker and representatives from the Comptroller’s audit division to discuss well placement surveying issues.
- (6) **Title Insurance** – On July 15, 2008 the Commissioner of Insurance held a hearing to consider requests by the Texas Land Title Association and Stewart Title Guaranty Company seeking changes to Procedural Rule P-5 and Procedural Rule P-50, and a proposed new Form T-19.2 endorsement. If the proposed changes to Procedural Rule P-5 are adopted, title companies will be permitted to include a special exception for any recorded or unrecorded matter that they determine to be uninsurable. Suggested wording for a special exception for minerals is included in the proposed amendment to Procedural

Rule P-5. Proposed changes to Procedural Rule P-5 would also allow a title company to limit the insured estate in Schedule A of the title insurance policy if the title company does not consider a portion of the insured's estate in the land to be insurable. The proposed amendment to Procedural Rule P-50, and the new T-19.2 endorsement, permit, but do not require, a title insurance company to insure against losses or damages in an owner title policy issued on residential real property containing one acre or less that arise from any damages to improvements (but excluding lawns, shrubbery and trees) located on the land on or after the policy date based on a future exercise of rights existing as of the policy date to use the surface of the land for extraction or development for minerals. As proposed, there is no charge for this endorsement. The Commissioner has taken the matter under advisement. Any proposed revisions to the Procedural Rule/Form will be published by TDI for public comment.

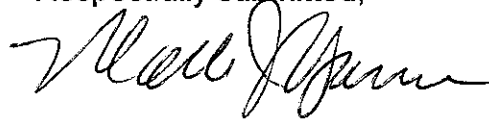
The Commissioner of Insurance issued a Notice of Hearing for the 2008 Texas Title Insurance Biennial Hearing on July 22, 2008. The hearing will consist of a rulemaking phase and a ratemaking phase. The rulemaking phase, under Docket No. 2690, will be for the consideration of rules, forms, and endorsements, and related matters not having primary rate implications. The ratemaking phase, under Docket No. 2691, will be for the consideration of fixing the premium rate and other matters with direct rate implications. The scope of the hearing includes subjects and matters related to both real property title insurance and personal property title insurance. The hearing for the rulemaking phase was held on October 2, 2008. No agenda items were submitted which would have an adverse impact upon the surveying profession. At the direction of the Commissioner, the ratemaking phase of the hearing will be conducted by the State Office of Administrative Hearings. The ratemaking hearing will begin at 8:30 a.m. on June 2, 2009, and continue through June 5, 2009. Anyone who wishes to participate in the ratemaking phase must file a motion for admission as a party. TSPS filed its Motion for Admission As A Party on August 11, 2008.

- (7) **2009 Eighty-First Session** – The 2009 Legislative Session began on January 13, 2009. New elected members of the Texas Senate and House of Representatives are as follows:

Wendy R. Davis (D) – Fort Worth (S-10)
Joan Huffman (R) – Houston (S-17)
Tim Kleinschmidt (R) – Lexington (H-17)
Randy Weber (R) – Pearland (H-29)
Todd Hunter (R) – Corpus Christi (H-32)
Tara Rios Ybarra (D) – South Padre (H-43)
Diana Maldonado (D) – Round Rock (H-52)
Ralph Sheffield (R) – Temple (H-55)
Doug Miller (R) – New Braunfels (H-73)
Marisa Marquez (D) – El Paso (H-77)
Joseph Moody (D) – El Paso (H-78)

Tyron D. Lewis (R) – Odessa (H-81)
Chris Turner (D) – Arlington (H-96)
Mark Shelton (R) – Fort Worth (H-97)
Robert Miklos (D) – Mesquite (H-101)
Carol Kent (D) – Dallas (H-102)
Angie Chen Button (R) – Garland (H-112)
Roland Gutierrez (D) – San Antonio (H-119)
Allen Fletcher (R) – Houston (H-130)
Kristi Thibaut (D) – Houston (H-133)
Armando Walle (D) – Houston (H-140)
Ken Legler (R) – Houston (H-144)
Carol Alvarado (D) – Houston (H-145)
Al Edwards (D) – Houston (H-146)

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark J. Hanna". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mark J. Hanna
TSPS Legal Counsel

Attachments

BY _____

_____ B. _____

A BILL TO BE ENTITLED

1 AN ACT

2 relating to disclaimers by a governmental body.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Chapter 552, Government Code, is amended by adding a new
5 Section 552.013 to read as follows:

6 §552.013. Disclaimer

7 The following spatial data disclaimer shall be explicitly
8 included or referenced in all geospatial data, mapping products,
9 and services created or hosted by a governmental body, which
10 appear to represent property boundaries and are not the direct
11 result of an on-the-ground survey conducted under the supervision
12 of a Registered Professional Land Surveyor:

13 "This product is for informational purposes and may not
14 have been prepared for, or be suitable for legal, engineering, or
15 surveying purposes. It does not represent an on-the-ground survey
16 and only represents the approximate relative location of property
17 boundaries."

18 This Section shall be interpreted as follows:

19 (a) spacial data producers shall be allowed to
20 extend the disclaimer with additional language further
21 defining the limits of their liability;

22 (b) a more complete disclaimer may be used in
23 connection with any and all geospatial data published on the

1 internet, on a separate page preceding access to the data,
2 with an accept/reject option for users; and

3 (c) the disclaimer may be used as a blanket
4 disclaimer for documents containing a number of small
5 maps.

6 SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds
7 of all the members elected to each house, as provided by Section 39, Article III, Texas
8 Constitution. If this Act does not receive the vote necessary for immediate effect, this
9 Act takes effect September 1, 2009.

BY _____

_____ B. _____

A BILL TO BE ENTITLED

1 AN ACT
2 relating to records of complaints maintained by the Texas Board of Professional Land
3 Surveying.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 1071.204(e), Occupations Code, is amended to read as
6 follows:

7 (e) ~~A frivolous complaint is public information, except that the license~~
8 ~~holder's name and other personal information shall be redacted~~ For any
9 complaint determined to be frivolous or without merit, the complaint and other
10 enforcement case information related to that complaint are confidential. The
11 information may be used only by the board or by its employees or agents directly
12 involved in the enforcement process for that complaint. The information is not
13 subject to discovery, subpoena, or other disclosure.

14 (f) In this section, "frivolous complaint" means a complaint that the
15 executive director and investigator, with board approval, determine:

16 (1) was made for the purpose of harassment; and

17 (2) does not demonstrate harm to any person.

18 SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds
19 of all the members elected to each house, as provided by Section 39, Article III, Texas
20 Constitution. If this Act does not receive the vote necessary for immediate effect, this
21 Act takes effect September 1, 2009.

BY _____

_____ B. _____

A BILL TO BE ENTITLED

1

AN ACT

2 relating to continuing professional education for a registered professional land surveyor.

3

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4

SECTION 1. Section 1071.305(a), Occupations Code, is amended to read as

5

follows:

6

(a) As a condition for renewal of a certificate of registration, the board

7

shall require a registered professional land surveyor to successfully complete

8

continuing professional education courses as prescribed by board rule. The

9

board's rules must provide that the continuing professional education

10

requirement may be met by completing annually [~~not more than eight~~] sixteen

11

hours [~~, a calendar day,~~] of professional development courses or programs.

12

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds

13

of all the members elected to each house, as provided by Section 39, Article III, Texas

14

Constitution. If this Act does not receive the vote necessary for immediate effect, this

15

Act takes effect September 1, 2009.