

ABAG FINANCE AND PERSONNEL COMMITTEE

Thursday, July 19, 2012, 5:00 p.m.
ABAG Conference Room B
MetroCenter—8th and Oak Streets
Oakland, CA

	<u>Recommendation</u>
	** —
1. Call to Order	
2. Public Comments	Information
*3. Minutes of the May 17, 2012 Meeting	Action
*4. Financial Reports – ABAG <i>The April and May 2012 Financial reports are enclosed with the agenda packet.</i>	Action
5. Update on ABAG Membership <i>An oral report will be provided.</i>	Information
*6. Request to join amicus curiae brief—Cole vs. Los Gatos <i>Discussion and action on request to join amicus curiae brief in support of Cole vs. Los Gatos.</i>	Action
7. Update on Budget Discussions Regarding Long-Term Funding for Planning and Research <i>An oral report will be provided.</i>	Information
*8. Process for Evaluation of Legal Counsel <i>Discussion as to process to be utilized in evaluating Legal Counsel at the September Committee meeting.</i>	Information
9. Consideration of additional compensation for Assistant Executive Director as Acting Executive Director	Action
THE FOLLOWING ITEM WILL BE DISCUSSED IN CLOSED SESSION PURSUANT TO THE REQUIREMENTS OF THE RALPH M. BROWN ACT.	
10. Conference with Labor Negotiators <i>Agency designated representatives: Patricia Jones and others TBD. Employee organization: SEIU Local 1021.</i>	Information
11. Adjournment	Action

* Attachments enclosed with packet.

** The Committee may take action on any item on the agenda, which action may be the recommended action, any other action or no action.

ABAG FINANCE AND PERSONNEL COMMITTEE

Summary Minutes

May 17, 2012

Members Present

Councilmember A. Sepi Richardson
Supervisor David Cortese
Supervisor John Gioia
Mayor Mark Green
Supervisor Scott Haggerty
Supervisor Barbara Kondylis
Supervisor Mark Luce
Vice Mayor Peter McHugh
Councilmember Julie Pierce
Supervisor David Rabbitt

Jurisdiction

City of Brisbane
County of Santa Clara
County of Contra Costa
City of Union City
County of Alameda
County of Solano
County of Napa
City of Milpitas
City of Clayton
County of Sonoma

Members Not in Attendance

Supervisor Rose Jacobs Gibson, Chair County of San Mateo

Officers and Staff Present

Patricia Jones, Assistant Executive Director
Kenneth Moy, Legal Counsel
Herbert Pike, Finance Director
Susan Hsieh, Assistant Finance Director

- 1) Councilmember Richardson called the meeting to order at 5:00 p.m.
- 2) Summary Minutes of the March 15, 2012 meeting were approved.
/M/McHugh/S/Haggerty/C/approved.
- 3) Pike provided an overview of the February and March 2012 Financial Reports.
/M/Green/S/Kondylis/C/approved.
- 4) Pike provided an oral update on dues still owing from FY 2010-11 and FY 2011-12. Potential actions were discussed and alternative were to be discussed at the next meeting in July. No action reported.
- 5) Closed Session to discuss anticipated litigation pursuant to GC Section 54956.9(b)(1).
- 6) Meeting adjourned at 6:00 p.m.

F&PC AGENDA ITEM #3

TO: Finance and Personnel Committee

DT: May 31, 2012

FM: Herbert Pike, Finance Director

Re: Financial Reports
--April 2012

The following are highlights of the financial reports for April 2012.

Overall Summary (Figures 3, 4, 7 & 8)

Through April 30th, the Agency's net year-to-date financial operating gain of about \$281 thousand is higher than in previous years, the largest factor being the surplus in indirect overhead to-date attributed to the diversion of accounting, information technology and administrative support personnel away from indirect overhead and charging directly to several new energy projects. The Association's cash balance is up \$1.9 million from the previous month and is higher than the prior year by \$2.5 million compared to the year prior. A significant portion of current year's cash balance is committed for grant funded activities. A year-end operating surplus of \$50,000 is still achievable, but there are several large transactions that could readily shift the expected outcome.

Cash on Hand (Figure 1)

Cash on hand increased to \$4.19 million as of April 30th from \$2.32 million on March 31st. The increase of \$1.87 million is attributed primarily to the receipt of grant advances in anticipation of large payouts to subcontractors in May. The April balance includes approximately \$0.67 million invested in the Local Agency Investment Fund (LAIF). Currently, ABAG does not hold any other investments. The April 30th cash balance is approximately \$2.51 million greater than the prior year. In the current fiscal year, the Association received large advances from a few granting agencies. The grant funds will be used for future program activities such as the design and construction of the Bay Trail Project and energy incentives for Bay Area homeowners.

Receivables (Figure 2)

Receivables from grant and service programs amounted to about \$4.50 million on April 30th, a decrease of \$343 thousand from the month prior. The month to month decrease reflects both a draw-down of previously advanced funds and quarterly billing cycles. Receivables are approximately \$1.64 million higher than they were a year prior reflecting the higher volume of grant funded activities in the current fiscal year, especially in energy-related grant activity. Much of the increase is attributable to large grant projects, e.g. energy retrofitting, that are drawing to a close and the rush to submit claims for completion of retrofits before the impending deadline.

Actual vs. Budgeted Expenses (Figure 9)

Total expenses through April 30th, the tenth month of the fiscal year, amounted to about \$23.58 million, or 80.5 percent, of the adjusted budgeted annual expense of \$29.30 million for FY 2011-12.

Actual vs. Budgeted Revenues (Figure 10)

As of April 30th, total revenues amounted to about \$23.86 million, or 81.4 percent, of the revised budgeted annual revenue of \$29.33 million for FY 11-12.

As of April 30th, both revenues and expenses are very close projections for the first ten months of FY 2011-12 (83.3 percent). Actual revenues and expenditures are both usually below the portion of the year elapsed because of the normal timing of grant funded consultant and sub-contractor expenses wherein there is a customary lag between the rendering of the service and the conversion to an expense and receivable when the contractors submit their bills. However, as some large grants are expiring, revenues and expenses are increasing prior the end of the fiscal year.

Fund Equity (Figure 5)

As of April 30th, general fund equity was approximately \$1.36 million, a decrease of \$104 thousand from the prior month. The Agency's restricted fund equity, consisting of capital, self-insurance, building maintenance and reserves, remained unchanged at \$560 thousand. That is \$50 thousand over the previous year to reflect the discussed minimum annual reserve increase in reserves of \$50 thousand per year.

Indirect Cost (Figure 6)

The Agency's actual indirect cost (overhead) rate was 37.36 percent, or 5.59 percent below target. The lower than expected rate reflects the diversion of substantial central services efforts toward new grants, especially energy grants. The rate is expected to increase in the next two months after a sizeable energy project wraps up for April 2012. It will allow some staff to divert their focus and resources back into the overhead functions.

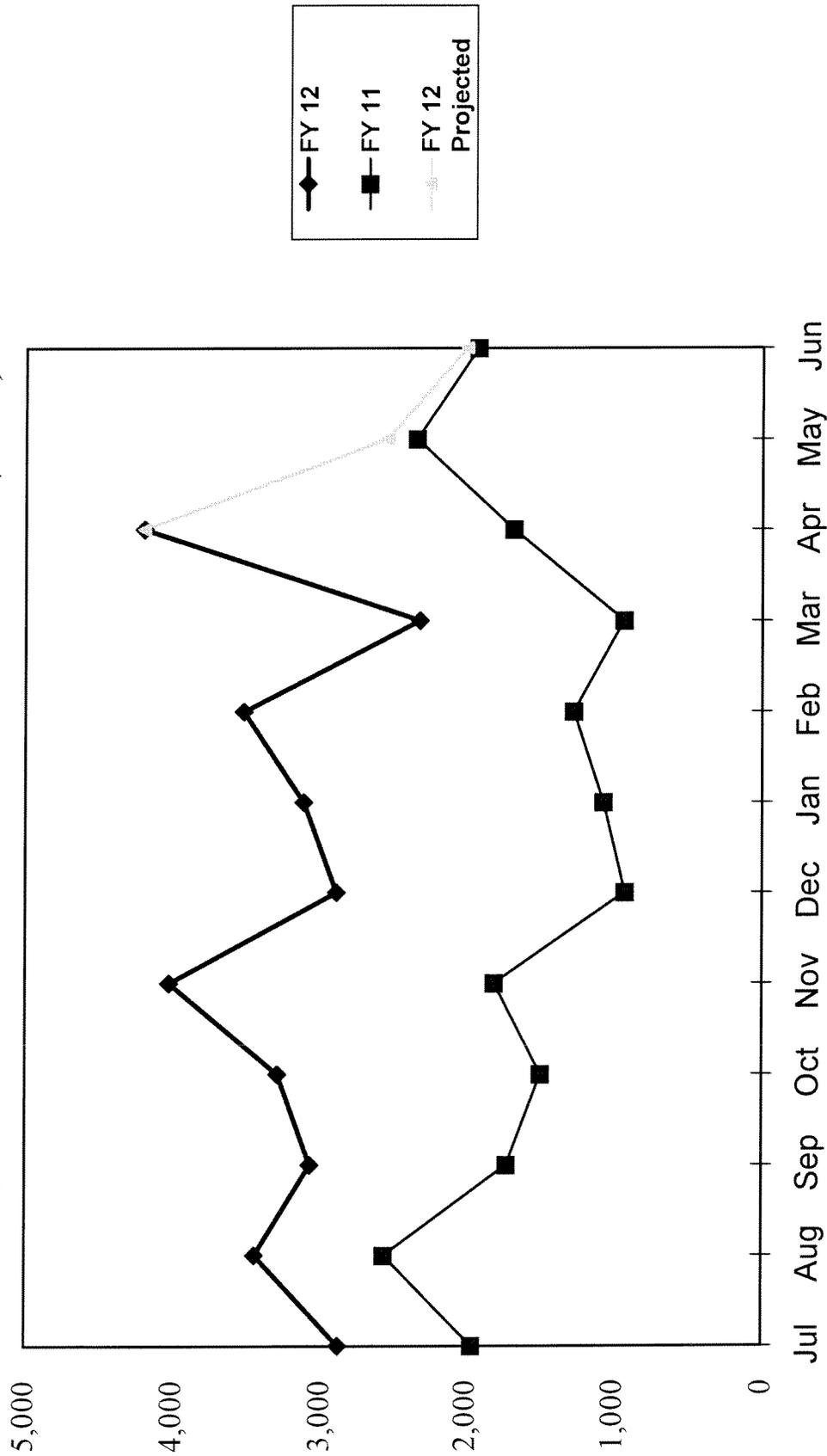
ABAG FINANCIAL REPORTS

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* Actual vs. Budgeted/Projected Revenues	Figure 10

ABAG Financial Indices

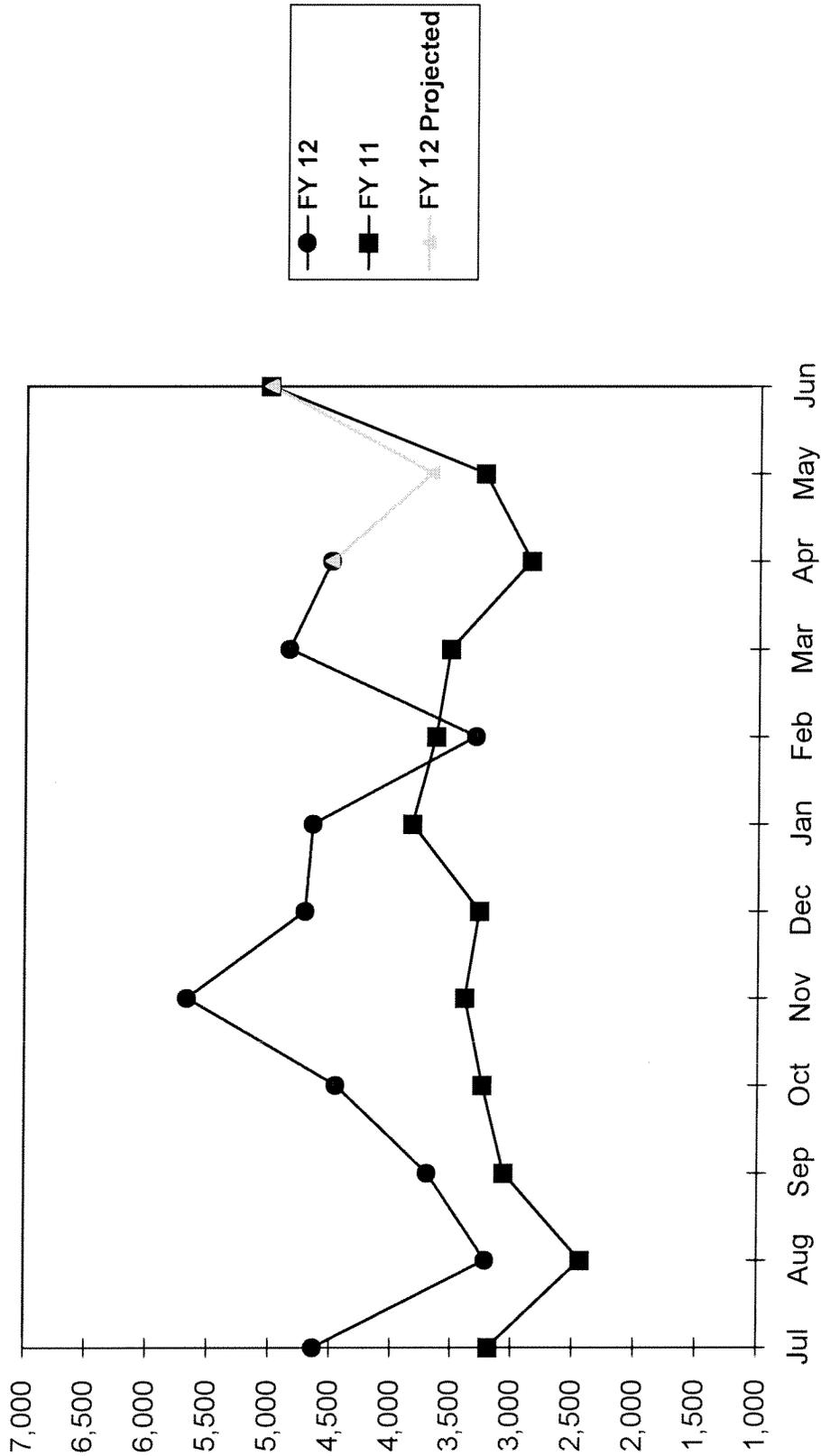
Figure 1--Cash on Hand--FY 11 and FY 12 (\$'000)



Represents the sum total of cash deposited at our bank and the Local Agency Investment Fund.
 This chart shows fluctuation patterns of cash on hand for the current and prior fiscal years.

ABAG Financial Indices

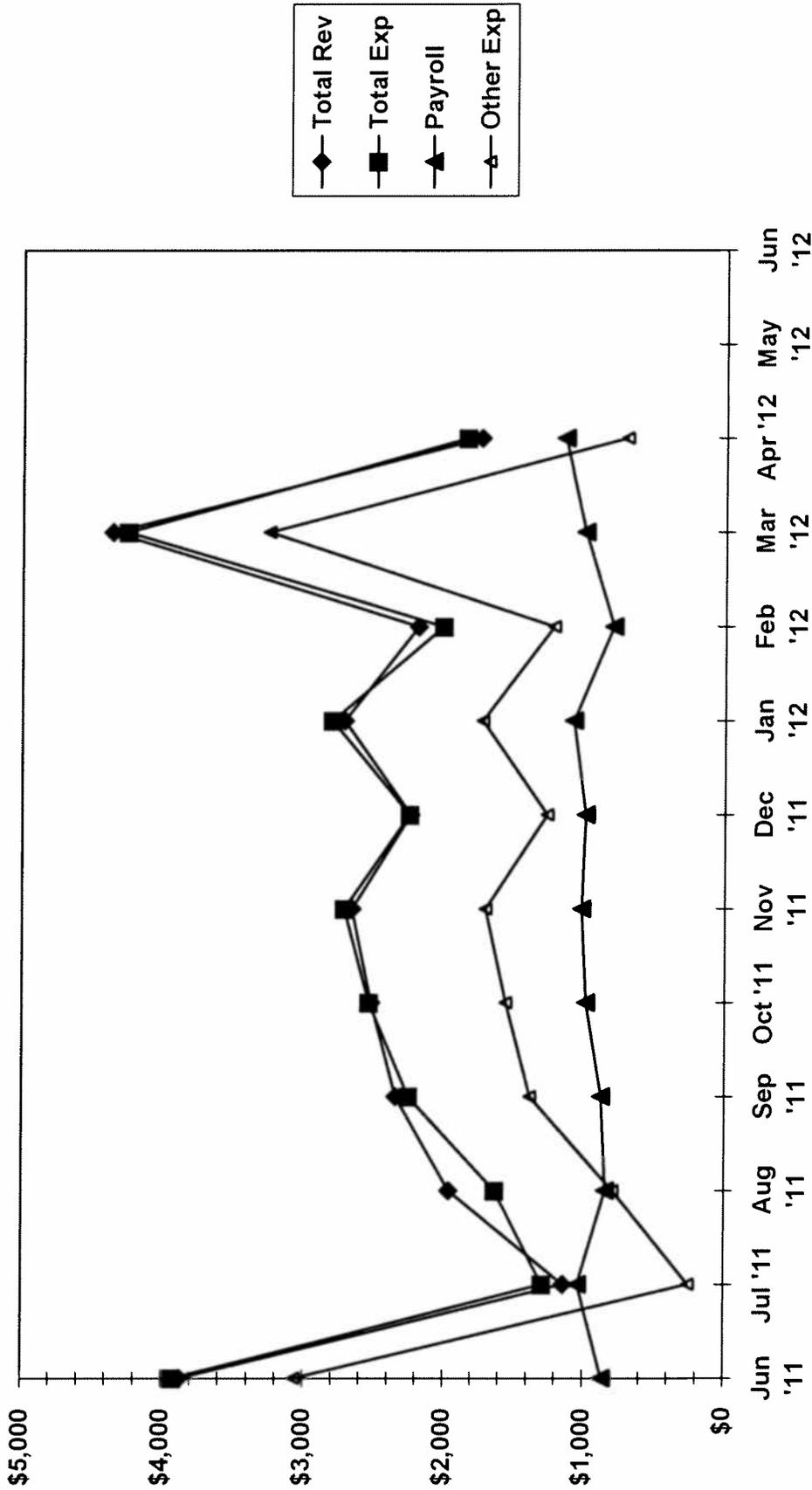
Figure 2--Accounts Receivable--FY 11 and FY 12 (\$'000)



Accounts receivable include receivables generated by grants and service programs over two fiscal years. Reflects the reasonableness of our receivable levels; usually have about six weeks' worth of annual revenues in receivables.

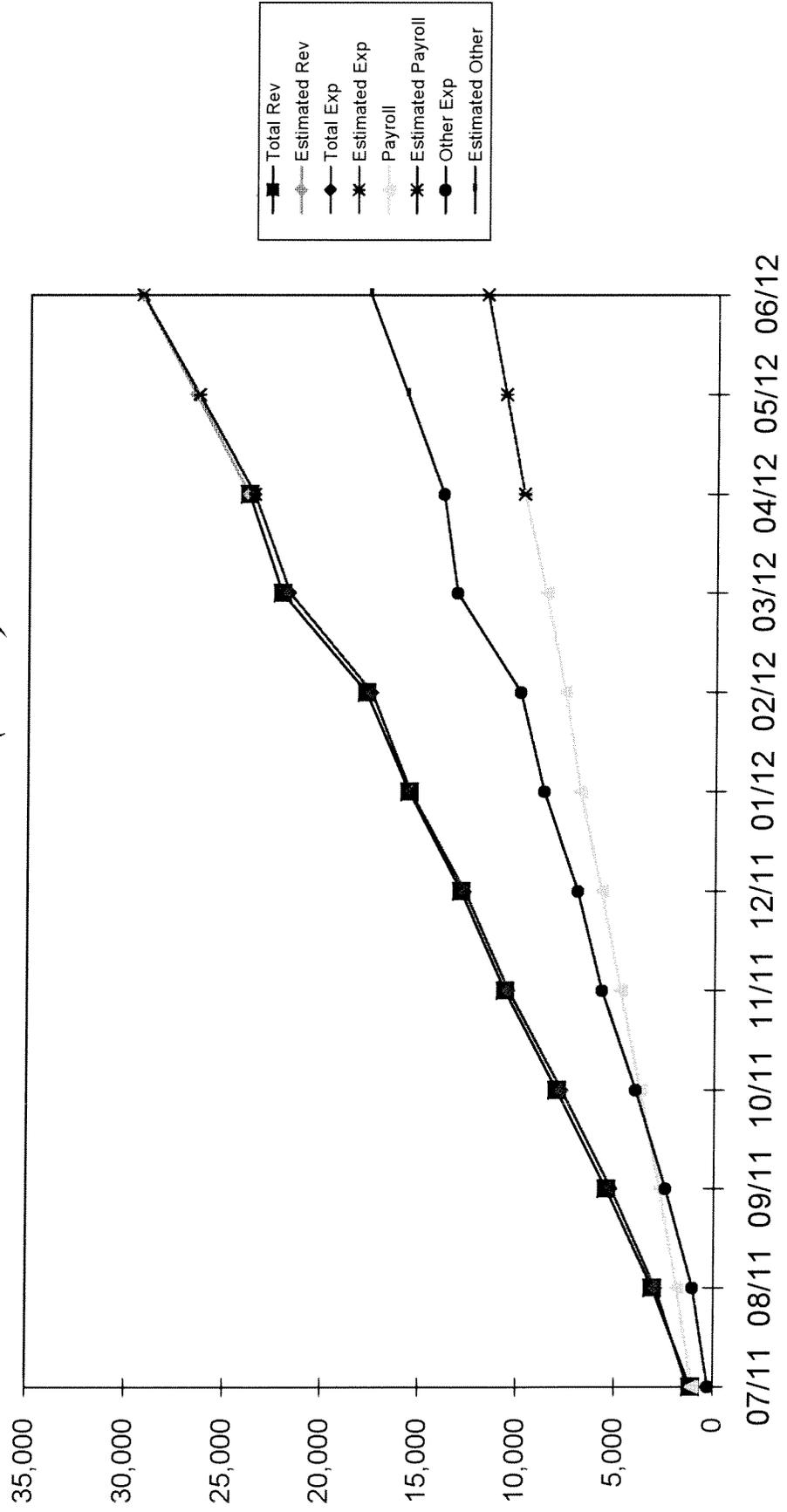
ABAG Financial Indices

Figure 3--Current Month Revenues & Expenses
FY 11-12 (\$'000)



Presents month by month total revenues, total expenses, payroll and other expenses for the current fiscal year. The difference between total revenues and total expenses line represents the overall current month net surplus (or deficit) for the Association.

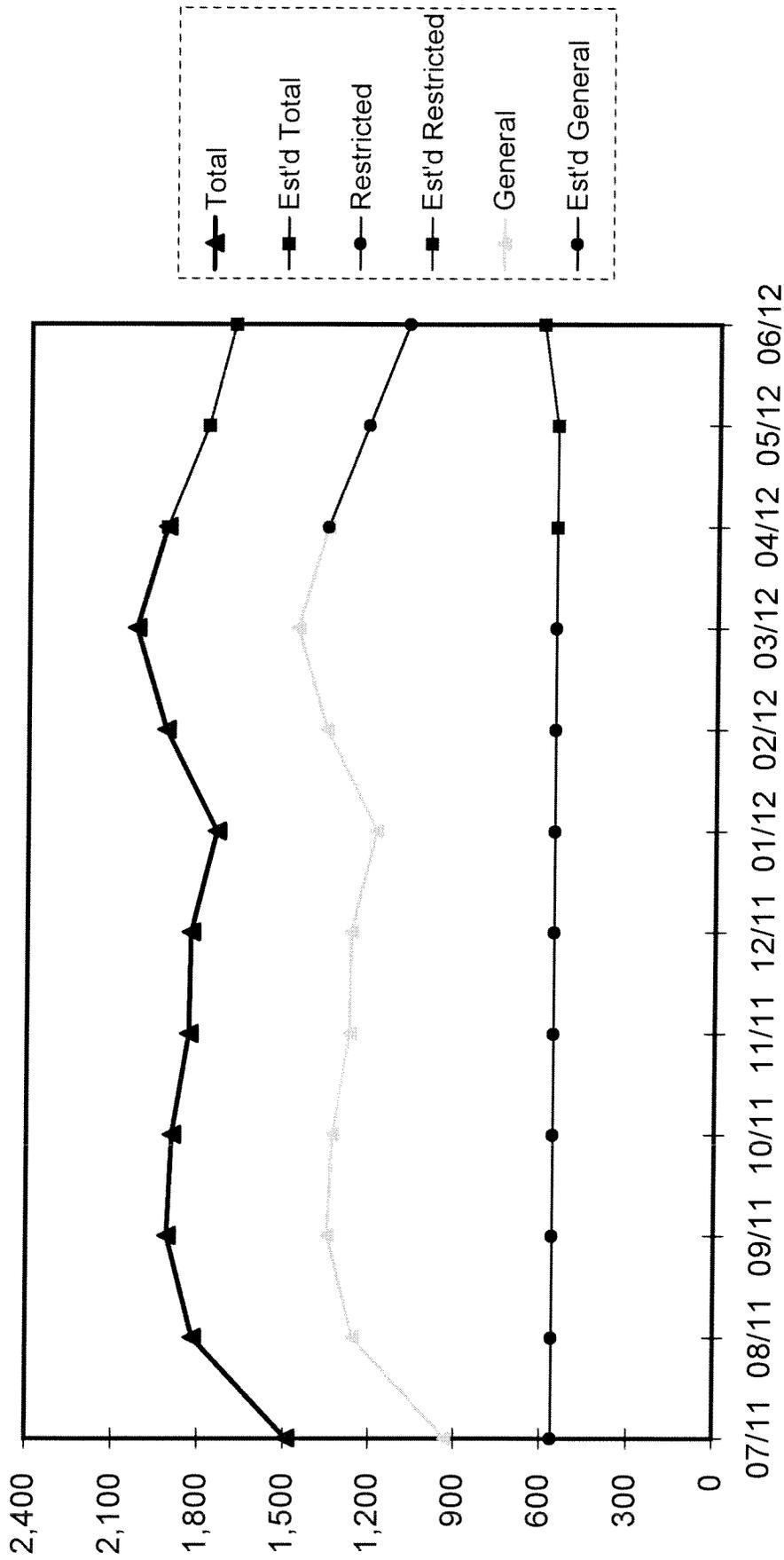
ABAG Financial Indices
Figure 4-- Year-to-date Revenues & Expenses
FY 11-12 (\$'000)



Presents year-to-date total revenues, total expenses, payroll and other expenses for the current fiscal year. The difference between total revenues and total expenses lines represents the overall year-to-date net surplus (or deficit) for the Association.

ABAG Financial Indices

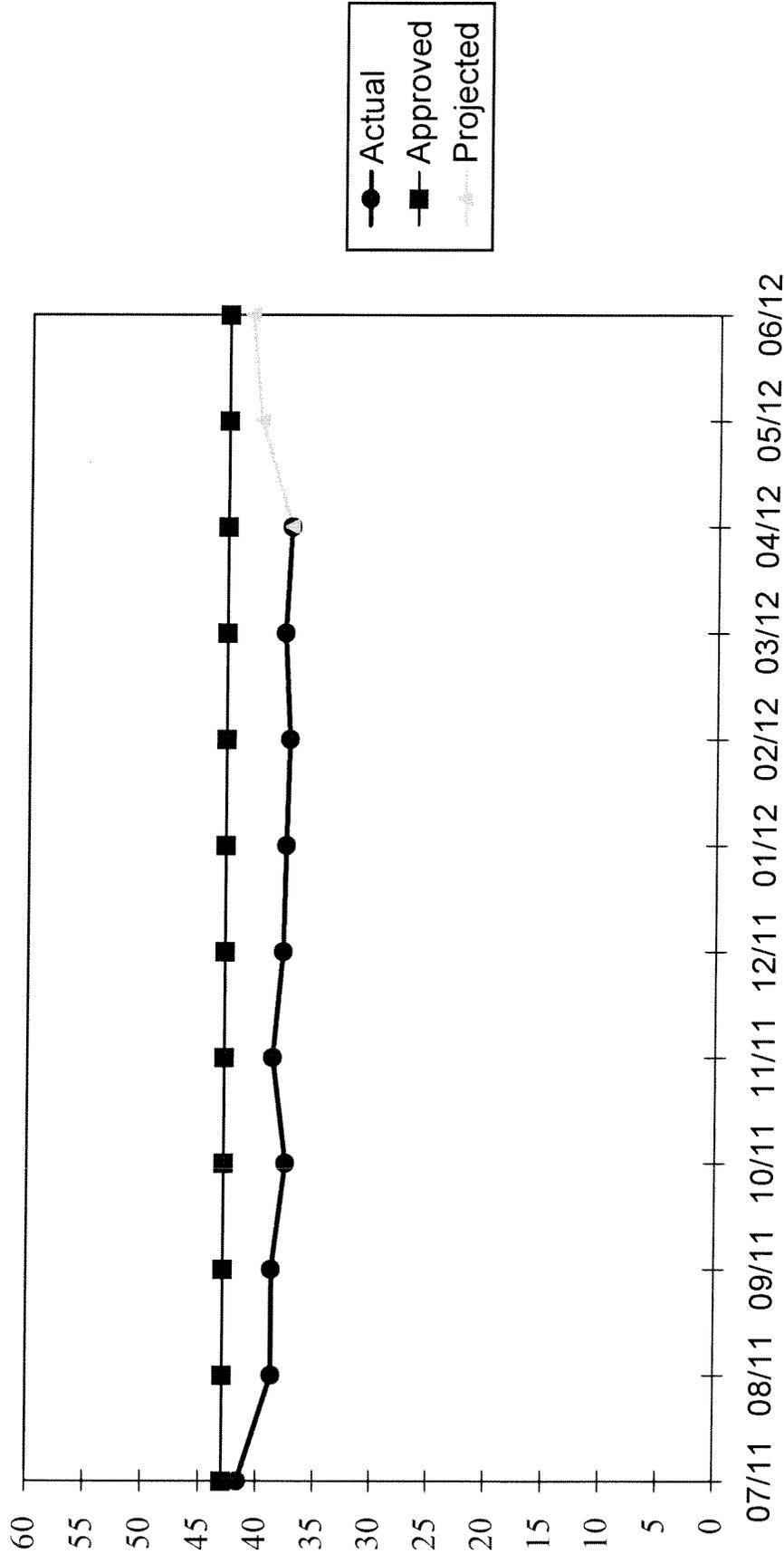
Figure 5--Fund Equity
FY 11-12 (\$'000)



Presents general, restricted and total fund equities for the current fiscal year. General fund equity represents unrestricted equity. Restricted equities include building improvement interest, building maintenance, self-insurance, capital and contingency reserve. These restricted equities represent the Association's equities set aside for specific purposes. Total equity is the sum total of general and restricted equities.

ABAG Financial Indices

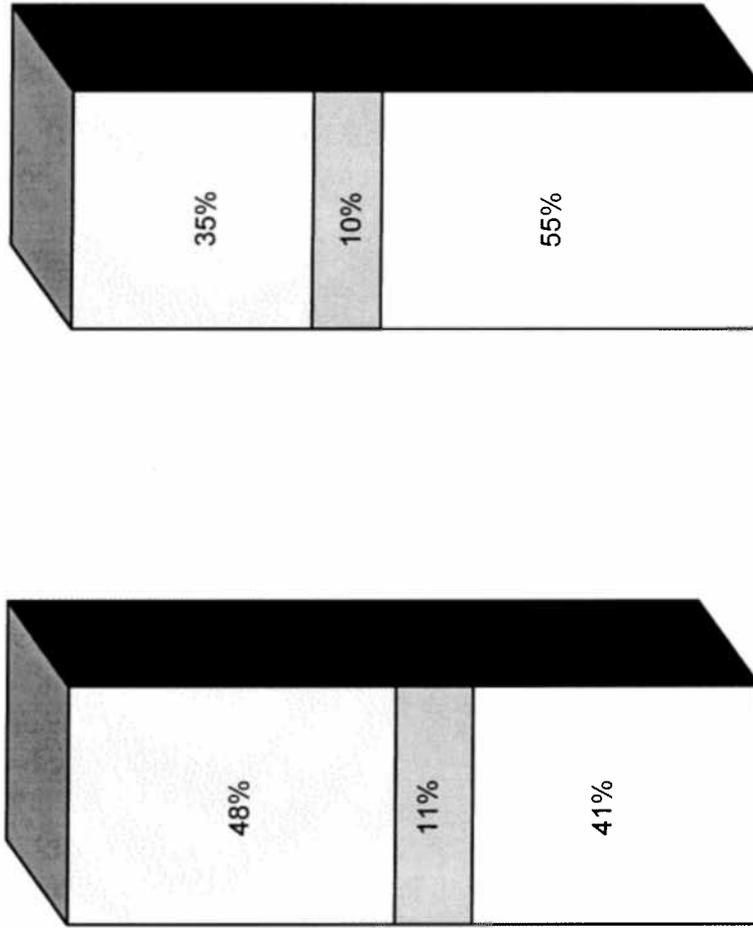
**Figure 6--Indirect Cost Rate (% of Direct Labor Cost)
FY 11-12**



Shows a comparison between the actual indirect cost rate and the approved rate. The approved indirect cost rate is computed by dividing total estimated overhead expenses by total projected direct labor cost for a fiscal year. This rate is used as a standard overhead cost rate to allocate indirect costs to all projects. This process is performed in accordance with an indirect cost plan, which is prepared annually in accordance with OMB Circular A-87.

ABAG Financial Indices

Figure 7-- Composition of Expenses FY 11--FY 12
Year to Date
(\$'000)

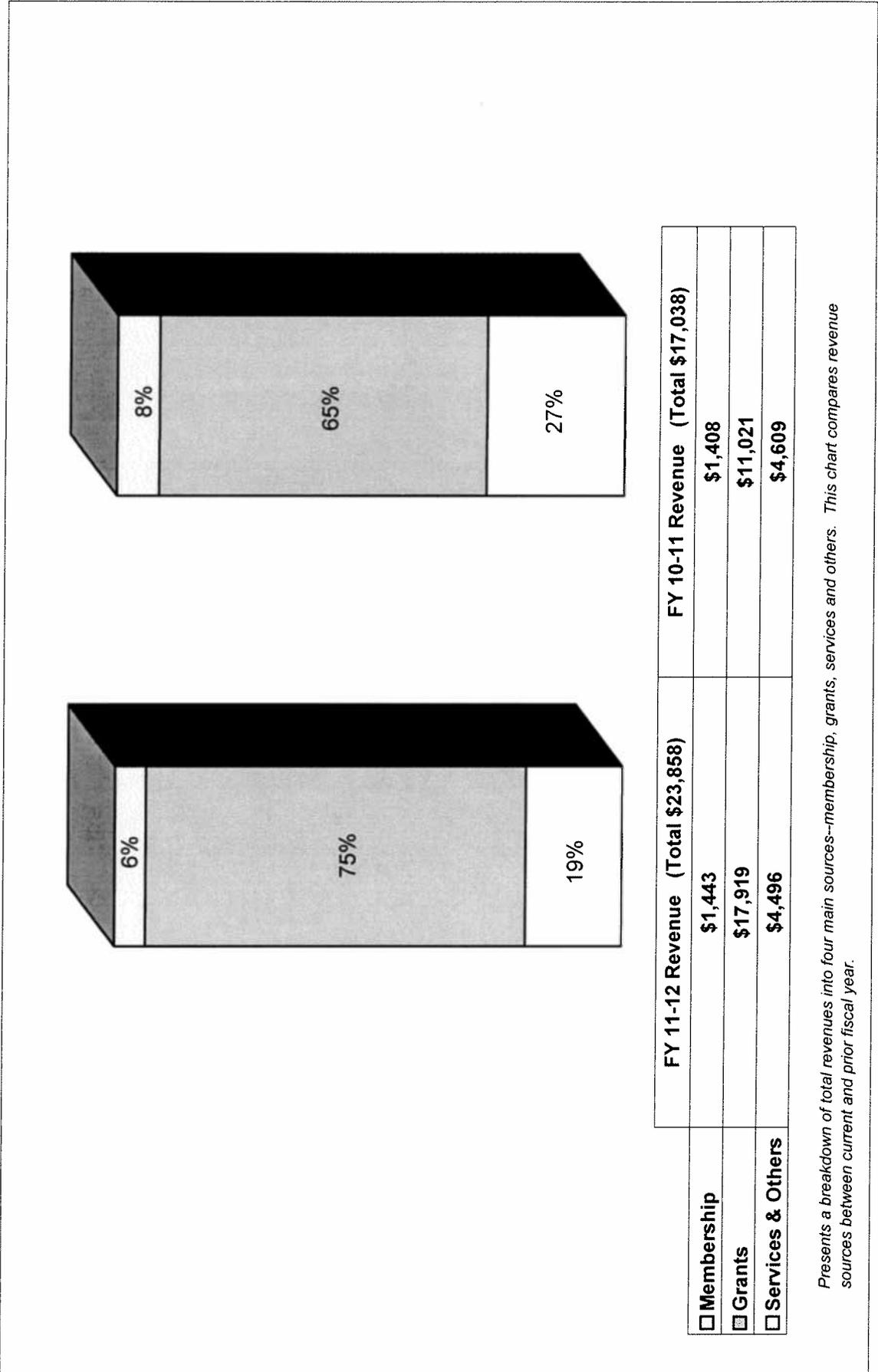


	FY11-12 Expenses (Total \$23,577)	FY10-11 Expenses (Total \$16,860)
□ Consultants	\$11,186	\$5,864
□ Others	\$2,651	\$1,691
□ Payroll	\$9,740	\$9,305

This chart compares expenses for current and prior fiscal year. It groups expenses into three broad categories--payroll costs, consultants and other expenses.

ABAG Financial Indices

**Figure 8-- Composition of Revenues FY 11--FY 12
Year to Date
(\$'000)**

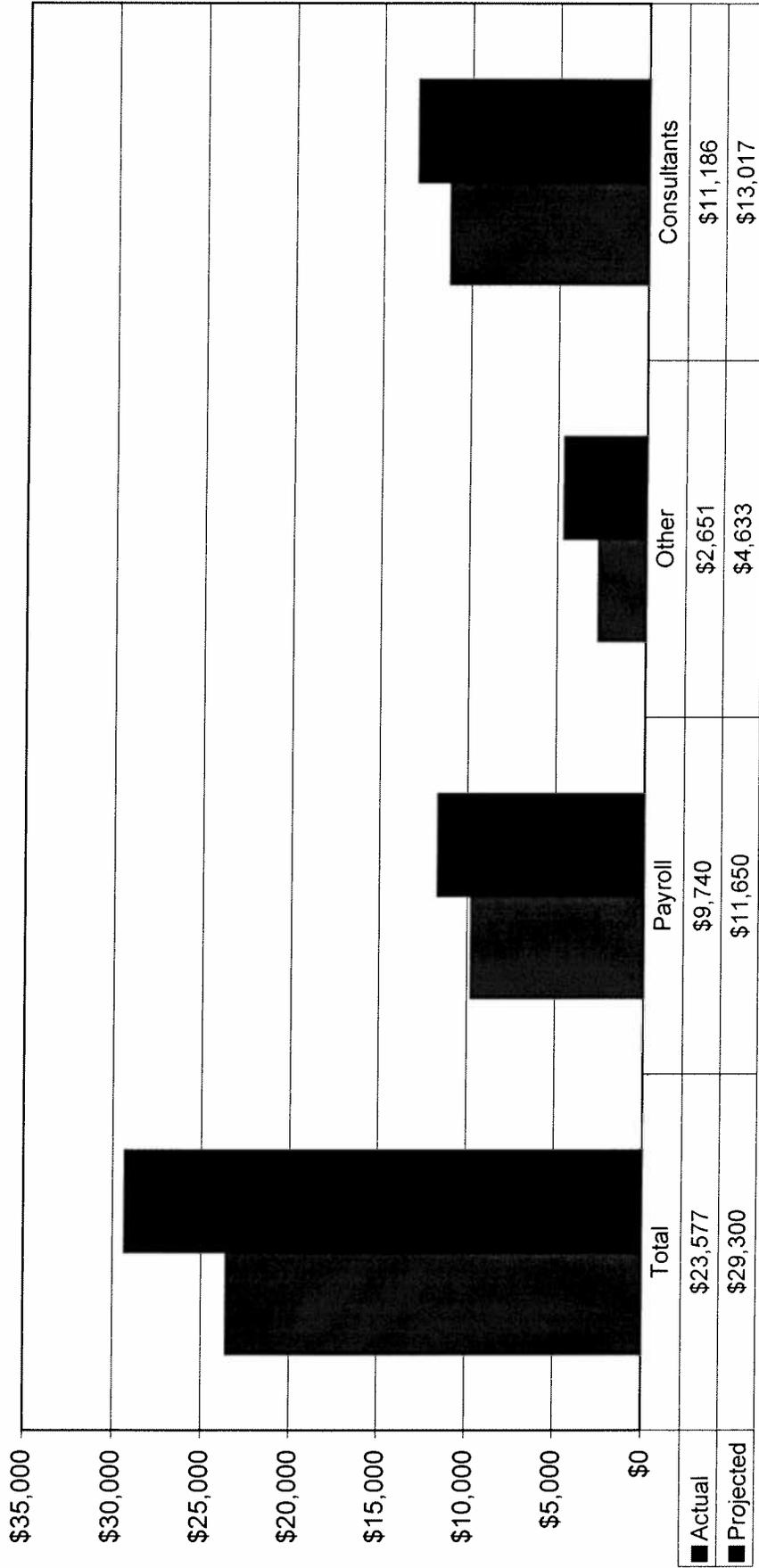


Source: ABAG --- INDICES 2012-04.xls

Figure 8

ABAG Financial Indices

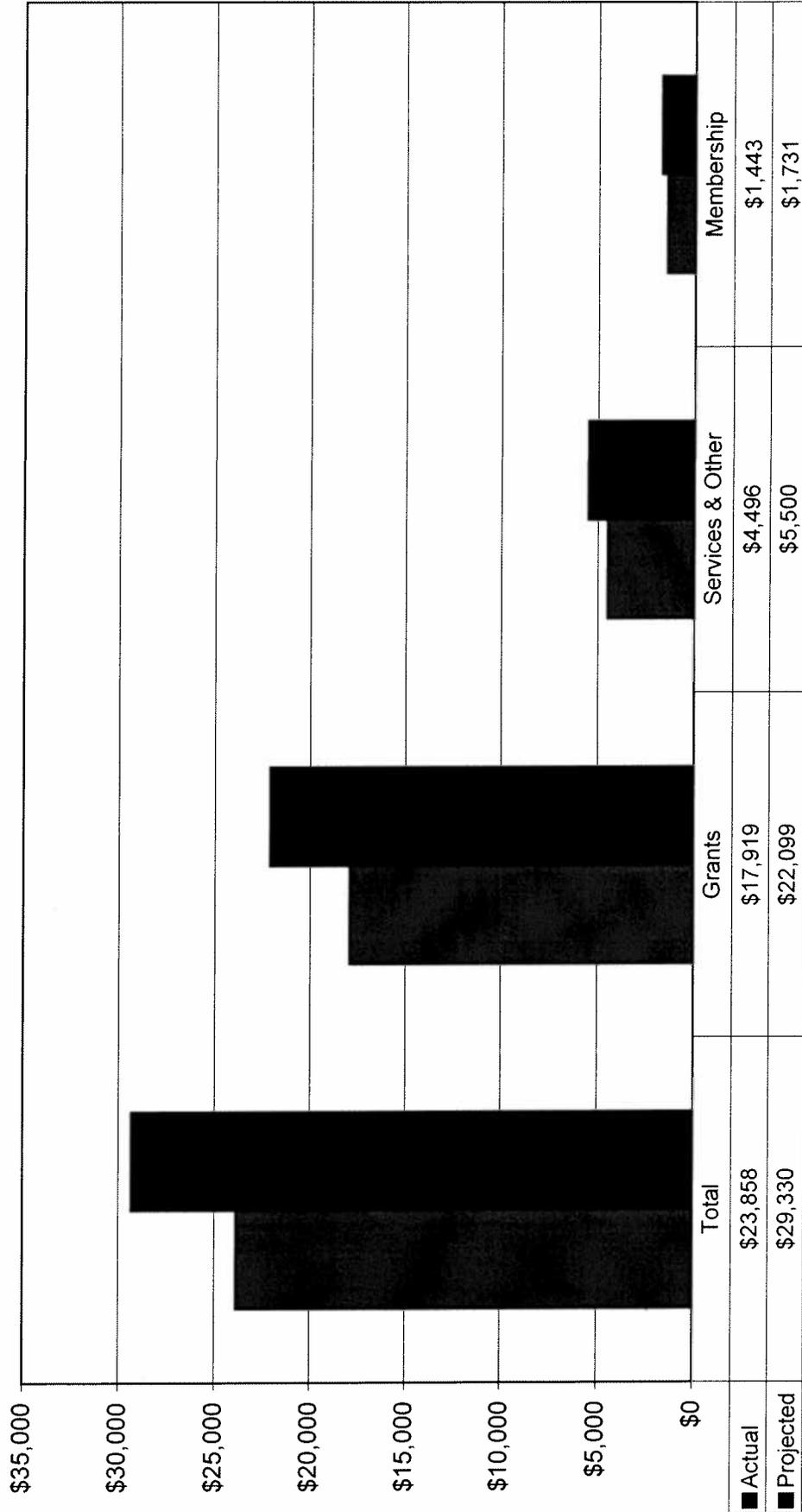
Figure 9--Actual vs Projected Expenses--FY 11-12
Year to Date (\$'000)



Presents a comparison of actual and budgeted/projected total expenses as well as component categories: payroll costs, consultants and other expenses.

ABAG Financial Indices

Figure 10--Actual vs Projected Revenues--FY 11-12
Year to Date (\$'000)



Presents a comparison of actual and budgeted/projected total revenues as well as component categories: membership dues, grants, services and other.

TO: Finance and Personnel Committee

DT: June 29, 2012

FM: Herbert Pike, Finance Director

Re: Financial Reports
--May 2012

The following are highlights of the financial reports for May 2012.

Overall Summary (Figures 3, 4, 7 & 8)

Through May 31st, the Agency's net year-to-date financial operating gain of about \$304 thousand is higher than in previous years, the largest factor being the surplus in indirect overhead to-date attributed to the diversion of accounting, information technology and administrative support personnel away from indirect overhead and charging directly to several new energy projects. The Association's cash balance is down \$1.6 million from the previous month and is higher than the prior year by \$205 thousand compared to the year prior. A significant portion of current year's cash balance is committed for grant funded activities. A year-end operating surplus of \$50,000 is still achievable, but there are several large transactions that could readily shift the anticipated outcome.

Cash on Hand (Figure 1)

Cash on hand decreased to \$2.55 million as of May 31st from \$4.19 million on April 30th. The decrease of \$1.64 million is attributed primarily to the close-out of a very large energy project in the month of May. The May balance includes approximately \$0.67 million invested in the Local Agency Investment Fund (LAIF). Currently, ABAG does not hold any other investments. The May 31st cash balance is approximately \$205 thousand greater than the prior year

Receivables (Figure 2)

Receivables from grant and service programs amounted to about \$3.68 million on May 31st, a decrease of \$823 thousand from the month prior. The month to month decrease reflects primarily the close out of a very large grant, as well as a draw-down of previously advanced funds and quarterly billing cycles. Receivables are approximately \$0.44 million higher than they were a year prior reflecting the higher volume of grant funded activities in the current fiscal year, especially in energy-related grant activity. Much of the activity is attributable to large grant projects, e.g. energy retrofitting, that are drawing to a close and the rush to submit claims for completion of retrofits before the impending deadline. Several other contractors and pass-through recipients are stepping up the pace in the submission of their bills as their fiscal years are similarly drawing to a close.

Actual vs. Budgeted Expenses (Figure 9)

Total expenses through May 31st, the eleventh month of the fiscal year, amounted to about \$26.83 million, or 91.6 percent, of the adjusted budgeted annual expense of \$29.30 million for FY 2011-12.

Actual vs. Budgeted Revenues (Figure 10)

As of May 31st, total revenues amounted to about \$27.13 million, or 92.5 percent, of the revised budgeted annual revenue of \$29.33 million for FY 11-12.

As of May 31st, both revenues and expenses are very close to projections for the first eleven months of FY 2011-12 (91.7 percent).

Fund Equity (Figure 5)

As of May 31st, general fund equity was approximately \$1.384 million, an increase of \$23 thousand from the prior month. The Agency's restricted fund equity, consisting of capital, self-insurance, building maintenance and reserves, remained unchanged at \$560 thousand. That is \$50 thousand over the previous year to reflect the discussed minimum annual reserve increase in reserves of \$50 thousand per year.

Indirect Cost (Figure 6)

The Agency's actual indirect cost (overhead) rate was 38.21 percent, or 4.74 percent below target. The lower than expected rate reflects the diversion of substantial central services efforts toward new grants, especially energy grants. The rate is expected to increase in the next month after a sizeable energy project wraps up for April 2012. It will allow some staff to divert their focus and resources back into the overhead functions. However, it will probably not reach the budgeted 42.95 percent, thereby requiring the posting of a payable for the balance at year-end.

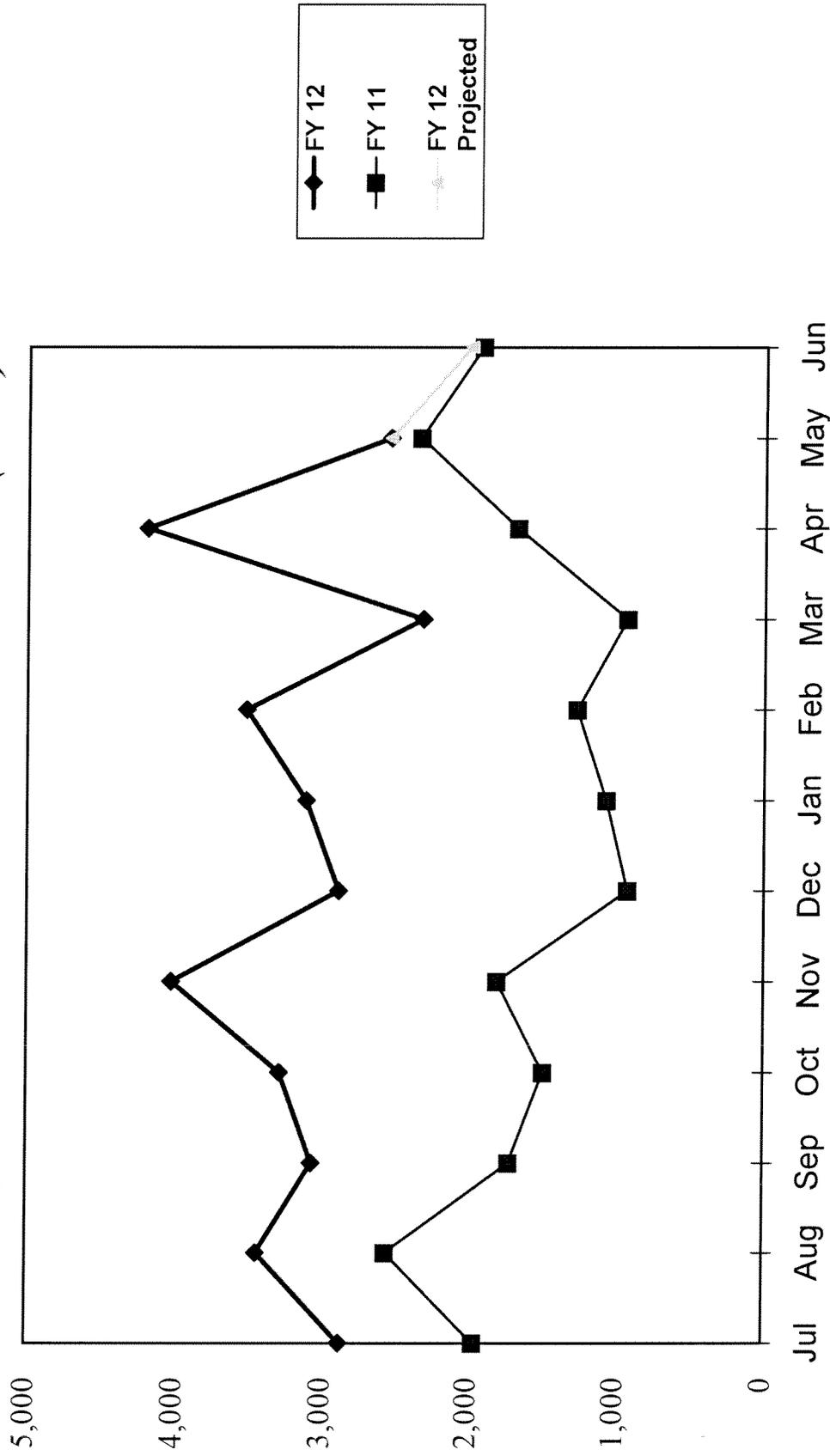
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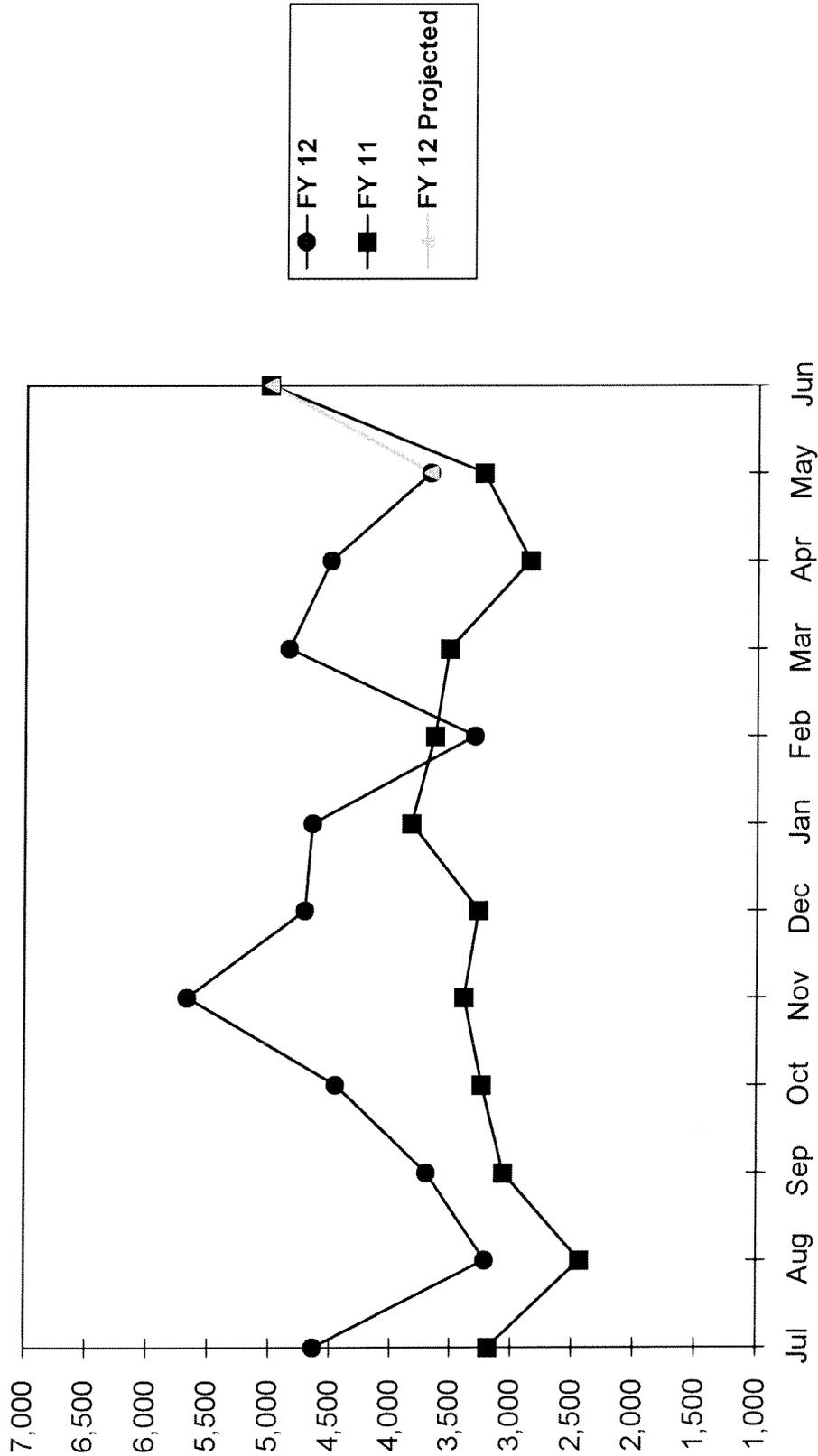
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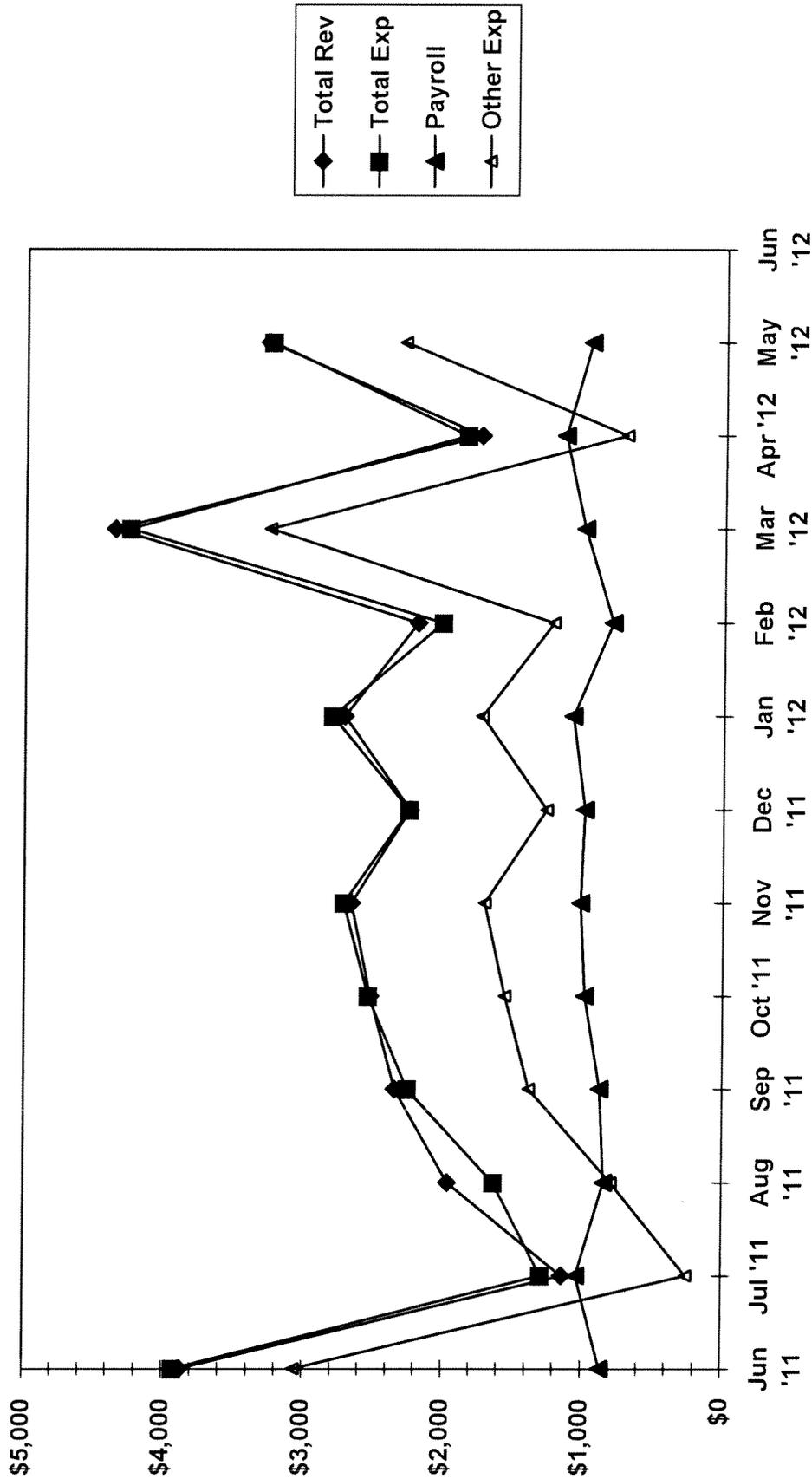
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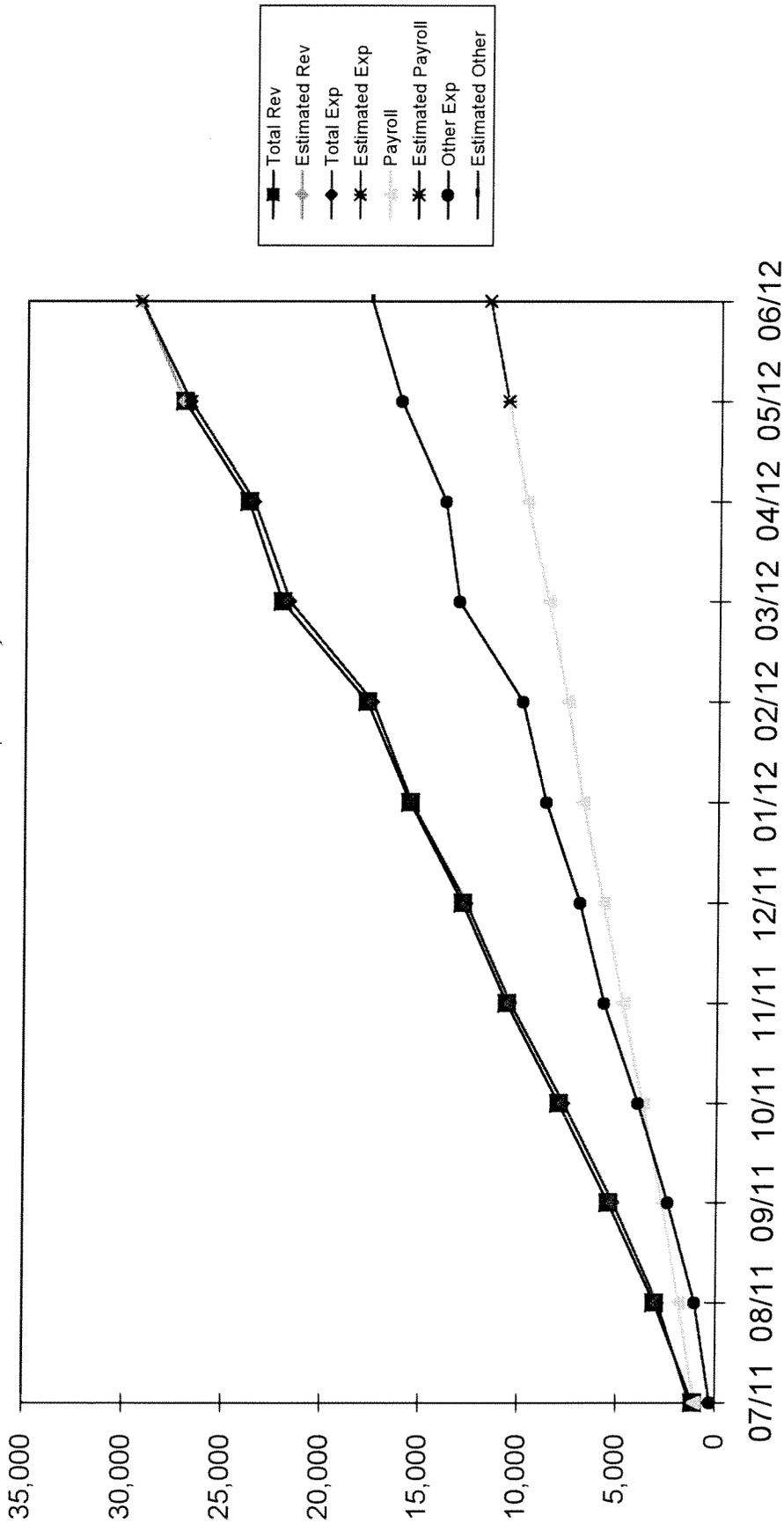
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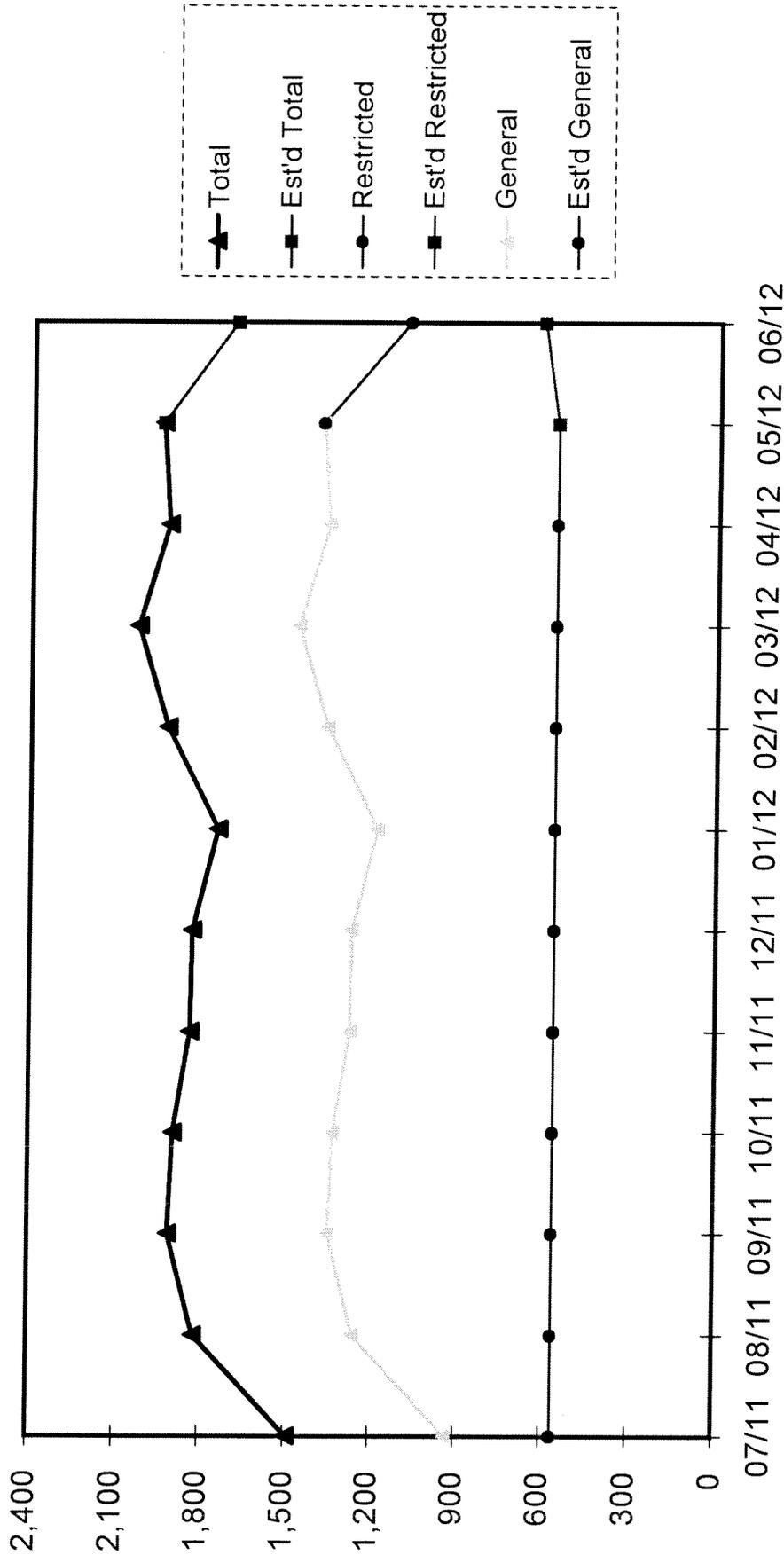
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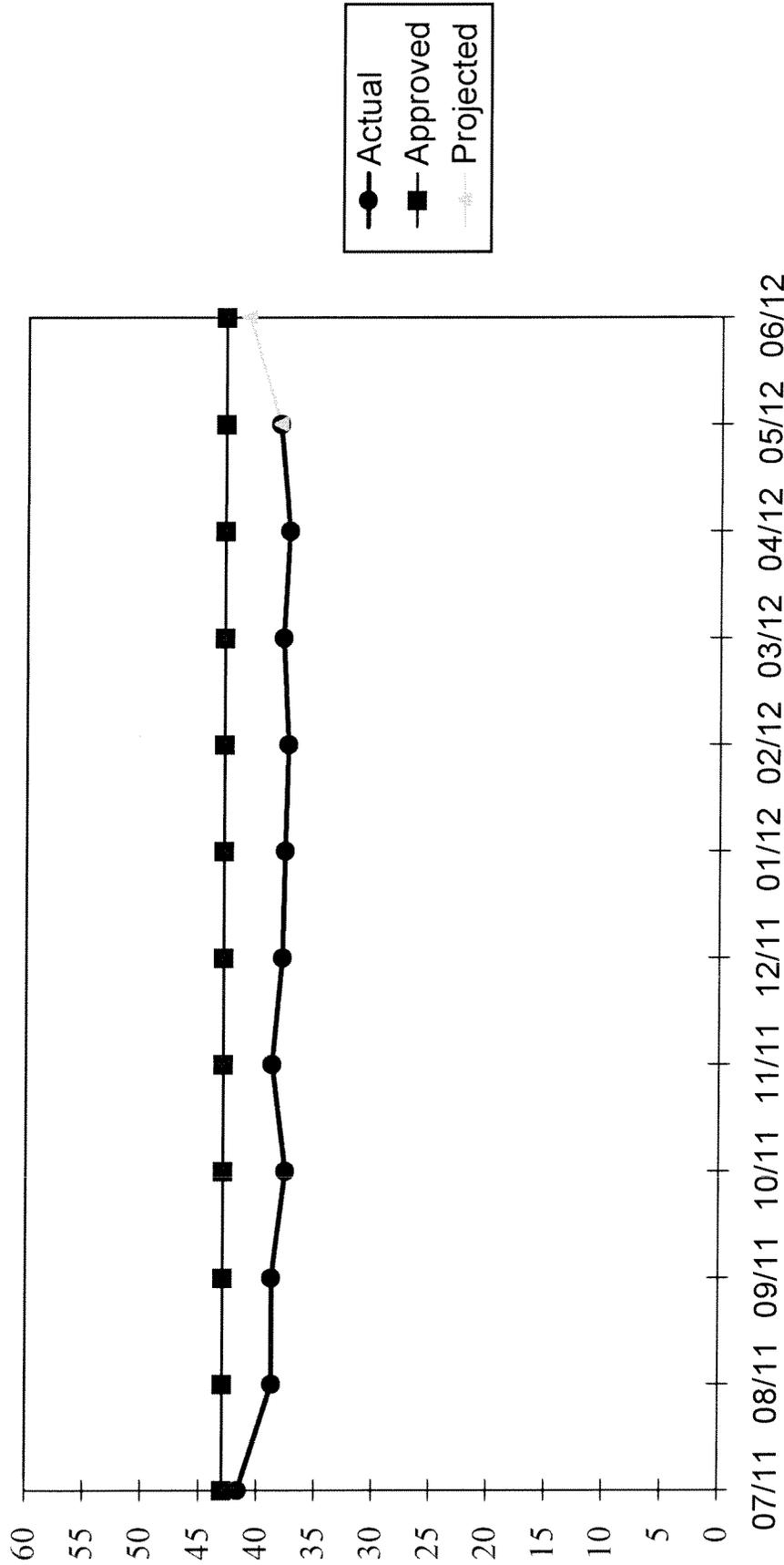
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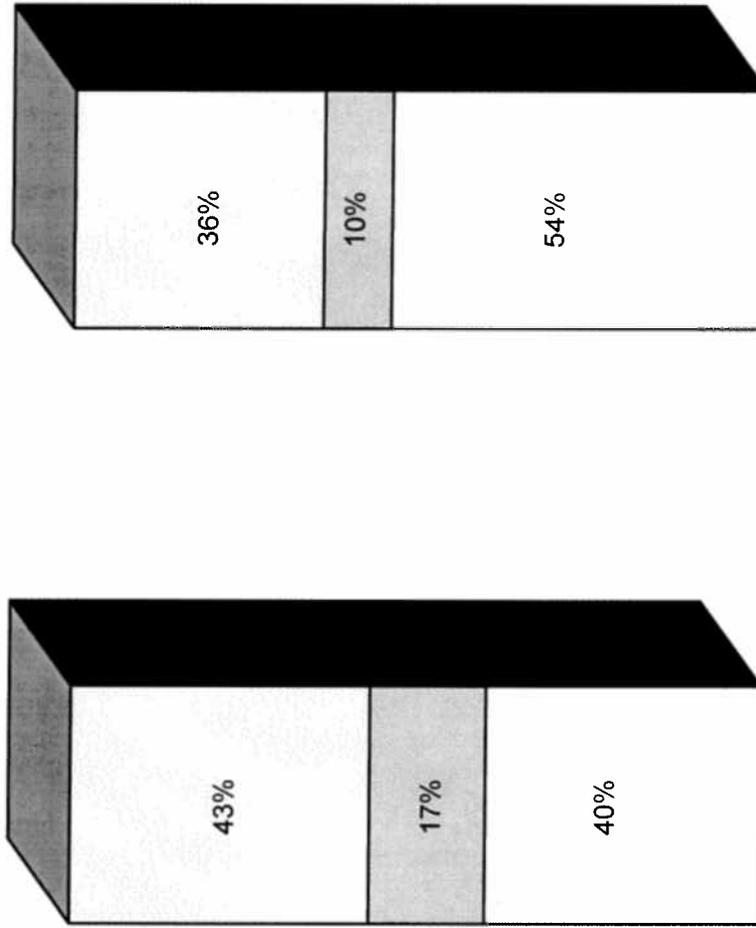
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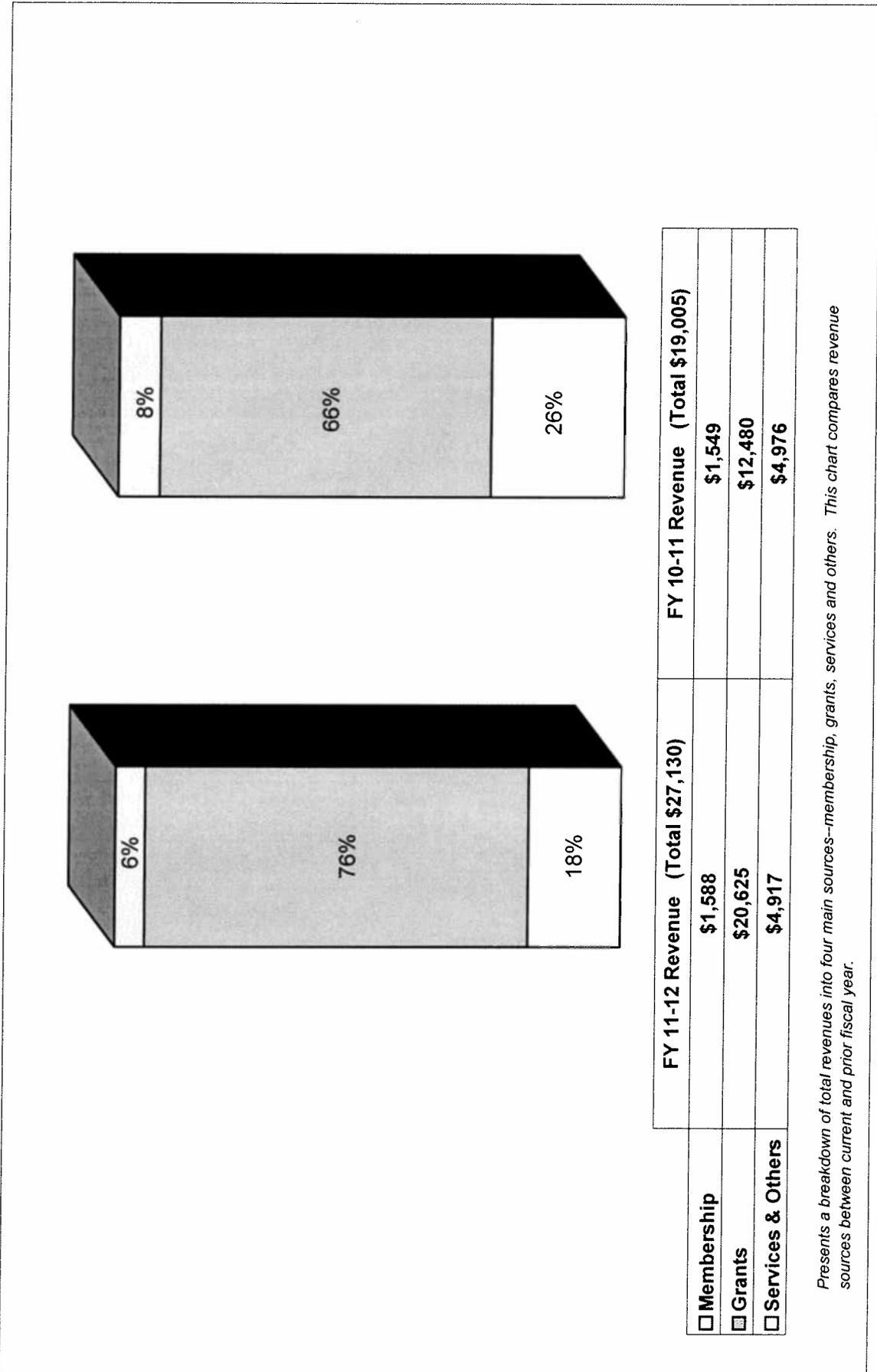


	FY11-12 Expenses (Total \$23,577)	FY10-11 Expenses (Total \$18,844)
☐ Consultants	\$11,581	\$6,773
☑ Others	\$4,548	\$1,860
☐ Payroll	\$10,697	\$10,211

This chart compares expenses for current and prior fiscal year. It groups expenses into three broad categories--payroll costs, consultants and other expenses.

ABAG Financial Indices

**Figure 8-- Composition of Revenues FY 11--FY 12
Year to Date
(\$'000)**

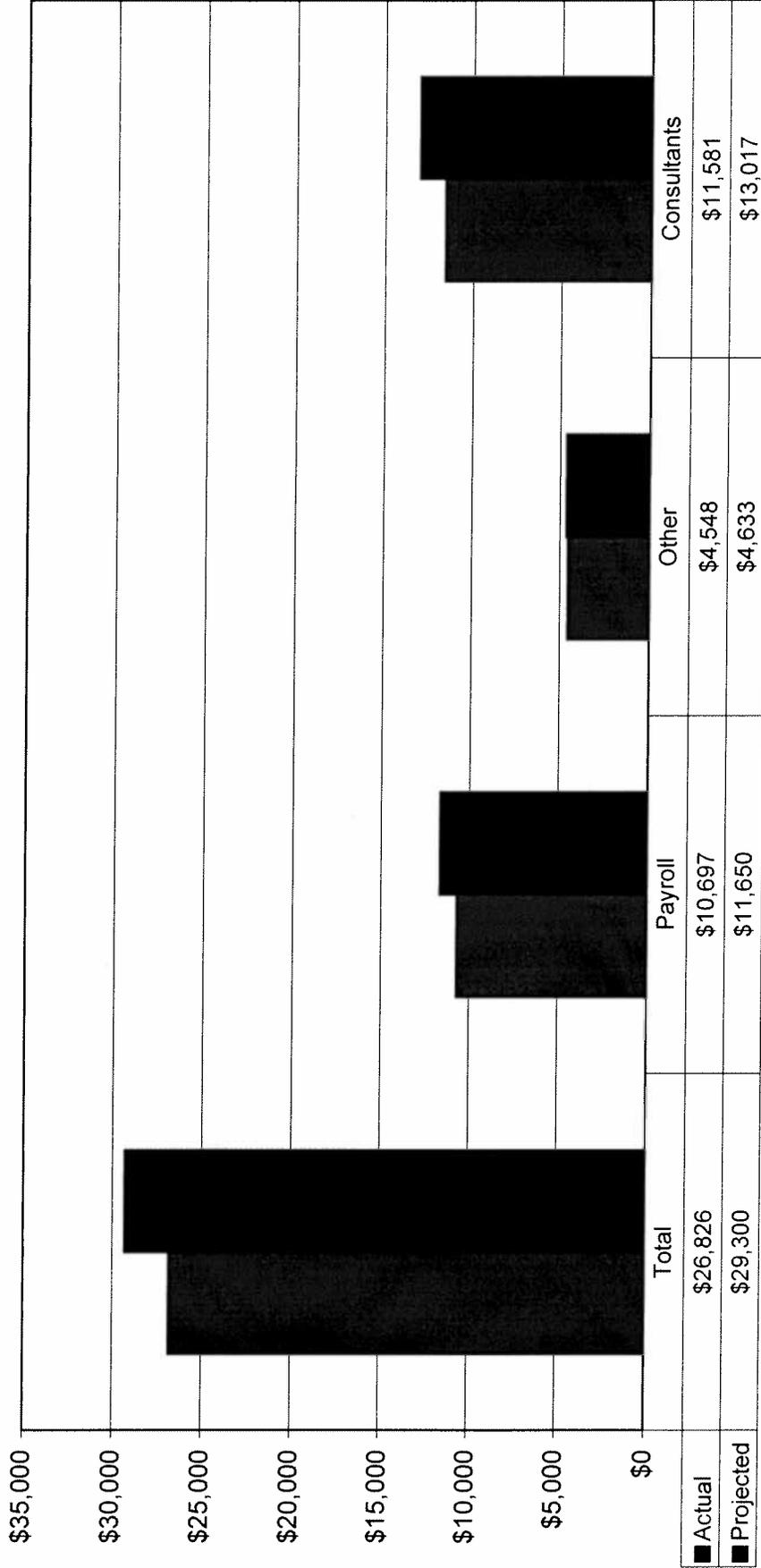


Source: ABAG --- INDICES 2012-05.xls

Figure 8

ABAG Financial Indices

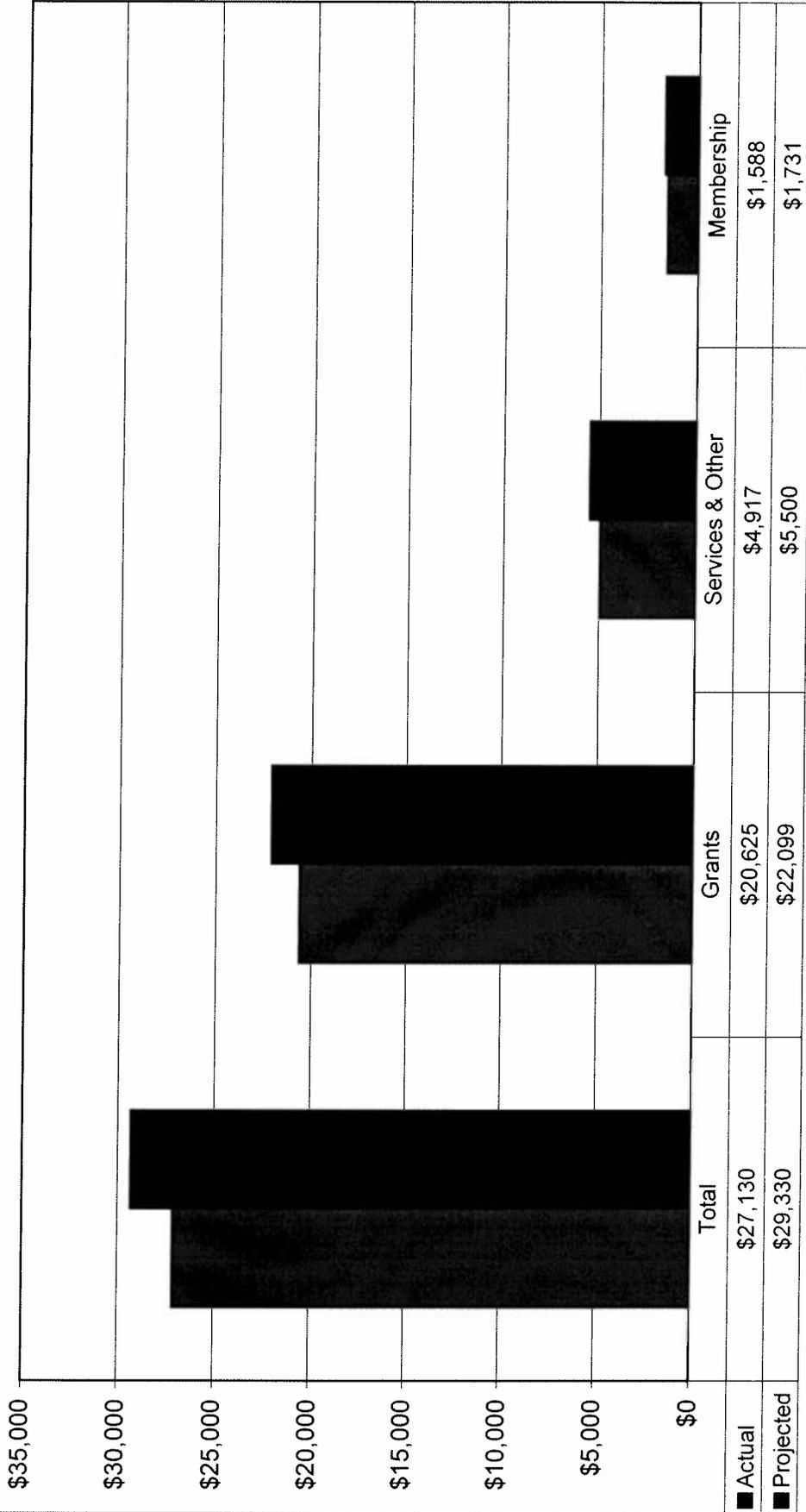
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**ASSOCIATION OF BAY AREA GOVERNMENTS
FINANCE & PERSONNEL COMMITTEE**

**TABLE OF FINANCIAL REPORT DATA ELEMENTS
(thousands of dollars)**

<u>Index Description</u>	<u>May-12</u>	<u>Apr-12</u>	<u>Mar-12</u>	<u>May-11</u>	<u>Apr-11</u>
Cash	2,550	4,191	2,320	2,345	1,677
Receivables	3,677	4,500	4,843	3,237	2,857
Payroll Cost-YTD	10,697	9,740	8,598	10,211	9,305
-Month	957	1,142	995	906	992
Total Other Expense-YTD	16,129	13,837	13,135	8,633	7,555
-Month	2,292	702	3,256	1,078	674
Total Expenses-YTD	26,826	23,577	21,733	18,844	16,860
-Month	3,249	1,844	4,251	1,984	1,666
Total Revenues-YTD	27,130	23,858	22,118	19,005	17,038
-Month	3,272	1,740	4,356	1,967	1,709
Fund Equity-General	1,384	1,361	1,465	1,182	1,199
Total Restricted	560	560	560	510	510
Total Fund Equity	1,944	1,921	2,025	1,692	1,709
Approved Overhead	42.95%	42.95%	42.95%	42.95%	42.95%
Overhead Rate %	38.21%	37.36%	37.87%	41.35%	41.90%

F&PC AGENDA ITEM #4C

ASSOCIATION OF BAY AREA GOVERNMENTS

Celebrating 50 Years of Service to the Region



To: Finance & Personnel Committee (F&P) and
Executive Board via F&P
Fr: Kenneth K. Moy
Dt: July 6, 2012
Re: Joining *Amicus Curiae* Brief in *Cole v Town of Los Gatos*

Summary and Requested Action: A recent appellate court decision in a case covered by the ABAG PLAN Program has the potential to significantly increase defense costs and liability exposure for all public entities. The Town of Los Gatos (Town) requests that ABAG join an *amicus curiae* brief if the California Supreme Court decides to an appeal. The ABAG staff that serves the program and I concur. There will be no costs to ABAG. Request authorization to join *amicus curiae* brief.

Background and Analysis: ABAG operates a self funded municipal liability pool (ABAG PLAN Program) on behalf of the thirty (30) cities that are members of ABAG and participate in the program, including the Town. In 2007, the Town tendered and ABAG accepted a claim brought by Cole based on the alleged 'dangerous condition' of a portion of Blossom Hill Road that is in the Town. However, the direct cause of the injury to Cole was a drunk driver who struck Coleman as she was loading or unloading a bicycle from the back of her SUV which was parked off Blossom Hill Road. Cole does not state how the alleged 'dangerous condition' caused the drunk driver to injure Cole. Relying on precedent, a motion for summary judgment based on Cole's failure to make the causal linkage was filed. The motion was granted by the trial court but was overturned on appeal.

The appellate court held that Cole does not need to articulate a causal connection between the alleged 'dangerous condition' and the actions of the drunk driver who directly caused the injury.¹ This decision increases litigation costs and liability exposure for all public entities. For this reason, the ABAG PLAN Program is negatively impacted by the decision.

The Cole decision is also in conflict with precedent in other California appellate districts. This conflict makes the decision ripe for review by the California Supreme Court and an appeal has been filed. If the Supreme Court decides to hear the appeal, the office of the County Counsel for San Diego County is prepared to draft an *amicus curiae* brief. The League of California Cities (LCC) and the California State Association of Counties (CSAC) have already decided to join the County of San Diego on the *amicus curiae* brief. The Town has requested that ABAG join in the *amicus curiae* brief. The ABAG staff that serves the program and I concur and proposes that we do so citing our role in the ABAG PLAN Program.

AGENDA ITEM 6

¹ In order to align its decision with precedent, the appellate court also held that a causal connection between the alleged 'dangerous condition' and the third party that is the direct cause of the injury if that third party was engaged in 'violent conduct'.

Representing City and County Governments of the San Francisco Bay Area

Mailing Address: P.O. Box 2050 Oakland, California 94604-2050 (510) 464-7900 Fax: (510) 464-7985 info@abag.ca.gov
Location: Joseph P. Bort MetroCenter 101 Eighth Street Oakland, California 94607-4756

ASSOCIATION OF BAY AREA GOVERNMENTS

Celebrating 50 Years of Service to the Region



To: Finance & Personnel Committee
Fr: Kenneth K. Moy, Legal Counsel
Dt: July 9, 2012
Re: Legal Counsel - Performance Evaluation, FY 2012-13

For my performance evaluation, I intend to continue to follow the process in place for the past five years. To that end, I propose to send a memorandum describing accomplishments since my last review and proposing goals for FY 2012-13 to all committee members by August 31, 2012.

The committee's consideration of the memorandum and evaluation of my performance will occur at its September 20th meeting.

AGENDA ITEM 8

Representing City and County Governments of the San Francisco Bay Area

Mailing Address: P.O. Box 2050 Oakland, California 94604-2050 [510] 464-7900 Fax: [510] 464-7985 info@abag.ca.gov
Location: Joseph P. Bort MetroCenter 101 Eighth Street Oakland, California 94607-4756

Item 16