Grand Jury

Contra
Costa
County

725 Court Street
P.O. Box 431
Martinez, CA 94553-0091

May 7, 2026

BART Board of Directors
c/o District Secretary
San Francisco Bay Area Rapid Transit District
2150 Webster Street, 10th Floor
Oakland, CA 94612

Dear Members of the Board:

Attached is a copy of Grand Jury Report No. 2603, BART Office of Inspector General: Independence Delayed Is Independence Denied prepared by the 2025-2026 Contra Costa County Civil Grand Jury.

In accordance with California Penal Code Section 933 et seq., we are submitting this report to you as the officer, agency, or department responsible for responding to the report. Please respond to the Findings and Recommendations as they apply to your agency. Please also confirm in writing that the person responding to the report is authorized to do so. As the responding person or person responding on behalf of an entity, please indicate one of the following actions with respect to each finding:

(1) You agree with the finding.
(2) You disagree with the finding.
(3) You partially disagree with the finding.

(Pen. Code, § 933.05(a).) In the cases of both (2) and (3) above, please specify the portion of the finding that is disputed and include an explanation of the reasons therefor.

In addition, Section 933.05(b) requires you to reply to each recommendation by stating one of the following actions:

1. The recommendation has been implemented, with a summary describing the implemented action.

2. The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

3. The recommendation requires further analysis. This response should explain the scope and parameters of the analysis or study, and a time frame for the matter to be prepared for discussion. This time frame shall not exceed six months from the date of the publication of the Grand Jury Report.

4. The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation thereof.

The Penal Code also prescribes the obligations of a governing board or elected county official with regard to responding to the grand jury's findings and recommendations. Specifically, if the report contains one or more recommendations directed to you as an elected county official, or to the governing board of which you are a member, you must respond to these recommendations and to the supporting findings, as directed in the report.

After reviewing the response to ensure that it includes the above-noted mandated items, please send (1) a hard copy of the response to the Grand Jury at P.O. Box 431, Martinez, CA 94553; and (2) an electronic copy by e-mail to ctadmin@contracosta.courts.ca.gov. The response must be submitted to the Grand Jury no later than **Friday, August 7, 2026.**

Finally, please note that this report is provided at least two working days before it is released publicly. Section 933.05 specifies that no officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to its public release.

Please immediately confirm receipt of this letter and the attached report by responding via e-mail to ctadmin@contracosta.courts.ca.gov.

Sincerely,

Brenda Balingit, Foreperson
2025-2026 Contra Costa County Civil Grand Jury

2025–2026 Contra Costa County Civil Grand Jury

BART OFFICE OF INSPECTOR GENERAL: INDEPENDENCE DELAYED IS INDEPENDENCE DENIED

Report 2603
May 1, 2026

Approved by the Grand Jury

Brenda Balingit
GRAND JURY FOREPERSON
5/7/26
Date

Accepted for Filing

Hon. Terri Mockler
JUDGE OF THE SUPERIOR COURT
5/4/26
Date

Civil Grand Jury reports are posted at: www.cc-courts.org/civil/grand-jury-reports.aspx

SUMMARY

In 2017, the California Legislature passed a bill providing for a vote by residents of the nine Bay Area counties whether to finance a $4.45 billion slate of highway and transit improvements with an increase in tolls on Bay Area bridges other than the Golden Gate. The proposal went to voters as Regional Measure 3 (RM3). RM3 also called for creation of an independent oversight committee operating across all nine counties and, separately, the creation of an independent Office of Inspector General (OIG) for the San Francisco Bay Area Rapid Transit District (BART). RM3 passed in June 2018 and has been codified in California Public Utilities Code Sections 28840-28845.

Public Utilities Code Section 28841 broadly outlines the authority and responsibilities of the BART OIG. They include requirements that the OIG:

1. *Examine BART's operating practices to identify fraud, waste, or abuse, and opportunities for efficiencies in administration of its programs and operations.*

2. *Ensure the BART administration, the Board of Directors, and the public are fully informed of the OIG's findings and recommendations.*

3. *Identify opportunities to improve data used to make BART's allocations of its resources more efficient.*

4. *Conduct, supervise, and coordinate audits and investigations relating to BART's programs and operations, including, but not limited to, toll-funded programs.*

5. *Identify best practices for delivering capital projects and recommend policies to enable BART to adopt these practices when practicable.*

6. *Recommend policies that promote efficiency in the administration of programs and operations.*

7. *Review and recommend best practices that BART should follow to maintain positive and productive relations with its employees and the collective bargaining units representing those employees.*

8. *Provide a report, at least annually, to the Board of Directors and the California Legislature that summarizes significant problems identified in audits and investigations and whether BART has implemented the resulting recommendations.*

In the years following voter approval of RM3, there have been discussions between the OIG and the BART Board of Directors regarding a formal charter for the OIG that would provide specific details regarding the OIG's scope and exercise of authority and responsibilities beyond the outline created by RM3. The OIG has presented the Board with at least two versions of a formal charter. The Board, however, has not acted to approve a charter for the OIG.

The Grand Jury examined the history of the OIG, its work, and the proposals and discussions regarding an OIG charter. Our findings highlight a lack of written clarity regarding the OIG's

independence, scope and exercise of authority, and access to information. This has at times impeded the OIG's ability to operate as intended under RM3 and resulted in disagreement between the OIG and members of BART's management regarding the scope and exercise of the OIG's authority.

CONFLICT OF INTEREST DISCLAIMER

One Grand Juror recused themself due to a possible conflict of interest and did not participate in the investigation, preparation, or approval of this report.

BACKGROUND

Many large government organizations have an independent office of inspector general, which examines the inner workings of the organization. The primary goal of any inspector general is to identify fraud, waste, and abuse, and to improve efficiency. An inspector general also investigates whistleblower complaints and audits agency operations.

The Association of Inspectors General (AIG) is a national non-profit, non-partisan umbrella organization of inspectors general that, among other things, establishes industry standards and best practices for offices of inspectors general. In its "*Statement of Principles and Standards for Offices of Inspector General*" (*Statement of Principles*), the AIG outlines three clearly documented mandates that any inspector general must have:

- The inspector general must be independent of the management and supervising director(s) of the agency that the inspector general oversees.
- The inspector general must have full and free access to the personnel and records of the agency whenever the inspector general conducts an investigation or audit.
- The inspector general must have the authority to review management responses to any finding(s) and recommendations that the inspector general makes, as well as to independently assess and report on the quality and effectiveness of management's actions in response to those findings and recommendations.

As the U.S. Office of Government Ethics (USOGE) has observed, an independent inspector general "ensures that the American public can have confidence in the integrity of its government." According to both the USOGE and AIG, an effective, independent inspector general promotes good governance by providing the public assurance that the inspector general's investigations are objective, and that agency management is both transparent and efficient in its use of public money.

METHODOLOGY

To conduct this investigation, the Grand Jury:

- Interviewed multiple individuals within and outside of BART with direct knowledge of, and/or subject matter expertise on, the topics of this report

- Reviewed video recordings of multiple meetings of BART's Board of Directors and its Audit Committee
- Reviewed materials available on BART's and the OIG's websites
- Reviewed publicly available materials regarding the history of legislation and public reports and commentary about the OIG
- Reviewed applicable legislation, codes, legislative history, and case law
- Reviewed source materials relating to the history, operation, and practices of other public agency inspectors general
- Reviewed the BART Employee Code of Conduct and ethics policies
- Reviewed current Collective Bargaining Agreements (CBAs) for BART's major unions
- Reviewed government auditing standards issued by the U.S. Government Accountability Office

DISCUSSION

The AIG's *Statement of Principles* provides that an inspector general's authority should be set in law, such as a statute, ordinance, or charter. These options are not mutually exclusive; the AIG notes that an inspector general's authority may incorporate authority from a variety of sources.

The *Statement of Principles* also provides that an inspector general's legal authority should grant specific powers and identify any limits on those powers. RM3 created an outline of the OIG's authority and responsibilities but did not set forth any detail regarding the specific extent of that authority or the OIG's power to exercise its authority.

History of Discussions Regarding an OIG Charter

In 2021, the OIG presented a draft charter to the Board's Audit Committee and the full Board. After review, the Board President said that BART's labor unions had concerns about not receiving advance notification before OIG interviews of union members. The Board did not resolve those concerns and did not adopt a charter for the OIG.

From 2021 to early 2023, the Board did not act on the 2021 draft OIG charter. In April 2023, the Board President directed the OIG to meet with union representatives to discuss the content of the draft charter.

In January 2024, the OIG presented a revised draft charter to the Board's Labor Committee. The revisions attempted to address union concerns by specifically recognizing employee rights to representation during investigations. The draft did not, however, require the OIG to notify unions before interviewing employees. The unions raised the same concerns they had raised regarding the 2021 draft charter. The Board's Labor Committee asked the OIG to continue discussions with the unions. The OIG stated in a public forum that it could discuss issues with the unions but could not negotiate any resolution with them because of the OIG's obligation to remain independent.

In August 2024, the OIG presented the same revised charter to the Board's Audit Committee but suggested the Audit Committee delay action because of a bill (SB 827) pending in the State Legislature that, if passed, would codify many of the provisions in the OIG's revised charter.

During the meeting, BART's General Counsel stated the draft charter met professional standards for independence. The OIG also shared with the Audit Committee during the meeting a letter from the AIG supporting adoption of a charter that allows the OIG to perform its duties in a manner which supports their principle of independence.

SB 827 died in committee in the Legislature. Neither the Audit Committee nor the Board have returned to consideration of an OIG charter. Nearly six years after the OIG was created, no charter exists.

The BART Employee Code of Conduct

BART's Employee Code of Conduct (ECOC) was last updated in 2013. The ECOC requires all BART officers and employees "demonstrate the highest standards of personal integrity, honesty, and truthfulness in all their public activities." It further provides that "employees shall provide relevant and necessary information, in a timely manner, to members of the Board of Directors to assist them in the performance of their duties." The ECOC does not reference the role of the OIG at BART and does not state that employees must cooperate with the OIG. The OIG was created after the last update of the ECOC.

BART's Collective Bargaining Agreements

Approximately 85 percent of BART employees are represented by labor organizations through Collective Bargaining Agreements (CBAs). The CBAs require employees to follow BART rules and policies, but do not specifically incorporate the ECOC. Neither do the CBAs state that employees must cooperate with OIG audits or investigations.

Union Issues Affecting an OIG Charter

With respect to both the 2021 and 2024 draft OIG charters, BART's unions raised two main issues:

- The unions want the OIG to notify unions before interviewing represented employees.
- The unions want the Board, not the OIG, to review management responses to OIG recommendations and track their implementation.

Confidential Access to Represented Employees

The OIG has stated to the Board and Board committees numerous times, in meetings and written communications, that advance notice to unions of an interview of a union member could affect confidentiality, and therefore the employee should be the one to decide when to notify their union of the OIG's interview. The OIG does propose in its most recent draft charter, however, to inform employees of their right to representation during an OIG investigation and allow them to request it at any time.

The Board publicly stated on at least one occasion that the "Board and management are neutral to the conditions of engagement between the labor unions and the OIG." Instead, the Board has asked the OIG to resolve the issue directly with the unions. It is the Board, however, that holds

responsibility for negotiating with unions concerning employee rights. The OIG has informed the Board, in writing, that while it can hold "discussions" with the unions: "[t]he OIG is an independent function and, therefore, cannot and should not **negotiate** with labor groups." (Emphasis added).

In 2022, State Senator Steve Glazer introduced a bill (SB 1488) that addressed OIG authority, including access to employees. The Board requested an amendment to the bill requiring notification to the union before an OIG interview of a represented employee. In its Fiscal Year 2022 Annual Report to the State Legislature, the OIG gave the Legislature an explanation of why such a provision "would undermine the OIG's authority by inserting the union in our independent work."

SB 1488 passed the Legislature but was not signed into law. In his September 28, 2022, letter to the State Senate explaining why he declined to sign the bill, the Governor encouraged the Board and the OIG to resolve the unions' issue. The Board has not taken any action on the issue since that time.

Oversight of OIG Recommendations

After issuing a report, the OIG reviews management responses and tracks whether recommendations are implemented. This function is part of an inspector general's role. Per the AIG, industry standard is that an inspector general "should take steps as necessary to determine whether appropriate officials take timely, complete, and reasonable actions to address issues identified in reports." Further, the OIG enabling legislation requires the OIG to report annually to the Legislature on problems identified and whether BART has implemented recommendations.

Oversight Functions at BART

BART's Director of Performance and Audit recently approved a formal charter for BART's Internal Audit (IA) function. That charter gives IA authority to, among other things:

- Follow up on findings and confirm implementation
- Access all records, data, and personnel

The Grand Jury found no public evidence of union objection to access, or the means of access, by IA to union members.

The OIG has proposed that it be given formal authority similar to that given to IA, but the OIG does not presently have a charter or formal written policy supporting its access to all BART personnel.

Lack of Organizational Clarity Regarding OIG Authority

In an April 16, 2026 public meeting, the OIG informed BART's Audit Committee that the OIG had to halt a retaliation investigation when the OIG was told by "an executive ... identified as someone party to an OIG investigation," and then by an outside lawyer, that the OIG "doesn't have the authority to launch an investigation into executive leadership without approval." The OIG reported that while it is "very clear" that its jurisdictional authority to investigate exists, the

response to the OIG was "that is not true," and that "that there needed to be policies [and] processes ... to define how [the OIG] would interact with executive leadership." The OIG further informed the Audit Committee that the executive—a Board-appointed officer—had later taken the additional position that "it is not in [the OIG's] purview to conduct a retaliation investigation."

In its presentation the OIG reminded the Audit Committee that its charter gives the Audit Committee jurisdiction over issues of OIG access to BART records and personnel.

During the same meeting BART's General Counsel informed the Audit Committee that the OIG does have the authority to conduct investigations of alleged retaliation following an OIG report and that the OIG does have authority to interview executive leadership. General Counsel, however, also stated that the OIG does not presently have authority to compel an employee to attend an interview.

Acting on the OIG's request for specific written affirmation if its authority, the Audit Committee requested that General Counsel draft amendments to BART's whistleblower policy to clarify that the OIG has authority to conduct retaliation investigations and the ability to interview all members of BART's executive team. The Audit Committee also requested that General Counsel prepare an additional amendment to the whistleblower policy to allow the Board to review language that could set "policy that [BART] personnel participate in investigations." The Audit Committee made no recommendation as to the language of the amendment.

A Peer Review: The Los Angeles Metropolitan Transit Authority's Inspector General

BART is a rail-only transit system, which distinguishes it from many other public transit agencies. Nonetheless, the Los Angeles Metropolitan Authority (MTA) is comparable to BART in terms of size, operational complexity, and the nature of its service.

Like BART, the MTA has an OIG that was created by the California State Legislature. The MTA's Inspector General does not have a charter; instead, the MTA created a statutory regime within its Administrative Code (MTA Code) that functions like a charter. The design of the MTA Code is identical to that of a charter.

The MTA Code provides for the MTA Inspector General to have several guaranteed powers. Two stand out when comparing the MTA Inspector General's documented ability to operate with the lack of a charter for BART's OIG.

- Under Section 2-20-030(A) of the MTA Code, the MTA Inspector General has:

  > *full, free and unrestricted access to all MTA records, reports, audits, reviews, plans, projections, documents, files, contracts, memoranda, correspondence, data, information and other materials, whether maintained in a written format or contained on audio, video, electronic tape or disk, or in some other format*

- Under Section 2-20-030(E) of the MTA Code, the MTA's Inspector General has:

direct and prompt access to any member of the Board of Directors, MTA officer, employee or contractor as may be necessary to carry out the [OIG's] duties and responsibilities

At present, BART has put nothing in writing giving its OIG either of these assurances.

FINDINGS

F1. In 2018, Bay Area voters approved the creation of an Office of Inspector General (OIG) for the San Francisco Bay Area Rapid Transit District (BART).

F2. Public Utilities Code Section 28841 outlines the foundational structure and responsibilities of the OIG but does not establish details regarding the scope or exercise of the OIG's authority.

F3. The OIG does not presently have a charter.

F4. In 2021, the OIG presented a draft charter to the BART Board of Directors (Board) and the Board's Audit Committee.

F5. Neither the Board nor the Audit Committee adopted or revised the draft charter received from the OIG in 2021.

F6. Following its August 1, 2024, meeting that included on its agenda an "OIG Charter Discussion," the Audit Committee has not placed on its agenda a discussion or review of an OIG charter.

F7. The Board has not acted to adopt a charter for the OIG.

F8. The Board has not itself attempted to negotiate with its unions a resolution to the unions' objections to any of the OIG's proposed charters.

F9. The Board asked the OIG to negotiate directly with the unions the issue of requiring advance notification to the unions when the OIG wishes to interview a union member as part of an investigation.

F10. BART adopted a written Internal Audit Charter confirming that its internal audit (IA) function has full and unrestricted access to data, records and information, physical property, and personnel, including union members, pertinent to carrying out IA responsibilities.

F11. The Board has not issued a written policy or established formal procedures stating that the OIG is to have unrestricted access to data, records, information, physical property, and personnel as necessary to carry out its responsibilities.

F12. A BART executive has taken the position that the OIG cannot interview them unless their supervisor approves.

F13. A BART executive has questioned the OIG's authority to conduct a retaliation investigation.

F14. Questions raised by a BART executive regarding the scope of the OIG's authority caused the OIG to halt a retaliation investigation for several months.

F15. BART has adopted a written charter that states that IA has the authority to determine the adequacy of management's actions taken in response to IA reports and recommendations.

F16. The Board has not issued a written policy or established written procedures stating that the OIG has the authority to determine adequacy of BART management's actions taken in response to OIG audit and investigative recommendations.

F17. Assigning the Board the responsibility for determining whether management has adequately implemented OIG recommendations following an audit or investigation would bypass an independent evaluation by the OIG of management's actions in response to OIG recommendations.

F18. The BART Employee Code of Conduct (ECOC) requires employees to act ethically, comply with District policies, and report misconduct.

F19. The ECOC does not presently require cooperation with OIG investigations.

F20. BART's current Collective Bargaining Agreements (CBAs) require employees to comply with BART's rules but do not explicitly incorporate the ECOC.

F21. BART's CBAs do not specifically require cooperation with OIG investigations.

RECOMMENDATIONS

R1. In the absence of an OIG charter, by December 31, 2026, the Board should consider adopting a written policy stating that the OIG has the authority and responsibility to determine whether management's planned actions will adequately address any issues identified in an audit or investigation.

R2. In the absence of an OIG charter, by December 31, 2026, the Board should consider adopting a written policy stating that the OIG has the authority and responsibility to follow up on audit and investigation recommendations until the OIG is satisfied that management has either implemented the recommendations or otherwise adequately addressed the concerns brought forward by the OIG.

R3. In the absence of an OIG charter, by December 31, 2026, the Board should consider adopting a written policy stating that the OIG is to have unrestricted access to data, records, information, physical property, and personnel as necessary to carry out its responsibilities.

R4. By December 31, 2026, the Board should consider revising the ECOC to require all officers and employees to cooperate with OIG audits and investigations.

R5. In the next negotiations of CBAs, the Board should consider seeking to have the ECOC explicitly incorporated by reference into new CBAs.

R6. By December 31, 2026, the Board should consider adopting a written policy affirming the authority of the OIG to interview any BART employee or officer, including executive leadership, without seeking prior approval.

R7. By December 31, 2026, the Board should consider requesting that the OIG develop written procedures that clarify employee obligations and rights to union representation during an investigation, at the employee's discretion.

R8. By December 31, 2026, the Board should consider directing the Audit Committee to begin the process of adopting a formal charter for the OIG.

REQUEST FOR RESPONSES

Pursuant to California Penal Code § 933(b) *et seq.* and California Penal Code § 933.05, the 2025-2026 Contra Costa County Civil Grand Jury requests responses from the following governing bodies:

Responding Agency	Findings	Recommendations
Bay Area Rapid Transit District Board of Directors	F1 – F21	R1 – R8

These responses must be provided in the format and by the date set forth in the cover letter that accompanies this report. An electronic copy of these responses in the form of a Word document should be sent by e-mail to ctadmin@contracosta.courts.ca.gov and a hard (paper) copy should be sent to:

Civil Grand Jury – Foreperson
725 Court Street
P.O. Box 431
Martinez, CA 94553-0091

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code § 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.