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The Honorable John A. Sweeney, A.J.S.C. (Ret.), Chairman
New Jersey Council on Local Mandates
135 West Hanover Street, 4th Floor
P.O. Box 627
Trenton, New Jersey 08625-0627

Re: In the Matter of a Complaint Filed by
the Borough of Leonia and a Complaint
Filed by the Borough of Fort Lee (Consolidated)
Complaint No. COLM 0011-22

Dear Judge Sweeney:

Please accept this letter in lieu of a formal brief on behalf of Respondent, State of New Jersey, in support of a motion to dismiss the consolidated case of the complaints filed by the Borough of Leonia and the Borough of Fort Lee in the above-captioned matter.

PLEADING SUMMARY

On August 5, 2022, Governor Murphy signed L. 2022, c. 92 ("the Act") into law. N.J.S.A 40A-1 to -3. In essence, the Act requires business owners or the owner of at least one rental unit, to provide proof of liability insurance (a "certificate of



insurance") with their respective municipality. N.J.S.A. 40A:10A-1(a), (b) -2(a). In turn, the municipality is to issue the business owner or rental unit owner a "certificate of registration." N.J.S.A. 40A:10A-2(b). The Act grants municipalities, through their municipal governing body, the option to enact an ordinance for the recovery of costs associated with the municipality's registration of each certificate of insurance submitted to it as required by the Act. N.J.S.A. 40A:10A-2(b). This provision took effect November 3, 2022.

Claimants, the Borough of Leonia and the Borough of Fort Lee, ("Leonia," "Fort Lee" or "Boroughs") challenge the Act and allege that it imposes an unfunded mandate upon the Boroughs. However, the basis for this challenge is entirely unfounded. By its plain language, the Act clearly provides a mechanism for a municipality to recover costs associated with the requirements of the Act, as well as the recovery of penalties for failure of a covered property owner or business to comply with the Act. Thus, there is no basis to conclude that the Act imposes unfunded costs to the municipalities. Accordingly, the Council on Local Mandates should grant the State's motion to dismiss Leonia and Fort Lee's complaints.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

The Act requires the owner of a business or the owner of a rental unit or units, to maintain liability insurance for negligent acts and omissions in an amount of no less than \$500,000 for combined property damage and bodily injury to, or death of one or more persons, in any one accident or occurrence. N.J.S.A 40A:10A-1(a). In addition, the Act requires that the owner of a multifamily home which contains four or fewer units (one of which is owner-occupied), shall maintain liability insurance for negligent acts or omissions in an amount of not less than \$300,000. N.J.S.A 40A:10A-1(b). Under the Act, those business owners and rental unit owners must annually register a certificate of insurance with the municipality demonstrating compliance with the Act. N.J.S.A 40A:10A-2(a). In turn, the municipality is to issue a certificate of registration. N.J.S.A. 40A:10A-2(b). Further, the municipality "may . . . establish a reasonable administrative fee for the certificate of registration" required by the Act. N.J.S.A 40A:10A-2(b). Finally, the municipal governing body may collect, through a summary proceeding, a fine of not less than \$500 but no more than \$5,000 against an owner who fails to comply with the provisions of the Act. Ibid.

On or about November 22, 2022, the Borough of Leonia filed a complaint with the Council on Local Mandates that "demands judgment

by the Council" that the Act is an unfunded mandate in violation of N.J. Const. art. VIII, § 2, ¶ 5 and N.J.S.A. 52:13H-2. Leonia alleges that the Act imposes "an undue burden on the municipality by requiring the borough to create and maintain an unfunded business registry." (Leonia Complaint, section 3). The complaint further alleges the State "did not make any preparation for the cost of municipalities to establish the business insurance registry and enforce the provisions of the statute." Ibid. The complaint alleges that the State "did not take into account the funds necessary to create and maintain a business insurance registry which cost will now be a burden on the municipality." Ibid. Finally, the complaint alleges expenditures to be incurred by Leonia in the amount of \$3,213 in 2022 and \$5,400 in 2023 and 2024. (Leonia Complaint, section 4).

On December 29, 2022, Fort Lee filed a complaint also alleging that the Act is an unfunded mandate "because it does not authorize resources, other than property tax, to offset the additional direct expenditures required for its implementation." (Fort Lee Complaint, section 2). Similar to Leonia, Fort Lee alleges that the Act imposes "an undue burden on the municipality by requiring the borough to create and maintain an unfunded business registry." (Fort Lee Complaint, section 3). Fort Lee also alleges anticipated expenditures to meet the requirements of the Act in the amount of

"\$35,000 (salary and benefits) for time devoted by administrative assistant annually." (Fort Lee Complaint, section 4).

The State files this motion to dismiss the Boroughs' complaints because the challenged statute does not create an unfunded mandate.

ARGUMENT

An unfunded mandate is a law, rule, or regulation that "does not authorize resources, other than the property tax, to offset the additional direct expenditures required for the implementation of the law or rule or regulation. . . ." N.J. Const. art. VIII, §2, ¶5. N.J. Const. art. VIII, §2, ¶5(a); see also N.J.S.A. 52:13H-1 to -22, the Local Mandates Act ("LMA"). The New Jersey Constitution grants the Council exclusive authority to determine whether any provision of a law enacted on or after January 17, 1996, or any part of a rule or regulation originally adopted after July 1, 1996, constitutes an unfunded State mandate. N.J. Const. art. VIII, §2, ¶5(b). Any statute or regulation that is deemed to be an unfunded mandate "shall, upon such determination cease to be mandatory in its effect and expire." N.J. Const. art. VIII, §2, ¶5(a); N.J.S.A. 52:13H-2, -12(a). The Council has explained that its "authority is limited to considering whether a mandate is funded or unfunded, and if it is unfunded, whether certain enumerated exemptions apply." In re Complaints Filed by the

Monmouth-Ocean Educ. Servs. Comm'n, the Rumson-Fair Haven Reg'l High Sch. Dist., and the Stafford Twp. Bd. of Educ. (August 20, 2004) at 8.

Here, the Act does not constitute an unfunded mandate as defined by N.J. Const. art. VIII, §2, ¶5 and the LMA, because it does not require any additional direct expenditures by the claimant Boroughs. The Act permits the adoption of an ordinance by a municipality for "a reasonable administrative fee for the certificate of registration," such registration demonstrating "compliance with section 1 of [the Act] with the municipality. . . ." N.J.S.A. 40A:10A-2(a), (b). The Act also allows the municipality to take enforcement action against those who fail to comply with the Act by permitting municipalities to collect penalties in cases of non-compliance by a covered property owner. N.J.S.A. 40A:10A-2(b). Ibid. A municipality may, therefore, take the necessary steps to recover any costs associated with the registration of proof of insurance and costs for enforcement of the required filing of proof of insurance.

For these reasons, the State's motion to dismiss the Boroughs' complaints should be granted.

**L. 2022, C. 92 IS NOT AN UNFUNDED MANDATE
BECAUSE IT DOES NOT REQUIRE THE CLAIMANTS TO
EXPEND ADDITIONAL RESOURCES.**

The Act is not an unfunded mandate because the plain language of the statute authorizes municipalities, like the Boroughs, to collect fees associated with the costs of registering proof of liability insurance for business owners and owners of at least one rental unit.

To make out a claim of unconstitutionality under N.J. Const. art. VIII, §2, ¶5 and the LMA, a claimant must demonstrate that: (1) the statute, rule, or regulation imposes a "mandate" on a unit of local government; (2) additional direct expenditures are required for the implementation of the statute, rule, or regulation; and (3) the statute, rule, or regulation fails to "authorize resources, other than the property tax, to offset the additional direct expenditures." In re a Complaint Filed by the Borough of Jamesburg (October 28, 2014) at 5. Where a statute does not require that direct expenditures be incurred to implement the language of the statute, there cannot be an unfunded mandate. In re Complaint filed by the Twp. of Blirstown (July 8, 2011) at 3.

The Act does not require any direct expenditures by a municipality. The Act does not require, as Complainants allege, the municipalities to create a "database." The municipalities are

required to issue certificates of registration. How to implement the statute is left to each municipality. Nevertheless, the Act plainly states a municipality may adopt an administrative fee for the costs of the insurance certificate registration process. Therefore, no matter how the municipality determines to best implement the Act (i.e., building a registry, adding to an existing registry structure, etc.), the Act authorizes resources to fund such endeavor through a reasonable administrative fee.

The Council addressed the issue of municipal administrative fees that offset any alleged unfunded mandate in In the Matter of A Complaint Filed By Ocean Township (Monmouth County) and Frankford Township, COLM 10-01 (August 2, 2002). There, the Council granted a motion to dismiss the complaint, finding there was no unfunded mandate where an amendment to the Municipal Land Use Law ("MLUL"), N.J.S.A. 40:55D-18, required an application for a zoning permit be granted or denied within ten business days. Ocean Township (Monmouth County) and Frankford Township at 10. The MLUL amendment permitted municipal administrative fees to recover costs related to the statutory amendment. Ibid.

In that case, the two complaining townships asserted that they experienced major increases in the volume of zoning applications and the requirement to grant or deny an application with ten days resulted in unfunded costs mandated by the State.

Id. at 3-4. The townships asserted the language of the MLUL permitting a municipality to “establish reasonable fees to cover administrative costs for the issuance of such permits” did not provide a source of revenue to the municipalities to cover the costs of the zoning permit amendment. Id. at 7. The townships argued the Legislature was required to provide a source of “State” funding of a local mandate and the ability to impose administrative fees to cover the townships’ costs did not satisfy the constitutional or statutory unfunded mandate requirements. Ibid.

In its decision, the Council first rejected the contention that the MLUL statutory amendment categorically required State funding of a local mandate. Ibid. “The Constitution speaks of *authorizing* a resource, not literally providing one, suggesting the ordinary legislative process of delegating to municipalities the power they need to impose taxes or fees.” Ibid. The Council noted that authorization by the Legislature for a municipality to establish reasonable fees to cover administrative costs is different from a tax. Id. at 8. Additionally, the Council found the administrative fee authorized under the MLUL to be specific to individual properties that fall within the specific category set forth, that is, those applying for a zoning permit. Ibid. In doing so, the Council noted that the administrative fee was

specific to affected properties and thus was not the equivalent of a general property tax impacting all property owners. Ibid.

The Council also addressed the intent of the Legislature in amending the MLUL and providing for a municipality to establish reasonable administrative fees, explaining there was no obvious reason the Legislature would have chosen to authorize a fee that does not offset all of the costs associated with the zoning permit system. Id. at 11.

The same holds true here. Just as in Ocean Township (Monmouth County) and Frankford Township, the Act provides that a municipality "may, by ordinance, establish a reasonable administrative fee for the certificate of registration." N.J.S.A. 40A:10A-2(b). The purpose of the Act is to require the purchase of adequate insurance by the specific property owners set forth in the Act. See S1368, second reprint. The owner of a business or a rental unit "shall annually register the certificate of insurance demonstrating compliance with section 1 of this act with the municipality in which the business, rental units, or multi-family home is located." N.J.S.A. 40A:10A-2(a). The registration by the affected property owners of their insurance policy with the municipality, and the issuance of a certificate of registration by the municipality to the property owners, is funded by the adoption of an administrative fee by the municipality, thereby covering any

costs resulting from the Act. N.J.S.A. 40A:10A-2(b). Like the MLUL, there is no obvious reason the Legislature would have chosen to authorize a fee that does not offset all of the costs associated with the annual registration of the certificates of insurance required by N.J.S.A. 40A:10A-2(a).

As to the adequacy of the funding, the Council has addressed this issue in prior decisions as well. In Ocean Township (Monmouth County) and Frankford Township, the Council held that it does not have the authority to determine whether the funding of any statute is adequate. See N.J.S.A. 52:13H-12(a); Ocean Township (Monmouth County) and Frankford Township at 12. Here, the Legislature allows for a "reasonable administrative fee" to carry out the issuance of a certificate of registration. N.J.S.A. 40A:10A-2(b). Therefore, the cost of the issuance of a certificate of registration incurred by a municipality may be recovered by an administrative fee.

The potential costs of carrying out the provisions of the Act will likely vary from one municipality to another. This is illustrated by the significant difference in alleged expenditures provided by the two Boroughs in their respective complaints. Leonia alleges expenditures of \$3,213 in 2022 and \$5,400 in 2023 and 2024 arising from the Act. Fort Lee anticipates annual expenditures of \$35,000, six times larger than Leonia's alleged costs. The costs alleged by the municipalities are speculative at

best and are irrelevant because whatever the real costs are, they may be recovered through the adoption of an ordinance by the municipality for the collection of an administrative fee, as authorized under the Act.

The ability of the Boroughs to adopt a reasonable administrative fee for the issuance of a certificate of registration required by the Act allows the municipality to cover all costs associated with the issuance of the certificate of registration. N.J.S.A. 40A:10A-2(a), (b). The Council reached this same conclusion in its decision in the Ocean Township (Monmouth County) and Frankford Township. In both instances, the Legislature has provided for municipal administrative fees to cover the costs of the legislative action. The Act makes clear that the administrative fee is for "the certificate of registration required pursuant to subsection a. of this section for properties located in that municipality." N.J.S.A. 40A:10A-2(b). Subsection (a) states the affected property owner shall annually register with the municipality the certificate of insurance demonstrating compliance with the Act. N.J.S.A. 40A:10A-2(a). Therefore, there is no unfunded mandate resulting from the Act as the municipality may adopt an administrative fee to cover all required costs.

In each of the rulings where the Council has invalidated a statute, rule, or regulation, "clear and convincing evidence was

presented that counties, municipalities or boards of education would incur expenditures in order to implement the challenged provisions.” In re a Complaint Filed by the Twp. of Medford (June 1, 2009) at 12 (concurring opinion). The same cannot be said of any costs associated with the Act. Any costs associated with the Act are permitted to be offset by the municipal governing body’s adoption of a reasonable administrative fee.

For all of these reasons, L. 2022, c. 92 is not an unfunded mandate and the State’s motion to dismiss Leonia and Fort Lee’s complaints should be granted.

CONCLUSION

For the foregoing reasons, the State’s motion to dismiss should be granted and the Boroughs’ complaints dismissed with prejudice by the Council.

Respectfully submitted,

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