

**SUBCHAPTER A. BASIC MANUAL OF RULES, RATES AND FORMS
FOR THE WRITING OF TITLE INSURANCE IN THE STATE OF TEXAS
28 TAC §9.50**

1. INTRODUCTION. The Texas Department of Insurance (Department) proposes new §9.50, concerning the adoption by reference of amendments to procedural rules P-1, P-12 and P-28; an amendment to Form T-57: Agreement to Furnish Title Evidence, the addition of new administrative rules G-3, G-4, G-5, G-6; and G-7 and the addition of new forms T-G4, T-G5, T-G6, T-G7, Exhibit I Financial Statement of Title Agent's Unencumbered Assets, and Texas Title Agent's/Direct Operation Minimum Capitalization Bond in the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas* (Basic Manual). The proposed adoption by reference of amendments to procedural rules and forms, the addition of new administrative rules, and the addition of new forms is necessary to implement House Bill (HB) 4338 as enacted by the 81st Legislature, Regular Session. The proposed amendments, new rules, and new forms are necessary to promote efficient and effective regulation of the business of title insurance in Texas. The amendments further update internal references and references related to nonsubstantive revisions of the Insurance Code.

Background and Purpose. In enacting HB 4338, the Legislature sought to strengthen the existing regulatory system for title insurance agents that were identified during the 2009 economic downturn (TEXAS BUSINESS AND COMMERCE COMMITTEE, BILL ANALYSIS (Engrossed), HB 4338, 81st Legislature, Regular Session (May 22, 2009)). Further legislative findings indicate several other relevant

factors. Several title insurance agents have failed, leaving files in the middle of closing, offices and file storage facilities padlocked. On the last day of July 2008, one of the largest independent title insurance companies in Texas was shut down by its out-of-state owners with no warning to its underwriters, employees, customers, vendors or lessors, or to the Department. The Department had just completed an escrow audit of the agent and was reasonably certain that there were no shortages in the escrow account. Because of the size of the agent and the fact that the Department and the Texas Title Insurance Guaranty Association were also involved with other failed agents, the Department's resources were stretched very thin, and the Department and the agent's underwriters were forced to devise a system to deal with the files that were in various stages of closing with upwards of \$12 million needing to be funded.

While extraordinary efforts by the Department and the underwriters allowed this failed agent's customers to have their transactions closed, existing liens paid, and documents recorded, all with no known loss of funds, it became apparent that changes to the title insurance act were needed to prevent similar problems in the future. This bill and the rules that implement the bill allow the Commissioner of Insurance (Commissioner) more flexibility in handling impaired title insurance agents and companies.

House Bill 4338 and the rules in this proposal that implement the bill provide a mechanism for the Department, as the receiver for an impaired agent or the title insurance companies for which the agent was licensed, to have improved access to the agent's files and provide for the confidentiality of the information contained in such files.

The bill and rules that implement the bill allow the Department to obtain information about the possible insolvency of a title insurance agent, place the funds derived from a division of premium between an agent and an underwriter or another agent into a trust, and require all abstract plants to cover a period beginning not later than January 1, 1979. The bill and rules that implement the bill increase the educational requirements for title insurance agents and their management personnel and specifies the entities that can provide such education. The bill and rules that implement the bill establish a staggered period during which many title insurance agents and direct operations must reach a certain level of minimum capitalization based on the population of the county or counties for which the agent is licensed.

The following is an item by item overview of the proposal.

Item HB 4338-1. The proposed amendments to P-28 amend subsection A and add a new subsection B to set forth requirements for the establishment of a professional training program for title agent management personnel and incorporate the use of a certified transcript as a means of providing evidence of the completion of title agent continuing education courses.

A proposed amendment to P-28 A.2 amends the definition of "Provider" to replace the language "a proprietary school as defined in the Texas Proprietary School Act (the Education Code, Chapter 32)" with the new language "a career school or college as defined by the Education Code §132.001." This amendment is necessary to conform the definition of "Provider" in P-28 with the Insurance Code §2651.0021(d)(3).

Another proposed amendment to P-28 A.2 adds a new definition of "Certified Transcript" to specify the requirements for a certified transcript that may be used as evidence of successful completion of continuing education courses.

Another proposed amendment to P-28 A.2 adds a new definition of "Control" to specify the meaning of this term as it is used in defining the management personnel who will be required to complete the Professional Training Program for Title Agent Management Personnel.

The proposed amendments to P-28 A.7 amend subsection (6) and P-28 A.8 amends subsection (c) to add the new language "or a certified transcript." This amendment is necessary to allow a course provider to issue a certified transcript as evidence of the completion of the course to a licensee who successfully completes a certified continuing education course.

The proposed amendment to P-28 A.9 amends subsection (a) to require that all continuing education courses be filed with the Department a minimum of 30 days before the courses are offered to students.

Proposed new subsection P-28 B.1 defines "management personnel" as all personnel who are designated as management personnel on the Application for Title Insurance Agent's License and the Title Agent Update Form.

Proposed new subsection P-28 B.2 specifies that a corporation or partnership licensed as a title agent must file in the Application for Title Insurance Agent's License and the Title Agent Update Form the following biographical information: (i) each executive officer, director, or partner who administers the entity's day to day operations

in this state; (ii) each shareholder who is in control of the corporation or partner who has the right or ability to control the partnership; and (iii) if the corporation or partnership is owned, in whole or in part, by another entity, each individual who is in control of the parent entity.

The new definition of “control” added to P-28 A.2 is that control is the power to direct or cause the direction of the management and policies of a title agent, whether directly or indirectly. A person is considered to control a title agent structured as a corporation if the person, individually or acting with others, directly or indirectly, holds with the power to vote, owns, or controls, or holds proxies representing, at least 10 percent of the voting stock or voting rights of the corporate title agent. A person is considered to control a title agent structured as a partnership if the person through a right to vote or through any other right or power exercises rights in the management, direction, or conduct of the day to day operations of the title agent.

Proposed new subsections P-28 B.1 and B.2 are necessary to clearly specify the title agent management personnel who will be required to complete the professional training program for title agent management personnel. By focusing on this group of key personnel that exercise rights in the management, direction, or conduct of the day to day operations of the title agent as those who are required to complete the professional training program for title agent management personnel, the Department's goal is to enhance the level of professionalism of the management personnel in the title insurance industry.

Proposed new subsection P-28 B.3 specifies that an individual who holds a management position for a title agent cannot engage in the business of title insurance unless the individual has completed the management training course within 12 months of the effective date of rule.

Proposed new subsection P-28 B.4 specifies that an individual is exempt from the professional training requirements if the individual has held a position as management personnel with a title agent for at least five years or a comparable position.

Proposed new subsection P-28 B.5 specifies that a continuing education course that provides professional training for title agent management personnel must be submitted to the Department for certification by the Department that the course meets the necessary requirements prior to offering the course.

Proposed new subsection P-28 B.6 specifies that licensees may count the management training course toward completion of the licensee's continuing education requirements.

Proposed new subsection P-28 B.7 specifies that individuals who are required to complete the management training course must maintain proof of course completion for a period of four years from the date that the course was completed.

Proposed new subsection P-28 B.8 specifies that the completion certificate or the certified transcript for the management training course must comply with all of the requirements set forth in P-28 A.8.

Proposed new subsection P-28 B.9 specifies the course topics that must be covered in a management training course.

Proposed new subsection P-28 B.10 specifies that course providers for the management training course must meet all of the requirements for providers set forth in P-28.

Item HB 4338-2. The proposed new administrative rule G-3 pertains to the filing of title agent quarterly withholding tax reports with the Department.

Proposed new subsection G-3 I. requires all title agents to submit to the Department on a quarterly basis a copy of the agent's quarterly withholding tax report that the title agent filed with the Internal Revenue Service and evidence that the taxes have been paid.

Proposed new subsection G-3 II. requires that the title agent submit the agent's quarterly withholding tax report and evidence that the taxes have been paid no later than 45 days after the end of the calendar quarter. Additionally, proposed new subsection G-3 II. sets forth a schedule of the ending dates for the quarter and the date that the reports are due to the Department.

Proposed new subsections G-3 III. and IV. specify that the withholding report and evidence that taxes have been paid must be submitted to the Title Examinations Section of the Department and that form T-G4 may be obtained from the Title Examinations Section of the Department or from the Department's website.

Proposed new subsection G-3 V. provides that an agent who does not have employees must certify to the Department that there has not been a material change in

the agent's financial condition. This certification for agents that do not have employees must be submitted to the Department in accordance with the schedule set forth in subsection G-3 II. The proposed new form T-G4 Title Agent Certification Form of Agent's Financial Condition provides a method for a title agent to certify that a title agent did not have any employees during a calendar quarter and therefore did not file a quarterly withholding tax report.

The purpose of requiring title agents to file their withholding tax reports is that it provides the Department with an early warning tool to monitor the financial condition of the title agent on a quarterly basis. Often one of the earliest signs that a title agent is in financial difficulty is the failure to pay their quarterly withholding taxes. By monitoring whether or not a title agent is paying these taxes on a quarterly basis, the Department will be alerted that the title agent is having financial problems and have the ability to schedule an examination and gather information on the title agent's financial condition much earlier than if this were uncovered in the course of a routine examination.

Item HB 4338-3. The proposed new administrative rule G-4 pertains to title company requirements, procedures, and forms for providing privileged title agent solvency information to the Department. The rule provides that an underwriter may provide information to the Department about a financial matter that would reasonably call into question the solvency of a title agent that the underwriter has appointed.

The proposed new form Annual Report of Underwriter's Officers Authorized to Provide Information On Title Agent Financial Matters (T-G5) designates the underwriter's officers who are authorized to provide information to the Department on

title agent financial solvency matters. The proposed new form Financial Matter Disclosure Report (T-G6) is the form that underwriters are required to use if the underwriter is submitting financial solvency information regarding one of the underwriter's appointed title agents to the Department. Information provided on T-G6 is privileged information and may not be disclosed except in an administrative hearing or proceeding. Any information provided to the Department on form T-G6 is not public information subject to Chapter 552 of the Government Code except that: (i) the Commissioner may release information that is received on form T-G6 to an underwriter that has appointed or that is considering appointing the title agent; or (ii) the Commissioner may release information to the title agent under the Insurance Code §2651.206 if the information is evidence on which an audit report or examination report relies. The Department has determined that the title underwriter's consideration of appointing a title agent would commence when the underwriter makes application to the Department to appoint the title agent that may have solvency problems and such application is pending. An underwriter that receives information under new administrative rule G-4 may not release the information except under a subpoena.

The purpose of this new rule and new forms is to facilitate communication between title insurance companies and the Department concerning financial matters that might reasonably call into question the solvency of a title insurance agent. Underwriters may have information concerning the solvency of a title agent; however, in the past if such information were disclosed to the Department the information may have been subject to an open records request by a third party. The prospect of the

information becoming public information through an open records request had a chilling effect on disclosure to the Department by the underwriter of what could be considered sensitive information. This new rule concerning the release of financial information regarding a title agent's solvency provides procedures and safeguards for both the title agent and the underwriter such that it promotes the flow of information to the Department early in the process so that the title agent has the best possible chance of rehabilitation from the hazardous financial condition.

Item HB 4338-4. The proposed new administrative rule G-5 pertains to minimum capitalization standards for title agents, a procedure for certification of a title agent's unencumbered assets, a new form for submission of the certification of unencumbered assets to the Department, and a procedure and new form for use in determining the value of a title agent's unencumbered assets.

Proposed new subsection G-5 I. specifies the minimum capitalization standards for a title agent. Title agents are required to maintain unencumbered assets with a market value in excess of liabilities, exclusive of abstract plants in the amounts specified in the Insurance Code §2651.012(c)(1) - (c)(4). The amount of unencumbered assets in excess of liabilities that a title agent is required to maintain is as follows: (i) \$25,000 for a title agent with a principal office in a county with a population of 10,000 or more but less than 50,000; (ii) \$50,000 for a title agent with a principal office in a county with a population of 50,000 or more but less than 200,000; (iii) \$100,000 for a title agent with a principal office in a county with a population of 200,000 or more but less than

1,000,000; and (iv) \$150,000 for a title agent with a principal office in a county with a population of 1,000,000 or more.

Proposed new subsection G-5 II. provides a schedule for compliance with the minimum capitalization standards specified in subsection I. The schedule provides specific time periods and specific benchmarks within those time periods for an agent to attain the required capitalization. The phase-in time periods for title agents to comply with the capitalization standards vary depending on the length of time that a title agent has been licensed. There is a range of time periods for attaining the required capital beginning with three years for an agent that has been licensed for at least three years but less than four years on September 1, 2009, and ending with nine years for an agent that has been licensed for at least nine years on September 1, 2009. If an agent has been licensed less than three years as of September 1, 2009, then the agent has two years to attain the required capital. On or after the effective date of the rule, a title agent that applies for a new license will be required to have 100 percent of the required capital as a requirement for issuance of a new license. Additionally, on or after the effective date of the rule, if there is a change in ownership or control of a title agent the new owner will be required to have 100 percent of the required capital as a requirement for issuance of a new license.

Proposed new subsection G-5 III. specifies the filing requirements and the form to be used for a title agent to provide certification to the Department that the title agent has the appropriate unencumbered assets for licensure.

Proposed new subsection G-5 III.A provides that the title agent must submit to the Department, with the annual audit of escrow accounts, a certification by a certified public accountant that the title agent has the appropriate unencumbered assets as specified in subsection G-5 I.A of this administrative rule on the form titled Certification Form For Title Agent's Unencumbered Assets Form Number T-G7.

Proposed new subsection G-5 III.B provides that the initial certification on Form Number T-G7 must be submitted to the Department with the title agent's annual audit of escrow accounts that is filed with the Department between September 1, 2011, and August 31, 2012.

Proposed new subsection G-5 III.C provides that the subsequent annual certification Form Number T-G7 and the title agent's annual audit of escrow accounts are to be submitted annually between September 1 and September 30 of each year for the preceding calendar year beginning in 2012. The filing requirements for the subsequent certifications after the initial certification set forth a new schedule with respect to the filing of title agent annual escrow audits. Currently, agents file their escrow audit up to 90 days after the end of their fiscal year which can end any month of the year. Since new §2651.012(g) of the Insurance Code requires title agents to follow a specific schedule for compliance with the new capitalization requirements, the filing of the annual escrow audits are also required to follow the compliance schedule for capitalization requirements (i.e., September 1st of each year). This is due to the fact that new §2651.158(a) has linked the filing of the certification of assets with the filing of the escrow audit and the additional statutory requirement in §2651.012(g) that title

agents follow the schedule for compliance with the capitalization requirements that has been set forth in that subsection.

Proposed new subsections G-5 III.D and III.E provide that Form Number T-G7 can be obtained from the Title Examinations Section of the Department or the Department's website and that certification forms must be submitted to the Title Examinations Section of the Department.

Proposed new subsection G-5 III.F provides that an agent that has made a deposit with the Department under §2651.012(f) of the Insurance Code is exempt from the certification requirement. However, if an agent elects to utilize a deposit with the Department as the method of complying with the title agent's capitalization requirement, then the agent must at the time of license renewal provide written notice to the Title Examinations Section that a deposit has been made and that the deposit meets the title agent's statutory capitalization requirement.

The proposed new Form Number T-G7 Certification Form for Title Agent's Unencumbered Assets requires a Certified Public Accountant (CPA) to audit the Financial Statement of Title Agent's Unencumbered Assets (Exhibit I). The Financial Statement of Title Agent's Unencumbered Assets (Exhibit I) is prepared by the title agent including management, officers, and directors from documents evidencing the title agent's unencumbered assets and account information that is maintained by the title agent. The title agent including management, officers, and directors are responsible for the accuracy of the information on Exhibit I and the accuracy and authenticity of the

supporting documents and account information. It is the CPA's responsibility to express an opinion on the Financial Statement of Title Agent's Unencumbered Assets (Exhibit I) based on the CPA's audit. The form specifies that the audit shall be conducted in accordance with generally accepted auditing standards. Those standards require that the CPA plan and perform the audit to obtain reasonable assurance concerning whether the Financial Statement of Title Agent's Unencumbered Assets (Exhibit I) is free of material misstatement. New Form Number T-G7 requires the CPA conducting the audit to certify that Exhibit I as of the date of the audit that was prepared from the documents evidencing the title agent's unencumbered assets and account information presents fairly in all material respects that the title agent's unencumbered assets exceed the liabilities, exclusive of the value of the abstract plants as required by §2651.012(c) of the Insurance Code.

Proposed new subsection G-5 IV. sets forth the procedures and requirements that a CPA must use for determining the value of a title agent's assets and proposes a new form Financial Statement of Title Agent's Unencumbered Assets (Exhibit I).

Proposed new subsection G-5 IV.A specifies that it is the responsibility of the title agent including management, officers, and directors to prepare the Financial Statement of Title Agent's Unencumbered Assets (Exhibit I) and to provide Exhibit I along with the supporting documents and account information to a CPA for audit.

Proposed new subsection G-5 IV.B sets forth the procedures that a CPA must use in the preparation of Exhibit I and are as follows: (i) verify that all assets are free and clear of any liens and obligations such as liens and mortgages; and (ii) verify that

the title agent is solvent by determining that the market value of all of the title agent's assets exceeds the book value of all liabilities.

Proposed new subsection G-5 IV.C specifies that a CPA must use Generally Accepted Accounting Principles to verify the market value of the title agent's assets and it provides some examples of verified assets.

Proposed new subsection G-5 IV.D specifies that a CPA who is determining the value of a title agent's assets and the book value of the title agent's liabilities as preparation for providing a certification of unencumbered assets to the Department in accordance with §2651.158(a) of the Insurance Code must attach to the annual audit of escrow accounts a Certification Form For Title Agent's Unencumbered Assets (Form Number T-G7) certifying that the title agent has the appropriate unencumbered assets as specified in §2651.158(a) of the Insurance Code. Additionally, Exhibit I Financial Statement of Title Agent's Unencumbered Assets must be attached to Form Number T-G7.

Proposed new subsection G-5 IV.E specifies that a title agent must use the form Exhibit I titled "Financial Statement of Title Agent's Unencumbered Assets" when filing the certification of unencumbered assets.

The proposed new form Exhibit I Financial Statement of Title Agent's Unencumbered Assets (Exhibit I) requires the title agent including management, officers, and directors to provide information on the form concerning the title agent's total unencumbered assets and total liabilities. Exhibit I and the documentation to support the information reported on Exhibit I are then submitted to a CPA for audit to

verify the accuracy of the information reported on Exhibit I. The preparation of Exhibit I and the audit of the accuracy of the information provided in Exhibit I are necessary for the CPA to certify that the title agent has the appropriate unencumbered assets in accordance with §2651.012(c) of the Insurance Code.

The purpose of the new minimum capitalization requirements is to enhance the ability of a title insurance agent to remain solvent during periods when the title insurance agent is having financial problems. The capital that an agent will be required to maintain will provide a reserve fund that the agent can use during periods of reduced cash flow. Additionally, this reserve capital will provide funds for administrative expenses to wind down the title agent's affairs in the event that insolvency cannot be avoided.

Item HB 4338-5. The proposed new Administrative Rule G-6 pertains to the surety bond that title agents may use to comply with the new minimum capitalization requirements.

Proposed new subsection G-6 I. specifies the procedures for use of the surety bond by the title agent.

Proposed new Subsection G-6 I.A specifies that a title agent may file a surety bond with the Department to comply with the minimum capitalization requirements for a title agent set forth in the Insurance Code §2651.012(c)(1) - (c)(4).

Proposed new subsection G-6 I.B provides that the conditions of the bond are as follows: (i). the bond shall be in the amount that a title agent requests to comply with the minimum capitalization requirements set forth in the Insurance Code

§2651.012(c)(1) - (4); (ii) the bond must be executed by a surety company authorized to do business in Texas; and (iii) the bond must be payable to the Commissioner of Insurance.

Proposed new subsection G-6 I.C concerns the bond proceeds and specifies that if the Commissioner makes a claim for bond proceeds it must be made on behalf of (i) a supervisor or conservator appointed by the Commissioner; (ii) a court-appointed receiver, rehabilitator, or liquidator; or (iii) the Texas Title Insurance Guaranty Association. Additionally, subsection G-6 I.C specifies that bond proceeds shall be used as permitted by the Commissioner by the supervisor, conservator, receiver, rehabilitator, or liquidator, or the Texas Title Insurance Guaranty Association. The contingencies for use of the bond proceeds include payment of administrative expenses incurred or that may be incurred by or on behalf of a title agent that has been declared impaired either before or after the date of impairment. The bond proceeds collected or received shall not be considered property of the state.

Proposed new subsection G-6 I.D specifies that the bond does not expire nor is it subject to cancellation until the 60th day after written notice of expiration of cancellation has been served on the Department either personally or by certified mail. After the notice of cancellation is issued, the title agent may not perform the acts of a title insurance agent unless the agent provides the Department with evidence of compliance with the Insurance Code §2651.012 on or before the expiration of the 60 day period.

Proposed new subsection G-6 I.E specifies that if an agent elects to utilize a surety bond as the method of complying with the title agent's capitalization requirement,

then the agent must at the time of license renewal provide written notice to the Title Examinations Section that a surety bond has been purchased and that such surety bond meets the title agent's statutory capitalization requirements.

Proposed new subsection G-6 II. prescribes the form and content of the surety bond in Subsection V Exhibits and Forms of the Basic Manual.

The purpose of the new bond form is to provide title agents with an alternative method of complying with the new minimum capitalization standards. The purchase of a surety bond may be more suitable to the needs of certain title agents for complying with the new statutory capitalization standards. Therefore, this option will be available through the promulgation of a new bond form and rules.

Item HB 4338-6. The proposed new administrative rule G-7 pertains to the requirements and procedures for a title agent audit, review, or examination.

Proposed new subsection G-7(A) specifies the requirements and procedures for an audit, review, or examination of a title agent or direct operation conducted under Chapter 2651 or Chapter 2602 of the Insurance Code and are as follows: (i) before the report from an examination, review, or audit becomes final, the Department must furnish a copy of the report and any evidence on which the report relies to the title agent or direct operation; (ii) the title agent or direct operation must be provided a reasonable period of not less than 10 days after the title agent or direct operation receives the report and evidence on which the report relies from the Department for the title agent or direct operation to respond; (iii) the title agent or direct operation must be provided an opportunity for an appeal under §7.83 of Title 28 of the Texas Administrative Code

(pertaining to appeal of examination reports); and (iv) the report and any evidence regarding the report are confidential and not subject to disclosure under the Insurance Code or Chapter 552 of the Government Code and may be transmitted only to designated representatives of the title agent or direct operation previously specified in writing by the title agent.

Proposed new subsection G-7(B) requires the Commissioner to furnish the title agent or direct operation with a draft of the report and a copy of any evidence on which the report relies not later than the 10th day before the scheduled date of a meeting requested by the Department regarding a report.

Proposed new subsection G-7(C) defines work papers and specifies the Department's responsibility for production of the work papers in an audit or examination. Section 2651.206 of the Insurance Code does not require the Department to turn over work papers. Work papers as specified in §2651.206(c) of the Insurance Code include work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules, and commentaries prepared or obtained by the auditor or examiner that support the opinions of the auditor or examiner.

The purpose of this new administrative rule is to establish guidelines and procedures for an audit, review, or examination conducted under Chapter 2651 or Chapter 2602 of the Insurance Code.

Item HB 4338-7. Section 1 of HB 4338 amended the Insurance Code §2501.004(b) to require that all title abstract plants in Texas cover a period beginning not later than January 1, 1979, in order to provide additional safety and protection for

policyholders. In order to conform the rules in the Basic Manual that pertain to abstract plants with the new requirements specified in HB 4338, the Department is proposing the following amendments to Procedural Rule P-1 Definitions and Procedural Rule P-12 Abstract Plants and Form T-57: Agreement to Furnish Title Evidence:

Procedural Rule P-1 i which is the definition of "Abstract plant" is proposed to be amended to replace the language "currently kept to date" with the new language "kept current." The purpose of this change is to conform the definition of "Abstract plant" in the Basic Manual with the newly amended statutory language in the Insurance Code §2501.004(b)(2).

Procedural Rule P-1 z, which is the definition of "Furnishing title evidence," is proposed to be amended to replace the language "going back not less than 25 years" with the new language "covering a period beginning not later than January 1, 1979." The purpose of this change is to conform the definition of "Furnishing title evidence" in the Basic Manual with the new statutory requirement for the beginning date of an abstract plant specified in the Insurance Code §2501.004(b)(2).

Procedural Rule P-12 Abstract Plants has a definition of "abstract plant" that is proposed to be amended to replace the language "for a period of at least 25 years immediately prior to the date of search" with the new language " covering a period beginning not later than January 1, 1979." The purpose of this change is to conform the definition of "abstract plant" in Procedural Rule P-12 with the new statutory requirement for the beginning date of an abstract plant specified in the Insurance Code §2501.004(b)(2). Additionally, new language is proposed to be added after the first

sentence as follows: " An abstract plant that is fulfilling the licensing requirement for a title insurance agent's license on September 1, 2009, but does not on that date, cover a period beginning not later than January 1, 1979 as required by §2501.004 of the Insurance Code, is not required to comply with §2501.004 before January 1, 2014." The purpose of this new language is to conform the definition of abstract plant with SECTION 19 of HB 4338 that specifies "An abstract plant that exists on September 1, 2009, but that does not, on that date, cover a period beginning not later than January 1, 1979, as required by §2501.004, Insurance Code, as amended by this act, is not required to comply with that section before January 1, 2014." SECTION 19 provides for a grace period beginning on September 1, 2009, and ending on January 1, 2014, for title agents to bring their abstract plants into compliance with the requirement that the plant cover a period beginning not later than January 1, 1979. However, if a joint abstract plant or subscription plant is in operation prior to September 1, 2009, and the plant does not have a "begin" date of January 1, 1979, a title agent who is using such a plant would be able to take advantage of the grace period through January 1, 2014. However, if the joint plant or subscription plant is not brought into compliance on or before January 1, 2014, any title agent that is using such a plant to fulfill its abstract plant licensing requirement would be subject to disciplinary action up to and including license revocation.

Form T-57: Agreement to Furnish Title Evidence is proposed to be amended to replace the language "at least 25 years immediately prior to the date of search" with the new language "a period beginning not later than January 1, 1979." The purpose of this

change is to conform Form T-57 in the Basic Manual with the new statutory requirement for the beginning date of an abstract plant specified in the Insurance Code §2501.004(b)(2).

The Department has filed a copy of each of the proposed items with the Secretary of State's *Texas Register* Section. Persons desiring copies of the proposed items may obtain them from the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78701-3938. To request copies, please contact the Office of the Chief Clerk at 512/463-6326.

2. FISCAL NOTE. Robert R. Carter, Jr., Deputy Commissioner for the Title Division, has determined that, for each year of the first five years the proposals are in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the amendments. Mr. Carter has also determined that there will be no measurable effect on local employment or the local economy.

3. PUBLIC BENEFIT/COST NOTE. Mr. Carter also has determined that for each year of the first five years the amendments are in effect there are a number of public benefits anticipated as a result of the amendments to the Basic Manual and Statistical Plan. The proposed amendments to P-28 A. and the addition of new P-28 B. set forth the requirements for the establishment of a professional training program for title agent management personnel. The proposed amendments to P-28 that establish a professional training program for title agents' management personnel reflect the

changes mandated by HB 4338, codified as Insurance Code §2651.0021. The Department anticipates that there will be costs for those title agents who have management personnel that will be required to attend the professional training program for title agent management personnel. These estimated costs are based on information provided to the Department by a title agent trade organization that is in the process of developing a curriculum for the professional training program for title agent management personnel and that will be offering such a course once the rules are adopted. The estimated cost would be \$600 - \$800 for each individual to attend a 12 hour in-person course. This cost would depend on: (i) the number of course hours that are ultimately adopted in the rule; (ii) the size of the facility needed based on the number of persons that are attending; and (iii) the fees charged by provider for the speakers. Additionally, it is estimated that the cost for reporting completion of the course to the Department would be minimal. The anticipated public benefit resulting from the establishment of a professional training program for the title agents' management personnel is the enhancement of the level of professionalism of the management personnel in the title insurance industry that will result in more efficient and thorough management of the title agents' business affairs.

The proposed addition of new administrative rule G-3 requires all title agents to submit to the Department on a quarterly basis a copy of the agent's quarterly withholding tax report that the title agent filed with the Internal Revenue Service and evidence that the taxes have been paid. The proposed addition of new administrative rule G-3 requiring all title agents to submit to the Department a copy of the agent's

quarterly withholding tax report reflects the changes mandated by HB 4338, codified as Insurance Code §2651.011(c). The Department anticipates that there will be a cost for title agents to submit the agent's quarterly IRS withholding tax report and evidence that the taxes have been paid. These estimated costs are based on information provided to the Department by a title agent trade organization that surveyed its member title agents and requested that they provide an annual cost estimate to comply with this new requirement. Of the 518 licensed agents surveyed, 111 or 22 percent responded. The total cost to comply reported by the 111 agents that responded was \$84,974 or an average cost of \$764 per title agent. Based on that sample and assuming that the average cost would be the same for the remaining agents who did not respond to the survey, the total estimated cost for all agents who were surveyed to comply would be \$395,752 per year. The anticipated costs associated with this new reporting requirement will include: (i) postage for certified mail or overnight delivery; (ii) accountant fees to obtain data on a quarterly basis; (iii) accountant costs to register with the Electronic Federal Tax Payment System; (iv) accountant costs to log in to the IRS website and print the quarterly tax report and give to clerical personnel for mailing; (v) copying costs; (vi) costs to reconcile the returns with payment vouchers; (vii) legal expenses to implement the compliance program; (viii) administrative support costs; and (ix) costs to rewrite computer programs or purchase software to comply with the new reporting requirements. The anticipated public benefit resulting from the agent's quarterly filing of the withholding tax report is that it provides the Department with an early warning tool to monitor the financial condition of the title agent on a quarterly

basis. By regularly monitoring whether or not a title agent is paying these taxes, the Department will be alerted in a timely fashion that the title agent is having a financial problem. This early warning will give the Department the ability to schedule an examination and gather information on the title agent's financial condition earlier than if the financial problem was uncovered in the course of a routine examination.

The proposed addition of new administrative rule G-4 pertains to title company requirements, procedures, and forms for providing privileged title agent solvency information to the Department. The rule provides that an underwriter may provide information to the Commissioner about a financial matter that would reasonably call into question the solvency of a title agent that the underwriter has appointed. The proposed addition of new administrative rule G-4 that pertains to title company requirements, procedures, and forms for providing privileged title agent solvency information to the Department reflects the changes mandated by HB 4338, codified as Insurance Code §2651.011(a), (b), and (d). There is no additional cost to agents required to comply with this amendment because the amendment is the result of the legislative enactment of HB 4338, and any cost to comply results directly from the enactment of HB 4338. The anticipated public benefit resulting from proposed addition of new administrative rule G-4 is that it facilitates communication between title insurance companies and the Department concerning financial matters that might reasonably call into question the solvency of a title insurance agent.

The proposed addition of new administrative rule G-5 pertains to new minimum capitalization standards for title agents, a procedure for certification of a title agent's

unencumbered assets, a new form for submission of the certification of unencumbered assets to the Department, and a procedure and new form for use in determining the value of a title agent's unencumbered assets. The proposed addition of new administrative rule G-5 reflects the changes mandated by HB 4338, codified as Insurance Code §2651.012 and §2651.158. There is no additional cost to agents required to comply with this amendment because the amendment is the result of the legislative enactment of HB 4338, and any cost to comply results directly from the enactment of HB 4338. The anticipated public benefit resulting from the proposed addition of new administrative rule G-5 is that the new minimum capitalization requirements enhance the ability of title insurance agents to remain solvent during periods when the title insurance agent is having financial problems. If the title agent elects to fulfill the minimum capitalization requirement through cash or cash equivalents; liquid assets that have a readily determinable market value and that do not have any lien against them; or investments, such as mutual funds, certificates of deposit, and stocks and bonds then the title agent will have access to a portion of the reserve fund that the title agent can use to help him through periods of reduced cash flow. However, if the title agent elects to fulfill the minimum capitalization requirement through a surety bond; a cash deposit made with the Department in accordance with §2651.102 of the Insurance Code; or a letter of credit that meets the requirements of §493.104(b)(2)(c) the provisions of G-5 would limit the ability of the title agent to access such funds for operational purposes. Additionally, this reserve capital will provide funds for the

Department to use for administrative expenses to wind down the title agent's affairs in the event that insolvency cannot be avoided.

The proposed addition of new administrative rule G-6 pertains to the surety bond that title agents may use to comply with the new minimum capitalization requirements specified in the Insurance Code §2651.012(c). The proposed addition of new administrative rule G-6 reflects the changes mandated by HB 4338, codified as Insurance Code §2651.012(a)(2)(E) and (j). The Department anticipates that there will be costs for those title agents who choose to purchase a surety bond to fulfill the new minimum capitalization requirement for title agents. The estimated costs are based on information provided to the Department by a surety company that is authorized to do business in Texas and that has reviewed the proposed bond form. The surety company classifies the bond as a Financial Compliance obligation and estimates the rate for the proposed bond to be \$15 for each \$1,000 of the financial obligation that the surety company assumes on behalf of the title agent. The levels of capitalization for a title agent depend on the population of the county in which the title agent has its principal office and they are as follows: (i) a title agent with a principal office in a county with a population of 10,000 to 50,000: \$25,000; (ii) a title agent with a principal office in a county with a population of 50,000 to 200,000: \$50,000; (iii) a title agent with a principal office in a county with a population of 200,000 to 1,000,000: \$100,000; or (iv) a title agent with a principal office in a county with a population of more than 1,000,000: \$150,000. Therefore, the estimated premium for a surety bond to fulfill these capitalization requirements range from a minimum of \$375 per year for a title agent with

a principal office in a county with a population of 10,000 to 50,000 to a maximum of \$2,250 per year for a title agent with a principal office in a county with a population of more than 1,000,000. The anticipated public benefit resulting from the proposed addition of new administrative rule G-6 is that the new bond form will provide title agents with an alternative method of complying with the new minimum capitalization standards. The purchase of a surety bond may be more suitable to the needs of certain title agents for complying with the new statutory capitalization standards. Therefore, this option will be available through the promulgation of a new bond form and rules.

The proposed addition of new administrative rule G-7 specifies the requirements and procedures for the Department to conduct a title agent, audit, review, or examination. The proposed addition of new administrative rule G-7 reflects the changes mandated by HB 4338, codified as Insurance Code §2651.206. There is no additional cost to agents required to comply with this amendment because the amendment is the result of the legislative enactment of HB 4338, and any cost to comply results directly from the enactment of HB 4338. The proposed addition of new administrative rule G-7 establishes guidelines and procedures for the Department to follow when conducting an audit, review, or examination under Chapter 2651 or Chapter 2602 of the Insurance Code. The anticipated public benefit resulting from the proposed addition of new administrative rule G-7 is to clarify the audit, review, and examination procedures so that the Department is able to conduct these administrative functions more uniformly and efficiently.

Procedural Rule P-1 i which is the definition of "Abstract plant" is proposed to be amended to replace the language "currently kept to date" with the new language "kept current." This change conforms the definition of "Abstract plant" in the Basic Manual with the statutory language in §2501.004(b)(2) as mandated by HB 4338. Procedural Rule P-1 z which is the definition of "Furnishing title evidence" is proposed to be amended to replace the language "going back not less than 25 years" with the new language "covering a period beginning not later than January 1, 1979." This change conforms the definition of "Furnishing title evidence" in the Basic Manual with the new statutory requirement for the beginning date of an abstract plant specified in §2501.004(b)(2) as mandated by HB 4338. Procedural Rule P-12 Abstract Plants has a definition of "abstract plant" that is proposed to be amended to replace the language "for a period of at least 25 years immediately prior to the date of search" with the new language " covering a period beginning not later than January 1, 1979." This change conforms the definition of "abstract plant" in Procedural Rule P-12 with the new statutory requirement for the beginning date of an abstract plant specified in §2501.004(b)(2) as mandated by HB 4338. The Department anticipates that there will be costs for updating the title plant of those title agents whose abstract plant does not cover a period beginning not later than January 1, 1979. These estimated costs are based on information provided to the Department by a title agent trade organization that surveyed its member title agents and requested that they provide an annual cost estimate to comply with this new requirement. Of the 518 licensed agents surveyed, 111 or 22 percent responded to the survey and only five or five percent of these agents

reported that they have had or will have costs to bring their abstract plant up to date. The average cost for the five title agents that responded was \$129,500. Extrapolating from the percentage of agents that responded to the survey and reported that they would have costs to comply (five percent) and the total number of licensed agents (518) it is assumed that there will be 26 agents that will incur costs to comply (518 total agents x five percent = 26 agents). Assuming the same percentage of the licensed agents that will incur costs (26) and that their average costs would be consistent with the title agents that responded to the survey (\$129,500), the total estimated compliance cost would be \$3,367,000 (26 x \$129,500 = \$3,367,000). The anticipated costs associated with this new abstract plant requirement will include: (i) cost to purchase data from the county; (ii) cost to purchase data from other sources; (iii) cost to purchase new servers to hold the additional data; (iv) cost to hire personnel to program and format data to upload into the database; (v) cost for administrative personnel to post, re-key, and locate data for accuracy; (vi) scanning costs; and (vii) additional subscription fees. The anticipated public benefit resulting from the proposed amendments will be that title abstract plants will be required to cover a period beginning not later than January 1, 1979. This new requirement to extend the mandatory time period that title abstract plants must cover will enhance the safety and security of title examinations and will result in more effective regulation of the title insurance industry.

As to all proposals, the department anticipates no differential impact between small, large, and micro businesses.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

FOR SMALL AND MICRO BUSINESSES. The Government Code §2006.002(c) requires that if a proposed rule may have an adverse economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. The Government Code §2006.001(2) defines “small business” as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has fewer than 100 employees or less than \$6 million in annual gross receipts. The Government Code §2006.001(1) defines “micro business” similarly to “small business” but specifies that such a business may not have more than 20 employees. The Government Code §2006.002(f) requires a state agency to adopt provisions concerning micro businesses that are uniform with those provisions outlined in the Government Code §2006.002(b) – (d) for small businesses.

Analysis of Economic Impact

The Department has determined that this proposal contains two new Administrative Rules G-3 and G-6 and amendments to Procedural Rules P-28, P-1, and P-12 and an amendment to Form T-57 that may have an adverse economic effect on approximately 600 small or micro business title insurance agents and that must be analyzed in order to determine costs to small and micro business title insurance agents required to comply with this proposal.

In accordance with the Government Code §2006.002(c), the Department has determined that there are two new Administrative Rules G-3 and G-6 and amendments to Procedural Rules P-28, P-1, and P-12 and an amendment to Form T-57 that may have an adverse economic impact on approximately 600 title agents that qualify as small or micro businesses under the Government Code §2006.001(1) and (2) and that are required to comply with the proposed rules. This estimate is based on the Department's review of information relating to the amount of gross receipts for the 654 title insurance agents licensed in Texas at the end of 2008. The data for 2008 was used because the data from the 2009 statistical plan for annual gross receipts is in the process of being compiled. The Department determined that 37 of these 654 title insurance agents had annual gross receipts of more than \$6 million, and therefore did not qualify as small or micro businesses under the Government Code §2006.001(1) and (2) while the remaining 614 did qualify based on the amount of gross receipts. The Department's cost analysis and resulting estimated costs, as detailed in the Public Benefit/Cost Note part of this proposal, are equally applicable to small or micro business title insurance agents.

Impact of Proposed P-28 B. on Title Insurance Agents: Provisions Pertaining to Professional Training for Title Insurance Agent Management Personnel. Proposed P-28 B.3 provides that an individual that holds a management position for a title agent shall not engage in the business of title insurance unless the individual has completed a professional training course for title agent management personnel that meets the requirements of Procedural Rule P-28. The Department has

determined that meeting the requirements of Procedural Rule P-28 B. will have an adverse economic impact on small and micro business title insurance agents. The estimated cost would be \$600 - \$800 for each person designated as management personnel of a title insurance agent to attend a 12 hour in-person course. This cost would depend on: (i) the number of course hours that are ultimately adopted in the rule; (ii) the size of the facility needed based on the number of persons that are attending; and (iii) the fees charged by the speakers. The Insurance Code §2651.021(a) enacted by HB 4338 requires the Commissioner to adopt by rule a professional training program for a title insurance agent and the management personnel of the title insurance agent.

Impact of Proposed Administrative Rule G-3 on Title Insurance Agents: Filing of Title Agent's Quarterly Withholding Tax Report. Proposed new Administrative Rule G-3 provides that all title insurance agents shall submit on a quarterly basis a copy of the agent's quarterly withholding tax report that the agent files with the Internal Revenue Service and evidence that the taxes have been paid. The Department has determined that this requirement may result in costs that will have an adverse economic impact on small or micro business title insurance agents. In summary, the total estimated cost for the title insurance agents who were surveyed to comply with the requirements of new G-3 would be \$395,752 per year. The anticipated costs associated with this new reporting requirement will include: (i) postage for certified mail or overnight delivery; (ii) accountant fees to obtain data on a quarterly basis; (iii) accountant costs to register with the Electronic Federal Tax Payment System; (iv) accountant costs to log in to the

IRS website and print the quarterly tax report and give to clerical personnel for mailing; (v) copying costs; (vi) costs to reconcile the returns with payment vouchers; (vii) legal expenses to implement the compliance program; (viii) administrative support costs; and (ix) costs to rewrite computer programs or purchase software to comply with the new reporting requirements. The Insurance Code §2651.011(c) enacted by HB 4338 requires that each title insurance agent shall provide the Department, on a quarterly basis, with a copy of the agent's quarterly withholding tax report and evidence that the taxes have been paid.

Impact of Proposed Administrative Rule G-6 on Title Insurance Agents: Surety Bond for Title Agents to Comply with Minimum Capitalization Standards. The proposed addition of new administrative rule G-6 pertains to the surety bond that title agents may use to comply with the new minimum capitalization requirements specified in the Insurance Code §2651.012 (c). There will be costs for those title agents who choose to purchase a surety bond to fulfill the new minimum capitalization requirement for title agents. The Department has determined that for those title agents who choose to purchase a surety bond to fulfill the new minimum capitalization requirement, this choice may result in costs that will have an adverse economic impact on small or micro business title insurance agents. In summary, the surety company estimates the rate for the proposed bond to be \$15 for each \$1,000 of the financial obligation that the surety company assumes on behalf of the title agent. The estimated premium for a surety bond to fulfill the applicable capitalization requirement range from a minimum of \$375 per year for a title agent with a principal office in a county with a population of 10,000 to

50,000 to a maximum of \$2,250 per year for a title agent with a principal office in a county with a population of more than 1,000,000. The Insurance Code §2651.012(j) enacted by HB 4338 requires the Commissioner to adopt by rule the form, content, and procedure for use of the surety bond and to establish by rule the procedures for making, filing, using, and paying for the surety bond.

Impact of Proposed Amendments to Procedural Rules P-1 and P-12 and Form T-57 on Title Insurance Agents: Provision that a title insurance agent must update its title plant to 1979. House Bill 4338 amended the Insurance Code §2501.004(b) to require that all abstract plants in Texas cover a period beginning not later January 1, 1979. The Department proposed conforming amendments to Procedural Rules P-1 and P-12 and Form T-57 to implement the new abstract plant requirement. The proposed amendment to Procedural Rule P-1 i, which is the definition of "Abstract plant", replaces the language "currently kept to date" with the new language "kept current." This change conforms the definition of "Abstract plant" in the Basic Manual with the statutory language in §2501.004(b)(2) as mandated by HB 4338. The proposed amendment to Procedural Rule P-1 z, which is the definition of "Furnishing title evidence", replaces the language "going back not less than 25 years" with the new language "covering a period beginning not later than January 1, 1979." This change conforms the definition of "Furnishing title evidence" in the Basic Manual with the new statutory requirement for the beginning date of an abstract plant specified in §2501.004(b)(2) as mandated by HB 4338. The proposed amendment to Procedural Rule P-12 Abstract Plants has a definition of "abstract plant" that is amended to replace the language "for a period of at

least 25 years immediately prior to the date of search" with the new language " covering a period beginning not later than January 1, 1979." This change conforms the definition of "abstract plant" in Procedural Rule P-12 with the new statutory requirement for the beginning date of an abstract plant specified in §2501.004(b)(2) as mandated by HB 4338. The Department has determined that this requirement will have an adverse economic impact on small and micro business title insurance agents. In summary, the Department estimates that the total compliance cost for updating the title plants of those title agents whose abstract plant do not currently cover a period beginning not later than January 1, 1979, would be a total of \$3,367,000 for all of the agents to bring their title plants into compliance. The anticipated costs associated with this new abstract plant requirement will include: (i) cost to purchase data from the county; (ii) cost to purchase data from other sources; (iii) cost to purchase new servers to hold the additional data; (iv) cost to hire personnel to program and format data to upload into the database; (v) cost for administrative personnel to post, re-key, and locate data for accuracy; (vi) scanning costs; and (vii) additional subscription fees.

REGULATORY FLEXIBILITY ANALYSIS

Proposed amendments and new sections that implement HB 4338. There are two new Administrative Rules G-3 and G-6 and amendments to Procedural Rules P-28, P-1, and P-12 and an amendment to Form T-57 that are necessary to implement HB 4338 and that may also have an adverse economic impact on small or micro business title insurance agents.

Pursuant to the Government Code §2006.002(c-1), an agency must “consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses.” An agency is not required to consider alternatives that while possibly minimizing adverse impacts on small businesses would not be protective of the health, safety, and environmental and economic welfare of the state. The Final Guidelines (Guidelines) issued by the Office of the Texas Attorney General (April 2008) providing guidance for compliance with the Government Code §2006.002(c-1) state that under §2006.002(c-1), an agency must “consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small business.” The Guidelines further state that an agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small businesses would not be protective of the health, safety and environmental and economic welfare of the state. According to the Guidelines, one common example appears to fit within this exception. This example is when agencies are required “to adopt as rules specific fees or specific standards and procedures under a legislative or federal mandate.” In these situations, “the mandated language may be considered *per se* consistent with the health, safety, or environmental and economic welfare of the state and the agency need not consider other regulatory methods.”

HB 4338 mandates that the Commissioner adopt specified standards and rules. HB 4338 amends Chapter 2651 of the Insurance Code to add (i) new §2651.021(a) to read: "The commissioner shall adopt by rule a professional training program for a title insurance agent and the management personnel of the title insurance agent" and (ii) new §2651.011(c) to read "Each title insurance agent shall provide the department, on a quarterly basis, with a copy of the agent's quarterly withholding tax report furnished by the agent to the United States Internal Revenue Service. The title insurance agent must also provide to the department proof of the payment of the tax...." HB 4338 enacts new §2651.012(j) to read "Notwithstanding any other provision of this section, this section takes effect only after the commissioner adopts the form, content, and procedures for use of the surety bond authorized under Subsection (a). The commissioner by rule shall establish the procedures for making, filing, using, and paying for the surety bond...."

HB 4338 amended §2501.004(b) to read as follows:

(b) To provide for the *safety and protection of policyholders*, the department shall require that an abstract plant:

- (1) *be* geographically arranged;
- (2) *cover a period beginning not later than January 1, 1979, and be kept current; and*
- (3) *be* adequate for use in insuring titles, as determined by the department. (emphasis added).

As previously stated, two new Administrative Rules G-3 and G-6 and amendments to Procedural Rules P-28, P-1, P-12 and an amendment to Form T-57 that are necessary to implement HB 4338, which may have an adverse economic impact on small or micro business title insurance agents reflect the mandated standards and rules of a legislative mandate. As a result, in accordance with the Guidelines, “the mandated language may be considered *per se* consistent with the health, safety, or environmental and economic welfare of the state and the agency need not consider other regulatory methods.”

Because these proposed amendments and new sections would constitute rules that adopt specific standards under the legislative mandate in HB 4338, they may be considered *per se* consistent with the health, safety, and environmental and economic welfare of the state, and the Department is not required to consider other regulatory methods. Therefore, pursuant to the Government Code §2006.002(c-1) a regulatory flexibility analysis is not required for these proposed amendments and new sections that implement HB 4338.

5. TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

6. REQUEST FOR COMMENTS. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on February 1, 2011, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas, 78714-9104. An additional copy of the comments must be submitted simultaneously to Robert R. Carter, Jr., Deputy Commissioner, Title Division, Mail Code 106-2T, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The Commissioner will consider the adoption by reference of amendments to procedural rules P-1, P-12 and P-28; an amendment to Form T-57: Agreement to Furnish Title Evidence, the addition of new administrative rules G-3, G-4, G-5, G-6; and G-7 and the addition of new forms T-G4, T-G5, T-G6, T-G7, Exhibit I Financial Statement of Title Agent's Unencumbered Assets, and Texas Title Agent's/Direct Operation Minimum Capitalization Bond in the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas* (Basic Manual) in a public hearing under Docket Number 2725, scheduled for January 27, 2011, 9:30 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. Written and oral comments presented at the hearing will be considered.

7. STATUTORY AUTHORITY. The adoption by reference of amendments to procedural rules and forms, the addition of new administrative rules, and the addition of new forms are proposed pursuant to the Insurance Code §§2501.004(b), 2651.0021, 2651.011, 2651.012, 2651.158, 2651.206 and 36.001. HB 4338 enacted by the 81st

Legislature amended §2501.004(b) to add a requirement that an abstract plant must cover a period beginning not later than January 1, 1979, and be kept current. HB 4338 added new §2651.0021 for the establishment of a professional training program for title agents and the management personnel of title insurance agents. HB 4338 amended §2651.011 to add new requirements and procedures for title companies providing privileged title agent solvency information to the Department and new requirements for the filing of title agent quarterly withholding tax reports with the Department. HB 4338 added new §2651.012 to set forth new minimum capitalization standards for title agents. HB 4338 added new §2651.158 to establish a procedure for certification of a title agent's unencumbered assets and a procedure for determining the value of a title agent's unencumbered assets. HB 4338 added new §2651.206 to establish guidelines and procedures for the Department to follow when conducting an audit, review, or examination under Chapter 2651 or Chapter 2602 of the Insurance Code. Section 36.001 authorizes the Commissioner of Insurance to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

8. CROSS REFERENCE TO STATUTES. The following statutes are affected by this proposal:

<u>Rule Number</u>	<u>Statute</u>
§9.50	Insurance Code §§2501.004(b), 2651.0021, 2651.011, 2651.012, 2651.158, and 2651.206

9. TEXT.

§9.50. Procedural Rules, Administrative Rules, and Forms Relating to Minimum Capitalization Requirements, Professional Training Program, and Other Important Matters Concerning Title Agents and Title Companies. In addition to material adopted by reference under §9.1 of this title (relating to the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas* (Basic Manual)), the Texas Department of Insurance adopts by reference, as part of the Basic Manual, amendments to procedural rules P-1, P-12 and P-28; an amendment to Form T-57: Agreement to Furnish Title Evidence, the addition of new administrative rules G-3, G-4, G-5, G-6; and G-7 and the addition of new forms T-G4, T-G5, T-G6, T-G7, Exhibit I Financial Statement of Title Agent's Unencumbered Assets, and Texas Title Agent's/Direct Operation Minimum Capitalization Bond. This document is available from and on file at the Texas Department of Insurance, Title Division, Mail Code 106-2T, William P. Hobby State Office Building, 333 Guadalupe Street, P.O.Box 149104, Austin, Texas 78714-9104.