

Regional Measure 3

Annual Report to the Legislature

2022

The following report is the 2022 Regional Measure 3 (“RM3”) Annual Report to the Legislature, as required by California Streets and Highways Code (“SHC”), Section 30923(i), on the status of projects and programs funded pursuant to Section 30914.7 (“RM3 Expenditure Plan”). The report consists of the following sections:

1. Toll Implementation
2. Revenue Collection and Escrow
3. Current Litigation
4. Independent Oversight Committee Formation and Membership
5. Adoption of Policies and Procedures
6. Letters of No Prejudice

1. Toll Implementation

Pursuant to SHC Section 30916(c)(1), on December 19, 2018, BATA adopted the toll schedule for state-owned toll bridges in the Bay Area, incorporating the three-dollar RM3 phased-in toll increase. The first dollar increase became effective January 1, 2019 and the second dollar increase became effective January 1, 2022 (Attachment A, BATA Resolution No. 128). The third dollar increase will become effective January 1, 2025. The toll schedule also incorporates the Fastrak® Electronic Toll Collection RM3 Toll Discount for vehicles crossing more than one bridge on the same calendar day during commute hours, and updates the high-occupancy vehicles rates to incorporate RM3 increases.

2. Revenue Collection and Escrow

In light of the litigation challenging RM3, on December 19, 2018, BATA approved escrow arrangements relating to bridge tolls collected pursuant to RM3, including a form of escrow agreement for the purpose of establishing and administering an escrow account for such purposes (Attachment B, BATA Resolution No. 129). Collected RM3 funds are being deposited in the established escrow account; as of September 2022, the account contains approximately \$431 million.

3. Current Litigation

On July 5, 2018, several plaintiffs filed suit against the Authority and the State Legislature in the Superior Court of the County of San Francisco in an action entitled Howard Jarvis Taxpayers Assn., et al. v. The Bay Area Toll Authority, et al., San Francisco Superior Court Case No. CGC-18-567860, seeking declaratory relief and invalidation of Senate Bill 595 and RM3. Judgment was entered in favor of the defendants.

On August 3, 2018, a plaintiff filed suit against the Metropolitan Transportation Commission in the Superior Court of the County of San Francisco in an action entitled Randall Whitney v. Metropolitan Transportation Commission, San Francisco Superior Court Case No. CPF-18-516276 , asserting, among other things, that: (i) Senate Bill 595 is unconstitutional, and (ii) that RM3 is a special tax which would require 2/3 voter approval. Judgment was entered in favor of the defendant.

The Plaintiffs in both cases appealed, and the cases were consolidated in the California 1st Court of Appeal (Case Nos. A157598 and A157972). The Court of Appeal upheld the trial court's decision to dismiss the cases. After the Plaintiffs' petition for a rehearing was denied, they appealed to the California Supreme Court for review.

In October 2020, the Supreme Court granted Plaintiffs' petition for review but deferred briefing until it heard and decided an appeal for a related action, Robert Zolly et al. v City of Oakland. The Court issued an opinion in the Zolly case in August 2022, and in October denied a petition for rehearing. The Court is next expected to issue procedural orders for the RM3 case.

4. Independent Oversight Committee Formation and Membership

Pursuant to SHC Section 30923(h), BATA established the RM3 Independent Oversight Committee on June 26, 2019 (Attachment C, BATA Resolution No. 131, Revised). Also pursuant to statute, representatives have been appointed to the committee by applicable county boards of supervisors, subject to certain eligibility criteria. Appointed members have been added to the committee roster attached to BATA Resolution No. 131, Revised.

As of November 2022, BATA has received RM3 Independent Oversight Committee appointees from seven of the nine Bay Area counties. The committee has not yet convened a meeting, as no expenditures have been made with RM3 funds.

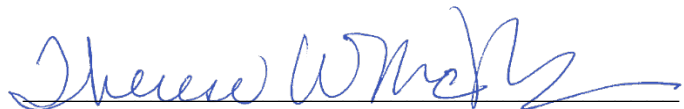
5. Adoption of Policies and Procedures

On December 18, 2019, MTC approved the RM3 Policies and Procedures (Attachment D, MTC Resolution No. 4404). The Policies and Procedures include guidance for implementing the RM3 capital program; guidance for the operating program will be proposed for inclusion at a later date.

The RM3 Policies and Procedures are currently being used to guide issuance Letters of No Prejudice.

6. Letters of No Prejudice

The adopted RM3 Policies and Procedures include an option for MTC to approve Letters of No Prejudice (LONPs) to allow project sponsors to move projects forward with alternate funds, at-risk, while maintaining RM3 eligibility if and when RM3 funds are available. On March 25, 2020, MTC approved Resolution No. 4412 (Attachment E), which enables MTC to issue LONPs for RM3 projects. LONPs are issued at the request of project sponsors and specify the amount and scope for which RM3 eligibility will be preserved and the alternate funding source to be used in place of RM3 funds. The first LONP was approved in March 2020, and as of December 2022, 21 LONPs have been issued in total.



Therese W. McMillan, Executive Director
Bay Area Toll Authority

Attachments

- A. BATA Resolution No. 128 (Toll schedule for the state-owned toll bridges in the Bay Area)
- B. BATA Resolution No. 129 (RM3 bridge toll revenues escrow arrangements)
- C. BATA Resolution No. 131, Revised (RM3 Independent Oversight Committee establishment and membership)
- D. MTC Resolution No. 4404 (RM3 Policies and Procedures)
- E. MTC Resolution No. 4412, Revised (RM3 Letters of No Prejudice)