

# Metropolitan Transportation Commission

## The Use of Toll Revenues to Purchase a New Headquarters Building Is Likely Legal, but the Transaction Exposes Toll Payers to Undisclosed Financial Risk

### REPORT NUMBER 2011-127, ISSUED AUGUST 2012

This report concludes that the decision the board governing the Bay Area Toll Authority (toll authority) made to use toll revenues to fund the acquisition of a new headquarters building likely was legally permissible. However, a court would ultimately decide the legality of the purchase. Further, during the decision-making process the Metropolitan Transportation Commission (transportation commission) and the toll authority could have done more to clearly articulate to both their shared governing board and the public the financial risks associated with purchasing the building. Specifically, the transportation commission's presentation to the board in September 2011 stated that toll payers are protected because the cash flows from the building would repay contributed toll revenue. However, in its projection the transportation commission did not discount the value of future cash flows to today's dollars. We converted the cash flows projection and determined that, in the most conservative combination of rental and occupancy rates, cash flows would fall short of repaying contributed toll revenue by \$30 million. We also noted that the financial risk of being unable to repay all of the toll revenue significantly increased in May 2012 when the Bay Area Headquarters Authority announced plans to convert 101,000 square feet of the building into an atrium and building support space that will reduce rental space available to generate income.

The transportation commission developed property search criteria and followed a reasonable process for evaluating potential properties, but at 350,000 square feet, the specified criteria for overall building size was roughly twice the amount originally shared with its governing board. Moreover, it is not clear to us what the transportation commission's motivation was in setting the search criteria for the building's size—planning for growth or generating income. Notwithstanding building size, the governing board was generally informed about the transaction and was responsive to public comment. Moreover, the Bay Area Air Quality Management District (air district) has signed a lease for space in the headquarters building with an option to buy. The transportation commission, toll authority, and the air district plan to move in to the headquarters building in fall 2013. Meanwhile, the transportation commission and the air district still need to resolve their options for disposing of their current headquarters buildings.

In the report, the California State Auditor (state auditor) made the following recommendations to the Legislature. The state auditor's determination regarding the current status of the recommendations is based on legislative actions as of December 2012.

#### **Recommendation 1.1—See pages 11—13 of the audit report for information on the related finding.**

If the Legislature believes state law provides the toll authority with too much discretion over its use of toll revenues, it should consider amending state law to more narrowly define how toll revenues that are not immediately needed for bridge maintenance or debt service may be spent or invested. For example, the Legislature might consider imposing specific limitations or prohibitions on the use of toll revenues to acquire real estate for administrative or investment purposes.

#### ***Legislative Action: Legislation introduced.***

Prior to the publication of our audit report in August 2012, the Senate considered Senate Bill 1149 (SB 1149) in May 2012 that would have made a variety of changes to the entities that were the subject of our audit. Among the changes proposed in SB 1149 was the requirement that the toll authority would be prohibited from using toll funds to invest in real property. A hearing was scheduled but was cancelled at the author's request.

**Recommendation 1.2—See pages 13 and 14 of the audit report for information on the related finding.**

If the Legislature desires greater separation between the transportation commission and the toll authority, it should consider amending state law to require that each entity have its own key executive management staff, such as its own chief executive officer, chief financial officer, and general counsel.

***Legislative Action: Unknown.***

The state auditor is not aware of any action taken by the Legislature as of December 18, 2012.