



June 29, 2020

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**Commission on
State Mandates**

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

Response to Test Claim 19-TC-03, SANDAG – Independent Performance Auditor

Dear Ms. Halsey:

The Department of Finance (Finance) has reviewed Test Claim 19-TC-03 submitted to the Commission on State Mandates by the San Diego Association of Governments (Claimant). The Claimant alleges there are state-mandated, reimbursable costs associated with Chapter 658, Statutes of 2017 (AB 805). This test claim should be denied for the reasons stated below.

AB 805, Chapter 658, Statutes of 2017 added and amended sections of the Public Utilities Code related to transportation agencies. It modified the governance structure and procedures of the Claimant and two local transit operators, the San Diego Metropolitan Transit Development Board and the North County Transit District. The Claimant alleges the statute created auditing, reporting, and oversight requirements. As part of these requirements, the Claimant alleges it must create an audit committee with specified responsibilities, including the appointment of an independent performance auditor.

The Claimant is a joint powers agency established pursuant to the Joint Exercise of Powers Act, Government Code sections 6500-6536 and is therefore not an eligible claimant under Article XIII B, section 6 of the California Constitution because it does not have independent taxation authority. The claimant alleges it is authorized to levy a retail transactions and use tax in San Diego County. However, pursuant to Public Utilities Code section 132301, the San Diego County Regional Transportation Commission (Commission) is the local entity that is authorized to impose a sales and use tax for local transportation purposes. The Commission transfers sales and use tax revenue to the Claimant to pay for staffing and other administrative costs. The Claimant is an indirect recipient of tax revenue and does not have independent authority to impose taxes, rendering the agency ineligible for mandate claims. Even if the Claimant were an eligible claimant, they have fee authority to cover the cost of complying with this statute.

Government Code section 17556 directs the Commission on State Mandates to determine costs are not mandated by the state if certain criteria are met, as outlined in the statute. This claim is subject to Government Code section 17556, subdivision (d) because the claimant has the authority to assess membership fees to board members that represent the county and cities around the San Diego Region. According to the claimant, despite doubling membership fees in 2019, the fees only partially offset the claimed costs. However, there is no cap on the Claimant's fee authority, and fees could be used to offset the full costs associated with this statute.

To comply with AB 805, the Claimant created the Office of the Independent Performance Auditor (OIPA), and OIPA is the official body to investigate allegations of potential fraud, waste, and abuse. The Claimant alleges the costs associated with the OIPA are reimbursable costs. The Claimant reports a total cost of \$430,159 for 2019-20. It appears that these costs may be overstated as some of them are not related to the alleged mandated activities. Salaries and benefits for multiple audit positions, including interns, are included in the claimed costs while the statute only requires appointment of a singular independent performance auditor. The Claimant is able to discharge its alleged required audit functions by contracting with an auditor rather than hiring staff and interns. Miscellaneous costs for training and development and professional licensing are also included in the claim, but the statute does not stipulate any specific training or licensing requirements for the independent performance auditor.

Sincerely,

Chris Hill 4/

ERIKA LI
Program Budget Manager

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 June 30, 2020, I served the:

- **Finance's Comments on the Test Claim filed June 29, 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 June 30, 2020 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
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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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