

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

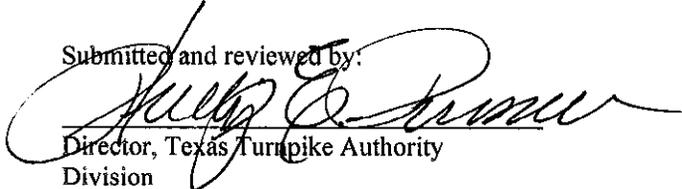
The Texas Transportation Commission (commission) finds it necessary to propose to amendments §26.2, §26.11, §26.33 and §26.51, concerning regional mobility authorities, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A - E, are incorporated by reference as though set forth at length verbatim in this minute order.

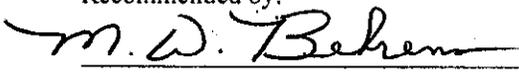
IT IS THEREFORE ORDERED by the commission that the amendments §26.2, §26.11, §26.33 and §26.51, are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:

  
Director, Texas Turnpike Authority  
Division

Recommended by:

  
Executive Director

**110225 SEP 29 05**

Minute  
Number

Date  
Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes  
3 amendments to §26.2, Definitions, §26.11, Petition, §26.33,  
4 Design and Construction, and §26.51, Conflict of Interest,  
5 concerning regional mobility authorities.

6

7 EXPLANATION OF PROPOSED AMENDMENTS

8 Transportation Code, Chapter 370, authorizes the creation of  
9 regional mobility authorities (RMAs) for the purpose of  
10 constructing, maintaining, and operating transportation projects  
11 in a region of this state. Transportation Code, §370.038,  
12 requires the Texas Transportation Commission (commission) to  
13 adopt rules governing the creation of an RMA and various powers  
14 of an RMA. The commission has previously adopted rules under  
15 §370.038, codified at 43 TAC Chapter 26.

16

17 House Bill 2702 and Senate Bill 1131, 79th Legislature, Regular  
18 Session, 2005, amended Transportation Code, Chapter 370 to make  
19 various revisions concerning RMAs. The proposed rule amendments  
20 implement House Bill 2702 and Senate Bill 1131 and make other  
21 technical revisions to the commission's rules governing RMAs.

22

23 Section 26.2, Definitions, is amended to: (1) add to the  
24 definition of "County" the cities of Laredo, Brownsville,  
25 McAllen, and Port Aransas, to implement amendments enacted by

1 House Bill 2702 and Senate Bill 1131 that authorize these cities  
2 to create and operate RMAs; (2) exclude from the definition of  
3 "transportation project" an airport that on September 1, 2005,  
4 was served by one or more air carriers engaged in scheduled  
5 interstate transportation, to implement the provision of House  
6 Bill 2702 that has the effect of prohibiting an RMA from  
7 acquiring or improving this type of aviation facility; and (3)  
8 add to the definition of "transportation project" the term  
9 "transit system" to implement the provisions of House Bill 2702  
10 that authorizes RMAs to establish transit systems.

11  
12 Section 26.11, Petition, is amended to provide that the cities  
13 of Laredo, Brownsville, McAllen, and Port Aransas may petition  
14 the commission for approval to create an RMA. This amendment  
15 implements provisions of House Bill 2702 and Senate Bill 1131.

16  
17 Section 26.33, Design and Construction, is amended to: (1)  
18 clarify, consistent with past practice, that if an RMA receives  
19 financial assistance from the department for an RMA turnpike  
20 project and the requirements of the commission's rules relating  
21 to financial assistance for toll facilities conflict with any  
22 provision of §26.33, the most stringent requirements will apply;  
23 and (2) revise the caption for §26.33(e) to include construction  
24 criteria in order to better reflect the scope and substance of  
25 the current provisions of the subsection.

1  
2 Section 26.51, Conflict of Interest, is amended to state that in  
3 addition to the prohibitions and restrictions of this section, a  
4 director of an RMA is subject to Local Government Code, Chapter  
5 171. This language implements similar language in House Bill  
6 2702.

7  
8 FISCAL NOTE  
9 James Bass, Chief Financial Officer, has determined that for  
10 each of the first five years the amendments as proposed are in  
11 effect, there will be no fiscal implications for state or local  
12 governments as a result of enforcing or administering the  
13 amendments. There are no anticipated economic costs for persons  
14 required to comply with the sections as proposed.

15  
16 Phillip Russell, Director, Texas Turnpike Authority, has  
17 certified that there will be no significant impact on local  
18 economies or overall employment as a result of enforcing or  
19 administering the amendments.

20  
21 PUBLIC BENEFIT  
22 Mr. Russell has also determined that for each year of the first  
23 five years the sections are in effect, the public benefit  
24 anticipated as a result of enforcing or administering the  
25 amendments will be the effective regulation of RMAs, consistent

1 with state statute. There will be no adverse economic effect on  
2 small businesses.

3

4 SUBMITTAL OF COMMENTS

5 Written comments on the proposed amendments may be submitted to  
6 Phillip Russell, Director, Texas Turnpike Authority, Texas  
7 Department of Transportation, 125 East 11th Street, Austin,  
8 Texas 78701-2483. The deadline for receipt of comments is 5:00  
9 p.m. on November 14, 2005.

10

11 STATUTORY AUTHORITY

12 The amendments are proposed under Transportation Code, §201.101,  
13 which provides the commission with the authority to establish  
14 rules for the conduct of the work of the department, and more  
15 specifically, Transportation Code, §370.038, which requires the  
16 commission to adopt rules governing regional mobility  
17 authorities.

18

19 CROSS REFERENCE TO STATUTE

20 Transportation Code, Chapter 370.

1 SUBCHAPTER A. GENERAL PROVISIONS

2 §26.2. Definitions. The following words and terms, when used  
3 in this chapter, shall have the following meanings, unless the  
4 context clearly indicates otherwise.

5 (1) AASHTO--The American Association of State Highway and  
6 Transportation Officials.

7 (2) Board--The board of directors of a regional mobility  
8 authority.

9 (3) Commission--The Texas Transportation Commission.

10 (4) County--Includes the cities [City] of El Paso,  
11 Laredo, Brownsville, McAllen, and Port Aransas.

12 (5) Director--A director of a board.

13 (6) Department--The Texas Department of Transportation.

14 (7) Environmental Permits, Issues, and Commitments  
15 (EPIC)--Any permit, issue, coordination, commitment, or  
16 mitigation obtained to satisfy social, economic, or  
17 environmental impacts of a transportation project, including,  
18 but not limited to, sole source aquifer coordination, wetland  
19 permits, stormwater permits, traffic noise abatement, threatened  
20 or endangered species coordination, archeological permits, and  
21 any mitigation or other commitment associated with any of those  
22 issues.

23 (8) Executive director--The executive director of the

1 department or the executive director's designee not below  
2 district engineer, division director, or office director.

3 (9) Fiscal year--An accounting period of 12 months that  
4 is consistent, to the extent feasible, with the fiscal year of  
5 an RMA's member counties.

6 (10) Governmental entity--A municipality, county, the  
7 department, or other public entity authorized to construct,  
8 maintain, and operate a transportation project within the region  
9 of a regional mobility authority.

10 (11) Metropolitan planning organization--An organization  
11 designated to carry out the transportation planning process in  
12 prescribed urbanized areas as required by 23 U.S.C. §134 [Title  
13 ~~23, United States Code, §134~~].

14 (12) Nonattainment area--An area designated by the U.S.  
15 Environmental Protection Agency as not meeting the air quality  
16 standards outlined in the Clean Air Act.

17 (13) Petitioner--The county or counties petitioning for  
18 the creation of a regional mobility authority.

19 (14) Public utility facility--Means:

20 (A) a water, wastewater, natural gas, or petroleum  
21 pipeline or associated equipment;

22 (B) an electric transmission or distribution line or  
23 associated equipment; or

1 (C) telecommunications information services, or cable  
2 television infrastructure or associated equipment, including  
3 fiber optic cable, conduit, and wireless communications  
4 facilities.

5 (15) RMA--A regional mobility authority.

6 (16) Revenue--Fares, fees, rents, tolls, and other money  
7 received by an authority from the ownership or operation of a  
8 transportation project.

9 (17) State Implementation Plan--The plan prepared by the  
10 Texas Commission on Environmental Quality as required by 42 USC  
11 §7410 to attain and maintain air quality standards.

12 (18) Surplus revenue--Revenue that exceeds:

13 (A) the regional mobility authority's debt service  
14 requirements for a transportation project, including the  
15 redemption or purchase price of bonds subject to redemption or  
16 purchase as provided in the applicable bond proceedings;

17 (B) coverage requirements of a bond indenture for a  
18 transportation project;

19 (C) costs of operation and maintenance for a  
20 transportation project;

21 (D) cost of repair, expansion, or improvement of a  
22 transportation project;

23 (E) funds allocated for feasibility studies; and

1 (F) necessary reserves as determined by the regional  
2 mobility authority.

3 (19) Transportation project--Means:

4 (A) a turnpike project;

5 (B) a system designated under Transportation Code,  
6 §~~[Section]~~ 370.034;

7 (C) a passenger or freight rail facility, including:

8 (i) tracks;

9 (ii) a rail line;

10 (iii) switching, signaling, or other operating  
11 equipment;

12 (iv) a depot;

13 (v) a locomotive;

14 (vi) rolling stock;

15 (vii) a maintenance facility; and

16 (viii) other real and personal property associated  
17 with a rail operation;

18 (D) a roadway with a functional classification greater  
19 than a local road or rural minor collector;

20 (E) a ferry;

21 (F) an airport, other than an airport that on September  
22 1, 2005 was served by one or more air carriers engaged in  
23 scheduled interstate transportation, as those terms were defined

1 by 14 C.F.R. §1.1 on that date;

2 (G) a pedestrian or bicycle facility;

3 (H) an intermodal hub;

4 (I) an automated conveyor belt for the movement of  
5 freight;

6 (J) a border crossing inspection station;

7 (K) an air quality improvement initiative;

8 (L) a public utility facility; [~~and~~]

9 (M) a transit system; and

10 (N) if applicable, projects and programs listed in the  
11 most recently approved state implementation plan for the area  
12 covered by the RMA, including an early action compact.

13 (20) Turnpike project--A highway of any number of lanes,  
14 with or without grade separations, owned or operated by an RMA  
15 under this chapter and any improvement, extension, or expansion  
16 to that highway, including:

17 (A) an improvement to relieve traffic congestion and  
18 promote safety;

19 (B) a bridge, tunnel, overpass, underpass, interchange,  
20 entrance plaza, approach, toll house, service road, or ramp;

21 (C) an administration, storage, or other building the  
22 RMA considers necessary for the operation of a turnpike project;

23 (D) a property right, easement, or interest the RMA

1 acquires to construct or operate the turnpike project; and  
2 (E) a parking area or structure, rest stop, park, and  
3 any other improvement or amenity the RMA considers necessary,  
4 useful, or beneficial for the operation of a turnpike project.

1 SUBCHAPTER B. CREATION OF A REGIONAL MOBILITY AUTHORITY

2 §26.11. Petition.

3 (a) One or more counties may petition the commission for  
4 approval to create an RMA. The petition shall include:

5 (1) an adopted resolution from the commissioners court of  
6 each county indicating its approval of the creation by the  
7 county of an RMA;

8 (2) a description of how the RMA would improve mobility  
9 in the region;

10 (3) a description of a potential candidate transportation  
11 project or system of projects the RMA may undertake depending on  
12 study outcomes, including:

13 (A) an explanation of how the project or system of  
14 projects will be consistent with the appropriate policies,  
15 strategies, and actions of the Texas Transportation Plan, and,  
16 if appropriate, with the metropolitan transportation plan  
17 developed by the metropolitan planning organization;

18 (B) a brief description of any known environmental,  
19 social, economic, or cultural resource issues, such as impacts  
20 on wetlands and other water resources, endangered species,  
21 parks, neighborhoods, businesses, historic buildings or bridges,  
22 and archeological sites;

23 (C) the name and address of any individuals or

1 organizations known to be opposed to any element of the project  
2 or system of projects, and a description of any known  
3 controversies concerning the project or system of projects; and

4 (D) a preliminary financing plan for the project or  
5 system of projects, which shall include an estimate of the  
6 following information, if available to the petitioner:

7 (i) total estimated cost, including planning, design,  
8 right of way acquisition, environmental mitigation, and  
9 construction; and

10 (ii) proposed financing, specifying the source and  
11 use of the funds, including debt financing and department  
12 contributions, identified as a loan or a grant;

13 (4) a commitment by the RMA to be fully responsible for  
14 identifying all EPIC, obtaining all required environmental  
15 permits, and other required environmental approvals;

16 (5) a brief description of any other transportation  
17 projects the petitioner is currently considering to be developed  
18 by the RMA; and

19 (6) the representation criteria and the appointment  
20 process for board members.

21 (b) The cities [~~City~~] of El Paso, Laredo, Brownsville,  
22 McAllen, or Port Aransas may petition the commission for  
23 approval to create an RMA in the same manner as a county under

1 subsection (a) of this section. Instead of the requirements of  
2 subsection (a)(1) of this section, the city must submit a  
3 resolution from its city council indicating its approval of the  
4 creation by the city of an RMA.

5 (c) For purposes of this subchapter, a system means a  
6 combination or network of transportation projects that the RMA  
7 may undertake.

1 SUBCHAPTER D. APPROVAL OF A TRANSPORTATION PROJECT

2 §26.33. Design and Construction.

3 (a) Applicability. This section applies to an RMA  
4 transportation project that will connect to the state highway  
5 system or a department rail facility.

6 (b) State or federal funds. RMA turnpike projects that use  
7 federal or state funds provided by the department must also  
8 comply with Chapter 27, Subchapter E of this title (relating to  
9 Financial Assistance for Toll Facilities). If a requirement of  
10 Chapter 27, Subchapter E conflicts with any provision of this  
11 section, the most stringent requirement, as determined by the  
12 executive director, will apply.

13 (c) Responsibility. The RMA is fully responsible for the  
14 design and construction of each project it undertakes, including  
15 ensuring that all EPIC are addressed in project design and  
16 construction.

17 (d) Design criteria for highway facilities.

18 (1) State criteria. All designs developed by or on  
19 behalf of the RMA shall comply with the latest version of the  
20 department's manuals, including, but not limited to, the Roadway  
21 Design Manual, Pavement Design Manual, Hydraulic Design Manual,  
22 the Texas Manual on Uniform Traffic Control Devices, Bridge  
23 Design Manual, and the Texas Accessibility Standards.

NOTE: Additions underlined  
Deletions in [ ]  
OGC: 09/01/05 9:09 AM

Exhibit D

1           (2) Alternative criteria. An RMA may request approval to  
2 use different accepted criteria for a particular item of work.  
3 Alternative criteria may include, but are not limited to, the  
4 latest version of the AASHTO Policy on Geometric Design of  
5 Highways and Streets, the AASHTO Pavement Design Guide, and the  
6 AASHTO Bridge Design Specifications. The use of alternative  
7 criteria is subject to the approval of the Federal Highway  
8 Administration for those projects involving federal funds. The  
9 executive director may approve the use of alternative criteria  
10 if the alternative criteria are determined to be sufficient to  
11 protect the safety of the traveling public and protect the  
12 integrity of the transportation system.

13           (3) Exceptions to design criteria. An RMA may deviate  
14 from the state or alternative criteria for a particular design  
15 element on a case by case basis after determining that the  
16 particular criteria could not reasonably be met due to physical,  
17 environmental, or other relevant factors and that the proposed  
18 design is a prudent engineering solution. Documentation of the  
19 exceptions shall be retained by the RMA and furnished to the  
20 department in accordance with subsection (h) of this section.

21           (e) Design and construction criteria for rail facilities.  
22 Rail facilities developed by or on behalf of the RMA shall  
23 comply with the current version of the American Railway

1 Engineering and Maintenance of Way Association (AREMA)  
2 standards.

3 (f) Access. For proposed projects that will change the  
4 access control line to an interstate highway, the RMA shall  
5 submit to the department all data necessary for the department  
6 to request Federal Highway Administration approval.

7 (g) Construction specifications for highway projects.

8 (1) All plans, specifications, and estimates developed by  
9 or on behalf of the RMA shall conform to the latest version of  
10 the department's Standard Specifications for Construction and  
11 Maintenance of Highways, Streets, and Bridges, and shall conform  
12 to department required special specifications and special  
13 provisions.

14 (2) The executive director may approve the use of an  
15 alternative specification if the proposed specification is  
16 determined to be sufficient to ensure the quality and durability  
17 of the finished product for the intended use and the safety of  
18 the traveling public.

19 (h) Design and construction review and approval.

20 (1) Applicability. This subsection applies to the  
21 segment of an RMA transportation project that connects to the  
22 state highway system or a department rail facility, including an  
23 overpass, underpass, intersection, or interchange.

1           (2) Exceptions to design criteria. An RMA may request  
2 approval to deviate from the state or alternative criteria for a  
3 particular design element on a case by case basis. The request  
4 for approval shall state the criteria for which an exception is  
5 being requested and must include a comprehensive description of  
6 the circumstances and engineering analysis supporting the  
7 request. The executive director may approve an exception after  
8 determining that the particular criteria could not reasonably be  
9 met due to physical, environmental, or other relevant factors  
10 and that the proposed design is a prudent engineering solution.

11           (3) Preliminary plan review. When design of the  
12 connection is approximately 30% complete, the RMA shall send the  
13 following preliminary design information to the department for  
14 review and approval in accordance with the procedures and  
15 timeline established in the project development agreement  
16 described in §26.34 of this subchapter:

17           (A) a design schematic depicting plan, profile, and  
18 superelevation information for each roadway and rail line;

19           (B) typical sections showing existing and proposed  
20 horizontal dimensions, cross slopes, location of profile grade  
21 line, pavement layer thickness and composition, earthen slopes,  
22 right of way lines, if applicable, rail cross ties, type and  
23 size of rail and ballast type;

1 (C) bridge, retaining wall, and sound wall layouts,  
2 including, where applicable, an indication of structural  
3 capacity in terms of design loading;

4 (D) hydraulic studies and drainage area maps showing  
5 the drainage of waterways entering the project and local project  
6 drainage; and

7 (E) the location and text of proposed mainlane guide  
8 signs shown on a schematic that includes lane lines or arrows  
9 indicating the number of lanes.

10 (4) Final plan review. When final plans are complete,  
11 the RMA shall send the following information to the executive  
12 director for review and approval in accordance with the  
13 procedures and timelines established in the project development  
14 agreement described in §26.34 of this subchapter:

15 (A) seven copies of the final set of plans,  
16 specifications, and engineer's estimate (PS&E) that have been  
17 signed and sealed by the responsible engineer; and

18 (B) revisions to the preliminary design submission  
19 previously approved by the department summarized or highlighted  
20 for the department.

21 (5) Contract bidding and award. The RMA shall not  
22 advertise the project for receipt of bids until it has received  
23 approval of the PS&E from the department. This paragraph does

1 not apply to a project developed under a comprehensive  
2 development agreement.

3 (6) Contract revisions.

4 (A) All contract revisions related to the connections  
5 to the department facility shall comply with the latest version  
6 of the applicable national or state administration criteria and  
7 manuals, and must be submitted to the department for its  
8 records. Major contract revisions must be submitted to the  
9 executive director for approval prior to beginning the revised  
10 construction work. Procedures governing the executive  
11 director's approval, including time limits for department  
12 review, shall be included in the project agreement described in  
13 §26.34 of this subchapter.

14 (B) For purposes of this subsection, "major contract  
15 revision" means a revision to a construction contract that:

16 (i) reduces geometric design or structural capacity  
17 below project design criteria;

18 (ii) changes the location or configuration of the  
19 physical connection to the department facility;

20 (iii) changes the placement of columns and other  
21 structural elements within the department's right of way;

22 (iv) changes the traffic control plan in a manner  
23 that reduces the capacity on the department facility as shown on

1 the approved PS&E;

2 (v) changes the access on a controlled access  
3 facility; or

4 (vi) for federally funded projects, eliminates or  
5 revises EPICs.

6 (i) As-built plans. Within six months after final  
7 acceptance of the construction project, the RMA shall file with  
8 the department a set of the as-built plans incorporating any  
9 contract revisions. These plans shall be signed, sealed, and  
10 dated by a Texas licensed professional engineer [~~in Texas~~]  
11 certifying that the project was constructed in accordance with  
12 the plans and specifications.

13 (j) Document and information exchange. If available, the  
14 RMA agrees to deliver to the department all materials used in  
15 the development of the project including, but not limited to,  
16 aerial photography, computer files, surveying information,  
17 engineering reports, environmental documentation, general notes,  
18 specifications, and contract provision requirements.

19 (k) State and federal law. The RMA shall comply with all  
20 federal and state laws and regulations applicable to the project  
21 and the state highway system, and shall provide or obtain all  
22 applicable permits, plans, and other documentation required by a  
23 federal or state entity.

1           (1) Work on state right of way. All work required within  
2 the limits of state owned right of way shall be accomplished  
3 only pursuant to express written agreement with the department.

1 SUBCHAPTER F. MISCELLANEOUS OPERATIONS PROVISIONS

2 §26.51. Conflict of Interest.

3 (a) Prohibited conduct for directors and employees. A  
4 director or employee of an RMA may not:

5 (1) accept or solicit any gift, favor, or service that  
6 might reasonably tend to influence the director or employee in  
7 the discharge of official duties or that the director or  
8 employee knows or should know is being offered with the intent  
9 to influence the director's or employee's official conduct;

10 (2) accept other employment or engage in a business or  
11 professional activity that the director or employee might  
12 reasonably expect would require or induce the director or  
13 employee to disclose confidential information acquired by reason  
14 of the official position;

15 (3) accept other employment or compensation that could  
16 reasonably be expected to impair the director's or employee's  
17 independence of judgment in the performance of the director's or  
18 employee's official duties;

19 (4) make personal investments, including investments of a  
20 spouse, that could reasonably be expected to create a conflict  
21 between the director's or employee's private interest and the  
22 interest of the RMA or that could impair the ability of the  
23 individual to make independent decisions;

1 (5) intentionally or knowingly solicit, accept, or agree  
2 to accept any benefit for having exercised the director's or  
3 employee's official powers or performed the director's or  
4 employee's official duties in favor of another; or

5 (6) have a personal interest in an agreement executed by  
6 the RMA.

7 (b) Eligibility of directors and chief administrative  
8 officer.

9 (1) A person is not eligible to serve as a director or  
10 chief administrative officer of an RMA if the person or the  
11 person's spouse:

12 (A) is employed by or participates in the management of  
13 a business entity or other organization, other than a political  
14 subdivision, that is regulated by or receives funds from the  
15 department, the RMA, or a member county;

16 (B) directly or indirectly owns or controls more than a  
17 10% interest in a business or other organization that is  
18 regulated by or receives funds from the department, the RMA, or  
19 a member county;

20 (C) uses or receives a substantial amount of tangible  
21 goods, services, or funds from the department, the RMA, or a  
22 member county; or

23 (D) is required to register as a lobbyist under

1 Government Code, Chapter 305, because of the person's activities  
2 for compensation on behalf of a profession related to the  
3 operation of the department, the RMA, or a member county.

4 (2) A person is not eligible to serve as a director or  
5 chief administrative officer of an RMA if the person is an  
6 officer, employee, or paid consultant of a Texas trade  
7 association in the field of road construction or maintenance,  
8 public transportation, rail, or aviation, or if the person's  
9 spouse is an officer, manager, or paid consultant of a Texas  
10 trade association in the field of road construction or  
11 maintenance, public transportation, rail, or aviation.

12 (3) Except as provided in Transportation Code,  
13 §370.251(g), a person is not ineligible to serve as a director  
14 or chief administrative officer of an RMA if the person has  
15 received funds from the department, the RMA, or a member county  
16 for acquisition of highway right of way.

17 (4) The commission may approve an exception to the  
18 requirements of subsection (b)(1)(A) of this section if:

19 (A) the RMA or the applicable county has properly  
20 disclosed to the public the details of the potential conflict;

21 (B) the potential conflict concerns employment with an  
22 entity that receives funds from a member county; and

23 (C) the commission determines that the employment will

1 not result in the director or chief administrative officer  
2 incurring any obligation of any nature that is in substantial  
3 conflict with the director or officer's proper discharge of his  
4 or her duties on behalf of the RMA.

5 (c) In addition to the prohibitions and restrictions of  
6 this section, a director is subject to Local Government Code,  
7 Chapter 171.