

February 14, 2023

VIA ELECTRONIC MAIL TO:
Filings-clmand@treas.state.nj.us
AND FEDERAL EXPRESS
State of New Jersey
Council on Local Mandates
140 East Front Street, 8th Floor
Trenton, New Jersey 08625-0627

**Re: In Re Complaint Filed by the Township of Middletown
Regarding P.L. 2014, Chapter 31 (Bail Reform Law)**

Dear Council on Local Mandates:

This office represents the Township of Middletown. Enclosed for filing is an original and two copies of the Complaint Form with additional information, and the Certification of Service.

Thank you for your attention to this matter.

Respectfully submitted,

SPIRO HARRISON & NELSON LLC

By: 
Brian M. Nelson, Esq.



State of New Jersey Council on Local Mandates Complaint

The form is to be completed and signed by the Claimant's attorney or other authorized representative, identified under Part I (B).

I (A). Information regarding the Claimant (include title if a County Executive or Mayor):

Name of Claimant (and title if applicable):

Township of Middletown

Claimant contact information:

Mailing Address:

One Kings Highway

City:

Middletown

State: New Jersey

Zip Code:

07748

Phone:

732-615-2000

Fax:

none

E-mail address:

amercant@middletownnj.org

I (B). Name of person preparing this document, and title or relationship to Claimant (e.g., legal counsel, business administrator, superintendent):

Name:

Brian M. Nelson, Esq.

Title/Relationship:

Township Attorney

Contact information for person identified in Part I (B):

Mailing Address:

Spiro Harrison & Nelson LLC, Two Bridge Avenue, Suite 322

City:

Red Bank

State: New Jersey

Zip Code:

07701

Phone:

732-784-1470

Fax:

none

E-mail Address:

bnelson@shnlegal.com

II. The Complaint:

1. Claimant alleges that the following statute, rule, or regulation is an unfunded mandate in violation of the New Jersey Constitution, article VIII, § 2, ¶ 5 and N.J.S.A. 52:13H-2, because it does not authorize resources, other than the property tax, to offset the additional direct expenditures required for its implementation:

P.L. 2014, Chapter 31

2. The above-cited statute, rule, or regulation became effective on:

January 1, 2017

3. The following is the basis for the claim made herein that the statute, rule, or regulation identified in paragraph II (1) is an unfunded mandate:

Please see attached "Section 3 - Basis for the Claim".

Note: The text provided in paragraph II (3) is to be used for the Pleading Summary published on the Council's web site. If more space is needed, please attach additional sheet(s).

4. State Claimant's estimate of the additional direct expenditures required to implement the statute, rule or regulation identified in paragraph II (1), together with:
- (a) a description of the frequency of the estimated expenses (i.e. annual, monthly), and
 - (b) a specification of the basis for the estimate.

Please see attached "Section 4 - Additional Direct Expenditures".

Note: If more space is needed, please attach additional sheet(s).

5. Does Claimant seek injunctive relief? No ☒ Yes ☐

If yes, on attached sheet(s), provide a description of the nature and extent of imminent irreparable injury that will result to Claimant in the absence of injunctive relief.

6. Claimant attaches:

- ☒ Resolution (of county/municipal governing body or of board of education), which is incorporated herein by reference, *or*
- ☐ Copy of notice of intention to file a complaint provided to governing body.

WHEREFORE, Claimant demands judgment by the Council that the statute, rule, or regulation identified in paragraph II (1) above is an unfunded mandate pursuant to the New Jersey Constitution, Art. VIII, § 2, ¶ 5 and N.J.S.A. 52:13 H-2, and that it shall cease to be mandatory in effect and expire.


[Signature of person preparing this document].

Date: February 14, 2023

Brian M. Nelson, Esq.

Name (typed or printed) of person signing

Township Attorney

Title (typed or printed) of person signing

Total number of attached pages:

8

Print Form

Brian M. Nelson, Esquire (#001352003)
SPIRO HARRISON & NELSON LLC
Two Bridge Avenue, Suite 322
Red Bank, New Jersey 07701
732-784-1470
bnelson@shnlegal.com
Attorneys for Township of Middletown

IN RE COMPLAINT FILED BY THE TOWNSHIP OF MIDDLETOWN, REGARDING P.L. 2014, CHAPTER 31	STATE OF NEW JERSEY COUNCIL ON LOCAL MANDATES ADDITIONAL INFORMATION SUBMITTED WITH FORM COMPLAINT
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Section 3 – Basis for the Claim

This Complaint addresses P.L. 2014, Chapter 31, which eliminated monetary bail in favor of a more equitable risk-based assessment for pretrial detention, but which imposes high costs on municipalities seeking to maintain order notwithstanding the widespread release of suspected criminals. New Jersey’s bail reform statute aims to change the fact that pretrial release from jail had been largely contingent on a defendant’s ability to post bail, regardless of the severity of the crime or risk that the defendant would fail to appear for trial. Unfortunately, however, the practical implications of this bail reform statute are causing the Township of Middletown – and likely other municipalities across the State – to incur over \$325,000 annually in increased public safety costs.

Pursuant to the bail reform encompassed within P.L. 2014, Chapter 31, only defendants who pose a serious risk of danger or flight are detained in jail pending trial. Defendants deemed to be “low risk” are now released pending trial and cannot be

detained solely because they cannot afford to post bail. Although laudable in theory, the result is that non-violent offenders released from jail, while still posing a risk to public safety through reckless and wanton behavior, are continuing and repeating their criminal behavior pending trial. New Jersey municipalities are forced to increase their law enforcement efforts, specifically to combat the rising rates of motor vehicle theft and home invasions, without any mechanism by which to fund these increased public safety costs. Accordingly, P.L. 2014, Chapter 31 constitutes an unfunded mandate.

1. Prior to the passage of P.L. 2014, Chapter 31, the State of New Jersey relied primarily on setting monetary bail as a condition of releasing defendants prior to trial.

2. With the passage of P.L. 2014, Chapter 31, the State shifted toward a risk-based system designed to ensure that only defendants who pose a serious risk of danger or flight are detained pending trial, and defendants deemed “low risk” are released pending trial.

3. Unless a defendant faces life imprisonment, defendants now are entitled to the presumption that they will be released following the commission of a crime while they await trial.

4. Notably, this change results in the near-immediate release of non-violent suspected offenders to the public streets in unprecedented numbers. The release of these offenders has resulted in increased recidivism with respect to non-violent crimes in general and motor vehicle thefts in particular.

5. Since the effective date of the bail reform law in January 2017, motor vehicle thefts and associated crimes in Monmouth County have increased by 40% with more than one-third of those being arrested and released committing the same crime again.

6. The substantial increase in motor vehicle thefts is placing a strain on local governments and municipal law enforcement officials, who must significantly increase police patrols and expenditures to combat the surge in motor vehicle thefts and associated crimes that statistically correlates with the effective date of the bail reform law.

7. Since the bail reform law became effective, the Township of Middletown's taxpayers have been forced to cover hundreds of thousands of dollars of unfunded costs associated with combatting and investigating motor vehicle thefts and associated crimes on an annually recurring basis.

8. Despite these increased costs, P.L. 2014, Chapter 31 does not provide for any practical means to offset the additional municipal expenditures necessitated by the return of criminal offenders to society pending trial.

9. For those reasons, New Jersey's bail reform law violates N.J.S.A. 52:13H-2 because the State has "not authorize[d] resources to offset the additional direct expenditures required for the implementation of the law" P.L. 2014, Chapter 31 is an unfunded mandate.

Section 4 – Additional Direct Expenditures

The negative direct expenditures required to implement P.L. 2014, Chapter 31 are clear and quantifiable in all respects. Prior to the bail reform law, the Township of Middletown had a decreased police presence during overnight hours, i.e., seven patrol officers plus necessary supervisors between 1:30 a.m. and 7:00 a.m. After the effective date of the bail reform law, the substantial correlative increase in motor vehicle thefts and associated crimes began occurring with greatest frequency between 1:30 a.m. and 7:00 a.m. The Township was forced to assign an additional officer to the overnight shift, on overtime hours, between 1:30 a.m. and 7:00 a.m. to reduce vulnerability and enhance the Township's ability to better prevent, detect, and solve motor vehicle thefts and related crimes. The addition of this officer allowed the Township to designate one patrol unit exclusively to motor vehicle theft patrol, without compromising or negatively impacting normal patrol duty commitments.

Assigning an officer exclusively to motor vehicle thefts on an overtime basis requires 5.5 hours of overtime pay each night, 365 days per year, for a total of 2,007.5 hours of overtime. Using the Federal Emergency Management Agency's model of the 88th percentile to factor the overtime rate yields a spend rate of \$93.89 per hour for 2,007.5 hours, which totals **\$188,484.17** in overtime pay attributable to motor vehicle theft. This estimate is extremely conservative, as the Township on occasion has as many as six additional officers assigned to motor vehicle theft patrol per night.

In addition to these costs, the Township also had to assign an officer on a full-time basis to the New Jersey State Police Auto Theft Taskforce. This officer has an annual salary of **\$136,907.00**.

As a result, the Township's combined costs directly attributable to the unfunded mandate comprising New Jersey's bail reform statute are at least **\$325,391.17** annually.

Section 5 – Resolution

Attached as Exhibit A, please find a Certified Resolution of the Township Committee of the Township of Middletown, authorizing suit.

Respectfully submitted,

SPIRO HARRISON & NELSON LLC
Attorneys for Township of
Middletown

Dated: February 14, 2023



Brian M. Nelson, Esq.

EXHIBIT A

**RESOLUTION NO. 23-59
TOWNSHIP OF MIDDLETOWN
COUNTY OF MONMOUTH**

Resolution Authorizing Filing of Complaint with The State Council on Local Mandates in Relation to Excess Costs Associated with Motor Vehicle Thefts and Associated Crimes Resulting from Bail Reform

WHEREAS, pursuant the New Jersey Constitution (the “State Constitution”), the New Jersey Council on Local Mandates (the “Council”) is charged with determining whether any statute, rule or regulation constitutes an “unfunded mandate” in violation of Article VIII, § 2, ¶ 5 of the State Constitution and N.J.S.A. 52:13H-2 imposed against a local government entity; and

WHEREAS, since the enactment of the bail reform law in January 2017, motor vehicle thefts and associated crimes in Monmouth County have increased by 40% with more than one-third of those being arrested and released committing the same crime again; and

WHEREAS, the Township of Middletown (the “Township”) has been forced to increase police patrols and significantly increase expenditures to combat the surge in auto thefts and associated crimes that statistically correlates with the enactment of the bail reform law; and

WHEREAS, since the bail reform was enacted, the Township’s taxpayers have been forced to cover hundreds of thousands of dollars of unfunded costs associated with combating and investigating auto thefts and associated crimes on an annually reoccurring basis; and

WHEREAS, the bail reform law, therefore, violates N.J.S.A. 52:13H-2 because the State has “not authorize[d] resources to offset the additional direct expenditures required for the implementation of the law . . .”; and

WHEREAS, under the State Constitution, the Council is empowered to act to eliminate such unfunded mandates imposed upon municipal governments by the State.

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Middletown in the County of Monmouth, State of New Jersey that it hereby authorizes and directs the Township Attorney to file a Complaint with the Council to address the above-recited unfunded mandate that the bail reform law has imposed upon municipal governments.

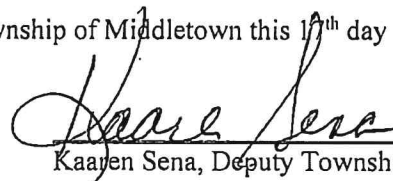
MIDDLETOWN TOWNSHIP COMMITTEE

Committee Member	Approved	Opposed	Recuse	Absent
R. Clarke	X			
R. Hibell	X			
K. Kratz	X			
K. Settembrino	X			
Mayor Perry	X			

CERTIFICATION

I, Kaaren Sena, Deputy Township Clerk of the Township of Middletown, hereby certify the foregoing to be a true copy of a resolution adopted by the Middletown Township Committee at their meeting held January 17, 2023.

WITNESS, my hand and the seal of the Township of Middletown this 17th day of January 2023.


Kaaren Sena, Deputy Township Clerk

Brian M. Nelson, Esquire (#001352003)
SPIRO HARRISON & NELSON LLC
Two Bridge Avenue, Suite 322
Red Bank, New Jersey 07701
732-784-1470
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Attorneys for Township of Middletown

IN RE COMPLAINT FILED BY THE TOWNSHIP OF MIDDLETOWN, REGARDING P.L. 2014, CHAPTER 31	STATE OF NEW JERSEY COUNCIL ON LOCAL MANDATES CERTIFICATION OF SERVICE
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I, Fiona Dugan, of full age, hereby certify as follows:

I am employed by the law firm of Spiro Harrison & Nelson LLC, attorneys for Township of Middletown, and on February 14, 2023, the original and two (2) copies of the Complaint in the above-captioned matter was sent via electronic mail and Federal Express to:

State of New Jersey
Council on Local Mandates
140 East Front Street, 8th Floor
Trenton, New Jersey 08625
Filings-clmand@treas.state.nj.us

I further certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/ Fiona Dugan
Fiona Dugan

Date: February 14, 2023