

Final Report to



Metropolitan Transit Authority of Harris County

FY05-FY08 Performance Audit: Compliance Review

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in association with

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February 2009

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I. INTRODUCTION

BOOZ ALLEN HAMILTON, WORKING CLOSELY WITH HOUSTON METRO STAFF, CONDUCTED THE FY05-FY08 PERFORMANCE AUDIT OF HOUSTON METRO

- Quadrennial performance audits are mandated by Section 451.454 of the Texas Transportation Code.
- The purpose of the performance audit is to provide:
 - Evaluative information necessary for state and local officers to perform oversight functions
 - Information useful to METRO for improving the efficiency and effectiveness of their operations.
- The performance audit is required to assess METRO's:
 - Collection and compilation of the base statistics and measurement of specified performance indicators
 - Compliance with applicable state law
 - Performance in one of three areas (i.e., administration and management, transit operations, or system maintenance).
- This report summarizes the results of the assessment of METRO's compliance with applicable state law for Fiscal Years 2005, 2006, 2007 and 2008, the period from October 1, 2004 through September 30, 2008. The results of the performance indicator assessment and the functional review of system maintenance are the subjects of separate audit reports.

SECTION 451.451 OF THE TEXAS TRANSPORTATION CODE REQUIRES METRO TO COMPLY WITH APPLICABLE STATE LAW

- Each performance audit must include an examination of METRO's compliance with the Act and other applicable State law.

- Applicable State laws include:
 - Texas Transportation Code, Chapter 451
 - Texas Government Code, Chapter 551, Sections 002, 021(a) and (b), 022, 023, 054(a), 071-073, 101-103(c), 141-145, 221(a)-(c), 222-225(b), 518
 - Texas Government Code, Chapter 552, Sections 228, 230, 263(a), 267(a), 301(a), (b), (d) and (e), 305, 307, 352(a)
 - Texas Government Code, Section 617.002
 - Texas Government Code, Chapter 791, Sections 011(d) and (e), 027(a)
 - Texas Government Code, Chapter 2253, Sections 021, 027
 - Texas Government Code, Chapter 2254, Sections 003, 004
 - Local Government Code, Chapter 171, Sections 001, 003, 004
 - Texas Property Code, Section 21.042
 - Local Government Code, Section 272.001
 - Health & Safety Code Section 382.133
 - Property Code Section 21.042.

- Texas Rev. Civil Statute Article 717 and Texas Transportation Code 451.301 through 451.305, which were related to Alternative Fuels, were not reviewed and tested for compliance during the audit because they were repealed.

BOARD RESOLUTIONS, EMBODIED AS BYLAWS AND PROCEDURES, GUIDE METRO'S DAY-TO-DAY ACTIVITIES. DOCUMENTS EXAMINED FOR THE COMPLIANCE REVIEW INCLUDE:

- Board Bylaws established by Resolution No. 80-59, which guide matters relating to Board composition, duties, and meeting procedures.
- Code of Ethics of Metropolitan Transit Authority of Harris County, adopted by the Board of Directors on November 21, 1988.
- Board Agenda, Minutes, Meeting Notices, Resolutions, and meeting materials, which are kept in binders in the office of the Chief Executive Officer.
- METRO's Multi-Modal Transportation Program, the 21st Century High Capacity Transit Vision, adopted by the Board on August 26, 1999.
- Real estate procedures necessary for appraising and acquiring real property or real property interests and paying relocation allowances, contained in METRO's Real Estate Management Guidelines. These guidelines were established to implement Board Resolution No. 82-74, 87-32, and 93-115.
- Procurement Manual, revised August 1, 2004, which establishes guidelines relating to the procurement of supplies, equipment, materials, services, and construction projects. Chapter 451 of the Texas Transportation Code and METRO Board of Directors' Resolutions and Policies form the basis of this manual.

METRO IS IN COMPLIANCE WITH APPLICABLE LEGISLATIVE REQUIREMENTS, EXCEPT AS OUTLINED IN COMPLIANCE MATRICES WHICH ADDRESS REQUIREMENTS

- The remainder of this report contains compliance matrices which address requirements in the following areas:
 - Authority: creation of METRO, authority to tax, and inter-local agreements
 - Board Matters: Board composition, reimbursements, meetings, and authority
 - Open Meetings & Public Information: public notice for meetings and executive session
 - Finance & Administration: bonds and other obligations, and annual budget approval
 - Real Estate: land acquisition, sale, and eminent domain requirements
 - Contracts: small business participation, competitive processes and requirements
 - Performance Audits: requirements for State mandated performance audits.

- Each matrix includes the required actions, the legal citations for the actions, and an assessment of METRO's compliance with each requirement.

- The actions cited in the compliance matrices are quoted from State Code. Therefore, the actions describe the State mandate, not the manner in which they have been implemented at METRO. For example, METRO has a President & CEO, not the general manager referenced in the regulations. The "compliance results" column in the matrix describes the manner in which METRO has implemented the regulations.

METRO IS IN COMPLIANCE WITH APPLICABLE LEGISLATIVE REQUIREMENTS, EXCEPT AS OUTLINED IN COMPLIANCE MATRICES WHICH ADDRESS REQUIREMENTS (CONTINUED)

- Some of the requirements impact METRO and its daily business procedures. Examples include specified timeframes for posting notices of Board meetings and non-competitive contract awards and responding to information requests, and requirements for the presiding officer to sign Board agendas. In those cases, compliance has been assessed by reviewing a sample of the postings, files, or other documents to which the requirements apply. The samples sizes vary with the specific requirements, but are identified in the applicable compliance results.
- Compliance has been assessed in three categories:
 - Compliance: the Authority has complied with the actions required by the State Code
 - Substantial Compliance: in instances where a sample of records was reviewed, the Authority has complied with the required actions in all but one instance.
 - Not Applicable: during the audit period, the Authority did not undertake the activities described in the code.
- Conclusions and recommendations related to these compliance findings are provided in the last section of this report.

II. AUTHORITY COMPLIANCE

AUTHORITY COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
|---|---|---|
| <p>1. If the votes cast are such that the Authority will continue to exist, the Board shall enter the results on its minutes and adopt an order declaring that the creation of the Authority is confirmed and describing the territory which comprises the Authority.</p> <ul style="list-style-type: none"> • A certified copy of the order and map shall be filed with the Texas Department of Transportation or its successor, and with the comptroller of public accounts, and in the deed records of each county in which the Authority is located. • The order shall include the date of the election, the proposition voted on, the number of votes cast for and against the proposition in each election unit, and the number of votes by which the proposition was approved in each election unit in which it was approved and shall be accompanied by a map of the Authority clearly showing the boundaries of the Authority. | <p>Texas Trans Code §451.661(b) (1) & (2)</p> <p>451.661(d)(1)-(3)</p> <p>451.661(b)(3)-(6) & (c)</p> | <p>Compliance. Resolution 78-8 confirms the creation of the Authority and describes the territory which comprises the Authority. Resolution 78-8 states that a copy of the order and map shall be filed with the Texas Department of Transportation and in the deed records of each county in which the Authority is located.</p> |
| <p>2. As soon as practicable after an election, the Board shall canvass the returns of the election and declare the results.</p> | <p>451.660</p> | <p>Compliance. The Board canvassed the results of the election. Refer to resolution 78-8 for results.</p> |
| <p>3. The Authority may acquire rolling stock or other property under a contract or trust agreement, including a conditional sales contract, lease, and equipment trust certificate.</p> | <p>451.057</p> | <p>Compliance. METRO has acquired other property under Series A and B leases.</p> |
| <p>4. The Authority shall by resolution make all rules and regulations governing the use, operation and maintenance of the system and shall determine all routings and change the same whenever it is deemed advisable by the Authority.</p> | <p>451.107(a)</p> <p>451.056(d)</p> | <p>Compliance. Article II, Section I of the Board Bylaws specifies that responsibility for management, control and operation of the Authority and its properties is vested with the Board.</p> |

AUTHORITY COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
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| <p>5. An Authority may not (construct, reconstruct or maintain any highway, road, thoroughfare, or arterial or local street...) in a municipality without: (1) the consent of the governing body of the municipality; or (2) a contract with the municipality that specifies the actions the Authority may take in the municipality.</p> <ul style="list-style-type: none"> • An Authority confirmed before 1985 may, in the Authority: (1) construct or maintain a sidewalk, hiking trail, or biking trail; (2) install or maintain streetlights, and (3) in performing an activity under Subdivision (1) or (2), make drainage improvements and take drainage-related measures as reasonable and necessary for the effective use of the transportation facility being constructed or maintained. • An Authority confirmed before 1980 in which the principal municipality has a population of more than 1.2 million may not spend, during any five-year period, more than seven percent of its revenue from sales and use taxes and interest income during that period for all items described by Section 451.065 (b). | <p>451.065(d)(1)</p> <p>451.065(b)</p> <p>451.066(a)</p> | <p>Compliance. METRO reconstructed sidewalks as paving was reconstructed along Gessner Road. Consent was obtained from the City of Houston through the City Inter-local Street Maintenance Improvement Agreement, which was superseded by the Transportation Improvement Agreement for Designated and Future Designated Projects (executed August 27, 1999). The Gessner Road improvements were part of the General Mobility Capital Improvement Program for 1999 to 2008. The project scope included sidewalks.</p> |
| <p>6. An interlocal contract must: (1) be authorized by the governing body of each party to the contract; (2) state the purpose, terms, rights, and duties of the contracting parties; and (3) specify that each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.</p> | <p>Texas Govt Code §791.011(d)*</p> | <p>Compliance. Inter-local agreements are executed according to State requirements and are renewed annually if the period covered is more than one year. METRO executed one agreement during the scope period with Harris County to provide service to Baytown.</p> |
| <p>7. An interlocal contractual payment must be in an amount that fairly compensates the performing party for the services or functions performed under the contract.</p> | <p>791.011(e)*</p> | <p>Compliance. Inter-local agreements specify funding arrangements and compensation levels.</p> |

AUTHORITY COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
|---|---------------------|--|
| 8. A local government may provide emergency assistance to another local government, whether or not the local governments have previously agreed or contracted to provide that kind of assistance, if: (1) in the opinion of the presiding officer of the governing body of the local government desiring emergency assistance, a state of civil emergency exists in the local government that requires assistance from another local government and the presiding officer requests the assistance; and (2) before the emergency assistance is provided, the governing body of the local government that is to provide the assistance authorizes that local government to provide the assistance by resolution or other official action. | 791.027(a) | Compliance. During the audit period, METRO provided emergency services in connection with Hurricanes Ike, Katrina and Rita. The services were provided before, during and after the storms through TranStar, the region's consolidated emergency management center. METRO's partners in TranStar are the City of Houston, Harris County and the Texas Department of Transportation. Under the TranStar agreement, METRO participates in a standing arrangement to provide consolidated emergency management services for the region, along with other agencies that include FEMA and the Houston police and fire departments. Inasmuch as the Authority has entered into TranStar agreement, it is the auditors' opinion that the METRO Board has taken "other official action" to satisfy this requirement. |
| 9. Any revenue bond indenture may provide limitations upon the exercise of the powers stated in this section and such limitations shall apply so long as any of the revenue bonds issued pursuant to such indenture are outstanding and unpaid. | 451.353(b) | Not applicable. METRO did not issue any bonds during the scope period. |
| 10. The Authority shall have power to lease the system or any part thereof to, or contract for the use or operation of the system or any part thereof by, any operator; provided, however, that a lease of the entire system shall be subject to the written consent and approval of the governing body of the principal city. | 451.056(a)(3) & (b) | Not applicable. METRO has not leased the system or any part thereof during the scope period. |
| 11. The Authority may contract with any city, county, or other political subdivision for the Authority to provide public transportation services to any area outside the boundaries of the Authority on such terms and conditions as may be agreed to by the parties. | 451.056 | Compliance. Inter-local agreements were executed according to State requirements and are renewed annually if the period covered is more than one year. METRO executed one agreement during the scope period with Harris County to provide service to Baytown. |

AUTHORITY COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
|--|---|--|
| <p>12. If an Authority in which a local sales and use tax has been imposed changes or alters its boundaries, the presiding officer of the Board shall forward to the comptroller of public accounts by United States registered mail or certified mail a certified copy of the order adding territory to the Authority or of the order canvassing the returns and declaring the result of the election.</p> <ul style="list-style-type: none"> • The order shall reflect the effective date of the tax and shall be accompanied by a map of the Authority clearly showing the territory added or detached | <p>451.555(b)(1) & (c)</p> <p>451.555(b)(2) & (d)</p> | <p>Not applicable. METRO boundaries have remained unchanged during the scope period. However, when a city changes its boundaries, METRO's boundaries may change.</p> |
| <p>13. An Authority may impose any kind of tax except an ad valorem property tax.</p> <ul style="list-style-type: none"> • An Authority may not impose a tax or increase the rate of an existing tax unless a proposition proposing the imposition or rate increase is approved by a majority of the votes received at an election held for that purpose. • The board shall, on or before November 1 of each year, certify to the county assessor-collector of each county having territory in the Authority the motor vehicle emissions tax rate for each class of motor vehicles for the succeeding tax year. The board shall furnish to the county assessor-collector motor vehicle emissions tax receipts in triplicate. | <p>451.401</p> <p>451.402 (a)</p> <p>451.418(d)</p> | <p>Not applicable. METRO has not levied a motor vehicle emission tax.</p> |
| <p>14. The Authority shall furnish to the tax assessor-collector of each county situated in whole or in part within the boundaries of the Authority, motor vehicle emission tax receipts in triplicate each of which shall, when issued bear a number of other identifying symbol of the motor vehicle for which issued.</p> | <p>451.418(b) & (d)</p> | <p>Not applicable. METRO has not levied a motor vehicle emission tax.</p> |

AUTHORITY COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS | | | | | | | | | | | | | | |
|--|--|---|------|-----|--------|---|--------|---|--------|---|--------|----|-------------|----|--|---|
| <p>15. The maximum emissions tax which may be levied by any Authority shall not exceed the respective annual sums shown in the following table:</p> <table><thead><tr><th data-bbox="275 431 541 488"><u>Cubic Inches of Cylinder Displacement</u></th><th data-bbox="667 431 808 488"><u>Annual Tax Per Vehicle</u></th></tr></thead><tbody><tr><td data-bbox="373 508 443 532">0-50</td><td data-bbox="716 508 760 532">\$4</td></tr><tr><td data-bbox="363 540 453 565">51-100</td><td data-bbox="726 540 749 565">6</td></tr><tr><td data-bbox="363 573 453 597">01-200</td><td data-bbox="726 573 749 597">7</td></tr><tr><td data-bbox="363 605 453 630">01-300</td><td data-bbox="726 605 749 630">8</td></tr><tr><td data-bbox="363 638 453 662">01-900</td><td data-bbox="716 638 760 662">10</td></tr><tr><td data-bbox="331 670 485 695">901 or more</td><td data-bbox="716 670 760 695">15</td></tr></tbody></table> <ul style="list-style-type: none"><li data-bbox="191 711 926 857">• The Board of an Authority shall each year fix the rate of tax for each group by fixing the percentage (not more than 100) of the foregoing respective maximum rates, which percentage shall apply equally and uniformly to all groups and to all members of each group. | <u>Cubic Inches of Cylinder Displacement</u> | <u>Annual Tax Per Vehicle</u> | 0-50 | \$4 | 51-100 | 6 | 01-200 | 7 | 01-300 | 8 | 01-900 | 10 | 901 or more | 15 | <p>451.414(a)</p> <p>451.414(b)</p> | <p>Not applicable. METRO has not levied a motor vehicle emission tax.</p> |
| <u>Cubic Inches of Cylinder Displacement</u> | <u>Annual Tax Per Vehicle</u> | | | | | | | | | | | | | | | |
| 0-50 | \$4 | | | | | | | | | | | | | | | |
| 51-100 | 6 | | | | | | | | | | | | | | | |
| 01-200 | 7 | | | | | | | | | | | | | | | |
| 01-300 | 8 | | | | | | | | | | | | | | | |
| 01-900 | 10 | | | | | | | | | | | | | | | |
| 901 or more | 15 | | | | | | | | | | | | | | | |
| <p>16. In addition to or in lieu of the motor vehicle emission taxes provided for in this Act, the Board of an Authority may levy and collect any kind of tax, other than an ad valorem tax on property, which is not prohibited by the Texas Constitution.</p> | <p>451.401</p> | <p>Not applicable. METRO has not levied a motor vehicle emission tax.</p> | | | | | | | | | | | | | | |

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
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| <p>17. No tax of any kind may be levied and collected by the Board until a proposition proposing the tax has first been submitted to and approved by a majority of the qualified electors of an Authority voting at an election held by the Board for that purpose.</p> <ul style="list-style-type: none"> • A separate proposition must be submitted for each kind of tax proposed, and propositions may be submitted in the alternative with provision for the method of determining the results of the election. • Each proposition must include a brief statement of the nature of the proposed tax. • The notice of the election must include a statement or description of the basis of or rate at which the tax is proposed to be levied. • Any subsequent increase in a tax must also be approved at an election. | 451.402(a)-(c) | <p>Compliance. The election in which voters approved the creation of METRO and sales tax was held in August 1978. Additional taxes or sales tax increases have not been sought by METRO since the 1978 election.</p> |
| <p>18. Prior to an election to authorize a tax other than motor vehicle emission taxes or a sales and use tax, the Board shall adopt a complete tax code and rules and regulations providing for the nature and amount of any tax with provisions for complete administration and enforcement, including the time and manner of payment, exemptions, liens, interest, penalties, discounts for advance payment, refunds for erroneous payment, fees for collection, collection procedures, manner of enforcement, required returns, registration and reports of taxpayers, the duties and responsibilities of tax officers and taxpayers, the delegation to tax officers to make additional rules and regulations and determination as and to obtain records as may be appropriate, and every other provision which may be determined to be desirable, including incorporation of any tax laws and remedies for the administration and enforcement that are available to the state or any political entities under general law.</p> | 451.403 (a) & (b) | <p>Not applicable. METRO has not requested authorization for taxes other than the 1978 one-percent sales tax.</p> |

AUTHORITY COMPLIANCE MATRIX
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| <p>19. A tax code and rules and regulations may be amended by the Board from time to time after an election approving a tax, but no amendment may increase the amount of a tax unless the increase is approved at an election.</p> | <p style="text-align: center;">451.403(c)</p> | <p>Not applicable. METRO has not requested authorization for taxes other than the 1978 one-percent sales tax.</p> |
| <p>20. In addition, the qualified voters of an Authority by petition may require that an election be held on the question of increasing the tax rate.</p> | <p style="text-align: center;">451.408(b)</p> | <p>Not applicable. METRO has not requested authorization for taxes other than the 1978 one-percent sales tax.</p> |
| <p>21. After receiving a petition, the Board shall submit the petition to the secretary of state for validation.</p> <ul style="list-style-type: none"> • If the secretary of state finds the petition valid or fails to act within the time allowed, the Board shall call an election. • The Authority shall pay the costs of determining the validity of a petition, if any, and of the election. | <p style="text-align: center;">451.409(b) 451.409(d) 451.409(e)</p> | <p>Not applicable. METRO has not requested authorization for taxes other than the 1978 one-percent sales tax.</p> |
| <p>22. At the election, the ballots shall be prepared to permit voting for or against the following proposition: "The increase (decrease) of the local sales and use tax rate to (percentage)."</p> <ul style="list-style-type: none"> • A notice of the election and a certified copy of the order canvassing the election results shall be sent to the State Department of Highways and Public Transportation or its successor and the comptroller of public accounts and shall be filed in the deed records of each county in which the Authority is located in the same manner as provided for a confirmation and tax election by Section 5 of this Act. | <p style="text-align: center;">451.410 451.411(b)</p> | <p>Not applicable. METRO has not requested authorization for taxes other than the 1978 one-percent sales tax.</p> |
| <p>23. An Authority may not adopt a sales and use tax or increase the rate of its sales and use tax under this section if as a result of the adoption of the tax or the tax increase the combined rate of all sales and use taxes imposed by the Authority and other political subdivisions of this state having territory in the Authority would exceed two percent at any location in the Authority.</p> | <p style="text-align: center;">451.405(a)</p> | <p>Not applicable. METRO has not requested authorization for taxes other than the 1978 one-percent sales tax.</p> |

AUTHORITY COMPLIANCE MATRIX
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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
|---|---|---|
| <p>24. The board, subject to Section 451.402, may impose for an Authority a sales and use tax at the rate of: (1) one-quarter of one percent; (2) one-half of one percent; (3) three-quarters of one percent; or (4) one percent.</p> <p>Chapter 322, Tax Code, applies to an Authority's sales and use tax.</p> <ul style="list-style-type: none"> • In an election ordered by a board: <ol style="list-style-type: none"> (1) the board shall give notice of the election by publication in a newspaper of general circulation in the Authority at least once each week for three consecutive weeks, with the first publication occurring at least 21 days before the date of the election; and (2) a resolution ordering the election and the election notice must show, in addition to the requirements of the Election Code, the hours of the election and polling places in election precincts. (b) Subsection (a) does not apply to an election under Subchapter N. | <p>451.404(a) 451.404(b) 451.070(b) 451.070(a)(1) 451.070(a)(2)</p> | <p>Not applicable. METRO has not requested authorization for taxes other than the 1978 one-percent sales tax.</p> |

* Denotes that this section was either amended or adopted since the prior performance audit.

III. BOARD MATTERS COMPLIANCE

BOARD MATTERS COMPLIANCE MATRIX
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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
|--|--|--|
| <p>1. All vacancies on the Board, whether by death or resignation shall be filled for the remainder of the term in the manner provided for the original appointment.</p> | <p>Texas Trans Code 451.504</p> | <p>Compliance. There were no vacancies on the Board during the scope period. The Board member appointments made during the scope period were to replace outgoing Board members before the position was vacant.</p> |
| <p>2. Each member of the Board shall be reimbursed for his necessary and reasonable expenses incurred in the discharge of his duties.</p> <ul style="list-style-type: none"> • Each member of a Board is entitled to \$50 for each meeting of the Board attended, not to exceed five meetings in a calendar month. | <p>451.519(a) 451.519(b)</p> | <p>Compliance. The Board Liaison Officer prepared a monthly list of Committee and Board meetings attended for each Board member. This list was submitted to the Director of Accounting for review and approval prior to payment. A review of sample payments indicated compliance with the \$250 per month maximum allowed. The review of payments indicates that Board Members were reimbursed for necessary and reasonable expenses incurred in the discharge of his/her duties.</p> |
| <p>3. The members of the Board, who shall be resident citizens, and qualified voters of the Authority, shall elect from among their number a chairman, a vice-chairman and a secretary.</p> <ul style="list-style-type: none"> • The Board shall elect from among its membership a presiding officer, an assistant presiding officer and a secretary. • The Board may appoint such assistant secretaries, either members or nonmembers of the Board, as it deems necessary. • The secretary and assistant secretaries shall, in addition to keeping the permanent records of all proceedings and transactions of the Authority, perform such other duties as may be assigned to them by the Board. • No member of the Board or officer of the Authority shall be peculiarly interested or benefited, directly or indirectly, in any contract or agreement to which the Authority is a party. | <p>451.507 451.520 (a) - (c) 451.112</p> | <p>Substantial Compliance. METRO did not verify the voting qualifications of the appointed board members. METRO relied on the appointing entity to ensure that the persons appointed to the Board were qualified. METRO is in compliance with the other sections of this requirement, as established in Section III B of the METRO Code of Ethics.</p> |

BOARD MATTERS COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
|---|--|---|
| <p>4. It is a ground for removal from the Board if a member: (i) does not have at the time of appointment the qualifications required by Section 451.507 of this Act; (ii) does not maintain during service on the Board the qualifications required by Section 451.507 of this Act; (iii) violates a prohibition established by Chapter 171, Local Government Code or Section 451.112 of this Act; (iv) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or (v) is absent from more than half of the regularly scheduled Board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the Board.</p> | 451.510 | Not applicable. METRO did not request the removal of any individual serving on the Board. |
| <p>5. The Board shall hold at least one regular meeting during each month for the purpose of transacting the business of the Authority.</p> <ul style="list-style-type: none"> • Upon written notice, the chairman or the general manager may call special meetings as may be necessary. • The Board, when organized, shall by resolution recorded in the minutes, set the time, place and day of the regular meetings, and shall likewise adopt rules and regulations and such bylaws as it may deem necessary for the conduct of its official meetings. • A majority of the members shall constitute a quorum of the Board for the purpose of conducting its business and exercising its powers and action may be taken by the Authority upon a vote of a majority of the Board members present unless the bylaws require a larger number for a particular action. | <p>451.5 14(a)</p> <p>451.514(b)</p> <p>451.514(a), 451.517</p> <p>451.515 (a)</p> | <p>Compliance. At least one regular meeting was held during each month.</p> <p>Compliance. As established in Article II Section 6 of the METRO Bylaws.</p> <p>Compliance. As established in Article II Section 8 of the METRO Bylaws.</p> |

BOARD MATTERS COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
|---|--|---|
| <p>6. The Board shall notice and hold its meetings pursuant to Chapter 551, Govt Code, except that the Board shall have notices of its meetings posted on a bulletin Board located at a place convenient to the public at its administrative offices and a bulletin Board located at a place convenient to the public at the county courthouse of the most populous county in which the principal city is located.</p> | 451.518 | Compliance. A sample review of the Board Meeting postings indicated receipt by court house personnel and posting of the notices on the METRO Administrative Office. |
| <p>7. Each member shall serve a term of two years. A person may not serve more than eight years.</p> <p>A term limitation provided by this section does not apply to service on the board by a holdover pending the qualifications of a successor.</p> | 451.505(a) & 451.506(b)* 451.506(d)* | Compliance. A review of Board member service dates indicated that Board member service had not exceeded eight years. |
| <p>8. The Board of an Authority in which the principal city has a population of more than 1,200,000, according to the most recent federal census, may establish advisory committees to make recommendations to the Board or general manager about the operation of the Authority.</p> <p>A member of an advisory committee may not be compensated by the Authority for committee service but is entitled to reimbursement for actual and necessary expenses incurred in the performance of committee service.</p> | 451.109(a) & (d) 451.109(c) | Not applicable. The Board had not established special advisory committees. Resolution 99-1 established four Standing Committees for the Board; Future Programs, Internal Operations, Transit Services; and Budget and Finance. The number of Standing Committees was increased to five with Resolution 2004-32; Finance Committee/Audit, Future Programs/Planning Committee, Government and Public Relations Committee, Human Resources Committee and the Operations Committee. |
| <p>9. The Board shall appoint members to an advisory committee from a list of persons recommended by the general manager to serve at the pleasure of the Board.</p> <ul style="list-style-type: none"> • In making appointments to an advisory committee established under this section, the Board shall appoint persons who have knowledge about and interest in and represent a broad range of viewpoints concerning the work of the committee. | 451.109(b) | Not applicable. The Board had not established special advisory committees. |

BOARD MATTERS COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
|---|------------------------|--|
| 10. The Board shall specify the purpose, powers, duties, and manner of reporting the results of the work of an advisory committee established under this section. | 451.109(a) | Not applicable. The Board had not established special advisory committees. |
| 11. Except as provided by Section 451.106, the responsibility for the management, operation and control of the properties belonging to an Authority shall be vested in its Board. | 451.053 | Compliance. As established in Article II Section I of the METRO Bylaws. |

BOARD MATTERS COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
|---|------------------------------------|--|
| <p>12. The Board may: (1) employ all persons, firms, partnerships or corporations deemed necessary by the Board for the conduct of the affairs of the Authority, including, but not limited to, a general manager, bookkeepers, auditors, engineers, attorneys, financial advisers and operating or management companies, and prescribe the duties, tenure and compensation of each. (all employees may be removed by the Board); (2) become a subscriber under the Texas workers' compensation laws with any old-line legal-reserve insurance company authorized to write policies in the State of Texas; (3) adopt a seal of the Authority; (4) invest funds of the Authority in direct or indirect obligations of the United States, the state, or any county, city, school district or other political subdivision of the state; funds of the Authority may be placed in certificates of deposit of state or national banks or savings and loan associations within the state provided that they are secured in the manner provided for the security of the funds of counties of the State of Texas; the Board, by resolution, may provide that an authorized representative of the Authority may invest and reinvest the funds of the Authority and provide for money to be withdrawn from the appropriate accounts of the Authority for the investments on such terms as the Board considers advisable; (5) fix the fiscal year for the Authority; (6) establish a complete system of accounts for the Authority and each year shall have prepared an audit of its affairs by an independent certified public accountant or a firm of independent certified public accountants which shall be open to public inspection; and (7) designate one or more banks to serve as the depository for the funds of the Authority.</p> | <p>451.101 and 451.105 (a)</p> | <p>Compliance. The Board had employed the services of the President & Chief Executive Officer of METRO to administer the daily operations of the Authority. Board resolutions authorize the President to contract with individuals, corporations, etc. to perform services and provide materials to the Authority.</p> |

BOARD MATTERS COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
|---|---|--|
| <p>13. The Board of an Authority in which the principal has a population of less than 750,000 or more than 1,200,000, shall employ a general manager to administer the daily operations of the Authority. The general manager may employ persons to conduct the affairs of the Authority and may prescribe their duties and compensation, subject to Board approval of the budget of the Authority and in accordance with personnel policies adopted by the Board. Subject to those policies, only the general manager may remove any employee. The general manager may, subject to approval of the Board, contract with individuals, partnerships, corporations, or other entities to perform work or provide materials for the Authority.</p> | 451.106(a)-(c) | <p>Compliance. The Board had employed the services of the President & Chief Executive Officer of METRO to administer the daily operations of the Authority. Board resolutions authorize the President to contract with individuals, corporations, etc. to perform services and provide materials to the Authority.</p> |
| <p>14. The Board of an Authority in which the principal city has a population of less than 750,000 or more than 1,200,000, shall develop and implement policies that clearly define the respective responsibilities of the Board and the staff of the Authority.</p> | 451.106(d) | <p>Compliance. As established in Article II Section 11 of the METRO Bylaws.</p> |
| <p>15. The Board of an Authority to which this section applies shall establish a program to promote the availability and use of the transportation services of the Authority by physically handicapped individuals.</p> <ul style="list-style-type: none"> • Before establishing the program, the Board shall hold public hearings relating to the establishment and operation of the program. • The program must address the specific transportation problems of physically handicapped individually and establish mechanisms by which transportation services are to be provided to those individuals. | <p>451.254(a)</p> <p>451.254(b)</p> <p>451.254(a)</p> | <p>Compliance. Resolution Number 87-90 reaffirmed and restated METRO's policy of providing transportation services to the elderly and disabled. METRO followed the Federal Americans with Disabilities Act and other laws with regard to accessibility of its system, programs, and services.</p> |

BOARD MATTERS COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
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| 16. The Board may adopt and enforce reasonable rules and regulations: (1) to secure and maintain safety and efficiency in the operation and maintenance of its system; (2) governing the use of the Authority's system and services by the public and the payment of fares, tools and charges; (3) regulating privileges on any land, easement, right-of-way, rolling stock or other property owned, leased, rented or otherwise controlled by the Authority; and (4) regulating the collection and payment of emission taxes levied by the Board. | 451.107 451.420 | Not Applicable. The Board has not adopted rules and regulations, but rather has developed policies, enacted by Resolutions, to guide day-to-day management of areas such as procurement; real estate, operations, and fare policy. |
| 17. A condensed substantive statement of the rules and regulations shall be published after adoption once a week for two consecutive weeks in a newspaper with general circulation in the area in which the Authority is located, which notice shall advise that the full text of the rules and regulations is on file in the principal office of the Authority where it may be read by any interested person. | 451.107(b) | Not Applicable. The Board has not adopted rules and regulations. |
| 18. An Authority may employ and commission its own peace officers with power to make arrests in all counties where the system is located when necessary to prevent or abate the commission of an offense against the laws of the state or a political subdivision of the state when the offense or threatened offense occurs on or involves the system of the Authority, to make arrests in cases of an offense involving injury or detriment to the system, to enforce all traffic laws and investigate traffic accidents which involve or occur in the system, and to provide emergency and public safety services to the system or person who use the system. | 451.108* | Compliance. A sample review of peace officer personnel information files indicated peace officers are commissioned by the Authority. |

BOARD MATTERS COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
|--|-------------------------------------|---|
| 19. Any person, commissioned under this section must be a certified peace officer who meets the requirements of the Texas Commission on Law Enforcement Officer Standards and Education, who shall file with the Authority the sworn oath required of peace officers, and who is vested with all the powers, privileges and immunities of peace officers in all counties where the system is located, provides services, or is supported by a general sales and use tax. | 451.108(d) | Compliance. A sample review of peace officer personnel information files indicated peace officers were certified. |
| 20. Regulation of conflicts of interest of officers of transit authorities. | Local Govt Code 171.001 et. seq. | Compliance. As established in Section III B of the METRO Code of Ethics. |
| 21. (a) A local public official commits an offense if the official knowingly: (1) violates Section 171.004; (2) acts as surety for a business entity that has work, business, or a contract with the governmental entity; or (3) acts as surety on any official bond required of an officer of the governmental entity. (b) An offense under this section is a Class A misdemeanor. | 171.003 | Not Applicable. There were no such incidents during the scope period. |

BOARD MATTERS COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
|--|--|---|
| <p>22. (a) If a local public official has a substantial interest in a business entity or in real property, the official shall file, before a vote or decision on any matter involving the business entity or the real property, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter if: (1) in the case of a substantial interest in a business entity the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or (2) in the case of a substantial interest in real property, it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.</p> <p>(b) The affidavit must be filed with the official record keeper of the governmental entity.</p> <p>(c) If a local public official is required to file and does file an affidavit under Subsection (a), the official is not required to abstain from further participation in the matter requiring the affidavit if a majority of the members of the governmental entity of which the official is a member is composed of persons who are likewise required to file and who do file affidavits of similar interests on the same official action.</p> | <p style="text-align: center;">171.004</p> | <p>Compliance. As established in Section III B of the METRO Code of Ethics. Board members disclosed all real property in which they have a substantial interest. Such disclosures are on file with METRO's Office of General Counsel.</p> |

BOARD MATTERS COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
|--|---|---|
| <p>APPLIES ONLY IF AUTHORITY HAS TAKEN THIS ACTION</p> <p>23. Any member of the Board may be removed from office by a majority vote of the remaining members of the Board for inefficiency, neglect of duty or malfeasance in office, not having at appointment or maintaining during service on the ; provided, however, that the Board shall furnish to such member a statement in writing of the nature of the charges as grounds for such removal, and the member, before the 11th day after receipt of the statement, may request a hearing before the Board and opportunity to be heard in person or through counsel.</p> <ul style="list-style-type: none"> • After any such hearing, if the Board by a majority vote finds that the charges are true, it shall confirm its decision to remove the member. | <p>Texas Trans Code</p> <p>451.508</p> <p>451.510</p> <p>451.511(a)</p> <p>451.511(b) & (c)</p> | <p>Not applicable. The Board did not take action against any Board member for inefficiency, neglect of duty or malfeasance in office during the scope period.</p> |

BOARD MATTERS COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
|---|------------------|--|
| <p>24. In an Authority in which the principal municipality has a population of more than 750,000, a member of the board may be removed for any ground described by Section 451.510 by the person or entity that appointed the member. If the person who appointed the member is the mayor of the principal municipality, the removal is by recommendation of the mayor and confirmation by the municipality's governing body. If the member to be removed was appointed by the mayor of the principal municipality, the statement required by Section 451.511(a) shall be given by the mayor, and confirmation of removal by the governing body of the municipality is necessary.</p> | 451.509(c) | Not applicable. There were no Board members subject to the recall procedure during the scope period. |
| <p>25. A board member of an Authority that has a principal municipality with a population of more than 750,000 may be removed, as provided by this section, on a petition for the recall of the member submitted by the registered voters of the Authority. Recall of a member under this section is in addition to any other method for removal under this subchapter. This is the wording in the code.</p> <ul style="list-style-type: none"> • A petition is valid if (1) it states that it is intended to require a reconsideration on the question of removing an identified Board member; (2) it is signed by qualified voters equal in number to at least 10% of the number of voters of the Authority voting in the previous governor's election; (3) if the signatures are collected within a period of 90 days prior to the date on which the petition is presented to the appointing political subdivision, and (4) it is submitted to the appointing political subdivision before the first day of the final six months of the term of the member whose removal is sought. | 451.513(a) & (c) | Not applicable. There were no petitions from qualified voters regarding the removal from office of a Board member during the scope period. |

BOARD MATTERS COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
|---|-----------------|--|
| <p>26. After receiving a petition, the appointing political subdivision shall submit it to the secretary of state, who, not later than the 10th day after the day he or she receives the petition, shall determine.</p> <ul style="list-style-type: none"> • If the secretary of state fails to act within the time allowed, the petition is treated as if it had been found valid. | 451.513(d) | Not applicable. There were no petitions from qualified voters regarding the removal from office of a Board member during the scope period. |
| <p>27. If the appointing political subdivision receives notice from the secretary of state that the petition is valid or if the secretary of state has failed to act within the time allowed, the appointing political subdivision shall reconsider such appointment and take action to either remove or reconfirm such appointee.</p> | 451.513(b) | Not applicable. There were no petitions from qualified voters regarding the removal from office of a Board member during the scope period. |
| <p>28. The appointing Authority that appointed the member removed by recall shall fill the vacancy not later than the 30th day after the day of removal.</p> | 451.513(e) | Not applicable. There were no petitions from qualified voters regarding the removal from office of a Board member during the scope period. |
| <p>29. A member removed by recall is not eligible for reappointment to fill the vacancy and is not eligible for appointment to any other position on the Board for a length of time after the day of removal equal to the length of a normal term of a member of the Board.</p> | 451.513(e) | Not applicable. There were no petitions from qualified voters regarding the removal from office of a Board member during the scope period. |
| <p>30. If the general manager of the Authority has knowledge that a potential ground for removal exists, the general manager shall notify the chairman of the Board of the ground.</p> <ul style="list-style-type: none"> • The chairman shall then notify the appointing agency that a potential ground for removal exists. | 451.509(d) | Not applicable. There were no Board members removed from the Board by the agency that appointed them during the scope period. |

* Denotes that this section was either amended or added since the prior performance audit and 1999 legislative year.

**IV. OPEN MEETINGS AND PUBLIC INFORMATION
COMPLIANCE**

OPEN MEETINGS AND PUBLIC INFORMATION COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
|---|--|--|
| <p>1. Except as otherwise provided in this Act or specifically permitted in the Constitution, every regular, special, or called meeting or session of every governmental body shall be open to the public; and no closed or executive meeting or session of any governmental body for any of the purposes for which closed or executive meetings or sessions are hereinafter authorized shall be held unless a quorum of the governmental body has first been convened in open meeting or session for which notice has been given as hereinafter provided and during which open meeting or session the presiding officer has publicly announced that a closed or executive meeting or session will be held and identified the section or sections under this Act authorizing the holding of such closed or executive session.</p> | <p>Texas Govt Code §551.002 551.101</p> | <p>Compliance. All regular scheduled METRO Board meetings, committee meetings, Special Meetings and Emergency meetings were open to the public. Closed executive meetings may have been called by the Board Chairman to discuss real estate, personnel, security or to consult with attorneys on litigation or legal matters.</p> |
| <p>2. A governmental body may exclude any witness or witnesses from a hearing during examination of another witness in the matter being investigated.</p> | <p>551.084</p> | <p>Not applicable. No such incident during the scope period.</p> |
| <p>3. Private consultations between a governmental body and its attorney are not permitted except in those instances in which the body seeks the attorney's advice with respect to pending or contemplated litigations, settlement offers, and matters where the duty of a public body's counsel to his client, pursuant to the Code of Professional Responsibility of the State Bar of Texas, clearly conflicts with this Act.</p> | <p>551.071</p> | <p>Compliance. A review of certified agendas from executive session indicated that the METRO Board met with its attorney in closed executive session to discuss litigation, real estate, and personnel issues only. Certified agendas from executive sessions clearly indicated that the Board consulted with its attorney and the case in question.</p> |

OPEN MEETINGS AND PUBLIC INFORMATION COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
|--|------------------------------|---|
| 4. The public may be excluded from that portion of a meeting during which a discussion is had with respect to the purchase, exchange, lease, or value of real property, negotiated contracts for prospective gifts or donations to the state or the governmental body, when such discussion would have a detrimental effect on the negotiating position of the governmental body as between such body and a third person, firm or corporation. | 551.072 551.073 | Compliance. A review of certified agendas from executive session indicated that the METRO Board met with its attorney in closed executive session to discuss litigation, real estate, and personnel issues only. Certified agendas from executive sessions clearly indicated that the Board consulted with its attorneys and the case in question. |
| 5. The governmental body may adopt reasonable rules to maintain order at the meeting place. • These rules may include, but shall not be limited to, a determination of the location of recording equipments and the manner in which the recording is conducted; provided, however, that the rules do not have the effect of preventing or unreasonably impairing camera coverage or tape recording. | 551.023(b) 551.023(c) | Compliance. By Resolution No. 90-159, the Board adopted reasonable rules to maintain order during meetings. |
| 6. Whenever any deliberations or any portion of a meeting are closed to the public as permitted by this Act, no final action, decision, or vote with regard to any matter considered in the closed meeting shall be made except in a meeting which is open to the public and in compliance with the requirements of Section 3 of this Act. | 551.102 | Compliance. The METRO Board did not vote in closed meetings. All votes were taken during open meetings session. |
| 7. For each of its meetings that are closed to the public, except for consultations in accordance with Section 551.071 of this Act, a governmental body shall keep a certified agenda of the proceedings. | 551.103(a) | Compliance. A review of the sample meeting agendas and minutes indicated instances of executive session. Certified agendas for each of these were found to be on file. |
| 8. The presiding officer must certify that the agenda kept under Subsection (a) of the section is a true and correct record of the proceedings. | 551.103(b) | Non-compliance. A review of the sample meeting agendas and minutes indicated instances of executive session. Certified agendas for each of these were found to be on file. Two of the 15 certified agendas reviewed were not signed by the presiding Board member, certifying that the agenda was a true and correct representation of the items discussed. |

OPEN MEETINGS AND PUBLIC INFORMATION COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
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| <p>9. The certified agenda shall include an announcement made by the presiding officer at the beginning and end of the meeting indicating the date and time.</p> <ul style="list-style-type: none"> • The certified agenda shall state the subject matter of each deliberation and shall include a record of any further action. • The certified agenda of closed or executive sessions shall be made available for public inspection and copying only upon court order in an action brought under this Act. | <p style="text-align: center;">551.103(c)</p> <p style="text-align: center;">551.104(c)</p> | Compliance. A review of the sample meeting agendas and minutes indicated instances of executive session. Certified agendas for each of these were found to be on file. |
| <p>10. The certified agenda or tape shall be available for in camera inspection by the judge of a district court if litigation has been initiated involving an alleged violation of this Act.</p> <p>The district court may admit all or part of the certified agenda or tape as evidence, on entry of a final judgment.</p> <p>The district court may grant legal or equitable relief it considers appropriate, including an order that the governmental body make available to the public the certified agenda or tape of any part of a meeting that was required to be open under this chapter.</p> | 551.104(b) | Compliance. The METRO Board had elected to keep certified agendas for all closed meetings. |
| <p>11. The governmental body shall preserve the certified agenda or tape for at least two years after the date of the meeting.</p> <ul style="list-style-type: none"> • If an action involving the meeting is commenced during the required preservation period, the certified agenda or tape shall be preserved pending the outcome of the action. | 551.104(a) | Compliance. Certified agendas are preserved for two years as required. If an action is commenced during the preservation period, METRO has taken measures to preserve the certified agendas pending the outcome of the action. |
| <p>12. No member of a governmental body shall participate in a meeting of the governmental body closed to the public knowing that a certified agenda of the meeting is not being kept or tape recording is not being made. (A person who violates this subsection commits a Class C misdemeanor).</p> <p>An action taken by a governmental body in violation of chapter 551 is voidable.</p> | <p style="text-align: center;">551.145</p> <p style="text-align: center;">551.141</p> | Not applicable. No such incident during the scope period. |

OPEN MEETINGS AND PUBLIC INFORMATION COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
|---|---------------------------|--|
| <p>13. Written notice of the date, hour, place, and subject of each meeting held by a governmental body shall be given before the meeting has prescribed by this section. (The requirement for notice prescribed by this section does not apply to matters about which specific factual information or a recitation of existing policy is furnished in response to an inquiry made at such meeting, whether such inquiry is made by a member of the general public or by a member of the governmental body.) Any deliberation, discussion, or decision with respect to the subject about which inquiry was made shall be limited to a proposal to place such subject on the agenda for a subsequent meeting of such governmental body for which notice has been provided in compliance with this Act.</p> | <p>551.041 to 551-042</p> | <p>Compliance. All regular, special and committee meetings of the METRO Board were posted at METRO's administrative offices, and on the official bulletin board at the County Courthouse. Meeting notices were also posted on the Secretary of State website. Each notice included the meeting date, time, location and subject.</p> |
| <p>14. The governing body of a water district, other district, or other political subdivision that extends into fewer than four counties shall have a notice posted at a place convenient to the public in its administrative office, and shall also furnish the notice to the county clerk of each county in which the district or political subdivision is located.</p> | <p>551.054(a)</p> | <p>Compliance. All regular, special and committee meetings of the METRO Board were posted at METRO's administrative offices, and on the official bulletin board at the County Courthouse. Meeting notices were also posted on the Secretary of State website. Each notice included the meeting, date, time, location, and subject.</p> |

OPEN MEETINGS AND PUBLIC INFORMATION COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
|--|---|---|
| <p>15. Notice of a meeting must be posted in place readily accessible to the general public at all times for at least 72 hours proceeding the scheduled time of the meeting. In case of emergency or urgent public necessity, which shall be clearly identified in the notice, it shall be sufficient if the notice is posted two hours before the meeting is convened. Cases of emergency and urgent public necessity are limited to imminent threats to public health and safety or reasonably unforeseeable situations requiring immediate action by the governmental body (see statute).</p> <p>In addition to notice required by Chapter 551, Govt Code, the Board shall post a board meeting notice in the Authority's administrative offices and at the courthouse of the most populous county in which the principal municipality of the Authority is located, each on a bulletin board at a place convenient to the public.</p> | <p>551.043 551.045 451.518</p> | <p>Substantial Compliance. A review of the sample postings indicated that the 72 hour advance posting was exceeded in most cases; however, one of the 40 samples reviewed did not meet the 72 hour posting requirement. Also, METRO did not retain records of board postings at the Administrative Building prior to June 2005. Therefore, there was no evidence to determine whether board postings for the Administrative Building prior to June 2005 were posted properly.</p> |
| <p>16. A governmental body shall prepare and retain minutes or make a tape recording of each of its open meetings.</p> <ul style="list-style-type: none"> • The minutes shall state the subject matter of each deliberation and shall indicate each vote, order, decision, or other action taken by the governmental body. • The minutes or tapes prepared under this section are public records and shall be made available for public inspection and copying on request to the chief administrative officer of the governmental body or to any other official designated by the chief administrative officer. | <p>551.021(a) 551.021(b) 551.022</p> | <p>Compliance. Meeting notices and written Board minutes of all regular, special, and Board committee meetings were kept on file at METRO administrative offices.</p> <p>Information is available for public inspection at METRO administrative offices during normal business hours.</p> |

OPEN MEETINGS AND PUBLIC INFORMATION COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
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| <p>17. If a governmental body determines that information covered by a special right of access under section 552.023 is exempt from disclosure under any other exception under Subchapter C, the governmental body shall, before disclosing the information, submit a written request for a decision to the attorney general under the procedures of this subchapter.</p> <ul style="list-style-type: none"> If a decision is not so requested, the governmental body shall release the information to the person with a special right of access under this section within 10 days of receiving the request for information. | <p>552.307(a)</p> <p>552.307(b)</p> | <p>Compliance. METRO's General Counsel submits questionable requests for information to the State Attorney General for a determination and abides by their decision.</p> |
| <p>18. On application of public information to the officer for public records in a governmental body by any person, the officer for public records shall promptly produce such information for inspection or duplication, or both, in the offices of the governmental body or sending copies by first class U.S. mail if so requested and the requestor pays the postage and any other applicable charges accrued under Subchapter F.</p> <ul style="list-style-type: none"> If the information is in active use or in storage and, therefore, not available at the time a person asks to examine it, the officer for public records shall certify this fact in writing to the applicant and set a date and hour within a reasonable time when the record will be available for the exercise of the right given by this Act. If an officer for public information cannot produce public information for inspection or duplication within 10 business days after the date the information is requested under Subsection (a), the officer shall certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication. | <p>552.221(a)&(b)</p> <p>552.221(c)</p> <p>552.221(d)</p> | <p>Non-Compliance. METRO's Legal Office responds to information requests made in person, as well as those made by telephone, mail and the internet. If the information cannot be provided immediately, the person requesting the information is notified. There have been no complaints registered with METRO regarding response time in providing information or access to information.</p> <p>However, for one of the 38 incidents reviewed, METRO extended the date to provide the information, but the information was not provided on or before the extended date.</p> <p>For another of the 38 incidents reviewed, METRO did not provide the information to the requestor within the ten business days after the date the information was requested.</p> |

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
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| <p>19. The officer for the public records shall extend the initial 10 days examination period by an additional 10 days if, within the initial period, the person requesting the information files with the officer for public records a written request for additional time.</p> <ul style="list-style-type: none"> The officer for public records shall extend an additional examination period by another 10 days if, within the additional period, the person requesting the information files with the officer for public records a written request for more additional time. | 552.225(b) | Compliance. METRO does not impose a time limitation on the inspection of documents and information. |
| <p>20. The time during which a person may examine information may be interrupted by the officer for public records if the information is needed for use by the governmental body.</p> | 552.225(c) | Not applicable, no such incident during the scope period. |
| <p>21. The chief administrative officer of the governmental body shall be the officer for public records.</p> <ul style="list-style-type: none"> It shall be the duty of the officer for public records, subject to penalties provided in this Act, to see that the public records are made available for public inspection and copying; that the records are carefully protected from deterioration, alteration, mutilation, loss, or unlawful removal; and that public records are repaired, renovated, or rebind when necessary to maintain them properly. When records are no longer currently in use, it shall be within the discretion of the governmental body to determine a period of time for which said records will be preserved subject to state laws governing the destruction and other disposition of state and local government records. | <p>552.201</p> <p>552.203</p> <p>552.004</p> | Compliance. The Chief Executive Officer is the Chief Administrative Officer for METRO and has primary responsibility for public records. METRO's Legal Counsel is responsible for ensuring the public has access to appropriate public records. |

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
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| <p>22. Neither the officer for public records nor his agent shall make any inquiry of any person who applies for inspection or copying of public records beyond the purpose of (1) establishing proper identification and the public records being requested; (2) establishing whether the officer for public records is unauthorized under Subsection (e) of Section 4A of this Act to refuse to honor the request; or (3) discuss with the requestor how the scope of the request might be narrowed if voluminous.</p> <ul style="list-style-type: none"> • The officer for public records or his agent shall give, grant, and extend to the person requesting public records all reasonable comfort and facility for the full exercise of the right granted by this Act. | <p style="text-align: center;">552.222(a)&(b)</p> <p style="text-align: center;">552.224</p> | <p>Compliance. Persons requesting information must provide a name, address and telephone number, as well as a description of the information being requested. The General Counsel acts as the Public Information Officer for METRO and may ask questions to determine the best format for supplying the information and clarify what specifically the person is looking for. METRO will provide copies at a nominal fee.</p> |
| <p>23. The officer for public records or the officer's agent shall treat each request for information uniformly without regard to the position or occupation of the person making the request or the person on whose behalf the request is made or because the individual is a member of the media.</p> | 552.223 | <p>Compliance. METRO treats each request for public information in the same equitable manner.</p> |
| <p>24. If a governmental body receives a written request, including e-mail and fax, for information which it considers within one of the exceptions stated in Subchapter C, but there has been no previous determination that it falls within one of the exceptions, the governmental body within a reasonable time, no later than ten calendar days, after receiving a written request must request a decision from the attorney general to determine whether the information is within that exception. (If a decision is not so requested, the information shall be presumed to be public information.)</p> | 552.301(a)-(c) 552.302 | <p>Compliance. METRO's General Counsel submits questionable requests for information to the State Attorney General for a determination and abides by their decision. All other requests for information are promptly handled.</p> |

OPEN MEETINGS AND PUBLIC INFORMATION COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
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| <p>26. In cases in which a third party's privacy or property interest may be implicated, including but not limited to Sections 552.101, 552.104, 552.110, or 552.114, the governmental body may decline to release the information in order to request an attorney general opinion.</p> <p>The governmental body that requests an attorney general decision under Section 552.301 shall make a good faith attempt to notify that person of the request for the attorney general decision. (See statute for Notice requirements)</p> <p>The governmental body shall send a copy of that letter, memorandum, or brief to the person who requested the information from the governmental body. If the letter, memorandum, or brief submitted to the attorney general contains the substance of the information requested, the copy of the letter, memorandum, or brief may be a redacted copy.</p> <p>The governmental body may, but is not required to, submit its reasons why the information should be withheld or released.</p> | <p style="text-align: center;">552.305(a)</p> <p style="text-align: center;">552.305(d)</p> <p style="text-align: center;">552.305(e)</p> <p style="text-align: center;">552.305(c)</p> | <p>Compliance. METRO's Public Information Officer follows State law when obtaining a determination from the State Attorney General regarding access to public information.</p> |
| <p>27. It shall be the policy of all governmental bodies to provide suitable copies in paper or electronic form, when available, of all public records within a reasonable period of time after the date copies were requested.</p> <ul style="list-style-type: none"> • Every governmental body is hereby instructed to make reasonably efficient use of each page of public records so as not to cause excessive costs for the reproduction of public records. | <p style="text-align: center;">552.228</p> <p style="text-align: center;">552.268</p> | <p>Compliance. METRO provides copies within ten business days for a nominal fee.</p> |

OPEN MEETINGS AND PUBLIC INFORMATION COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
|---|--|--|
| <p>28. Public records shall be furnished without charge or at a reduced charge if the governmental body determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.</p> <p>If the cost to the governmental body of processing collection of a charge exceeds the amount of the charge for providing a copy, the charge may be waived.</p> | <p>552.267(a)</p> <p>552.267(b)</p> | <p>Compliance. METRO provides copies within ten business days for a nominal fee.</p> |
| <p>29. Information deemed confidential under the terms of this action shall not be distributed.</p> | <p>552.352(a)</p> | <p>Compliance. METRO's General Counsel submits questionable requests for information to the State Attorney General for a determination and abides by their decision.</p> |
| <p>30. A bond for payment of costs for the preparation of such public records, or a prepayment in cash of the anticipated costs for the preparation of such records, may be required by the officer for public records or the officer's agent as a condition precedent to the preparation of such record if: (1) the requestor has been provided a written itemized estimate of charges and (2) the record is estimated by the governmental body to exceed \$100.</p> | <p>552.263(a)</p> | <p>Not applicable. METRO has not had cause to require the issuance of a bond to pay for the expense of preparing public information.</p> |
| <p>31. Each governmental body may promulgate reasonable rules of procedure by which public records may be inspected efficiently, safely, and without delay.</p> | <p>552.230</p> | <p>Not applicable. The Authority has not elected to develop rules or procedures for inspection of public records.</p> |

V. FINANCE AND ADMINISTRATION COMPLIANCE

FINANCE AND ADMINISTRATION COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
|---|---------------------------|---|
| 1. The issuance of bonds (to finance project costs of an eligible project) shall be authorized by resolution, order or ordinance of the governing body of Houston METRO (see statute for contents). | Texas Trans Code §451.352 | Not Applicable. METRO has not issued bonds during the scope period. |
| 2. The Authority shall establish and maintain rates, fares, tolls, charges, rents or other compensation for the use of the facilities of the system acquired, constructed, operated or maintained by the Authority which shall be reasonable and nondiscriminatory and which, together with receipts from taxes collected by the Authority, shall be sufficient to produce revenues adequate: (1) to pay all expenses necessary to the operation and maintenance of the properties and facilities of the Authority; (2) to pay the interest on and principal of all bonds issued by the Authority under this Act which are payable in whole or in part from such revenues, when and as the same shall become due and payable; (3) to pay all sinking fund and reserve fund payments agreed to be made in respect of any such bonds, and payable out of such taxes and revenues, when and as the same shall become due and payable; and (4) to fulfill the terms of any agreements made with the holders of such bonds or with any person in their behalf. | 451.061(a) | Compliance. The Authority pays for all operating and capital expenses from fare box revenues, the one-percent sales tax, miscellaneous operating revenues, and other State and Federal grant funds. |
| 3. Taxes levied and the rates, fares, tolls, charges, rents and other compensation for the use of the facilities of the system shall not be in excess of what may be necessary to fulfill the obligations imposed upon the Authority by this Act. | 451.061(b) | Compliance. Review of the Authority's Fiscal Year 2005, 2006 and 2007 financial statements and METRO's Vision for 21 st Century High Capacity Transit Plan (adopted August 26, 1999) it is reasonable to conclude that all compensation for the use of facilities of the system were not in excess of what is necessary to fulfill the obligations imposed upon the Authority. |

FINANCE AND ADMINISTRATION COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
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| <p>4. The Authority, however, shall have the full power to issue bonds and notes, from time to time and in such amounts as it shall consider necessary or appropriate, for the acquisition, purchase, construction, reconstruction, repair, equipping, improvement or extension of such rapid transit system or systems and all properties thereof whether real, personal or mixed.</p> <ul style="list-style-type: none"> • All such bonds and notes shall be fully negotiable and may be made redeemable before maturity, at the option of the issuing Authority, at such price or prices and under such terms and conditions as may be fixed by the issuing Authority in the resolution authorizing such bonds or notes, and may be sold at public or private sale whichever the Board may deem more advantageous. | <p>451.352(a) 451.353(a) 451.354</p> | <p>Not Applicable. METRO has not issued bonds in the scope period.</p> |
| <p>5. Prior to delivery thereof, all bonds and notes authorized to be issued hereunder and the records relating to their issuance shall be submitted to the Attorney General of Texas for examination</p> | <p>451.355(a)</p> | <p>Not Applicable. METRO has not issued bonds in the scope period.</p> |
| <p>6. Refunding bonds or notes may be issued for the purposes and in the manner provided by general law, including, chapter 1207, government code.</p> | <p>451.359</p> | <p>Not Applicable. METRO has not issued bonds in the scope period.</p> |
| <p>7. Bonds payable solely from revenues may be issued by resolution of the Board, but no bonds, except refunding bonds, payable wholly or partially from taxes, may be issued until authorized by a majority vote of the qualified voters of the Authority voting in an election called and held for that purpose.</p> | <p>451.352(b) 451.352(c)</p> | <p>Not Applicable. METRO has not issued bonds in the scope period.</p> |

FINANCE AND ADMINISTRATION COMPLIANCE MATRIX
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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
|---|--|---|
| <p>8. Notwithstanding other provisions of this chapter and except as provided by Subsections (c) and (d), the board, by order or resolution, may issue bonds that are secured by revenue or taxes of the Authority if the bonds: (1) have a term of not more than 12 months; and (2) are payable only from revenue or taxes received on or after the date of their issuance and before the end of the fiscal year following the fiscal year in which the bonds are issued.</p> <p>In an Authority in which the principal municipality has a population of 1.5 million or more, bonds may have a term of not more than five years. The bonds are payable only from revenue on taxes received on or after the date of their issuance.</p> | <p>451.362(a)*</p> <p>451.362(c)*</p> | Not Applicable. METRO has not issued bonds in the scope period. |
| <p>9. The Board of an Authority by order may decrease the local sales and use tax rate or may call an election to increase or decrease the local sales and use tax rate.</p> <ul style="list-style-type: none"> • If the Board of an Authority decreases the tax rate by its own order, it may increase the tax rate by a subsequent order to a rate that does not exceed the rate in effect before the order to decrease the tax rate was approved. | <p>451.407</p> <p>451.408(a)</p> <p>451.408(c)</p> | Not applicable. METRO has not increased or decreased the local sales and use tax rate during the scope period. |
| <p>10. All funds of the Authority shall be deposited in the depository bank or banks unless otherwise required by orders or resolutions authorizing the issuance of the Authority's bonds or notes.</p> <ul style="list-style-type: none"> • To the extent that funds in the depository bank or banks are not insured by the Federal Deposit Insurance Corporation, they shall be secured in the manner provided by law for the security of funds of counties of the State of Texas. • The Board by resolution may authorize a designated representative to supervise the substitution of securities pledge to secure the authorities funds. | <p>451.105(b)</p> <p>451.105(c)</p> <p>451.101(10)</p> | Compliance. Article IV of the Authority's Bylaws specifies that except for petty cash, all funds shall be deposited in banks designated by the Board. Designated banks are identified in investment policies approved in board resolutions 2005-51, 2006-74 and 2007-103. |

FINANCE AND ADMINISTRATION COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
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| <p>11. Prior to the commencement of a fiscal year, the Board shall adopt an annual operating budget which specifies major expenditures by type and amount.</p> <ul style="list-style-type: none"> • Before the Board adopts its annual operating budget, it shall conduct a public hearing and shall make the proposed annual operating budget available to the public at least 14 days prior to the hearing. • An annual operating budget must be adopted before the Authority conducts business in a fiscal year. • The Authority may not make operating expenditures in excess of the total budgeted operating expenditures for a fiscal year unless the Board amends the operating budget by order after public notice and hearing. | <p>451.102(a)</p> <p>451.102(b)</p> <p>451.102(c)</p> <p>451.103</p> | <p>Compliance. The Board approved the annual operating and capital budgets in September of each of the audit scope years (refer to resolutions 2005-74, 2006-67, 2004-66 and 2007-84). Prior to approval, a public hearing was conducted.</p> |

FINANCE AND ADMINISTRATION COMPLIANCE MATRIX
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| <p>12. The Board of an Authority to which this section applies shall have prepared a financial audit of the affairs of the Authority by an independent certified public accountant or a firm of independent certified public accountants.</p> <ul style="list-style-type: none"> • The Board of the Authority shall deliver a copy of the report of an audit performed under this section to the presiding officer of the governing body of each county or municipality having territory in the Authority, to the county judge of each county or municipality having territory in the Authority, to the governor, to the lieutenant governor, to the speaker of the house of representatives, and to the state auditor. • The Board of an Authority in which the principal city has a population of more than 1,200,000, shall deliver a copy of the report of an audit performed under this subchapter to the state auditor for review and comment. | <p>451.451(a)</p> <p>451.452(a)*</p> <p>451.452(b)-(d)*</p> | <p>Non-compliance. Annual financial audits were completed as follows:</p> <p>FY 05 December 28, 2008 FY 06 January 15, 2007 FY 07 January 28, 2008 FY 08 Not available as of January 31, 2009.</p> <p>Under this requirement, METRO is required to distribute financial audits to 46 individuals. Throughout the audit period, they have been provided to many, but not all of the required individuals. METRO has begun providing access to the annual financial audit reports electronically, via e-mail notifications.</p> <p>For FY2005 and FY2006, the Governor, Lt. Governor, State Auditor, Speaker of the House and Ft. Bend County Judge did not receive e-mail notifications or copies of the financial audit reports until January 2009, after the auditors requested copies of delivery notifications.</p> <p>For FY2007, e-mail notifications or copies of the financial audit report were not delivered to the Governor, Lt. Governor, State Auditor, Speaker of the House, County Judges or Mayors until January 2009, after delivery notifications were requested by the auditors.</p> |
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* Denotes that this section was either amended or added since the prior performance audit.

Note: Texas R. Civ. Stat. Art. 717 was repealed. Therefore, it was not tested for compliance and is not included in the Finance and Administration Compliance Matrix.

VI. REAL ESTATE COMPLIANCE

REAL ESTATE COMPLIANCE MATRIX
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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
|---|------------------------------|---|
| 1. Before an Authority acquires an interest in real property for more than \$20,000, the Board of the Authority shall cause the property to be appraised by two appraisers working independently of each other. | Texas Trans Code §451.054(d) | Substantial Compliance. A sample review of the property purchased by METRO during the audit period indicated that two separate appraisals were not obtained for one of the 20 closed parcel files reviewed. |
| 2. The Authority shall not proceed with any action to change, alter or damage the property or facilities of the state, its municipal corporations, agencies or political subdivisions or of owners rendering public services, or which shall disrupt such services being provided by others, or to otherwise inconvenience the owners of such property or facilities, without having first obtained the written consent of such owners or unless the Authority shall have first obtained the right to take such action under its power of eminent domain as herein specified. • In the event the owners of such property or facilities desire to handle any such relocation, raising, change in the grade of, or alteration in the construction of such property or facilities with their own forces, or to cause the same to be done by contractors of their own choosing, the Authority shall have the power to enter into agreements with such owners providing for the necessary relocations, changes or alterations of such property or facilities by the owners and/or such contractors and the reimbursement by the Authority to such owners of the costs incurred by such owners in making such relocations, changes or alterations and/or in causing the same to be accomplished by such contractors. | 451.058(e) 451.058(b) | Not Applicable. METRO has not proceeded with any activity to change, alter or damage the property or facilities during the audit scope period. |

REAL ESTATE COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
|--|-------------------|---|
| <p>3. In the event the Authority, in exercising any of the powers conferred by this Act, makes necessary the relocation, adjustment, raising, lowering, rerouting or changing the grade of or altering the construction of any street, alley, highway, overpass, underpass, or road, any railroad track, bridge or other facilities or properties, any electric lines, conduits or other facilities or properties, any telephone or telegraph lines, conduits or other facilities or properties, any gas transmission or distribution pipes, pipelines, mains or other facilities or properties, any water, sanitary sewer or storm sewer pipes, pipelines, mains or other facilities or properties, any cable television lines, cables, conduits or other facilities or properties, or any other pipelines and any facilities or properties relating thereto, any and all such relocations, adjustments, raising, lowering, rerouting or changing of grade or altering of construction shall be accomplished at the sole cost and expense of the Authority, and all damages which may be suffered by the owners of such property or facilities shall be borne by the Authority.</p> | <p>451.058(d)</p> | <p>Compliance. A sample review of a construction projects indicated that costs and expenses for construction were solely funded by METRO.</p> |
| <p>4. The Authority shall have the right of eminent domain to acquire lands in fee simple and any interests less than fee simple in, on, under and above lands, including, without limitation, easements, rights-of-way, rights of use of air space or subsurface space, or any combination thereof; provided that such right shall not be exercised in a manner which would unduly interfere with interstate commerce or which would authorize the Authority to run its vehicles on railroad tracks which are used to transport property.</p> | <p>451.058(c)</p> | <p>Compliance. METRO utilized eminent domain in the acquisition of property in accordance with Real Estate Management Guidelines (Section 3.2).</p> |

REAL ESTATE COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
|---|--|---|
| <p>5. Eminent domain proceedings brought by the Authority shall be governed by the provisions of Chapter 21, Property Code.</p> <ul style="list-style-type: none"> • Proceedings for the exercise of the power of eminent domain shall be commenced by the adoption by the Board of a resolution declaring the public necessity for the acquisition by the Authority of the property or interest therein described in the resolution, and that such acquisition is necessary and property for the construction, extension, improvement or development of the system and is in the public interest. • At least 30 days before adopting a resolution under this subsection, however, a Board shall hold a public hearing on the question of acquisition of the property or interest for which eminent domain proceedings are being considered. • The Board shall hold the hearing at a place convenient to residents of the area in which the property is located. • The Board shall cause notice of the hearing to be published in a newspaper of general circulation in the county in which the property is located at least once each week for two weeks before the date of the hearing. | <p>451.059(e) 451.059(a) 451.059(b) 451.059(c)</p> | <p>Compliance. METRO utilized eminent domain in the acquisition of property in accordance with Real Estate Management Guidelines (Section 3.2).</p> |

REAL ESTATE COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
|---|---|---|
| <p>6. The Authority may sell, lease, convey or otherwise dispose of any of its rights, interests or properties which are not needed for, or, if a lease, is inconsistent with, the efficient operation and maintenance of the system.</p> <ul style="list-style-type: none"> It may sell, lease, or otherwise dispose of, at any time, any surplus materials or personal or real property not needed for its requirements or for the purpose of carrying out its power under this Chapter. | <p>451.054(e)(1)</p> <p>451.054(e)(2)</p> | <p>Compliance. METRO leased property in accordance with METRO's Real Estate guidelines.</p> <p>METRO did not convey, sell or otherwise dispose of any property.</p> |
| <p>7. Any lands or interest in land acquired for a station or terminal complex must be part of or contained within a station or terminal complex designated as part of the system within a comprehensive transit plan approved by resolution of the Board.</p> <ul style="list-style-type: none"> Before a station or terminal complex may be included in the system, the Board must find and determine that the proposed station or terminal complex will encourage and provide for efficient and economical mass transit service, will facilitate access to mass transit service and provide other mass transit proposes, will reduce vehicular congestion and air pollution in the metropolitan area, and is reasonably essential to the successful operation of the system. The Board may amend its comprehensive transit plan to include other station or terminal complexes upon making these findings. | <p>451.151(a)</p> <p>451.151(b)</p> <p>451.151(c)</p> | <p>Not Applicable. METRO has not acquired any lands or interests in land for a station or terminal complex during the scope period.</p> |

REAL ESTATE COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
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| <p>8. Any station or terminal complex shall include adequate provisions for the transfer of passengers between the various modes of transportation available to the complex.</p> <ul style="list-style-type: none"> • A complex may include provisions for commercial, residential, recreational, institutional, and industrial facilities, except that no land or interest in land that is more than 1,500 feet in distance from the center point of the complex and that has not been included in a master plan of development adopted by the Board may be acquired for the facilities. • Land or an interest in land more than 1,500 feet in distance from the center point of the complex may not be acquired by eminent domain proceedings, and the Board shall designate the center point prior to the commencement of eminent domain proceedings. | <p>451.152(1)</p> <p>451.152(2)</p> <p>451.154(a)</p> | <p>Compliance. All of METRO's stations and/or terminal complexes include adequate provisions for the transfer of passengers between the various modes of transportation available.</p> <p>METRO has not purchased any property beyond 1,500 feet from the station locations.</p> |

REAL ESTATE COMPLIANCE MATRIX
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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
|---|---|--|
| <p>9. The Authority may sell, lease, or otherwise transfer lands or interest in land acquired within a station or terminal complex, and may enter into contracts with respect to it, in accordance with the comprehensive transit plan approved by the Board, subject to such covenants, conditions, and restrictions, including covenants running with the land and obligations to commence construction within a specified time, as the Board may deem to be in the public interest or necessary to carry out the purposes of this section, all of which shall be incorporated into the instrument transferring or conveying title or right of use.</p> <ul style="list-style-type: none"> • Any lease, sale or transfer shall be at fair value, taking into account the use designated for the land in the comprehensive transit plan for the system and the restrictions on, and the covenants, conditions, and obligations assumed by, the purchaser, lessee, or transferee. • However, if the Authority offers the property for sale, the original owner from whom the property was acquired by eminent domain proceedings or through threat of eminent domain proceedings has the first right to repurchase at the price at which it is offered to the public. | <p>451.155(a)</p> <p>451.155(b)</p> <p>451.155(c)</p> | <p>Not applicable. METRO has not sold, leased or otherwise transferred lands or interests in land within a station or terminal complex.</p> |
| <p>10. Engineers, employees, and representatives of an Authority may go on any land within the Authority boundaries to make surveys and examine the land with reference to the location of works, improvements, plants, facilities, equipment or appliances and to attend to any business of the Authority; provided that two weeks' notice be given to the owners in possession and that if any of the Authority's activities cause damage to the land or property, the land or property shall be restored as nearly as possible to the original state at the sole expense of the Authority.</p> | <p>451.062(a)</p> <p>451.062(b)</p> <p>451.062(c)</p> | <p>Compliance. METRO staff will not enter property for preparation of limited title reports, appraisals, or other matters without first sending a written letter, by certified mail, requesting permission. A review of project files indicated the presence of certified letters sent two weeks in advance of the desired access.</p> |

REAL ESTATE COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
|---|--|--|
| <p>11. The special commissioners shall assess damages in a condemnation proceeding according to the evidence presented at the hearing.</p> <ul style="list-style-type: none"> • If an entire tract or parcel of real property is condemned, the damage to the property owner is the local market value of the property at the time of the special commissioners' hearing. • If a portion of a tract or parcel of real property is condemned, the special commissioners shall determine the damage to the property owner after estimating the extent of the injury and benefit to the property owner, including the effect of the condemnation on the value of the property owners' remaining property. • In estimating injury or benefit under Subsection (c), the special commissioner shall consider an injury or benefit that is peculiar to the property owner and that relates to the property owner's ownership, use, or enjoyment of the particular parcel of real property, but they may not consider an injury or benefit that the property owner experiences in common with the general community. • If a portion of a tract or parcel of real property is condemned for the use, construction, operation, or maintenance of the state highway system or of a county toll project described by Chapter 284, Transportation Code, that is eligible for designation as part of the state highway system, or for use, construction, development, operation, or maintenance of improvement or project by a metropolitan rapid transit Authority created before January 1, 1980, with a principal city having a population of less than 1,900,000 and established under Chapter 451, Transportation Code, the special commissioners shall determine the damage to the property owner regardless of whether the property owner makes a claim for damages to the remaining property. In awarding compensation or assessing the damages, the special commissioners shall consider any special and direct benefits that arise from the highway improvement or the transit Authority improvement or project that arise from the highway improvement or the transit Authority improvement or project that are peculiar to the property owner and that relate to the property owner's ownership, use, or enjoyment of the particular parcel of remaining real property. | <p>Texas Property Code §21.042(a) 21.042(b) 21.042(c) 21.042(d) 21.042(e)</p> | <p>Compliance. METRO followed the Real Estate Management Guidelines in the processing of the eminent domain for the sample property selected for review.</p> |

REAL ESTATE COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
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| <p>12. Except for the types of land and interests covered by Subsection (b), (g), (h), (l), or (j) and by Section 253.008 before land owned by a political subdivision of the state may be sold or exchanged for other land, notice to the general public of the offer of the land for sale or exchange must be published in a newspaper of general circulation in either the county in which the land is located or, if there is no such newspaper, in an adjoining county.</p> <ul style="list-style-type: none"> • The notice must include a description of the land, including its location, and the procedure by which sealed bids to purchase the land or offers to exchange the land may be submitted. • The notice must be published on two separate dates and the sale or exchange may not be made until after the 14th day after the date of the second publication. • The notice and bidding requirements of Subsection (a) do not apply to the types of land and real property interests described by this subsection and owned by a political subdivision. • That land and those interest may not be conveyed, sold, or exchanged for less than the fair market value of the land or interest unless with one or more abutting property owners who own the underlying fee simple. | <p>Local Govt. Code §272.001(a) 272.001(b)</p> | <p>Not Applicable. METRO has not sold or exchanged land in the audit scope period.</p> |

REAL ESTATE COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
|---|--|--------------------|
| <p>CONTINUED</p> <ul style="list-style-type: none"> The fair market value is determined by an appraisal obtained by the political subdivision that owns the land or interest, and the appraisal is conclusive of the fair market value of the land or interest. This subsection applies to: (1) narrow strips of land, or land that because of its shape or small area cannot be used independently under its current zoning or under applicable subdivision or other development control ordinances; (2) streets or alleys, owned in fee or used by easement; (3) an easement for which one or more abutting property owners own the underlying fee simple; (4) land or a real property interest originally acquired for streets, rights-of-way, or easements that the political subdivision chooses to exchange for other land to be used for streets, rights-of-way, or easements, including transactions partly for cash; (5) land that the political subdivision wants to have developed by contract with an independent foundation; (6) a real property interest conveyed to a governmental entity that has the power of eminent domain; (7) a municipality's land that is located in a reinvestment zone designated as provided by law and that the municipality desires to have developed under a project plan adopted by the municipality for the zone; or (8) a property interest owned by a defense base development authority established under Chapter 378, Local Government Code, as added by Chapter 1221, Acts of the 76th Legislature, Regular Session, 1999. | <p>Local Govt. Code §272.001(a) 272.001(b)</p> | |

VII. CONTRACTS COMPLIANCE

CONTRACTS COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
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| <p>1. An Authority that does not have an up-to-date disadvantaged business enterprise program, as defined by 49 C.F.R. Part 23, to assist minorities and women in participating in Authority contracts should establish goals for that participation. The recommended contract goals are: (1) 17 percent for construction, 11 percent for purchasing, and 24 percent for professional services; or (2) the weighted average equivalent of the categories in Subdivision (1).</p> <p>The Board of an Authority to which this section applies shall establish a program to encourage participation in contracts of the Authority by businesses owned by minority or disadvantaged individuals.</p> | <p>Texas Trans Code §451.251</p> <p>451.252(a)</p> | <p>Compliance. METRO's Small Business/Disadvantaged Business Enterprise Program and operational procedures, which are race and gender neutral, ensured opportunities for Small Business and Disadvantaged Businesses to participate in METRO's contracting activities.</p> |
| <p>2. An Authority shall contract with the Texas Dept of Human Services (DHS) to provide transportation services to a person who: (1) resides in the area served by the Authority; (2) is receiving financial assistance under Chapter 31, Human Resources Code; and (3) is registered in the jobs opportunities and basic skills training program under Part F, Subchapter IV, Social Security Act (42 U.S.C. Section 682). The contract must include provisions to ensure that: (1) the Authority is required to provide transportation services only to a location: (A) to which the person travels in connection with participation in the jobs opportunities and basic skills training program; and (B) that the Authority serves under the Authority's authorized rate structure and existing services; (2) the authority provides directly to the Texas DHS trip vouchers for distribution by the dept to a person who is eligible under this section; (3) the Texas DHS reimburses the authority for costs, at the applicable federal matching rate; and (4) the Texas DHS may return undistributed trip vouchers.</p> | <p>451.255(a) 451.255(b)</p> | <p>Not applicable. METRO staff report that there is an agreement with Texas Department of Human Services to provide fare media for the Medicaid program, but that DHS has never asked METRO to provide services or trip vouchers for the jobs opportunities and basic skills training program.</p> |

CONTRACTS COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
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| <p>3. Contracts for more than \$25,000 for the construction of improvements or the purchase of material, machinery, equipment supplies and all other property except real property, shall be let on competitive bids after notice published once a week for two consecutive weeks, the first publication to be at least 15 days before the date fixed for receiving bids, in a newspaper of general circulation in the area in which the Authority is located.</p> <ul style="list-style-type: none"> • The Board may adopt rules governing the taking of bids and the awarding of such contracts and providing for the waiver of this requirement in the event of emergency, in the event the needed materials are available from only one source, in the event that, except for construction of improvements on real property, in a procurement requiring design by the supplier competitive bidding would not be appropriate and competitive negotiation, with proposals solicited from an adequate number of qualified sources, would permit reasonable competition consistent with the nature and requirements of the procurement, or in the event that, except for construction of improvements on real property, after solicitation it is ascertained that there will be only one bidder. (This subsection does not apply to personal and professional services or to the acquisition of existing transit systems.) • The Board of an Authority may not let a contract (1) that is not subject to competitive bidding requirements, (2) that is for more than \$25,000 and (3) that is for the purchase of real property or for consulting or professional services, unless an announcement that a contract is being considered is posted in a prominent place in the principal office of the Authority for at least two weeks before the contract is awarded. (This subsection does not apply to the acquisition of existing transit systems.) | 451.110(a)&(c) | Compliance. A review of construction and property procurement files indicated that METRO provided advance notice as required. Chapter 7.4 of METRO's Procurement Manual defines advertising requirements. |
| | 451.110(b) | Compliance. Emergency and Urgent Purchasing Guidelines have been established and were used by METRO. The President & CEO may declare the existence of an emergency such that competitive bidding is deemed inappropriate for a procurement valued over \$25,000. The CEO's declaration is subject to ratification by the Board of Directors in the next meeting. |
| | 451.111 | Substantial Compliance. A sample review of non-competitive contracts indicated that there was no support or evidence of the announcement posted for one of the 20 non-competitive contracts awarded. |

CONTRACTS COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
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| <p>4. No state agency, political subdivision, county, municipality, district, Authority or publicly-owned utility of the State of Texas shall make any contract for, or engage the professional services or group or association thereof, selected on the basis of competitive bids submitted for such contract or for such services to be performed, but shall select and award such contracts and engage such services on the basis of demonstrated competence and qualifications for the type of professional services to be performed and at fair and reasonable prices, as long as professional fees do not exceed the maximum provided by any state law.</p> | <p>Texas Govt Code §2254.003(a)</p> <p>2254.003(b)</p> | <p>Compliance. Chapter 8.5 of METRO's Procurement Manual specifies methods of selecting sources. Chapter 8.9 identifies appropriate evaluation factors. Chapter 3 of METRO's Procurement Manual includes policies relating to the selection of service contracts and includes six criteria for the evaluation of proposal responses.</p> |
| <p>5. In the procurement of architectural, engineering, or land surveying services, a governmental entity described by Section 2 of this Act, the entity shall negotiate a contract for the services on the basis of a two-step process: (1) initial selection shall be based on the demonstrated competence and qualifications of the person, including any firm, who is to provide the services; and (2) after the entity makes its selection according to Subsection (a) of this section, it shall proceed to negotiate a contract at a fair and reasonable price.</p> | <p>2254.004(a)</p> | <p>Compliance. Chapter 3 of METRO's Procurement Manual includes six criteria for the evaluation of proposal responses, including: (1) qualifications and experience of personnel; (2) experience in related work/past performance; (3) management plan and ideas for coordinating work; (4) responsiveness to SB goal; (5) financial viability to accomplish the project; and (6) cost data.</p> |
| <p>6. If the entity is unable to negotiate a satisfactory contract with the most highly qualified person, the entity shall formally end negotiations with that person and begin negotiations with the second most highly qualified person.</p> <ul style="list-style-type: none"> • Negotiations shall be undertaken in this sequence until a contract is made. | <p>2254.004(b)</p> <p>2254.004(c)</p> | <p>Compliance. During the audit period, there was one instance (the METRO Solutions Facility Provider Contract) when METRO terminated negotiations with the most qualified bidder and negotiated a contract with the second most qualified bidder.</p> <p>Chapter 8 of METRO's Procurement Guidelines establishes the sequence for negotiating contracts.</p> |

CONTRACTS COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
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| 7. It is declared to be against the public policy of the State of Texas for any official or group of officials of the State, or of a County, City, Municipality or other political subdivision of the State, to enter into a collective bargaining contract with a labor organization respecting the wages, hours, or conditions of employment of public employees, and any such contracts entered into after the effective date of this Act shall be null and void. | 617.002(a) 617.002(b) | Compliance. METRO agreements predate State law and were a requirement as a condition of operation of transit services under Federal 13(c) requirements. METRO's agreement is unilateral. |

CONTRACTS COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
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| <p>8. A governmental entity that makes a public works contract with a prime contractor shall require the contractor, before beginning the work, to execute to the governmental entity: (1) a performance bond if the contract is in excess of \$100,000 and (2) a payment bond if the contract is in excess of \$25,000.</p> <p>A bond required by this section must be executed by a corporate surety or corporation sureties in accordance with Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code). In the case of contracts of the State or a department, Board, or agency thereof, the aforesaid bonds shall be payable to the State and shall be approved by the Attorney General as to form. In case of all other contracts subject to this Act, the bonds shall be payable to the governmental awarding Authority concerned, and shall be approved by it as to form.</p> <p>Any bond furnished by any prime contractor in an attempted compliance with this Act shall be treated and construed as in conformity with the requirements of this Act as to rights created, limitations thereon, and remedies provided. Any provision in any bond furnished by a prime contractor in attempted compliance with this Act that expands or restricts the rights or liabilities provided under this Act shall be disregarded and the provisions of this Act shall be read into that bond.</p> <ul style="list-style-type: none"> A Performance Bond in the amount of the contract conditioned upon the faithful performance of the work in accordance with the plans, specifications, and contract documents. Said bond shall be solely of the protection of the State or the governmental Authority awarding the contract, as the case may be. | <p>2253.021(a) 2253.021(d) 2253.021(e) 2253.021(b) 2253.021(c) & 2253.021(a)(2) 2253.027</p> | <p>Compliance. Item No. 30 of METRO's Procurement Checklist is for Bonds (Payment, Performance, etc.). A sample review of construction contracts for the scope period indicated that METRO complied with those requirements. Chapter 17 of METRO's Procurement Manual specifies criteria for determining bonding requirements.</p> |

CONTRACTS COMPLIANCE MATRIX

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| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
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| <p>CONTINUED</p> <ul style="list-style-type: none"> A Payment Bond, in the amount of the contract, solely for the protection of all claimants supplying labor and material as hereinafter defined, in the prosecution of the work provided for in said contract, of the use of each such claimant. (Notwithstanding any provision in this Act are in Chapter 252 or 262, Local Government Code, if the governmental Authority fails to obtain from the prime contractor a payment bond in compliance with Act covering a contract in excess of \$25,000, the Authority is subject to the same liability as that of a surety who had issued a valid bond if the Authority had complied with this section, and a claimant is entitled to a lien on funds due the prime contractor in the same manner and to the same extent as if the contract were subject to Subchapter J, Chapter 53, Property Code.) | | |

* Denotes that this section was either amended or adopted since the prior performance audit.

VIII. PERFORMANCE AUDITS COMPLIANCE

PERFORMANCE AUDITS COMPLIANCE MATRIX

(Page 1 of 2)

| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
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| 1. The Board of an Authority in which the principal city has a population of more than 1,200,000 shall contract with a firm to conduct a performance audit of the Authority every four years. | Texas Trans Code §451.454(a) | Compliance. During the audit period, METRO contracted with Booz Allen Hamilton for the FY01-FY04 performance audit. |
| 2. The Board shall determine one or more subjects for a particular audit from among the subjects of administration and management of the Authority, transit operations, and system maintenance. Each of those subjects must be examined at least once in every third performance audit. | 451.454(c)(1) 451.454(d) | Compliance. METRO's transit operations were the subject of the FY01-FY04 performance audit. |
| 3. Each performance audit must include an examination of the Authority's compliance with this Chapter and other applicable state law and of the following performance indicators: (1) operating cost per passenger; (2) sales and use tax receipts per passenger; (3) fare recovery rate; (4) average vehicle occupancy; (5) on-time performance; (6) the number of accidents per 100,000 miles; and (7) the number of total miles between mechanical road calls. (See statute for definitions.) | 451.454(c) 451.455 | Compliance. METRO's performance indicators are detailed in Section II: State Required Performance Indicators of the FY01-FY04 performance audit. |
| 4. An Authority for which a performance audit is conducted under this section shall prepare a written response to the report of the performance audit. The response must include any proposals for action, whether pending, adopted, or rejected, relating to recommendations contained in the performance audit report. | 451.456(a) | Compliance. METRO prepared a written response that addressed the recommendations of the FY01-FY04 performance audit. |
| 5. The Authority shall conduct a public hearing on each performance audit report conducted under this section and the Authority's response. The Authority shall publish notice of the hearing in a newspaper with general circulation in the area included within the Authority 14 days before the date of the hearing. The Authority also shall make copies of the report and response available for public inspection at Authority offices. | 451.456(b)(c) | Compliance. For the FY01 - FY04 performance audit, METRO conducted a Public Hearing on June 30, 2005 to report the findings of the audit. Compliance. METRO published the Notice for Public Hearing on June 15, 2005 in the <i>Houston Chronicle</i> . |

PERFORMANCE AUDITS COMPLIANCE MATRIX

(Page 2 of 2)

| ACTION | LEGAL REFERENCE | COMPLIANCE RESULTS |
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| <p>6. A copy of each report of a performance audit conducted under this section and the response of the Authority shall be delivered to the governor, the lieutenant governor, the speaker of the house of representatives, the state auditor, the presiding officer of the governing body of each county and municipality having territory included within the Authority, and each member of the state legislature whose district includes territory within the Authority.</p> <p>The copies shall be delivered before February 1, of every second odd-numbered year.</p> | 451.457 | Non-compliance. METRO sent copies of the FY01 - FY04 performance audit to all appropriate parties on July 20, 2005 (the required delivery date was before February 1, 2005). |

IX. CONCLUSIONS AND RECOMMENDATIONS

METRO IS IN COMPLIANCE WITH ALL BUT FOUR OF APPROXIMATELY 123 TEXAS GOVERNMENT CODE REQUIREMENTS

- The compliance review assesses compliance with approximately 123 legislative requirements in seven areas.
- Compliance findings documented in this report indicate that METRO is in full or substantial compliance with all but four of the requirements that were applicable to the Authority during the FY05-FY08 audit period:
 - Open Meetings #8: Two of the 15 certified Board meeting agendas that were reviewed were not signed by the presiding Board member to indicate they were true and correct representations of the items discussed.
 - Open Meetings #18: In responding to information requests, METRO did not provide the information within ten days after the request or by the extended due date in two of 38 instances reviewed.
 - Finance & Administration #12: Annual financial audit reports were completed, but METRO did not distribute them to all required parties.
 - Performance Audits #6: METRO did not provide a copy of the FY01-FY04 performance audit reports to required parties before February 1, 2005. METRO has not met the reporting deadline in any of the last three audits.

METRO IS IN SUBSTANTIAL COMPLIANCE WITH FOUR REQUIREMENTS

- Board Matters #3: METRO did not verify that the members of the Board are resident citizens and qualified voters of the Authority. The substantial compliance finding is made because METRO relied on the appointing entity to ensure that appointed Board members are qualified.
- Open Meetings #15: One of the 40 notices of Board meetings that were reviewed did not meet the 72-hour posting requirement. Also, METRO did not retain records of Board postings at the Administration Building prior to June 2005, so it was not possible to determine whether posting requirements were met prior to that time. The substantial compliance finding is made because there was only one instance when the advance posting requirement was not met and because METRO has maintained the records of all Board postings since June 2005.
- Real Estate #1: A review of a 20 closed files for property purchased by METRO during the audit period indicated that two separate appraisals were not obtained for one of the parcels. The substantial compliance finding is made because there was only one instance when two separate appraisals were not obtained.
- Contracts Compliance #3: A review of 20 contracts awarded in non-competitive situations indicated that in one case, METRO did not post an announcement for two weeks prior to contract award.

TWO RECOMMENDATIONS ARE OFFERED FOR METRO'S CONSIDERATION

- While the findings from the compliance assessment indicate predominantly positive performance, there are opportunities to improve compliance with legislative requirements. This section includes two general recommendations that are intended to help METRO implement improvement opportunities.
- The following recommendations are provided for METRO's consideration:
 - Recommendation #1: Ensure that procedural requirements are met.
 - Recommendation #2: Continue efforts to change the performance audit due date to a specified number of months after the end of the Authority's fiscal year.
- Recommendations are not intended to be viewed negatively, but rather as opportunities for improvement. Recommendations need to be balanced with consideration of METRO's positive performance results during the audit review period.

RECOMMENDATION 1: ENSURE THAT PROCEDURAL REQUIREMENTS ARE MET

- METRO is in full compliance with almost all legislative requirements. However, the audit identified seven areas that require closer adherence to procedural requirements:
 - Board Matters #3: Board must be resident citizens and qualified voters of the Authority.
 - Open Meetings #8: Certified Board meeting agendas must be signed by the presiding Board member to indicate they are true and correct representations of the items discussed.
 - Open Meetings #15: Notices of Board meetings must be posted 72 hours prior to the meeting.
 - Open Meetings #18: METRO must respond to information requests within ten days after the request or by an extended due date.
 - Contracts Compliance #3: METRO must post announcements of non-competitive contract awards for two weeks prior to the award.
 - Finance & Administration #12: METRO must distribute annual financial audit reports to required parties in a timely manner.
 - Real Estate #1: Two separate appraisals must be obtained for property purchased by METRO.

RECOMMENDATION 1: ENSURE THAT PROCEDURAL REQUIREMENTS ARE MET (CONTINUED)

- While METRO has met these requirements in most instances, the expectation is that they will be met in all cases.
- It is recommended that METRO establish procedures for implementing these requirements (and possibly for the other legislative requirements that apply to METRO) and clearly communicate the procedures and the expectations that they will be met in every case.

RECOMMENDATION 2: CONTINUE EFFORTS TO CHANGE THE PERFORMANCE AUDIT DUE DATE TO A SPECIFIED NUMBER OF MONTHS AFTER THE END OF THE AUTHORITY'S FISCAL YEAR

- Texas Transportation Code Section 451.457 requires transit authorities to deliver copies of performance audit reports to the governor and other government officials by February 1 of every second odd-numbered year.
- The audits conducted in FY93, FY97, FY01 and FY04 did not meet the State's February 1 due date. The last two audits found METRO in non-compliance with respect to the timely completion of the previous performance audit and recommended that METRO consider sponsoring legislation to change the due date for the performance audit report.
- METRO staff report that during the current audit period, the Authority did take steps to try to change to due date of the performance audit report, but there was insufficient interest among legislators to address the issue.
- Nevertheless, because METRO is non-compliant with the requirement, it is recommended that METRO continue to work to change the performance audit due date to a specified number of months following the end of a transit authority's fiscal year.