2011/2012 MARIN COUNTY CIVIL GRAND JURY

ADVANTAGES OF CREATING AN OFFICE OF INDEPENDENT BUDGET AND LEGISLATIVE ANALYSIS

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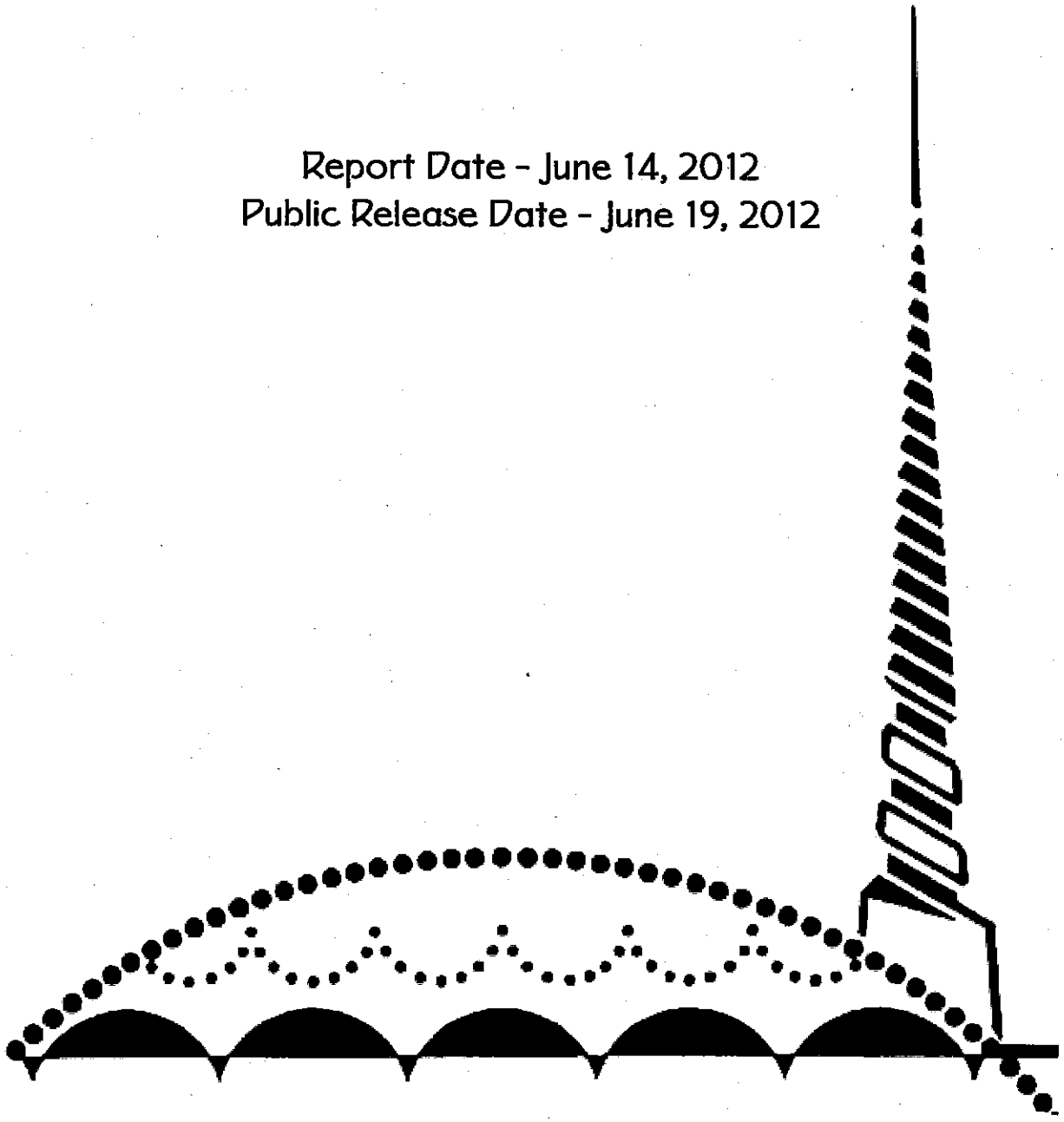

ADVANTAGES OF CREATING AN OFFICE OF Independent Budget and Legislative Analysis

SUMMARY

We are told that the County of Marin's finances are in better shape than those of most other counties and that County government operates efficiently and without the rancor and divisiveness which seem to be the hallmark of inter-government relations throughout the country. That is a very appealing premise and the Marin County Civil Grand Jury set out to test it.

Much of what was discovered is what one might expect. Some claims are true; some are partially true and some questionable. It often depends on the precise question asked and one's ability to parse the answer given. That was expected. What was unexpected is the level at which many of the County's most important recent decisions appear to be driven solely by economics. Staff is being reduced, principally through attrition, departments are being combined and overall costs have been cut wherever possible. This follows the approach taken by for-profit corporations, intent on improving the bottom line.

Unfortunately, or fortunately, the principal purpose of government is not to generate a better bottom line. Government is in the business of providing the services its citizens need and want. What the Marin County Civil Grand Jury found missing in the County's reaction to the current financial difficulties was the careful analysis of alternatives that might make it possible for the County to really do more, with less. Currently, it appears that the County is on track to do less, with less.

The Jury also found instances in which the actions and inactions of County government have resulted in the loss of millions of dollars and which may still cost millions more, far into the future. Some of these losses are the result of decisions made years ago and some are the result of decisions recently made. Although no one individual can be faulted with respect to these losses, the process which allowed them to arise can and should be.

As individuals, each of us makes decisions based, hopefully, on good information and some organizing principle. Sometimes the decisions are good, sometimes, not so good. The consequences, one way or the other, usually only affect us and those in our family, or perhaps our immediate community. Governments are composed of individuals who also make decisions. The essential difference is that even though those individuals are only active for a relatively short period, the consequences of their decisions have wide impacts which are likely to continue, long after the individual actors are gone.

To better understand the process of the County's decision making, the Jury has taken a look at the County and its management, as well as the effect of applicable state laws, over time. The Jury looked at the mission of County government, which all would agree is to provide services to the public and its process of allocating funds to pay for those services. The Jury considered the County's legislative and budgetary processes and how they are conducted. The Jury's primary focus, however, is on one question: How can these processes become more transparent while leading to results that are more efficient and cost-effective than is now the case?

The Jury's analysis has led to a solution that has been adopted in various iterations, using various titles, by governmental entities large and small throughout the world. However structured, the solution involves a formalized independent body which stands outside of government, reviews its existing and proposed activities, and makes public observations and recommendations. The existence of such a body would have the following benefits to the County and its citizens. It would:

- Create opportunities for collective reflection and deliberation among citizens, civil society organizations, legislators and others so as to enhance their collective influences on budget processes and decisions;
- Foster greater public understanding of budget issues and serve to open new and productive channels of communication between the Board of Supervisors and the various stakeholders within the County;
- Challenge the Board of Supervisors to justify its budgetary decisions, thus contributing to increased transparency and accountability;
- Serve to enhance trust and understanding between citizens and their public institutions; and
- Assure that the County's administrative functions are provided in the most effective and efficient manner.

The Marin County Civil Grand Jury recommends:

- That the Marin County Board of Supervisors promptly establish an office of Independent Budget and Legislative Analysis, to assist it in:
  - Analyzing the County's annual budget presentations;
  - Evaluating the long and short term fiscal impacts of all legislation and legislative actions proposed to be enacted or taken by it;
  - Evaluating and developing programs to address the County's fiscal challenges; and
  - Evaluating the performance of the County's operations.
- That the citizens of Marin County give serious consideration to the use of the State of California's initiative process, to establish an office of Independent Budget and Legislative Analysis, if the Board of Supervisors does not promptly take action to do so.

BACKGROUND

State law mandates that each county has a Board of Supervisors consisting of five members, elected for four-year staggered terms. Unlike the separation of powers that characterizes the federal and state governments, these individuals sitting as the Board of Supervisors ("BOS") serve as both the legislative and executive authority for the County of Marin ("County"). The

BOS also has quasi-judicial powers,[1] but for purposes of this report only its executive and legislative powers and responsibilities are considered.

The County's website describes the BOS, as follows:[2]
"The Board of Supervisors has the overall responsibility for the function of county government. They are the legislative and executive body of county government. The board serves as the governing board of the County Free Library and of many special districts such as the Parks and Open Space District, Redevelopment Agency, Transit District, and of the Housing Authority. The Board passes all ordinances governing the county and is responsible for seeing that mandated functions are properly discharged. They adopt the budget; set employee salaries; direct a wide variety of services to county residents, including public works, roads, voter registration health and welfare programs, courts, district attorney, public defender, jail facilities, recording of official documents, as well as municipal-type services in the unincorporated area of the county, such as fire and police protection, planning, zoning and land use regulation, traffic regulation, and parks and recreation."[3]

State law imposes significant legislative, managerial and administrative obligations on the BOS. However, in addition to their county-specific responsibilities, individual supervisors sit as a County representative on various multi-county or regional special districts and agencies.[4] Supervisors' also sit on the boards of or are active with many other local and regional organizations. On average, each supervisor is actively involved with 25 other such organizations, which obviously requires a significant investment time and energy and leaves less time for legislative and executive responsibilities.

Although the County was created in 1850, it did not experience significant growth until the years following the Second World War. As the county's population grew, so did its residential, commercial and industrial activity. This activity increased the demand for county services, which presumably substantially increased the supervisor's day to day management and administrative responsibilities.

Throughout the United States there have been many examples of non-elected individuals managing county and municipal governments, but the concept of professional management did not become prevalent until the late '40s or early '50s. In part, the impetus was to eliminate corruption, which was rampant at one time. Perhaps more importantly, adoption of professional management was a recognition that the activities of and demands on governments were becoming more complex and that successful politicians were elected for

[1] See California State Association of Counties - County Structure: www.counties.org.

[2] www.co.marin.ca.us/depts/BS/main/about_bos.cfm

[3] The BOS has limited authority with respect to the elected officers of the County and state law limits, to the extent not relevant here, its authority over certain positions mandated by the state's Constitution.

[4] Bay Area Air Quality Management District, Golden Gate Bridge Highway & Transportation District, California Regional Water Quality Control District (San Francisco Bay Region), the San Francisco Bay Conservation & Development Commission, Metropolitan Transportation Commission, North Central Coastal Region Commission (now a part of the California Coastal Commission), and Association of Bay Area Governments.

reasons other than their demonstrated management ability. In fact, management ability is often woefully missing.

It was not until 1962, however, that the County formalized the position of County Administrator ("CA"). The CA is assigned 16 specific powers and duties. The principal ones are to "be responsible for the proper and efficient administration of the affairs of the county, and enforce ordinances, orders or regulations of the board," and to "[a]dminister, supervise, direct and control the administration of all county offices, departments and institutions, elective or appointive, in such matters that are the concern and responsibility of the board of supervisors."[5]

The authorizing ordinance makes it clear that although the CA is given broad authority and responsibility, the person acting in that capacity is only the agent of the BOS, and that the BOS retains the ultimate authority and responsibility for the proper functioning and administration of the County and all of its components.[6] In addition to coordinating the work of all County offices, departments and institutions and administrating the County's operations, the CA is obligated to "[r]ecommend an annual county budget and exercise continuous budgetary control after the adoption of the budget."[7]

The practical effect of creating the position of County Administrator was to relieve the BOS from involvement in the nitty-gritty of administering the County's 30 principal departments, almost 2,000 employees, and hundreds of diverse activities. Presumably, this was intended not simply to bring professional management to the operation of the County, but also to give the Supervisors more time to be "policymakers and goal setters".[8]

The Board of Supervisors/County Executive or Manager arrangement (which goes by many names) is now widespread at every level of government throughout the United States and in many developed nations. The executive and legislative body (the BOS in Marin), establishes the goals and priorities for the organization and looks to its appointed manager (the CA in Marin) for their implementation.

However, this arrangement, which provides efficient management by qualified individuals,

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[5] Title 2- Chap 2.08 § 2.08.040 Marin County Code of Ordinances. The generally accepted definition of administrator is "one who manages." Although the CA is specifically assigned the responsibility of the "administration of all county offices, departments and institutions", the Marin County Civil Grand Jury has been advised that in practice, the CA is viewed and treated by the BOS as simply the head of the County Administrator's Office, and perhaps, at best, first among equals with respect to all other department heads. If true, this is neither efficient, nor consistent with the plain text of §2.08.040.

[6] §2.080.050 Limitation on Authority. "No provision of this chapter is intended to vest in the county administrator any duty or grant to him any authority which is vested by general law on any other county officer or employee. Nothing shall be construed to delegate to the county administrator any authority or duty required to be performed by the board of supervisors. Except as provided in Section 2.08.051, he shall have no power to bind, obligate or to commit the county or the board of supervisors in connection with any contractual obligation."

[7] Title 2- Chap 2.08 § 2.08.040 Marin County Code of Ordinances.

[8] League of Women Voters of Marin County. Goals for County Government: www.marinlwv.org

comes at a cost. The individuals ultimately in charge and responsible no longer have close and continuous contact with the individuals who are directly providing services to the public. They are isolated from the nitty-gritty, but now must rely on what others tell them about how things are going.[9] With only minimal administrative staff, the Supervisors are also reliant on the CA to provide them with information, in the form of reports and studies, as to the efficiency and efficacy of the County's activities.[10] That may no longer be sufficient.

For the last fifty or so years, reliance on staff or paid managers to provide meaningful information to those ultimately responsible, has been a workable model for most governmental entities. However, the U.S. Congress, as early as 1921, and legislatures in many state governments including California and their political subdivisions concluded for various reasons, that they needed information and evaluation from independent sources. This was perhaps inspired by the recognition that captains of the ship of state receive little credit for a smooth voyage, but are damned and fired for the occasional sinking. It might also reflect the reality that unbiased and independent answers are most likely to come from those without an interest in the outcome.

The actions of government at every level are under increasing scrutiny and often met with public distrust. As expressed by the National Performance Management Advisory Commission: "At no time in modern history have state, local and provincial governments been under greater pressure to provide results that matter to the public, often within severe resource constraints. At the same time, government officials and managers are challenged to overcome the public's lack of trust in government at all levels....Democratic governments are also obligated to be accountable to their owners - the citizenry."[11]

An example of the basis for this lack of trust was the recent news that the County had reduced a budget deficit of $50 million to just $1.5 million. Any taxpayer might be initially relieved and pleased with that announcement. However, on reflection, any one of us, whether a parent, grandparent, or concerned citizen, might ask, "What important services did we give up to accomplish this dramatic reduction? How were the decisions made and who went through the agonizing process of balancing competing demands?" It was probably not the CA. That is not an administrator's responsibility. As recently expressed by a former university official in a similar situation: "The administration's job is not 'to get justice'. Our job is to run the university".[12]

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[9] The League of Women Voters of Marin County recommended the "utilization of administrative aides to relieve supervisors of some district and administrative detail and to observe and report to them the sense of outside meetings that the supervisors are unable to attend." Also see prior footnote.

[10] One of the CA's duties is to: "make such studies and investigations as the administrator believes necessary or desirable and make any study or investigation the board requests." (emphasis added)

[11] *A Performance Management Framework for State and Local Government, 2010.* The National Performance Management Advisory Commission is a collaborative effort of 11 leading public sector management organizations.

[12] See: *CSU whistle-blower loses job.* S.F. Chronicle, Sunday April 1, 2012

How then was this amazing result achieved? Some attribute it to new financial arrangements with the County's employees and attrition in the County's employment. Others suggest that it was the result of mandated reductions in the operating costs of each County department. Some say it was the effect of money 'found' in some accounting process. Whatever the back story may be, it was clearly not the result of public meetings at which interested parties were given the opportunity to make suggestions and exchange views and ideas. There were no public meetings or presentations by the BOS carefully explaining the methodology that was or will be used to allocate the pain and there certainly had to be pain. There were no readily available documents or information by which an interested citizen could evaluate how well the BOS handled this. There was at best, a statement of the result, but nothing about the processes involved and certainly nothing that would be considered 21st Century transparency.

This questioning of governmental process and transparency is not new. Similar questions have been asked many times before. There have been many solutions presented. In its evaluation of this question, the Jury determined that history supports a process that involves some variant of a formal body, independent of the executive and legislature, which considers and evaluates the government's activities. In practice, this body in a non-partisan manner reviews and opines on the economic impact of pending or proposed legislative actions, including budgets and frequently evaluates the efficacy of the administration's activities.[13]

This process, although called by many names, is generally identified as Independent Budget and Legislative Analysis. It is a tool used and recommended for use throughout the world, but for purposes of this report, the Jury focused on its use in the United States.[14]

METHODOLOGY

In preparing this report, the Marin County Civil Grand Jury interviewed members of the BOS; County department heads; individual County employees; elected and appointed officers of other cities and counties in California with experience with the Independent Budget and Legislative Analysis[15]("IBLA") process, and individuals and representatives of companies which provide these services to governmental entities. The Jury also conducted extensive research by accessing published materials and numerous good government websites in the United States and elsewhere.

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[13] See for example -Burton & Bellinger -"Alternative strategies for legislative analysis of public policy", Duke University, Durham, NC 27706 USA

[14] Simon Wren-Lewis, March 2011 Oxford Department of Economics Discussion Paper Series *#540 Comparing the Delegation of Monetary and Fiscal Policy*; Hoffman - *Legislative Fiscal Analysts: Roles in Legislative Budget Development and Relationships with State Budget Actors*; Barry Anderson - *The Value of a Nonpartisan, Independent, Objective Analytic Unit to the Legislative Role in Budget Preparation* .

[15] The term Independent Budget and Legislative Analysis is a common identification for the process described in this report. In practice, the title given to the unit, office, or individual providing these services and the specific duties assigned varies from government to government.

DEFINITIONS

To understand the fundamental differences between the activities that are conducted in the IBLA process and seemingly similar activities conducted by the CA and his staff, some terms need to be defined.

Budget Analyst

Although specific duties may vary from organization to organization, essentially a budget analyst is responsible for developing, analyzing, and executing budgets so that an organization's funds and resources are distributed efficiently among different departments and projects. The basic role of an in-house budget analyst centers around financial processes: determining what resources are available; determining what resources are needed for various purposes; and establishing a plan (the budget) to allocate the resources in a manner that will accomplish the organizations' goals.[16]

County Budget Process

The County's proposed budget for FY 2011-2012 identifies six individuals with the formal title of budget analyst. The Jury has been advised that the current number of budget analysts is four. At the beginning of each budget cycle which for the County generally starts in November, each department head works with an assigned budget analyst to evaluate the financial aspects of the department's current and proposed operations. This analysis considers a number of issues, including the impact on the department's current programs and operations if funding is decreased or increased; the financial effect of any new departmental activities and initiatives; and how the departments' expenses fit in with the County's projected financial condition for the coming fiscal year. The job of the budget analyst is to examine each department's budget plans for completeness, accuracy and conformance with established procedures, regulations and the County's objectives, priorities and resources. It is the BOS that establishes each department's priorities.

Eventually, the various departmental proposals are coordinated and consolidated into a single document: the draft budget. The draft budget is presented to the BOS in April for review and discussion and when finally approved (sometime in June), is the County's interim operating budget for the fiscal year which starts on July 1st. For various reasons, primarily related to federal and state funding, the budget is not finalized until the latter part of the year. Throughout the year, the budget analysts monitor the budget to confirm its continuing validity and to alert the CA and the BOS when adjustments are required. Although this description is extremely simplified, this is essentially the process the County has traditionally used to prepare its annual budget.

Independent Budget and Legislative Analysis

Although IBLA and the activities of a staff budget analyst might appear to be two sides of the

[16] The County's overall goals are specified in the County's 2001 Strategic Plan: *Provide Excellent Public Service; Create A Sustainable Future; Promote Service Excellence; Encourage Community Collaboration and Partnering; and Promote Innovate Management and Employee Development.*

same coin, they are not. IBLA does not refer to the mechanical process of creating and administering budgets. Nor is it an activity that is carried out by an organization's management or staff. Rather, IBLA, as evidenced by the examples below, is the process by which an independent and non-partisan entity analyzes and reports with respect to proposed legislation and budgets and the administration of government, to provide informed input and oversight with respect to these activities. The purposes are to both improve the transparency of those processes and to provide recommendations to the governing body for policy actions to meet the organization's goals.[17]

Nationally and internationally, the key concept is 'independence', even if the word itself is not part of the title. However titled, the person or entity performing IBLA activities is neither a representative of nor part of the governmental structure that creates and administers the budget. It may be an elected official, an appointed person or body, or a third party under contract with the principal governmental authority. Whatever the relationship, the structure must provide not simply the appearance of independence, but true independence.[18] This is not intended as a confrontational relationship although on occasion the governing body will hear things it would prefer remained unsaid.

The ultimate goal of IBLA, through the publication of reports of analysis, findings and conclusions, is to:

- Create opportunities for collective reflection and deliberation among citizens, civil society organizations, legislators and others that enhance their collective influences on budget processes and decisions;
- Foster greater public understanding of budget issues and open new and productive channels of communication between policy makers and different stakeholders within society;
- Challenge the government to justify its budgetary decisions, thus contributing to increased transparency and accountability; and
- Enhance trust and understanding between citizens and public institutions.[19]

[17] The principal goal of the County is expressed in its Mission Statement: "The mission of the County of Marin is to provide excellent services that support healthy, safe and sustainable communities; preserve Marin's unique environmental heritage; and encourage meaningful participation in the governance of the county by all."

[18] See *Government Auditing Standards* (GAGAS) § 3.03, Appendix D.

[19] Galena & Khallaf - *Independent Budget Analysis* - Civicus.org. See also Barry Anderson - *The Value of a Nonpartisan, Independent, Objective Analytic Unit to the Legislative Role in Budget Preparation* 2005. Southern Political Science Association Annual Meeting.

DISCUSSION

EXAMPLES OF INDEPENDENT BUDGET AND LEGISLATIVE ANALYSIS

Federal Government

U.S. Government Accountability Office: Founded 1921

The website of the Government Accountability Office contains the following description of its activities and responsibilities:

"The U.S. Government Accountability Office (GAO) is an independent, nonpartisan agency that works for Congress. Often called the 'congressional watchdog', GAO investigates how the federal government spends taxpayer dollars. Our Mission is to support the Congress in meeting its constitutional responsibilities and to help improve the performance and ensure the accountability of the federal government for the benefit of the American people. We provide Congress with timely information that is objective, fact-based, nonpartisan, non-ideological, fair, and balanced."

"Our Work is done at the request of congressional committees or subcommittees or is mandated by public laws or committee reports. We also undertake research under the authority of the Comptroller General. We support congressional oversight by auditing agency operations to determine whether federal funds are being spent efficiently and effectively:

- investigating allegations of illegal and improper activities;
- reporting on how well government programs and policies are meeting their objectives;
- performing policy analyses and outlining options for congressional consideration; and
- issuing legal decisions and opinions, such as bid protest rulings and reports on agency rules."[20]

In the broad spectrum of the IBLA process, which starts before the budget and continues through its administration, the GAO's activities are focused on post-budget performance audits.

Congressional Budget Office: Founded in 1974

The Congressional Budget Office has a 'front end', but complementary responsibility to that of the GAO in that it deals primarily with economic and budgetary issues. Its activities are described as:

"The Congressional Budget Office has produced independent, nonpartisan, timely analysis of economic and budgetary issues to support the Congressional budget process. CBO analyses do not make policy recommendations, and each report and cost estimate discloses our assumptions and methodologies. All CBO employees are appointed solely on the basis of

[20] www.gao.gov/about/index.html

professional competence, without regard to political affiliation."[21]

States

Every state other than Nebraska has a traditional three-part governmental structure consisting of an executive branch (governor) and a bicameral (two chambers) legislative branch. As is the case with the federal government, the executive branch proposes (budgets and other legislation) and the legislature disposes, (e.g., by passing laws). As a consequence, analysis of pending legislation which would include the budget is difficult for the legislature since it often does not have analytical staff. This absence often provides an opportunity for those with an agenda to provide unsolicited analysis, which may be accurate, but may also be biased.[22] States have adopted various solutions to this problem. Currently, all 50 states have developed the resource of legislative fiscal analysis.[23] Set out below are examples of several different approaches.

California - Legislative Analyst's Office: Established 1941

California's solution is a single bipartisan office. It also provides post-budget (performance audit) oversight for the state legislature.

"The Legislative Analyst's Office has been providing fiscal and policy advice to the Legislature for more than 70 years. It is known for its fiscal and programmatic expertise and nonpartisan analyses of the state budget. The office serves as the "eyes and ears" for the Legislature to ensure that the executive branch is implementing legislative policy in a cost efficient and effective manner.

The LAO is overseen by the Joint Legislative Budget Committee, a 16-member bipartisan committee. The office currently has a staff of 43 analysts and approximately 13 support staff. The analytical staff is divided into nine subject areas: Criminal Justice, State Finance, K-12 Education, Higher Education, Health, Environmental and Natural Resources, Social Services and Labor, General Government (including Local Government and Infrastructure), and Transportation, Business, and Housing."[24]

Michigan - House and Senate Fiscal Agencies

The Michigan legislature's response to the need for independent analysis of pending legislation and other budget issues was the creation of a "Fiscal Agency" in both its House and Senate. These two agencies, although separate, have essentially the same mission: to

[21] www.cbo.gov/

[22] See California Budget Project- www.cbp.org

[23] Hoffman: *Legislative Fiscal Analysts: Roles in Legislative Budget Development and Relationships with State Budget Actors* - University of Central Arkansas

[24] www.lao.ca.gov/laoapp/laomenus/lao_menu_aboutlao.aspx. See also Elizabeth G. Hill, Legislative Analyst *Non-Partisan Analysis in a Partisan World* - Journal of Policy Analysis and Management, Spring 2003

provide nonpartisan and unbiased assistance with respect to budget issues and analysis of the fiscal impacts of all proposed legislation. This is more akin to the Congressional Budget Office's activities than to those of the GAO.

Utah - Office of the Legislative Fiscal Analyst

Utah's solution is a single Legislative Fiscal Analyst, which although not independent, provides non-partisan analysis. Note that the Fiscal Analyst also provides performance audits.

"Utah's Legislative Fiscal Analyst is selected by the state's Legislative Management Committee and appointed by approval of the Legislature as a whole. The Fiscal Analyst is charged by law with duties and responsibilities relating to fiscal oversight, as described below. The Office of the Legislative Fiscal Analyst is directed by law to prepare revenue estimates for existing and proposed legislation. Prior to each Legislative session, the office makes detailed revenue estimates for all state operating funds. These estimates are delivered to the Legislature in addition to estimates prepared by the executive branch. The Office of the Fiscal Analyst must also 'propose and analyze statutory changes to effect operation economies of more effective administration' and to 'conduct organizational and management improvement studies."[25]

Political Subdivisions

New York City

New York City has the Independent Budget Office ("IBO"), which is a publicly funded agency. IBO's responsibilities, as described in its website, include the following:

"IBO's primary responsibility is to provide nonpartisan information about the city budget and tax revenues. This can range from reviewing how much a particular agency spends to more in-depth considerations of program costs, historical trends, tax burdens, debt, or capital finances."

"**Examining Issues of Interest**. IBO regularly produces 'fiscal briefs' on critical issues confronting the city. These informative publications have covered important topics such as city spending on schools, progress and prospects for completing the Mayor's housing plan, the tax burden on city residents, financing sports stadiums, and the cost of recycling. Our 'background papers are generally geared to narrower interests and technical readers and include methodological details or provide overviews of specific city programs. IBO's Weblog provides short explanations and timely information on current fiscal issues."

"IBO presents its budgetary reviews, economic forecasts, and policy analyses in the form of reports, testimony, memos, letters, and presentations. IBO also produces guides to understanding the budget and provides online access to key revenue and spending data from

[25] Utah Office of the Legislative Fiscal Analyst – www.le.utah.gov/lfa/index.htmle.utah.gov/fa/

past years."[26]

New York's application of IBLA is more than simply pre-budget analysis, but less than a comprehensive application in that it does not appear to include performance audits.

Santa Clara County[27]

The Santa Clara County Board of Supervisors has a comprehensive IBLA arrangement. It is described on that county's website, as follows:

"In 1980, the Board of Supervisors established a management audit function to perform detailed audits and analyses of County operations, review the annual County budget, analyze major financial issues, and conduct other special studies or projects. The Board currently contracts with a private firm for these management audit services. The Management Auditor is independent from County administration, as well as all departments and programs, and reports directly to the Board."[28]

The financial benefits to Santa Clara County resulting from the Management Auditor's performance audits are extolled in the county's Fiscal Year 2012 Final Budget.

"In FY 2011, at the request of the Finance and Government Operations Committee, the Office of the Controller and the Management Audit Division of the Board of Supervisors met with ISD staff to review the financial history of the Internal Service Fund 0074. The review identified approximately $3.5 million total revenues in excess of expenditures (retained earnings). In order to reallocate this surplus to customers, ISD has issued a one-time rebate to customer rates for FY 2012. One-time General Fund Savings: $3,276,636."

"Agreed to Findings of the HMR Audit Ongoing saving of $3,429,745 recognized as part of agreed to audit findings from the Management Auditors."

"SCVMC Collections: The Management Audit of the FY 2012 Recommended Budget determined that the revenue estimate for the SCVMC general collections should be increased to reflect the current rate of collections on older accounts. **Ongoing Revenue: $331,065."**

"The following changes were based on the agreed to findings of the management audit by the...[the Management Auditor].[29]

- Reduced Insurance Premiums - $216,969

[26] www.ibo.nyc.ny.us/

[27] Unlike the County, which is a general law county, Santa Clara County is a Charter county. For purposes of this report however, there are no meaningful differences between the duties and authorities of the Santa Clara County, County Executive and the CA.

[28] www.sccgov.org/sites/bos/Management%20Audit/Pages/Management-Audit-Division.aspx. The duties of the Management Auditor are set out in Appendix A.

[29] A private company is under contract to the county to serve as the Management Auditor.

- Reduced Pharmaceutical expense - $1,000,000
- Reduced variable interest rate expense - $897,584
- Reduced General Fund Grant for Other Budgeted Interest Expense - $1,315,192."[30]

City of San Diego

The citizens of the City of San Diego, in response to San Diego's fiscal and governance problems, exercised their initiative prerogative[31] and voted to create the Office of Independent Budget Analyst. The process is described on the city's website as follows:

"On November 2, 2004, the voters of the City of San Diego approved Proposition F which provided for a change in the City's form of government from City Manager to Strong Mayor - Strong Council for a five year trial period. Proposition F also provided that the City Council shall have the right to establish an Office of the Independent Budget Analyst (IBA) and to determine the powers of the office and its manager by ordinance. This decision was triggered both by a major unfunded liability in the City's pension program and by a more general decline in public confidence in the City's government."

"On June 3, 2008, voters passed Proposition C which amended the City Charter related to the Chief Financial Officer, City Auditor, Independent Budget Analyst, City Treasurer, and Audit Committee and made permanent the Strong Mayor - Strong Council form of government. By adding Section 39.3 to City Charter Article V, this proposition made permanent the Office of the Independent Budget Analyst regardless of the form of government."[32]

The City's Mission Statement for the Independent Budget Analyst is:

"To provide clear, objective and unbiased analysis and advice to the City Council and the public regarding all legislative items bearing financial and policy impacts to the City of San Diego."[33]

A summary of a report issued by the Independent Budget Analyst in February, 2012, is attached in Appendix B. In this case, the Independent Budget Analyst provided transparency to certain financial actions proposed by the city's mayor.

City and County of San Francisco

The City and County of San Francisco's authorizing legislation for its Board of Supervisors

[30] www.sccgov.org/sites/scc/countygovernment/Documents/County_Budget_FY_2012_Final_Budget.pdf

[31] California Elections Code §§ 9100 *et seq:* Provides for a procedure by which citizens may submit an initiative petition containing a proposed ordinance to the Board of Supervisors and require that the Board either adopt the ordinance or submit it to the voters for adoption or rejection.

[32] *Facing The Challenge of Implementing Proposition F in San Diego* The Rand Corporation www.rand.org/content/dam/rand/pubs/monographs/2005/RAND_MG411.pdf

[33] www.sandiego.gov/iba/aboutus/index.shtml

Budget & Legislative Analyst, is perhaps the most definitive statement the Jury found, with respect to the specificity of duties and responsibilities and reflects the full implementation of the IBLA concept.[34]

"The Board of Supervisors Budget & Legislative Analyst provides independent fiscal & policy analyses, special studies and management audit reports on City departments and programs to the San Francisco Board of Supervisors.

The Budget and Legislative Analyst's responsibilities are defined as follows:

- "Review the City and County of San Francisco's proposed Annual Budget and report recommendations to the Board of Supervisors Finance and Labor Committee.
- Analyze and report on (1) all fiscal matters in legislation referred to the Board of Supervisors' Committees; and (2) when at least five days notice is given to the budget analyst, all fiscal matters in legislation considered by the full board without reference to committee.
- Conduct management audits of City and County departments as requested by formal motion of the Board of Supervisors.
- Perform special fiscal analyses as requested by formal motion of the Board.
- Review and analyze, as necessary to perform services requested by the Board of Supervisors, all records of the City and County.
- Attend each full Board meeting and each meeting of the Board's Finance Committee and such other Committee meetings as necessary.
- Perform all other duties as requested by a committee of the Board concerning legislation pending before it or as requested by formal motion of the Board of Supervisors."

Interestingly, although the Budget and Legislative Analyst's Office is a department of the City and County of San Francisco, it is a joint venture partnership which is managed by an individual who is not a city or county employee. This is allowed under the city's charter, on condition that the services are provided at a lower cost than if the work were performed by city employees.[35]

The Budget and Legislative Analyst's Fiscal Year 2010-2011 Annual Report contains the following information with respect to the financial benefits of its activities:

"In its annual review of the proposed Citywide budget, the Budget and Legislative Analyst's Office identified budget savings totaling more than $18.8 million for the Board of Supervisors Budget and Finance Committee for Fiscal Year 2011-12. Combined with additional budgetary adjustments, the Budget and Legislative Analyst's recommendations enabled the Board of Supervisors to return more than $20.5 million to various departments and programs, including public safety, health, and human services."[36]
A San Francisco supervisor had the following response to the Jury's inquiry regarding how the Budget and Legislative Analyst's reports do or do not influence the decision making

[34] See Appendix C

[35] www.sfbos.org/indx.aspx?page=3703

[36] www.sfbos.org/Modules/ShowDocument.aspx?documentid=40327

process:

"The Budget and Legislative Analyst's reports are the guide to the Board's budget hearings and weekly Budget and Finance Committee meetings. The reports contain recommendations for all key fiscal decisions. The Budget and Legislative Analyst's policy and analysis reports are used by Board members to guide the development of new legislation or amendment of existing legislation."

City of Berkeley

The City of Berkeley has an elected city council, an elected mayor, and an appointed city manager. As is the case in the County, the city manager is the principal administrative officer for the city and reports to the city council.[37] Although the city does not have a formal IBLA or independent legislative analysis services, the elected office of Auditor of the City of Berkeley provides the independent performance audit element of IBLA.

"The Auditor's Office provides independent oversight of City operations; its mission is to be a catalyst for improving City government. Our audits, conducted in accordance with Government Audit Standards, provide the City Manager, City Council, and the public with objective, timely, and accurate information about City program performance. By providing this information and making recommendations for improvement, we help to hold government accountable in its stewardship of public resources."[38]

The Berkeley City Auditor's Annual Report Fiscal Year 2011 contains the following statements.

"Our audit recommendations improve performance of City operations, save money, and promote transparency and accountability. Savings and increased efficiency are not always easy to measure. When a recommendation identifies an efficiency or risk reduction that we cannot fully quantify, we try to provide an example that conservatively estimates the loss avoidance, potential savings, or revenue recovery...."

"Taking action on our audits reduces financial risk, regulatory risk, operational risk, and risk to the City's good reputation. Fraud experts estimate that a typical organization loses 5 percent of its annual revenues to fraud. If applied to Berkeley's 2011 budget of $319 million, the amount lost to fraud would be nearly $16 million."[39]
A savings of almost $16 million represents a significant return on the City's investment in a performance audit.

[37] www.cityofberkeley.info/auditor/

[38] www.cityofberkeley.info/auditor/

[39] www.ci.berkeley.ca.us/uploadedFiles/Clerk/Level_3_-_City_Council/2011/12Dec/2011-12-13 Item_29_City_Auditors_Annual_Report.pdf

City of Los Angeles

The City of Los Angeles has an elected city controller. The responsibilities of the Controller's Auditing Division, to the extent applicable here, are described as follows:

"Audits are conducted to determine if existing controls are adequate, departments operate efficiently and effectively, and to ensure that revenues and expenditures are properly recorded in conformance with applicable laws and regulations. Auditors recommend improvements that promote efficiency and effectiveness of City operations and to save taxpayer dollars."

Performance Audits - Performance and operational audits of City departments and programs are mandated by the City Charter, and assess whether government programs or functions are efficiently and effectively achieving their goals."

Special Analysis and Reviews - Includes other reviews and analysis, such as tracking the implementation status of audit recommendations as asserted by Management, Follow-Up audits to independently ensure implementation status, and other special assignments as directed. On an as-needed basis, the Division also performs information systems audits such as general control reviews, application reviews, and post-implementation systems reviews to ensure system functionality and data integrity."[40]

City of Oakland

The City of Oakland has an elected mayor, elected city council, an elected city auditor and a city manager. Oakland has a "strong mayor' arrangement, in which the mayor is the chief executive of the city. The city manager operates under the direction of the mayor and the city council acts only as the legislative branch of government. The city auditor provides comprehensive management oversight and publishes many reports evaluating the City's activities, but does not appear to evaluate department level efficiency except with respect to specific matters. The city auditor's website provides the following general information:[41]

"**Our Mission**: The Office of the City Auditor's mission is to serve as a model performance-auditing organization that delivers in-depth, unbiased and meaningful results to the citizens of Oakland. We do this by identifying and auditing the areas of government most vulnerable to fraud, waste, abuse and mismanagement."

"**Our Vision**: We are devoted to helping the City ensure accountability and integrity, improving operations and instilling confidence in Oakland's citizens and stakeholders. We are committed to shining a light on significant issues throughout the City by providing independent, impartial assessments of how public resources are managed. We are dedicated to working with the City's administration to address these issues and to operate our government more responsibly, ethically, effectively and efficiently in the best interests of the

[40] www.controller.lacity.org/What_is_the_Office_of_the_Controller/index.htm

[41] www.oaklandauditor.com

public."[42]

The city auditor also provides performance audits for the city as well as an annual report card.

"**Performance Audits:** Performance audits address whether the City is effectively and efficiently spending taxpayer dollars, complying with relevant rules and regulations, and whether programs are getting the results that were promised."[43]

The 2011 Annual Report card contains the following interesting information:

"In 2011, the Office of the City Auditor continued to demonstrate its clear fiscal value to Oakland residents. For every $1 spent on our operations, the City Auditor's Office identified $10 in future savings, lost revenue or waste.

For example, the Fox Theater Renovation Project Performance audit identified more than $14 million in excessive cost growth, payments exceeding contract values and overpayments. And despite the original audit recommendation to spend excess funds or return the unused dollars back to the taxpayers, the Measure N Performance audit found the Administration continued to grow the fund balance by an additional $700,000.

In addition to future savings, lost revenue or waste, the City Auditor's Office also identified more than $2 million in inaccurately recorded or reported funds."[44]

City of Novato

On February 22, 2012, the Novato City Council adopted an ordinance establishing the Measure F Oversight/Citizens Finance Committee. The ordinance provides, in part:

"The Committee shall have the following responsibilities related to its role as the Citizens Finance Committee:

1. Review existing fiscal policies and/or recommend new fiscal policies to the City Council, including guidelines for the use of fund balances, surpluses and other reserves.
2. Review budget assumptions and budget process.
3. Review the City's financial status quarterly.
4. Collaborate with City staff to determine long-term financial needs and obligations.
5. Collaborate with City staff to review all reasonable strategies which either enhance revenues or decrease expenditures as methods for reducing and ultimately eliminating the structural deficit and achieving fiscal sustainability.
6. Collaborate with staff on strategies to encourage public information and communication regarding the City's financial situation and options for improving the City's financial

[42] www.oaklandauditor.com/audits/reports

[43] www.oaklandauditor.com/audits/reports

[44] www.oaklandauditor.com/images/oakland/auditreports/2011annualreportcard.pdf

health."[45]

Reports of the activities of this committee do not appear to be readily available. Anecdotal information suggests that the city council has not taken full advantage of the committee's recommendations.

IBLA AND THE COUNTY OF MARIN

Recognizing that hindsight is, at best, looking through a glass darkly, the Jury has nevertheless attempted to evaluate the probable results had IBLA been implemented when certain key decisions were made by the BOS. The Jury has chosen two issues that have significant current and long term negative financial impacts, one that is likely to have significant negative long term financial impact, and several which represent perhaps as yet unacknowledged problems.

Pensions

Much has been written concerning the County's pension problems and the Jury has no interest in simply felling more trees. The pension problem arises in part from the BOS's decision in 1977 to change the County's pension structure and the BOS's subsequent decisions with respect to the contracts between the County and its employees. Unfortunately, what might have simply been a potential problem became existential when the stock market collapsed and the value of the fund upon which the County relies to meet its pension obligations followed suit. The County's current unfunded pension liability is reportedly between $700 million and $2 billion, depending on the actuarial and investment return assumptions used.[46] In addition, the County has a current unfunded retiree health care liability of $382.7 million.[47]

The County's response, since it is unable to reduce or eliminate its contractual obligations to current pensioners and vested employees, has been to (i) reduce its future obligations to its current employees through contract negotiations and (ii) to reduce other costs wherever it can. Unfortunately, to a large extent, the success of this effort will depend on significant improvement in the overall economy, something over which the BOS has no control.

Not knowing the quality of the analysis that went into the BOS's decisions at each crucial point, it is difficult to say, although many have, that wrong decisions were made. However, there is every reason to believe that had an independent and transparent process of careful evaluation then been in place, different and perhaps better decisions might have been made. At the very least, the citizens, would have a better understanding of how the problem arose and perhaps a greater willingness to accept the consequences. Certainly, finding possible ways to mitigate such an enormous problem calls for the application of IBLA now.

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[45] www.cityofnovato.org/index.aspx?page=1561 ref to measure F

[46] www.menafn.com/qn_news_story.asp?StoryId={922aaee0-9d71-4935-9ee4-1499f03c1e7d}&src=MWHEAD

[47] CA's April 16, 2012 to the BOS with respect to *FY 2012-13 Proposed Budget Hearings*.

Deloitte & SAP ERP (Enterprise Resource Planning)

In 2004, the County decided to replace its then-existing financial management systems with an integrated software based system. The County issued a Request for Proposal and after reviewing various responses, eventually entered into contracts with SAP, a software provider, for its SAP ERP program and with Deloitte Consulting LLP for implementation services.

The anticipated results were not achieved and the County is currently pursuing litigation with damage claims against Deloitte and SAP of not less than $35 million. Excluding the cost of the litigation, which is approaching $4 million, the County's out of pocket expense with respect to the failed computer project is about $13 million and counting. The matter remains unresolved and SAP ERP remains in use. The County has also started the expensive process of replacing the SAP ERP system, which the Jury has been advised is likely to involve an expenditure of another $6 to $15 million. A worst case scenario, in which the County gains nothing from the litigation and must foot the entire bill for the replacement system, would mean an aggregate expenditure of between $23 to $32 million.

Based on information provided to it by the CA, the BOS agreed to the initial and all subsequent contracts with Deloitte and SAP. That is consistent with long-standing County procedures. The question anyone asks when committing to a purchase - for a few dollars or millions of dollars - is simple. How do I satisfy myself that I am making the right decision? Obviously, if you are not certain, you get help. And the more costly and/or complex the purchase, the more qualified that help has to be. Unfortunately, the pending litigation precludes the Jury from investigating or commenting on the nature of the help the CA obtained with respect to the SAP ERP system, the qualifications of those providing such help, or how the BOS arrived at its decisions. Certain information, however, is public record.

The County's Information Services and Technology Department("IST") is responsible for "assisting county departments in achieving their stated business goals by effectively deploying information management services and providing proven and reliable technologies..." IST would therefore be primarily responsible for implementing the replacement for the SAP ERP system but was not involved in its original selection or implementation. Unfortunately, in its *Five Year Department Vision Plan* IST pointed out the following weaknesses:

1. "Insufficient staff support for managing third party programs; document management and disaster recovery
2. Lack of business analysis and design skills and capacity
3. Uneven internal software development process maturity
4. Lack of a single location for IST staff
5. No mechanism to review and plan new projects before commitment
6. No cost of service data due
7. Inadequate staff to support Service Level Agreements/Operation Level Agreement (SLA/OLA)"[48]

[48] Materials provided to the BOS with respect to the April FY 2012-13 Budget Hearings.

IST's admitted weaknesses indicate that it recognizes its limitations and needs help; perhaps desperately. If these weaknesses existed in 2005, the level of expertise required for the SAP ERP replacement would not have been "just a phone call away." What, if anything, is the County doing to acquire that assistance? The Jury was told, "Nothing at this time". If anything has been learned from the SAP ERP debacle, one would expect that the County would be looking for a better way to solve this problem than simply relying on its existing internal resources.

Based on information posted on the web by various companies that provide IBLA services to governments, it is clear that if they do not have some required level of expertise, they partner with someone who does. That is what anyone might do. It is unknown how the CA dealt with this issue in 2005 when contracts were being negotiated and executed, but had IBLA then been in effect, there would have been an established process for addressing this.

While the implementation of the IBLA process may not have avoided the Deloitte/SAP problem, the analytical approach of IBLA could have provided the BOS with a clearer understanding of the magnitude and complexity of the undertaking to which they were agreeing. Although possessing even the best information is no guarantee against making a bad decision, it is beyond question that a better approach involving IBLA should be used now, to avoid history repeating itself.

Unintended Consequences?

In 2008, in the spirit of reducing costs and increasing efficiency, the BOS recommended and the voters approved, the consolidation of the then elected Auditor-Controller and Treasurer-Tax Collector offices and their replacement with an appointed Director of Finance. This change left the County with ten elected officials: the five members of the BOS, the Assessor-Recorder, County Clerk, District Attorney, Superintendent of Schools and the Sheriff-Coroner. Each of the last five officials has discrete responsibilities and skill sets. They are in the County's governmental structure, but not part of the County administration. Review of the County's organization chart clearly reflects this reality.[49]

Who then within the County has the responsibility and authority that the auditors in the cities of Berkeley and Oakland, the controller in Los Angeles, or the IBLAs in San Francisco, San Diego or Santa Clara County exercise? To whom would the BOS turn to undertake those activities? Any such activity undertaken by the CA or the County's employees would, by the definitions described below, not be independent and would pose various "threats" to independence.[50] Although the former Auditor-Controller historically only dealt with financial audits, this was an elected position that conceivably could have been given additional responsibilities. That, of course, is no longer an option.

[49] www.co.marin.ca.us/nav/OrgIndex.cfm

[50] See Appendix D, §3.13. § 3.14 identifies and describes a number of "threats." As an example, a Structural threat is "the threat that an audit organization's placement within a government entity, in combination with the structure of the government entity being audited, will impact the audit organization's ability to perform work and report results objectively."

The U.S. Government Accountability Office has established the fundamental rules for government audits: the Government Audit Standards, typically referred to as "GAGAS." Those standards are applicable to financial audits as well as performance audits.[51] GAGAS Section 3.02 provides that "in all matters relating to the audit work, the audit organization and the individual auditor, whether government or public, must be independent."[52] By this definition, no person reporting to the BOS, directly or through the CA, would be considered independent. The BOS would therefore have to turn to some third party individual or group to provide both the independence and qualifications for a valid performance audit.

The County's Long-Term Restructuring Plan

The County has 30 departments and approximately 2,000 employees. Under the County's Long Term Restructuring Plan ("LTR")[53], some departments' activities have been consolidated, departmental funding has been reduced in many cases and vacated positions have not been filled. This is all in aid of reducing the County's significant financial shortfall, aggravated by the current economic conditions but also by previous decisions by the BOS and CA regarding pensions and SAP ERP.

The LTR contains ten Guiding Principles which are "intended to guide decision-making and strategies in addressing key issues and policy options", presumably, in the order given. The principles are:

1. "Make budget adjustments consistent with vision of sustainability while continuing to ensure safe and healthy communities
2. Identify ongoing savings to reduce long-term costs
3. Explore opportunities for additional revenues to offset or augment program costs
4. Focus on priorities and make service tradeoffs based on community and organizational needs
5. Use results to inform decisions and continue providing high quality of service
6. Promote creative and innovative solutions
7. Provide fair and consistent process
8. Develop mix of options and solutions at countywide, service area and departmental levels
9. Engage the public and employees to share information and involve them in finding solutions
10. Provide supportive work environment for employees to adapt to continuously changing conditions."[54]

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[51] Government Auditing Standards 2011. In practice, the terms performance audit and management audit are used interchangeably. The Jury has elected to use performance audit, since that seems to more accurately describe the processes involved.

[52] See Appendix C for relevant text. Although by state law, the County must have an annual financial audit, there is no such requirement with respect to a performance audit.

[53] *County of Marin Long-Term Restructuring Plan: A Blueprint for Financial Sustainability* January 12, 2010

[54] *County of Marin Long-Term Restructuring Plan: A Blueprint for Financial Sustainability* January 12, 2010

By not placing the ninth principle first, the CA and the BOS have missed a significant opportunity to align County government's activities with the needs and expectations of its citizens. The ninth and the fourth principles should be the most important for any government. By placing them in the order chosen, it appears that the restructuring plan is primarily intended to result in *business as usual, but with less money*. The LTR plan may be the best that can be done under the circumstances, but then again, what alternatives were considered and how can the BOS satisfy itself that it has chosen the best and not simply an expedient solution? Again, this is an instance in which the application of IBLA would have greatly assisted the BOS in establishing its priorities for the County.

Grady Ranch

As reported in the past month's press, Lucasfilm Ltd. had worked for over a decade to convert the Grady Ranch property on Lucas Valley Road into a state-of-the-art film production studio. This April, Lucasfilm announced its intention to discontinue the project and has subsequently announced that it is working with a local community group to develop the site for low-income housing. Various reasons have been presented for the demise of the studio project. The County's project approval process has been identified as a significant contributing factor. Whatever the reasons, the project's abandonment means the potential loss of an estimated 690 construction jobs and more than 270 permanent jobs in Marin County.

Without attempting to examine the intricate interplay of forces that resulted in the loss of this project, the question that arises is: How could our governmental procedures so provoke a socially conscious and environmentally friendly local citizen that he felt that, after more than a decade of effort, he had no alternative but to abandon a project that would have brought hundreds of jobs and millions in tax revenue to the County?

Only time, perhaps, will provide an answer to this question. Recently however, several supervisors publicly addressed this issue and promised to review the applicable County project review procedures. If the supervisors simply intend an administrative review of the procedures, then the CA will be directed to undertake it. How effective is an internal review likely to be? Perhaps as effective as rearranging the deck chairs on the Titanic would have been in avoiding the iceberg. Then and now, that would clearly not result in a new direction. If, on the other hand the supervisors' intention is to address Marin County's underlying slow growth/no growth philosophical basis for the existing processes, in the interest of making fundamental changes, to whom would it turn?

This is not a management issue, so it is clearly outside of the CA's scope of responsibility. The BOS itself, which has the responsibility, does not have the staff to address this issue. This is an issue that requires significant thought, research, analysis, and exchange of ideas. State law, perhaps intentionally, perhaps inadvertently, presents significant impediments to the BOS undertaking these actions itself.[55] Even if the supervisors had the time and background to undertake such a comprehensive analysis, their actions are circumscribed by law. Under the Brown Act, no more than two supervisors can privately meet to discuss an

[55] California Government Code § 54950 *et. seq.* -Ralph M. Brown Act.

issue and neither of those supervisors can then discuss that same issue privately with any other supervisor. How then can the individual members of the BOS exchange information and share ideas? Their only choice is through a duly noticed public meeting. Experience would indicate that formal public meetings are not often the source of great creativity and exchange of ideas.

Even assuming the public meeting approach is chosen, there needs to be a preliminary step. Someone must perform a comprehensive analysis of current procedures; a performance audit, prepare a report and perhaps make preliminary recommendations for change. According to GAGAS, performance audits "are defined as audits that provide findings or conclusions based on an evaluation of sufficient, appropriate evidence against criteria. Performance audits provide objective analysis to assist management and those charged with governance and oversight in using the information to improve program performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability."[56]

The question remains: who would undertake this activity? Although on occasion the CA has retained consultants to consider specific issues, the Jury is not aware of any previously undertaken performance audit that would meet the GAGAS standards, especially the need to be independent. This therefore is another instance in which the application of IBLA principles would be of significant benefit to the County. There is also the concern that absent the objective information that would be provided by a comprehensive performance audit, the BOS could reactively take actions that may ultimately be viewed as draconian or simply be wrong.

We Live in Interesting Times

County government anticipates that within a four to five year period, 25% of the County's existing workforce will have retired. This unusual event is fraught with both difficulties and opportunities. The loss of experienced individuals and significant County institutional knowledge and history poses significant risks if not properly addressed. It will, however, permit younger and perhaps more energized individuals to move up and take charge. More importantly, it will present the County with a once-in-a-generation opportunity to reinvent itself, to restructure and reorganize to better meet the challenges and demands of the second quarter of the 21st Century. The application of IBLA and in particular its performance audit element would be of significant assistance to the citizens and the BOS, as they collectively chart the progress of the County through what will undoubtedly be even more interesting times.

CONCLUSION

The government of the County of Marin is not a transitory agency. It was established to provide the services its citizens need and want for so long as the County shall exist. The individuals currently serving as members of the BOS, the current CA and all of the County's employees will serve their time, and one by one be replaced. Over the years, their

[56] See Appendix D, GAGAS § 2.10

replacements may be effective or ineffective, honest or dishonest, capable or incompetent individuals. It is important therefore, that the BOS establish and maintain a culture of analytical evaluation of all of its activities that will ingrain itself into the fabric of County government. In this manner, no matter who may be temporarily in charge, the citizens' expectation of good government will be met.

The analytical evaluation process, however characterized, must come from an independent sources, untainted by any of the GAGAS threats identified above and in Appendix D, §36.13.

FINDINGS

The Marin County Civil Grand Jury finds:

F1: There is no independent fiscal oversight entity in the County of Marin.

F2: The Board of Supervisors is reliant on information and data provided by the County Administrator, a department head, or obtained anecdotally. In those rare instances in which a qualified third party has provided information and data to the Board of Supervisors, the third party has been contracted for by the County Administrator.

F3: As demonstrated by the examples provided, Independent Budget and Legislative Analysis has proven to be an efficient and cost effective tool in its legislative, budgetary and post-budget performance audit applications.

F4: There are significant benefits to the implementation of IBLA to the Board of Supervisors, County government and the citizens of the County. It would:

- Create opportunities for collective reflection and deliberation among citizens, civil society organizations, legislators and others so as to enhance their collective influences on budget processes and decisions;
- Foster greater public understanding of budget issues and serve to open new and productive channels of communication between the Board of Supervisors and the various stakeholders within the County;
- Challenge the Board of Supervisors to justify its budgetary decisions, thus contributing to increased transparency and accountability;
- Serve to enhance trust and understanding between citizens and their public institutions; and
- Assure that the County's administrative functions are provided in the most effective and efficient manner.

RECOMMENDATIONS

The Marin County Civil Grand Jury recommends:

R1: That the Board of Supervisors promptly establish an office of Independent Budget and Legislative Analysis, to assist it in:

- Analyzing the County's annual budget presentations;
- Evaluating the long and short term fiscal impacts of all legislation and legislative actions proposed to be enacted or taken by it;

- Evaluating and developing programs to address the County's fiscal challenges; and
- Evaluating the performance of the County's operations.

R2: That the citizens of the County give serious consideration to the use of the State of California's initiative process to establish an office of Independent Budget and Legislative Analysis, if the Board of Supervisors does not promptly take action to do so.

REQUEST FOR RESPONSES

Pursuant to Penal Code section 933.05, the Civil Grand Jury requests responses from the following individuals:

- Mathew H. Hymel, County Administrator: All findings and recommendations
- Richard N. Benson, Assessor-Recorder-County: All findings and recommendations
- Jack Govi, Acting County Counsel: All findings and recommendations
- Sheriff Robert T. Doyle: All findings and recommendations

From the following governing body:

- The Board of Supervisors of the County of Marin: All findings and recommendations

The governing body or bodies indicated above should be aware that the comment or response of the governing body must be conducted in accordance with Penal Code Section 933 (c) and subject to the notice, agenda and open meeting requirements of the Ralph M. Brown Act.

California Penal Code Section 933 (c) states that "...the governing body of the public agency shall comment to the presiding judge on the findings and recommendations pertaining to matters under the control of the governing body." Further, the Ralph M. Brown Act requires that any action of a public entity governing board occur only at a noticed and agendized public meeting.

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 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 Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code Section 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Civil Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury.

APPENDIX A

SANTA CLARA COUNTY
FINANCE AND GOVERNMENT OPERATIONS COMMITTEE
PROCEDURES ON BOARD'S MANAGEMENT AUDITOR

A. PURPOSE

These procedures set forth the Finance and Government Operations Committee (FGOC) responsibility to oversee, monitor and review the Board's Management Audit function. They also elaborate on the duties and responsibilities designated in the Board's Management Auditor Policy. The topics covered are:

1. Management Auditor Duties
2. Annual Audit Work Plan Approval
3. Annual Audit Work Plan Status Reports
4. Timelines for Exit Conferences, Agency Responses, Final Reports
5. Special Projects
6. Media Inquiries
7. Implementation Monitoring
8. Status of Referrals and Implementation Monitoring Schedule
9. Annual Auditor Performance Evaluation
10. External Quality Review
11. Whistle Blower

B. MANAGEMENT AUDITOR DUTIES

The Board's Auditor Policy lists seven duties assigned to the Management Auditor; this section describes them in greater detail. The first three descriptions are consistent with definitions found in the General Accounting Office's (GAO) Governmental Accounting Standards.

1. PERFORMANCE AUDITS - ECONOMY AND EFFICIENCY

These audits include determining: (a) whether the entity is acquiring, protecting, and using its resources, such as personnel, property, and space, in an economical and efficient manner; (b) the cause of inefficiencies or non-economic practices and/or procedures; and (c) whether the entity has complied with laws and regulations on matters of economy and efficiency.

2. PERFORMANCE AUDITS - PROGRAM PERFORMANCE

These audits include determining: (a) the extent to which desired results or benefits established by the legislature or other authorizing body are being achieved; (b) the efficiency and effectiveness of organizations, programs, activities, or functions; and (c) whether the entity has complied with significant laws and regulations applicable to the program.

3. MANAGEMENT AND TECHNICAL AUDITS

These audits include determining whether: (a) explicit plans are developed to achieve clearly defined results; (b) an appropriate structure of management authority and responsibility exists; (c) management has clearly communicated its expectations to these responsible for operations; (d) operations are regularly monitored and evaluated: (e) management controls and procedures are appropriate documented; and (f) technical methods are being used appropriately for the operations performed.

4. BUDGET ANALYSIS

The Management Auditor will conduct analyses of the annual recommended budget from the County Executive, and present the analysis and recommendations that are reported to the Board prior to the budget hearings.

5. ANCILLARY AUDIT SERVICES

These services include, but are not limited to: (a) independent review of county legislation with a fiscal impact that is presented to the Board for action; (b) independent staff analysis for committees of the Board, including independent budget analysis or certification of revenue and expenditure forecasts made by the County Executive or other elected officials; (c) risk assessments as approved by the Board or the Board's Finance and Government Operations Committee for specific functions, projections, programs, or the County as a whole; (d) monitoring and follow-up reporting of outstanding audit recommendations; and (e) any other assignments that the Board deems appropriate.

6. SPECIAL STUDIES OR PROJECTS

The Board may have other information needs that arise rapidly and call for intense activity over a relatively short period of time. Assignments may involve a brief review, development of information, or a detailed study.

7. WHISTLE BLOWER SUPPORT

Conduct an analysis and investigation of all complaints that are forwarded to the Management Audit Division.

APPENDIX B

CITY OF SAN DIEGO
REPORT NO. 12-11 "REVIEW OF FY 2012 MID-YEAR BUDGET MONITORING REPORT

The Chief Financial Officer issued the FY 2012 Mid-Year Budget monitoring Report on February 23, 2012. This report describes the current status of revenues and expenditures and their year-end projections, based on actual (unaudited) data from July through December 2011. The IBA's review of this report highlights major issues, discusses options for the City Council and makes recommendations for the Budget & Finance Commit-tee (B&FC) to consider, all pertaining to the Mid-Year Report's projection of a year-end $16.5M surplus. Re-port #12-11 also includes an Appendix I outlining 25 FY 2012 budget solutions and their current status.

For FY 2012, the Mayor has proposed to utilize $5.0M of the projected surplus to restore services in Library and Park and Recreation, add 15 cadets to the April Police Academy, and undertake a one-time expenditure to fully fund the fire alert system and create a CIP emergency fund. He also proposed that $3.2M be re-budgeted in FY 2013 for projects originally budgeted in FY 2012, and the remainder of the forecasted surplus will be unbudgeted to allow for fluctuations in revenues or expenditures.

Based on the Mayor's recommendations for the surplus, the recently passed Ordinance-20084 language (explained in more detail in the IBA's report) and the IBA analysis of the Mid-Year Report, the IBA recommends the B&FC consider the following actions:

1. Support the Mayor's proposed re-budget of $3.2M to FY 2013
2. Approve the Mayor's recommendations for utilizing $5.0M of projected surplus
3. Request the Mayor commit the remaining $8.3M surplus to increasing cash funding of deferred capital projects in the Mayor's FY 2013 Preliminary Budget

The Mid-Year Report and the IBA's review of the report were both presented to the B&FC on February 29, 2012. The Committee requested that these two reports be moved forward to Council on March 12, 2012 with support for the IBA's recommendations.

APPENDIX C

CITY OF SAN FRANCISCO
SEC. 2.6-3. LEGISLATION - FISCAL IMPACT

Whenever any ordinance or resolution is introduced, the Clerk of the Board of Supervisors shall refer the ordinance or resolution to the Budget Analyst of the Board of Supervisors to review and to determine and inform the Board of Supervisors whether the legislation would have a fiscal impact. This Section shall not apply to the following types of legislation: Ballot measures and ballot arguments; Charter amendments; employee memoranda of understanding; salary standardization ordinances; interim zoning controls; landmark issues; land use issues; litigation settlements. The Budget Analyst, within three days of the receipt of the introduced legislation, shall determine whether the legislation would have fiscal impact, and shall notify the Clerk of the Board if the legislation has a fiscal impact. The Clerk shall identify in the Board's file, and on all Board and committee calendars, which items have fiscal impact, as determined by this Section.

"Fiscal impact" is defined for the purposes of this Section to be an expenditure or commitment of City funds in any fiscal year in excess of $200,000, or a total expenditure or commitment of City funds in excess of $1,000,000 over a five-year period.

For the purposes of this Section, "fiscal impact" shall include, but not be limited to, any of the following which result in a fiscal impact in excess of $200,000 in any fiscal year or in excess of $1,000,000 over a five-year period.

1. Appropriation of funds or release of reserved funds;
2. Increased or substantial expenditure of funds by: (a) imposing new responsibilities on the City or (b) imposing new or additional duties on a City department, agency, board, person or business having a contract with the City, or commission or (c) expanding any City program, function or responsibility;
3. Substantial loss of revenue to the City's General Fund or any special fund created by ordinance or Charter;
4. Substantial reduction of expenditures of City money by reducing, transferring, or eliminating any existing services or functions of any City department.

The sponsor or sponsors of legislation having a fiscal impact as determined under the provisions of this Section shall make every effort to identify the funding source for the proposed legislation.

When legislation has been assigned to a nonfiscal committee of the Board and it has been determined that the legislation has a fiscal impact as defined in this Section, and the nonfiscal committee wishes the legislation to be further considered by the Board of Supervisors, then the nonfiscal committee shall refer, and the Clerk of the Board shall schedule, the legislation for review and consideration by the fiscal committee of the Board of Supervisors, which shall then consider and act upon the legislation consistent with the rules and regulations governing the consideration and processing of legislation by the Board and its committees.

The Budget Analyst's analysis and report on the cost of the legislation will be submitted to the Board of Supervisors prior to the legislation being heard by the fiscal committee.

Legislation which has been initially determined not to have a fiscal impact and which is substantively amended in a committee other than the fiscal committee shall be referred to the Budget Analyst to determine whether the amendments result in the legislation having a fiscal impact. Amended legislation determined to have a fiscal impact shall be referred to, and scheduled by the Clerk of the Board before, the fiscal committee of the Board of Supervisors.

Legislation prepared in and reported out to the Board by a nonfiscal committee shall be governed by this Section. Such prepared in and reported out legislation shall be reviewed by the Budget Analyst to determine whether the legislation has a fiscal impact, and if so, such legislation shall be referred to, and the Clerk of the Board shall schedule before, the fiscal committee of the Board, consistent with the provisions of this Section.

When the Budget Analyst determines that legislation would have a fiscal impact as defined in this Section, then the legislation shall not be calendared by the Clerk of the Board of Supervisors for consideration by the full Board of Supervisors until after the legislation has been forwarded to the full Board by all Committees of the Board asked, or required, to review the legislation.

Whenever required by this ordinance to schedule legislation for review and consideration by the fiscal committee, the Clerk shall schedule the legislation for said hearing not more than 30 days after the nonfiscal committee has determined that the legislation is to be further considered by the Board.

If the fiscal committee fails to conduct a hearing on the legislation within 30 days after the nonfiscal committee has determined that the legislation is to be further considered by the Board, the Clerk shall place the legislation on the calendar of the Board for the next regularly scheduled meeting of the Board subsequent to the expiration of the 30-day period.

(Added by Ord. 272-91, App. 7/2/91; amended by Ord. 243-97, App. 6/13/97)

APPENDIX D

GOVERNMENT AUDITING STANDARDS – GAGAS

(excerpts - internal footnotes deleted)

Performance audits

2.10 Performance audits are defined as audits that provide findings or conclusions based on an evaluation of sufficient, appropriate evidence against criteria. Performance audits provide objective analysis to assist management and those charged with governance and oversight in using the information to improve program performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability. The term "program" is used in GAGAS to include government entities, organizations, programs, activities, and functions.

2.11 Performance audit objectives vary widely and include assessments of program effectiveness, economy, and efficiency; internal control; compliance; and prospective analyses. These overall objectives are not mutually exclusive. Thus, a performance audit may have more than one overall objective. For example, a performance audit with an objective of determining or evaluating program effectiveness may also involve an additional objective of evaluating internal controls to determine the reasons for a program's lack of effectiveness or how effectiveness can be improved. Examples of the various types of the performance audit objectives discussed below are included in [*reference deleted*].

a. Program effectiveness and results audit objectives are frequently interrelated with economy and efficiency objectives. Audit objectives that focus on program effectiveness and results typically measure the extent to which a program is achieving its goals and objectives. Audit objectives that focus on economy and efficiency address the costs and resources used to achieve program results.

b. Internal control audit objectives relate to an assessment of one or more components of an organization's system of internal control that is designed to provide reasonable assurance of achieving effective and efficient operations, reliable financial and performance reporting, or compliance with applicable laws and regulations. Internal control objectives also may be relevant when determining the cause of unsatisfactory program performance. Internal control comprises the plans, policies, methods, and procedures used to meet the organization's mission, goals, and objectives. Internal control includes the processes and procedures for planning, organizing, directing, and controlling program operations, and management's system for measuring, reporting, and monitoring program performance.

c. Compliance audit objectives relate to an assessment of compliance with criteria established by provisions of laws, regulations, contracts, or grant agreements, or other requirements that could affect the acquisition, protection, use, and disposition of the entity's resources and the quantity, quality, timeliness, and cost of services the entity produces and delivers. Compliance requirements can be either financial or nonfinancial.

d. Prospective analysis audit objectives provide analysis or conclusions about information that is based on assumptions about events that may occur in the future, along with possible actions that the entity may take in response to the future events.

Nonaudit Services Provided by Audit Organizations

2.12 GAGAS does not cover nonaudit services, which are defined as professional services other than audits or attestation engagements. Therefore, auditors do not report that the nonaudit services were conducted in accordance with GAG-AS. When performing nonaudit services for an entity for which the audit organization performs a GAG-AS audit, audit organizations should communicate with requestors and those charged with governance to clarify that the work performed does not constitute an audit conducted in accordance with GAG-AS.

2.13 When audit organizations provide nonaudit services to entities for which they also provide GAGAS audits, they should assess the impact that providing those non audit services may have on auditor and audit organization independence and respond to any identified threats to independence in accordance with the GAGAS independence standard.

Use of Terminology to Define GAGAS Requirements

2.14 GAGAS contains requirements together with related guidance in the form of application and other explanatory material. The terminology is consistent with the terminology defined in the AICPA's *Codification of Statements on Auditing Standards* Auditors have a responsibility to consider the entire text of GAGAS in carrying out their work and in understanding and applying the requirements in GAGAS. Not every paragraph of GAGAS carries a requirement that auditors and audit organizations are expected to fulfill. Rather, the requirements are identified through use of specific language.

2.15 GAGAS uses two categories of requirements, identified by specific terms, to describe the degree of responsibility they impose on auditors and audit organizations, as follows:

a. Unconditional requirements: Auditors and audit organizations must comply with an unconditional requirement in all cases where such requirement is relevant. GAGAS uses the word *must to* indicate an unconditional requirement.

b. Presumptively mandatory requirements: Auditors and audit organizations must comply with a presumptively mandatory requirement in all cases where such a requirement is relevant except in rare circumstances discussed in paragraph 2.16. GAGAS uses the word *should to* indicate a presumptively mandatory requirement.

2.16 In rare circumstances, auditors and audit organizations may determine it necessary to depart from a relevant presumptively mandatory requirement. In such rare circumstances, auditors should perform alternative procedures to achieve the intent of that requirement. The need for the auditors to depart from a relevant presumptively mandatory requirement is expected to arise only when the requirement is for a specific procedure to be performed and, in the specific circumstances of the audit, that procedure would be ineffective in achieving the intent of the requirement. If, in rare circumstances, auditors judge it necessary to depart from a relevant presumptively mandatory requirement, they must document their justification for the departure and how the alternative procedures performed in the circumstances were sufficient to achieve the intent of that requirement.

2.17 In addition to requirements as identified in paragraph 2.15, GAGAS contains related guidance in the form of application and other explanatory material. The application and other explanatory material provides further explanation of the requirements and guidance for carrying them out. In particular, it may explain more precisely what a requirement means or is intended to cover or include examples of procedures that may be appropriate in the circumstances. Although such guidance does not in itself impose a requirement, it is relevant to the proper application of the requirements. Auditors should have an understanding of the application and other explanatory material; how auditors apply the guidance in the audit depends on the exercise of professional judgment in the circumstances consistent with the objective of the requirement. The words "may," "might," and "could" are used to describe these actions and procedures. The application and other explanatory material may also provide background information on matters addressed in GAGAS.

Chapter 3 General Standards

Introduction

3.01 This chapter establishes general standards and provides guidance for performing financial audits, attestation engagements, and performance audits under generally accepted government auditing standards (GALAS). These general standards, along with the overarching ethical principles presented in chapter 1, establish a foundation for the credibility of auditors' work. These general standards emphasize the importance of the independence of the audit organization and its individual auditors; the exercise of professional judgment in the performance of work and the preparation of related reports; the competence of staff; and quality control and assurance.

Independence

3.02 In all matters relating to the audit work, the audit organization and the individual auditor, whether government or public, must be independent.

3.03 Independence comprises:

a. Independence of Mind

The state of mind that permits the performance of an audit without being affected by influences that compromise professional judgment, thereby allowing an individual to act with integrity and exercise objectivity and professional skepticism_

b. Independence in Appearance

The absence of circumstances that would cause a reasonable and informed third party, having knowledge of the relevant information, to reasonably conclude that the integrity, objectivity, or professional skepticism of an audit organization or member of the audit team had been compromised.

3.04 Auditors and audit organizations maintain independence so that their opinions, findings, conclusions, judgments, and recommendations will be impartial and viewed as impartial by reasonable and informed third parties. Auditors should avoid situations that could lead

reasonable and informed third parties to conclude that the auditors are not independent and thus are not capable of exercising objective and impartial judgment on all issues associated with conducting the audit and reporting on the work.

3.05 Except under the limited circumstances discussed in paragraphs 3.47 and 3.48, auditors should be independent from an audited entity during: any period of time that falls within the period covered by the financial statements or subject matter of the audit, and the period of the professional engagement, which begins when the auditors either sign an initial engagement letter or other agreement to perform an audit or begins to perform an audit whichever is earlier_ The period lasts for the entire duration of the professional relationship (which, for recurring audits, could cover many periods) and ends with the formal or informal notification, either by the auditors or the audited entity, of the termination of the professional relationship or by the issuance of a report, whichever is later. Accordingly, the period of professional engagement does not necessarily end with the issuance of a report and recommence with the beginning of the following year's audit or a subsequent audit with a similar objective.

3.06 GAGAS' practical consideration of independence consists of four interrelated sections, providing:

a. Conceptual framework for making independence determinations based on facts and circumstances that are often unique to specific environments;

b. Requirements for and guidance on independence for audit organizations that are structurally located within the entities they audit;

c. Requirements for and guidance on independence for auditors performing nonaudit services, including indication of specific nonaudit services that always impair_independence and others that would not normally impair independence; and

d. Requirements for and guidance on documentation necessary to support adequate consideration of auditor independence.

GAGAS Conceptual Framework Approach to Independence

3.07 Many different circumstances, or combinations of circumstances, are relevant in evaluating threats to independence. Therefore, GALAS establishes a conceptual framework that auditors use to identify, evaluate, and apply safeguards to address threats to independence. The conceptual framework assists auditors in maintaining both independence of mind and independence in appearance. It can be applied to many variations in circumstances that create threats to independence and allows auditors to address threats to independence that result from activities that are not specifically prohibited by GAGAS.

3.08 Auditors should apply the conceptual framework at the audit organization, audit, and individual auditor levels to:

a. Identify threats to independence;

b. Evaluate the significance of the threats identified, both individually and in the aggregate;

and

c. Apply safeguards as necessary to eliminate the threats or reduce them to an acceptable level.

3.09 If no safeguards are available to eliminate an unacceptable threat or reduce it to an acceptable level, independence would be considered impaired.

3.10 The use of the term "audit organization" in GAGAS is described in paragraph 1.07. For consideration of auditor independence, offices or units of an audit organization, or related or affiliated entities under common control, are not differentiated from one another. Consequently, for the purposes of independence evaluation using the conceptual framework, an audit organization that includes multiple offices or units, or includes multiple entities related or affiliated through common control, is considered to be one audit organization. Common ownership may also affect independence in appearance regardless of the level of control.

3.11 The GAGAS section on non-audit services in paragraphs 3.33 through 3.58 provides requirements and guidance on evaluating threats to independence related to non-audit services provided by auditors to audited entities. That section also enumerates specific non-audit services that always impair auditor independence with respect to audited entities and that auditors are prohibited from providing to audited entities.

3.12 The following sections discuss threats to independence, safeguards or controls to eliminate or reduce threats, and application of the conceptual framework for independence.

Threats

3.13 Threats to independence are circumstances that could impair independence. Whether independence is impaired depends on the nature of the threat, whether the threat is of such significance that it would compromise an auditor's professional judgment or create the appearance that the auditor's professional judgment may be compromised, and on the specific safeguards applied to eliminate the threat or reduce it to an acceptable level. Threats are conditions to be evaluated using the conceptual framework. Threats do not necessarily impair independence.

3.14 Threats to independence may be created by a wide range of relationships and circumstances. Auditors should evaluate the following broad categories of threats to independence when threats are being identified and evaluated:
a. Self-interest threat - the threat that a financial or other interest will inappropriately influence an auditor's judgment or behavior;
b. Self-review threat - the threat that an auditor or audit organization that has provided non-audit services will not appropriately evaluate the results of previous judgments made or services performed as part of the non-audit services when forming a judgment significant to an audit;
c. Bias threat - the threat that an auditor will, as a result of political, ideological, social, or other convictions, take a position that is not objective;
d. Familiarity threat - the threat that aspects of a relationship with management or personnel

of an audited entity, such as a close or long relationship, or that of an immediate or close family member, will lead an auditor to take a position that is not objective;
e. Undue influence threat - the threat that external influences or pressures will impact an auditor's ability to make independent and objective judgments;
f. Management participation threat - the threat that results from an auditor's taking on the role of management or otherwise performing management functions on behalf of the entity undergoing an audit; and
g. Structural threat - the threat that an audit organization's placement within a government entity, in combination with the structure of the government entity being audited, will impact the audit organization's ability to perform work and report results objectively.