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May 26, 2020
**Commission on
State Mandates**

JIM DESMOND

SUPERVISOR, FIFTH DISTRICT
SAN DIEGO COUNTY BOARD OF SUPERVISORS

1600 PACIFIC HIGHWAY, ROOM 335, SAN DIEGO, CALIFORNIA 92101-2470

May 26, 2020

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Response to Test Claim 19-TC-03, Assembly Bill No. 805 SANDAG's Independent Performance Auditor Staffing and Other Increased Cost

Dear Ms. Halsey:

I am writing to express my support for the test claim submitted by the San Diego Association of Governments (SANDAG) on March 19, 2020, related to "Assembly Bill 805 (AB 805) SANDAG's Independent Performance Auditor Staffing and Other Increased Cost."

AB 805 mandates that SANDAG appoint an Independent Performance Auditor (IPA) to conduct or to cause to be conducted performance audits of all departments, offices, boards, activities, agencies, and programs relating to the agency. It also provides that the IPA have the power to appoint and employee personnel as believed necessary for efficient and effective administration of affairs of the office. The IPA is also charged with the responsibilities to investigate any material claim of financial fraud, waste or impropriety within the agency, claimant, or other persons.

A statute creates a "program" when it creates: "[1] programs that carry out the governmental function of providing services to the public, or [2] laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state." *County of Los Angeles v. State of California*, 43 Cal. 3d 46, 56 (1987). A program is "new" if the local governmental entity had not previously been required to institute it." *County of Los Angeles v. Comm'n on State Mandates*, 110 Cal. App. 4th 1176, 1189 (2003).

The purpose of the constitutional provision requiring reimbursement to local governments for a new program is to prevent "transferring to [local] agencies the fiscal responsibility for providing services which the state believed should be extended to the public." *County of Los Angeles*, 43 Cal. 3d at 56-57. The test claim statute meets this definition of a "program."

Prior to AB 805, the IPA position at SANDAG did not exist. Further the requirement to create this position is unique to SANDAG as the statute does not apply to similar regional agencies statewide.

The Legislature anticipated that AB 805 would impose a mandate on SANDAG, as indicated in the legislative history. The Senate Committee on Appropriations (August 28, 2017) determined the fiscal effect of the bill to be “Unknown, potentially reimbursable local mandate costs to...establish an in-house audit committee and independent auditor within SANDAG... To the extent SANDAG, MTS, and/or NCTD files a successful claim for reimbursement with the Commission on State Mandates, this bill could result in significant General Fund impacts.” The Assembly Committee on Appropriations (May 17, 2017) found the fiscal effect to be “Unknown, potentially reimbursable mandate costs, likely in the several hundreds of thousands of dollars, to the affected local agencies to...establish an audit committee...”

Although these comments are not binding on the Commission, see Cal. Government Code § 17575, it is clear the Legislature understood the statute would “transfer[] to [local] agencies the fiscal responsibility for providing services which the state believed should be extended to the public.” County of Los Angeles, 43 Cal. 3d at 56-57.

Similarly, the Department of Finance stated it opposed AB 805 because “it appears to create a reimbursable state mandate.” The potentially reimbursable components included requiring a higher level of audit functions from SANDAG though Finance could not quantify the potential fiscal impact of the bill on SANDAG.

Though SANDAG can and has assessed membership assessment fees, the amounts collected are not sufficient to pay for the full mandated program increased cost. As a result of the state-imposed mandate, in 2019, SANDAG doubled membership assessments fees to help recover some of the increased costs that resulted from the state-imposed mandate. Since April 2019, the assessments have and continue to be used to offset the cost mandated cost, but there are residual costs associated with the state-imposed mandate. Given the current economic situation, SANDAG member agencies are unable to further increase their member assessment contributions. The amounts collected are not sufficient and do result in costs incurred that are not fully covered by offsets, thus the remainder of the cost associated with the mandate-imposed actions and increased level of activity is what SANDAG is seeking through this test claim.

For these reasons, I encourage the Commission on State Mandates to approve SANDAG’s test claim, reimbursing the claimant for incurred, eligible expenses.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Desmond". The signature is fluid and cursive, with the first name "Jim" and last name "Desmond" clearly distinguishable.

Jim Desmond, Supervisor
County of San Diego, Fifth District

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On May 28, 2020, I served the:

- **City of Chula Vista's Comments on the Test Claim filed May 27, 2020**
- **City of El Cajon's Comments on the Test Claim filed May 27, 2020**
- **Mr. Paul J. Dostart's Comments on the Test Claim filed May 27, 2020**
- **San Diego County Supervisor, Fifth District's Comments on the Test Claim filed May 26, 2020**

SANDAG: Independent Performance Auditor, 19-TC-03
Public Utilities Code Section 132354.1 (b)(1), (2), (3), (4)
San Diego Association of Government (SANDAG), Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 28, 2020 at Sacramento, California.

Lorenzo Duran

Lorenzo Duran
Commission on State Mandates
980 Ninth Street, Suite 300
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(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 5/5/20

Claim Number: 19-TC-03

Matter: SANDAG: Independent Performance Auditor

Claimant: San Diego Association of Government (SANDAG)

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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