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March 5, 2021

File No.: 12160-87

VIA EMAIL AND FIRST CLASS MAIL
filings-clmand@treas.state.nj.us

Council on Local Mandates
140 East Front Street, 8th floor
Trenton, NJ 08625-0627

Re: In Re: Franklin Township Board of Education 0001-21

Dear Counsel:

I represent Complainants in the above referenced matter. Complainants seek to supplement their Complaint, and more specifically their request for an injunction, to include draft legislation, S3487, recently sponsored by Senate President, Stephen M. Sweeney, that would alter P.L. 2020, c. 44. S3487 limits who has to participate in P.L. 2020, c. 44, and allows for enhanced bargaining of the financial impact of the same. A copy of S3487 is enclosed.

If a more formal amendment is required please do not hesitate to contact me.

Very truly yours,

/s/ William C. Morlok

WILLIAM C. MORLOK

WCM:eb
Enclosure

4836-8677-4239, v. 1

COUNSEL WHEN IT MATTERS.SM

Mount Laurel, New Jersey | Hamilton, New Jersey | Atlantic City, New Jersey | Camden, New Jersey

File No. 12160-87

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Attorneys for Franklin Township Board of Education

**In re Complaint Filed by the
Franklin Township Board of Education
Regarding P.L. 2020, Chapter 44.**

**STATE OF NEW JERSEY
COUNCIL ON LOCAL MANDATES**

CASE NO. 00001-21

CERTIFICATION OF SERVICE

I, Elizabeth A. Bennett, of full age, hereby certify as follows:

I am employed by the law firm of Parker McCay P.A., attorneys for Franklin Township Board of Education, and on March 5, 2021, the original and two copies of correspondence dated March 5, 2021 enclosing draft legislation, S3487 with enclosure was sent via email and first class mail to:

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

A copy of the within was also sent to the following:

VIA EMAIL:

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VIA FIRST CLASS MAIL:

Honorable Angelica Allen-McMillan, Ed. D.
Acting Commissioner
Department of Education
P.O. Box 500
Trenton, NJ 08625-0112

I 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/ Elizabeth A. Bennett
Elizabeth A. Bennett

Date: March 5, 2021

4842-7830-2431, v. 1

SG 240
SR 076
TR 310
DR B
CR 12

House Copy

OLS Copy
For Official House Use

Public Copy

BILL NO. 3487

Date of Intro. _____

Ref. _____

NOTE TO
SPONSOR

Notify OLS if you require changes in this document. A revised copy for introduction will be prepared on the legislative computer system. Handwritten changes will not appear in the printed bill.

AN ACT concerning health care benefits plans provided to public employees by the School Employees' Health Benefits Program and certain boards of educations and amending P.L.2020, c.44.

Limits to certain boards of education not in SEHBP requirement to provide certain health care plans and delays requirement to offer plans; changes effective date of Garden State Health Plan and provides open enrollment period.

PRIME Sponsor

Sweeney

CO-Sponsor	District	CO-Sponsor	District
_____	_____	_____	_____
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_____	_____	_____	_____

Same as _____ 18/19

Same as _____ 20/21

Suggested allocation:

AN ACT concerning health care benefits plans provided to public employees by the School Employees' Health Benefits Program and certain boards of education and amending P.L.2020, c.44.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 5 of P.L.2020, c.44 (C.18A:16-13.2) is amended to read as follows:

5. This section shall apply to certain local boards of education and employers, as specified in subsection **【j】** k. of this section, who do not participate in the School Employees' Health Benefits Program and who offered the equivalent of the NJ DIRECT 15 and NJ DIRECT 10 plans of the School Employees' Health Benefits Program as of July 1, 2020.

a. (1) Notwithstanding the provisions of any other law, rule, or regulation to the contrary, beginning January 1, 2021 and for each plan year thereafter, a board of education as an employer providing health care benefits coverage for its employees, and their dependents if any, in accordance with P.L.1979, c.391 (C.18A:16-12 et seq.) shall offer to its employees, and their dependents if any, the equivalent of the New Jersey Educators Health Plan in the School Employees' Health Benefits Program as that plan design is described in subsection f. of section 1 of P.L.2020, c.44 (C.52:14-17.46.13).

Beginning **【July 1, 2021】** August 1, 2021 and for each plan year thereafter, a board of education as an employer providing health care benefits coverage for its employees, and their dependents if any, in accordance with P.L.1979, c.391 (C.18A:16-12 et seq.) shall also offer a plan for its employees, and their dependents if any, that is the equivalent of the Garden State Health Plan in the School Employees' Health Benefits Program. The board shall provide a special enrollment period prior to August 1, 2021.

(2) The plans under this section shall be offered by the employer regardless of any collective negotiations agreement between the employer and its employees in effect on the effective date of this act, P.L.2020, c.44, that provides for enrollment in other plans offered by the employer.

No new health care benefits plans, other than those specified in paragraph (1) of this subsection, shall be added by the employer from January 1, 2021 through December 31, 2027 unless the provisions of any collective negotiations agreement entered into before or after the effective date of this act, P.L.2020, c.44, result in additional premium cost reductions. Nothing in this section shall prohibit an employer from offering health care benefits plans that existed prior to the effective date of this act.

(3) Commencing January 1, 2028, the employer may offer such other plans as may be required in accordance with any collective negotiations agreement between the employer and its employees.

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

b. Prior to January 1, 2021, each employer shall provide an enrollment period during which all employees who commenced employment prior to the effective date of this act shall be required to select affirmatively a plan provided by the employer. If an employee fails to select affirmatively a plan during this enrollment period, the employer shall enroll the employee, and the employee's dependents if any, in the equivalent New Jersey Educators Health Plan offered pursuant to subsection a. of this section for the year January 1, 2021 until December 31, 2021.

During the enrollment period, each person who is enrolled in a plan offered by the employer and who is paying the full cost of coverage shall also be required to select affirmatively a plan provided by the employer. If a person fails to select affirmatively a plan during this enrollment period, the employer shall enroll the person, and the person's dependents if any, in the equivalent New Jersey Educators Health Plan offered pursuant to subsection a. of this section for the year January 1, 2021 until December 31, 2021. Any such person shall continue to pay the full cost of coverage and shall not be subject to the contribution schedule or any mandatory enrollment period as set forth in this section.

c. (1) Beginning on January 1, 2021, an employee commencing employment on or after the effective date of this act but before January 1, 2028 who does not waive coverage, shall be enrolled by the employer in the equivalent New Jersey Educators Health Plan, or the equivalent Garden State Health Plan if selected by the employee, as those plans are offered pursuant to subsection a. of this section. The employee shall remain enrolled in either the equivalent New Jersey Educators Health Plan or the equivalent Garden State Health Plan selected by the employee at the annual open enrollment for each plan year until December 31, 2027, provided that the employee during this period may waive coverage as an employee and select and change the type of coverage received under the plan following a qualifying life event, in accordance with the plan regulations. Beginning January 1, 2028, the employee may select, during any open enrollment period or at such other times or under such conditions as the employer may provide, any plan offered by the employer.

(2) Except as otherwise provided in this subsection or subsection b. of this section, selection of a plan shall be at the sole discretion of the employee.

d. An employee shall contribute annually toward the cost of health care benefits coverage for the employee, and employee's dependents if any, the amount specified, in the manner specified, in subsection a. or b. of section 2 of this act, P.L.2020, c.44 (C.52:14-17.46.14) if the employee, and the employee's dependents if any, are enrolled in the equivalent New Jersey Educators Health Plan or the equivalent Garden State Health Plan offered pursuant to subsection a. of this section. An employee's contribution toward the cost of coverage under the equivalent Garden State Health Plan offered

pursuant to subsection a. of this section shall be the amount required in subsection b. of section 2 of this act, except that the contribution specified in that subsection shall not be less than the minimum annual contribution for health care benefits coverage of 1.5% of salary as required by law.

e. (1) An employee enrolled in the equivalent New Jersey Educators Health Plan or the equivalent Garden State Health Plan offered pursuant to subsection a. of this section shall be required to pay only the contribution specified in subsections a. and b. of section 2 of this act, notwithstanding any other provision of law, rule, or regulation to the contrary requiring contributions by employees toward the cost of health care benefits coverage provided by an employer, except as provided in subsection d. of this section. No other contribution may be required by collective negotiations agreement, except as set forth in subsection i. of this section.

(2) Employees who are not enrolled in the equivalent New Jersey Educators Health Plan or the equivalent Garden State Health Plan offered pursuant to subsection a. of this section shall continue, after the effective date of this act, P.L.2020, c.44, to contribute to health care benefits coverage and those contributions shall be determined in accordance with what is permitted or required by provisions of law.

An employee who is enrolled in a plan other than the equivalent New Jersey Educators Health Plan or the equivalent Garden State Health Plan offered pursuant to subsection a. of this section shall be required to contribute toward the cost of health care benefits coverage offered by the employer (a) in accordance with a collective negotiations agreement applicable to that employee as negotiated prior to or after the effective date of this act pursuant to the requirements that were set forth in law on the day next preceding that effective date; (b) as may be required at the discretion of the employer; or (c) as required by a provision of law, whichever is applicable to that employee.

With regard to contributions by an employee who is enrolled in a plan other than the equivalent New Jersey Educators Health Plan or the equivalent Garden State Health Plan offered pursuant to subsection a. of this section, no provision in this section shall be deemed to modify, alter, impair, or terminate the requirement in sections 77 and 78 of P.L.2011, c.78 (C.18A:16-17.2 and C.52:14-17.28e), as applicable, that a public employer and employees who are in negotiations for the collective negotiations agreement to be executed after the employees in that unit had reached full implementation of the premium share set forth in section 39 of P.L.2011, c.78 (C.52:14-17.28c) shall conduct negotiations concerning contributions for health care benefits as if the full premium share was included in the prior contract. Nothing in this act shall be deemed to modify, alter, impair, or terminate the continued compliance after the effective date of this act with that requirement for negotiations for any collective negotiations agreement for employee contributions for plans other than the equivalent New

Jersey Educators Health Plan or the equivalent Garden State Health Plan offered pursuant to subsection a. of this section.

(3) For an employee, the annual base salary paid by the employer for the position held by the employee shall be used to identify the percentage to be used to calculate the annual contribution required under subsections a. and b. of section 2 of this act.

f. The annual contribution by an employee as calculated in accordance with subsection a. or b. of section 2 of this act shall not exceed the amount as calculated in accordance with section 4 of this act.

g. The contributions required by this section shall apply to employees for whom the employer has assumed a health care benefits payment obligation, to require that such employees pay the amount of contribution specified in this section for health care benefits coverage.

h. The level of benefits in the equivalent New Jersey Educators Health Plan and the equivalent Garden State Health Plan offered by the employer shall remain unchanged until December 31, 2027. No change in the level of benefits in those plans shall be made before that date unless such a change is required by federal or State law to governmental health care benefits plans or to both governmental and non-governmental health care benefits plans.

Commencing January 1, 2028 and for each plan year thereafter, the level of benefits in the equivalent New Jersey Educators Health Plan and the equivalent Garden State Health Plan offered by the employer may be modified by the employer in accordance with collective negotiations agreements entered into between the employers who do not participate in the School Employees' Health Benefits Program and their employees, or as otherwise permitted by law.

i. Commencing January 1, 2028 and for each plan year thereafter, the contributions required pursuant to subsections a. and b. of section 2 of this act for employees enrolled in the equivalent New Jersey Educators Health Plan or the equivalent Garden State Health Plan offered pursuant to subsection a. of this section may be modified in accordance with collective negotiations agreements entered into between the employers who do not participate in the School Employees' Health Benefits Program and their employees. The contributions required pursuant to subsections a. and b. of section 2 of this act shall become part of the parties' collective negotiations and shall then be subject to collective negotiations in a manner similar to other negotiable items between the parties. Negotiations concerning contributions for health care benefits shall be conducted as if the contributions required pursuant to subsections a. and b. of section 2 of this act were included in the prior contract. The contribution scheme of the percentage of base salary set forth in those subsections may be modified or a new contribution scheme or method other than a percentage of salary may be provided for in accordance with a collective negotiations agreement.

j. Modifications to plan design of the plans set forth in section 1 of this act, P.L.2020, c.44 (C.52:14-17.46.13), or adjustments to the employee contribution rates set forth in subsections a. and b. of section 2 of this act, made by the School Employees' Health Benefits Plan Design Committee or the State Treasurer pursuant to section 7 of this act shall be implemented for the purposes of this section by the employer commencing January 1, 2024.

k. This section shall also apply **also** when health care benefits coverage is provided through an insurance fund or joint insurance fund or any other manner. This section shall apply to any employer, as that term is defined in section 32 of P.L.2007, c.103 (C.52:14-17.46.2), that is not a participating employer in the School Employees' Health Benefits Program.
(cf: P.L.2020, c.44, s.5)

2. Section 1 of P.L.2020, c.44 (C.52:14-17.46.13) is amended to read as follows:

1. This section shall apply to the School Employees' Health Benefits Program (SEHBP) and to those employers defined pursuant to section 32 of P.L.2007, c.103 (C.52:14-17.46.2) that participate in the program.

a. (1) Notwithstanding the provisions of any other law, rule, or regulation to the contrary, beginning with the plan year that commences January 1, 2021 and for each plan year thereafter, the School Employees' Health Benefits Program shall offer only three plans that provide medical and prescription drug benefits for employees, and retirees who are not Medicare-eligible, and their dependents if any. All other plans offered prior to January 1, 2021 for employees, and retirees who are not Medicare-eligible, and their dependents if any, shall be terminated.

The three plans shall be the New Jersey Educators Health Plan as developed by the School Employees' Health Benefits Plan Design Committee in accordance with subsection f. of this section which sets forth the plan design of the New Jersey Educators Health Plan; the SEHBP NJ Direct 10 plan as adopted and implemented by the School Employees' Health Benefits Commission for the plan year that began January 1, 2020; and the SEHBP NJ Direct 15 plan as adopted and implemented by the School Employees' Health Benefits Commission for the plan year that began January 1, 2020.

Employers that participate in the School Employees' Health Benefits Program shall retain the ability to enter the program for medical only plans and may separately purchase pharmacy and dental benefits outside of the program without limitation or restriction.

(2) Only the plans set forth in this section shall be offered by the program regardless of any collective negotiations agreement between a participating employer and its employees in effect on the effective date of this act, P.L.2020, c.44, that provides for enrollment in other plans that were offered by the program prior to January 1, 2021.

b. Prior to January 1, 2021, the program, through the Division of Pensions and Benefits in the Department of the Treasury, shall provide for an enrollment period during which all employees who commenced employment prior to the effective date of this act shall be required to select affirmatively one of the three plans specified in subsection a. of this section. If an employee fails to select affirmatively a plan during this enrollment period, the program shall enroll the employee, and the employee's dependents if any, in the New Jersey Educators Health Plan for the plan year beginning January 1, 2021 and ending December 31, 2021.

During the enrollment period, any person who is enrolled in a plan offered by the program and who is paying the full cost of health care benefits coverage shall also be required to select affirmatively one of the three plans specified in subsection a. of this section. If a person fails to select affirmatively a plan during this enrollment period, the program shall enroll the person, and the person's dependents if any, in the New Jersey Educators Health Plan for the plan year beginning January 1, 2021 and ending December 31, 2021. Any such person shall continue to pay the full cost of coverage and shall not be subject to the contribution schedule or any mandatory enrollment period as set forth in this section.

c. (1) Beginning on January 1, 2021, an employee commencing employment on or after the effective date of this act but before January 1, 2028 who does not waive coverage shall be enrolled by the program, with the employee's dependents if any, in the New Jersey Educators Health Plan, or the Garden State Health Plan if selected by the employee. The employee shall remain enrolled in either the New Jersey Educators Health Plan or the Garden State Health Plan selected by the employee at the annual open enrollment for each plan year through the plan year that ends December 31, 2027, provided that the employee during this period may waive coverage as an employee and select and change the type of coverage received under the plan following a qualifying life event, in accordance with the program regulations. For the plan year beginning January 1, 2028, the employee may select, during any open enrollment period or at such other times or under such conditions as the program may provide, any plan offered by the program.

(2) For the plan year beginning January 1, 2021, the program shall enroll a retiree who is not Medicare-eligible, and the retiree's dependents if any, in the New Jersey Educators Health Plan for health care benefits coverage as a retiree, if the retiree does not waive coverage. The retiree shall remain enrolled in that plan for each plan year through the plan year that ends December 31, 2027 or until the retiree becomes eligible for Medicare, whichever comes first. The retiree who becomes eligible for Medicare shall no longer be eligible for enrollment in the New Jersey Educators Health Plan, except that any dependent of the retiree who is not eligible for Medicare may remain eligible for coverage under the New Jersey Educators Health Plan. For the plan year beginning January 1, 2028, that retiree who is

not Medicare-eligible may select, during any open enrollment period or at such other times or under such conditions as the program may provide, any plan offered by the program.

(3) Except as otherwise provided in this subsection or subsection b. of this section, selection of a plan shall be at the sole discretion of the employee or retiree who is not Medicare-eligible.

d. Beginning ~~July 1, 2021~~ August 1, 2021 and for each plan year thereafter, the program shall offer a fourth plan to be called the Garden State Health Plan. The plan shall be developed by the School Employees' Health Benefits Plan Design Committee. If the committee does not adopt a design for the Garden State Health Plan by December 31, 2020, the Division of Pensions and Benefits in the Department of the Treasury shall develop the Garden State Health Plan. The program shall provide a special enrollment period prior to August 1, 2021.

The Garden State Health Plan shall provide medical and prescription drug benefits that are equivalent to the level of medical and prescription drug benefits provided by the New Jersey Educators Health Plan, except that the benefits under the Garden State Health Plan shall be available only from providers located in the State of New Jersey.

Access to a service provider that is located outside of the State shall be available only under such terms, conditions, restrictions, and limitations as the plan design committee or the division, as appropriate, shall provide in the plan governing documents.

Employers that participate in the School Employees' Health Benefits Program shall retain the ability to enter the program for medical only plans and may separately purchase pharmacy and dental benefits outside of the program without limitation or restriction.

e. The plan design of the New Jersey Educators Health Plan, the Garden State Health Plan, the NJ Direct 10 plan, and the NJ Direct 15 plan as those plan designs are specified in subsections a., d., and f. of this section shall remain unchanged until December 31, 2027. No change in the plan design of those plans shall be made before that date unless such a change in plan design is required by federal or State law to governmental health care benefits plans or to both governmental and non-governmental health care benefits plans.

For the plan year that commences January 1, 2028 and for each plan year thereafter, the plan design of the New Jersey Educators Health Plan, the Garden State Health Plan, the NJ Direct 10 plan, and the NJ Direct 15 plan as those plan designs are specified in subsections a., d., and f. of this section may be modified by the School Employees' Health Benefits Plan Design Committee.

Modifications to plan design of the plans set forth in this section made by the School Employees' Health Benefits Plan Design Committee or the State Treasurer pursuant to section 7 of this act shall be implemented by the program for the purposes of this section commencing January 1, 2024.

f. The plan design of the New Jersey Educators Health Plan shall be the following:

In Network Benefits

Coverage

Member Coinsurance:10%, Applies Only to Emergency Transportation Care and Durable Medical Equipment

Deductible:N/A

Out-of-Pocket Maximum:\$500 Single/ \$1,000 Family (covers all in network copayments, coinsurance, and deductible)

Emergency Room Copayment:\$125 (To be Waived if Admitted)

PCP Office Visit Copayment:\$10

Specialist Office Visit Copayment\$15Out-of-Network Benefits

Coverage

Member Coinsurance:30% of the Out-of-Network Fee Schedule

Deductible:\$350 / \$700

Out-of-Pocket Maximum:\$2,000 Single / \$5,000 Family Routine Lab:Paid at Out-of-Network Benefit Level

Out-of-Network Fee Schedule:200% of CMS - MedicarePharmacy

Out-of-Pocket Maximum:\$1,600 Single / \$3,200 Family (Indexed Annually Pursuant to Federal Law)Generic Copayment:\$5 Retail 30

Day Supply / \$10 Mail 90 Day SupplyBrand Copayment:\$10 Retail

30 Day Supply/ \$20 Mail 90 Day SupplyMandatory Generic:Member

Pays Difference in Cost Between Generic and Brand, Plus Brand

CopaymentFormulary: Closed Formulary as contracted with the

Pharmacy Benefit Manager and the School Employees' Health Benefits CommissionOther

Chiropractic, Physical Therapy, and Acupuncture:

Subject to the same Out-of-Network Limits as for the State Health Benefits Program as were in effect on June 1, 2020 to take effect as of July 1, 2020, or as soon thereafter as reasonably practicable.

Under a patient centered medical home model, there shall be no office visit copay for primary care for participants who select and commit to a patient centered medical home for primary care in accordance with plan rules and regulations.

g. Any plan offered by the School Employees' Health Benefits Program shall require that chiropractic, physical therapy, and acupuncture benefits shall be subject to the same out-of-network limits as for the State Health Benefits Program that were in effect on June 1, 2020 to take effect as of July 1, 2020 or as soon thereafter as reasonably practicable.

(cf: P.L.2020, c.44, s.1)

3. Section 8 of P.L.2020, c.44 is amended to read as follows:

8. With regard to employers that have collective negotiations agreements in effect on the effective date of this act, P.L.2020, c.44, that include health care benefits coverage available to employees when the net cost, including employee contributions, to the employer is lower than the cost to the employer would be compared to the New Jersey Educators Health Plan, the employer and the majority

representative shall engage in collective negotiations **[over]** to fully mitigate the financial impact of the difference, which may include modifications to plan level offerings or contributions to the New Jersey Educators Health Plan or the equivalent plan, or to both plan level offerings and contributions. Until such collective negotiations have concluded, the requirements of P.L.2020, c.44 may be delayed. Notwithstanding any provision of law to the contrary, plan level offerings or contributions to the New Jersey Educators Health Plan or the equivalent plan, or both plan level offerings and contributions, may be modified pursuant to collective negotiations required by this section.

(cf: P.L.2020, c.44, s.8)

4. This act shall take effect immediately.

STATEMENT

A recently enacted law, P.L.2020, c.44, requires local boards of education who do not participate in the School Employees' Health Benefits Plan (SEHBP) to provide to their employees the equivalent of the New Jersey Educators Health Plan and the Garden State Health Plan offered by the SEHBP. This bill would limit that requirement only to those local boards of education who also offered the equivalent of the NJ DIRECT 15 and NJ DIRECT 10 plans of the SEHBP as of July 1, 2020.

Under the recently enacted law, local boards of education that offer collectively negotiated health care benefits coverage to their employees pursuant to a contract as of July 1, 2020, which is less expensive than the New Jersey Educators Health Plan, are required to engage in collective negotiations regarding the financial impact of the difference in the cost of the plans.

This bill will require that, when the net cost of the collectively negotiated health benefit plans under a contract as of July 1, 2020, including employee contributions, offered by local boards of education is less expensive than the New Jersey Educators Health Plan, the local board of education and the majority representative of the employees must engage in collective negotiations to mitigate fully the financial impact of the difference in the cost of the plans. Mitigation may include modifications in plan level offerings or contributions to the New Jersey Educators Health Plan or the equivalent plan, or both plan level offerings and contributions. The bill allows for the delay of the implementation of P.L.2020, c.44 until collective negotiations mitigating the financial impact have concluded. The bill permits plan level offerings or contributions to the New Jersey Educators Health Plan or the equivalent plan, or both plan level offerings and contributions to be modified pursuant to collective negotiations.

In addition, this bill changes the effective date of the new Garden State Health Plan for the School Employees' Health Benefits

Program and for local education employers, as established by P.L.2020, c.44, from July 1, 2020 to August 1, 2020 to provide additional time to develop the plan and to require a special enrollment period.

Limits to certain boards of education not in SEHBP requirement to provide certain health care plans and delays requirement to offer plans; changes effective date of Garden State Health Plan and provides open enrollment period.