



Bay Area Transportation Working Group

March 17, 2023

Ensuring that Inspector Generals Are Independent

A report to the California Legislature

On March 9, 2023 the BART staff presented its proposed response to SB827 to its Board. It appears to us that the BART staff and perhaps the Board as well remain committed to preventing its Office of Inspector General (OIG) from adequately performing its oversight function. While some positive things were said, both about the need for an independent IG and the accomplishments of incumbent I.G. Harriett Richardson, the staff and majority of the Board seemed intent upon watering down the requirements of SB827.

The Bay Area Transportation Working Group (BATWG) has spent a considerable amount of time reviewing both the legislation that currently governs the functions of the Inspector General and SB827. Our group strongly supports the language in SB827 that gives the IG more authority to conduct whatever investigations it believes are necessary without being hampered or impeded by the BART staff, its unions or its Board of Directors.

Having compared the role and authority of BART's IG with that of similar transit properties elsewhere in the county our conclusion is that several loopholes in the existing legislation should be closed. Following is a link to the State of New York's legislation that defines the role of the New York City Metropolitan Transportation Authority's Inspector General. New York's statement is strong, clear and succinct:

<https://www.nysenate.gov/legislation/laws/PBA/1279>

Here are some recommendations:

- 1.) **OIG Budget:** A means of establishing the OIG's annual budget should be clearly spelled out in SB827. Letting the agency to be inspected (in this case BART) define the budget creates a conflict of interest which should be avoided. In an effort to find a clear and reliable way of calculating the OIG's yearly budget we compared BART's budgetary figures with those of other major urban rail systems in Washington DC, New York, Los Angeles and Atlanta. (Comparison Table attached) It is suggested that the OIG's budget be set at 0.12% of BART's total budget and that the percentage remain unchanged in future years. (The Bay Area Toll Authority has, in

the past, been a source of IG funding and could remain so). If, because of some special circumstance, the I.G. or BART believes that an exception to the established percentage should be made in a given year, the matter could be settled by an independent outside entity.

2.) Selecting I.G. Candidates: The selection of all three IG candidates by BART is not a prudent way of proceeding. If the IG is to be independent of BART, then the candidates should be selected by three separate informed and neutral parties, such as the State Auditor's office, the Caltrans IG, and/or the IG of some other large agency or department. The Governor of California would then appoint one of the three candidates to be BART's IG.

3.) Reappointing an IG: The BART Board currently has the power to extend the IG's four year term established in SB1488 "at will". Extensions should not be granted without the Governor's approval.

4.) OIG Access: The OIG should have strong access authority, including subpoena power.

5.) IG Qualifications: As things stand it doesn't sound like either a college degree or a CPA would be necessary to become BART's I.G. To be effective, the fiscal overseer of a large and complex organization with large operating budgets and capital expenditure programs would need the ability to quickly master and effectively analyze large amounts of fiscal data, interpret policies and effectively manage a team of accountants and other professionals. An IG should be selected based upon high professional standards as well as relevant experience.

6.) Penalties: The penalties established for thwarting a legitimate OIG investigation are relatively small. They should not be construed as limiting the amount of penalty that would befall an employee, official or contractor caught stealing from or defrauding BART or the taxpayers or otherwise breaking the law.

7.) Clarification of Authority: BART needs competent accountants of its own. However, these accountants should be forbidden from assuming IG functions or taking any other actions designed to undermine the OIG's ability to do its independent work.

8.) Follow Through Legislation: BART is not the only large California bureaucracy in need of a strong and independent OIG. It is recommended that in time the Legislature establish other well-defined I.G. positions where and as needed.

Sincerely yours,



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