

SENATE, No. 487

STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator PATRICK J. DIEGNAN, JR.

District 18 (Middlesex)

SYNOPSIS

Preserves property tax exempt status of certain nonprofit acute care hospitals; requires these hospitals to enter into payment in lieu of taxation agreement in certain circumstances.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning the property taxation of nonprofit acute care
2 hospitals, supplementing chapter 48 of Title 40 and chapter 4 of
3 Title 54 of the Revised Statutes, and amending R.S.54:4-3.6.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. (New section) a. If the average of the community benefit
9 expense percentages of total expense reported by a qualified
10 nonprofit acute care hospital exempt from taxation pursuant to
11 R.S.54:4-3.6 and section 2 of P.L. , c. (C.) (pending before
12 the Legislature as this bill) on its Internal Revenue Service Form
13 990, Schedule H, filed with the Internal Revenue Service for the
14 three tax years prior to the pretax year is five percent or greater, but
15 not greater than eight percent, and the average of the combined
16 community benefit expense and community building activities
17 percentages of total expense reported on those filings is less than 10
18 percent, the owner of the hospital shall enter into a payment in lieu
19 of taxation agreement with the municipality in which the hospital is
20 located for the current tax year.

21 b. If the average of the community benefit expense percentages
22 of total expense reported by a qualified nonprofit acute care hospital
23 exempt from taxation pursuant to R.S.54:4-3.6 and section 2 of
24 P.L. , c. (C.) (pending before the Legislature as this bill) on
25 its Internal Revenue Service Form 990, Schedule H, filed with the
26 Internal Revenue Service for the three tax years prior to the pretax
27 year is greater than eight percent or the average of the combined
28 community benefit expense and community building activities
29 percentages of total expense reported on those filings is 10 percent
30 or greater, the owner of the hospital may enter into a voluntary
31 payment in lieu of taxation agreement with the municipality in
32 which the hospital is located for the current tax year.

33 c. If a nonprofit acute care hospital does not meet the
34 requirements of a qualified nonprofit acute care hospital and is not
35 exempt from taxation pursuant to R.S.54:4-3.6 and section 2 of
36 P.L. , c. (C.) (pending before the Legislature as this bill),
37 the municipality in which the hospital is located may enter into a
38 payment in lieu of taxation agreement with the owner of the
39 hospital, and forego the collection of property taxes with respect to
40 that hospital.

41 d. A nonprofit acute care hospital shall annually file with the
42 tax assessor of the municipality in which the hospital is located
43 copies of its Internal Revenue Service Form 990, including
44 Schedule H, filed with the Internal Revenue Service for the three

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.

1 tax years prior to the pretax year by September 1 of each pretax
2 year.

3 e. The tax assessor of a municipality in which a nonprofit acute
4 care hospital is located shall annually determine whether the
5 hospital is a qualified nonprofit acute care hospital exempt from
6 taxation and whether the hospital is required to enter into a payment
7 in lieu of taxation agreement with the municipality pursuant to
8 R.S.54:4-3.6 and P.L. , c. (C.) (pending before the
9 Legislature as this bill) by October 1 of each pretax year.

10 f. The owner of an acute care hospital may appeal the
11 determination of a tax assessor pursuant to subsection e. of
12 P.L. , c. (C.) (pending before the Legislature as this bill) in
13 the manner set forth in R.S.54:3-21.

14 g. The Commissioner of Health, in consultation with the
15 Director of the Division of Taxation in the Department of the
16 Treasury and the Director of the Division of Local Government
17 Services in the Department of Community Affairs, shall adopt
18 regulations necessary to effectuate the provisions of this section
19 pursuant to the "Administrative Procedure Act," P.L.1968,
20 c.410 (C.52:14B-1 et seq.).

21 h. As used in this section:

22 "Acute care hospital" means a hospital which maintains and
23 operates organized facilities and services as approved by the
24 Department of Health for the diagnosis, treatment, or care of
25 persons suffering from acute illness, injury, or deformity and in
26 which all diagnosis, treatment, and care are administered by or
27 performed under the direction of persons licensed to practice
28 medicine or osteopathy in the State of New Jersey.

29 "Nonprofit acute care hospital" means an acute care hospital that
30 is owned by an association or corporation organized as a nonprofit
31 pursuant to Title 15 of the Revised Statutes or Title 15A of the New
32 Jersey Statutes exclusively for hospital purposes.

33 "Qualified nonprofit acute care hospital" means a nonprofit acute
34 care hospital for which either an average of the community benefit
35 expense percentages of total expense reported on its Internal
36 Revenue Service Form 990, Schedule H, filed with the Internal
37 Revenue Service for the three tax years prior to the pretax year is
38 five percent or greater, or the average of the combined community
39 benefit expense and community building activities percentages of
40 total expense reported on those filings is 10 percent or greater.

41

42 2. (New section) a. Property, including land and buildings,
43 used as a qualified nonprofit acute care hospital shall be exempt
44 from taxation, provided that, except in the case of a lease to or use
45 by a profit-making medical provider for medical purposes, if any
46 portion of the property is leased to a profit-making organization or
47 otherwise used for purposes which are not themselves exempt from
48 taxation, that portion shall be subject to taxation and the remaining

1 portion only shall be exempt. If any portion of a qualified nonprofit
2 acute care hospital is leased to or otherwise used by a profit-making
3 medical provider for medical purposes, that portion shall be exempt
4 from taxation.

5 b. The owner of property used as a qualified nonprofit acute
6 care hospital exempt from taxation pursuant to subsection a. of this
7 section may be subject to a payment in lieu of taxation agreement as
8 provided in section 1 of P.L. , c. (C.) (pending before the
9 Legislature as this bill).

10 c. As used in this section:

11 "Acute care hospital" means a hospital which maintains and
12 operates organized facilities and services as approved by the
13 Department of Health for the diagnosis, treatment, or care of
14 persons suffering from acute illness, injury, or deformity and in
15 which all diagnosis, treatment, and care are administered by or
16 performed under the direction of persons licensed to practice
17 medicine or osteopathy in the State of New Jersey.

18 "Medical provider" means an individual or entity which, acting
19 within the scope of a licensure or certification, provides health care
20 services, and includes, but is not limited to, a physician, physician
21 assistant, psychologist, pharmacist, dentist, nurse, paramedic,
22 respiratory care practitioner, medical or laboratory technician,
23 ambulance or emergency medical worker, orthotist or prosthetist,
24 radiological or other diagnostic service facility, bioanalytical
25 laboratory, health care facility, and further includes administrative
26 support staff of the individual or entity.

27 "Nonprofit acute care hospital" means an acute care hospital that
28 is owned by an association or corporation organized as a nonprofit
29 pursuant to Title 15 of the Revised Statutes or Title 15A of the New
30 Jersey Statutes exclusively for hospital purposes.

31 "Qualified nonprofit acute care hospital" means a nonprofit acute
32 care hospital for which either an average of the community benefit
33 expense percentages of total expense reported on its Internal
34 Revenue Service Form 990, Schedule H, filed with the Internal
35 Revenue Service for the three tax years prior to the pretax year is
36 five percent or greater, or the average of the combined community
37 benefit expense and community building activities percentages of
38 total expense reported on those filings is 10 percent or greater.

39
40 3. R.S.54:4-3.6 is amended to read as follows:

41 54:4-3.6. The following property shall be exempt from taxation
42 under this chapter: all buildings actually used for colleges, schools,
43 academies or seminaries, provided that if any portion of such
44 buildings are leased to profit-making organizations or otherwise
45 used for purposes which are not themselves exempt from taxation,
46 said portion shall be subject to taxation and the remaining portion
47 only shall be exempt; all buildings actually used for historical
48 societies, associations or exhibitions, when owned by the State,

1 county or any political subdivision thereof or when located on land
2 owned by an educational institution which derives its primary
3 support from State revenue; all buildings actually and exclusively
4 used for public libraries, asylum or schools for adults and children
5 with intellectual disabilities; all buildings used exclusively by any
6 association or corporation formed for the purpose and actually
7 engaged in the work of preventing cruelty to animals; all buildings
8 actually and exclusively used and owned by volunteer first-aid
9 squads, which squads are or shall be incorporated as associations
10 not for pecuniary profit; all buildings actually used in the work of
11 associations and corporations organized exclusively for the moral
12 and mental improvement of men, women and children, provided
13 that if any portion of a building used for that purpose is leased to
14 profit-making organizations or is otherwise used for purposes which
15 are not themselves exempt from taxation, that portion shall be
16 subject to taxation and the remaining portion only shall be exempt;
17 all buildings actually used in the work of associations and
18 corporations organized exclusively for religious purposes, including
19 religious worship, or charitable purposes, provided that if any
20 portion of a building used for that purpose is leased to a profit-
21 making organization or is otherwise used for purposes which are not
22 themselves exempt from taxation, that portion shall be subject to
23 taxation and the remaining portion shall be exempt from taxation,
24 and provided further that if any portion of a building is used for a
25 different exempt use by an exempt entity, that portion shall also be
26 exempt from taxation; all buildings actually used in the work of
27 associations and corporations organized exclusively for hospital
28 purposes, provided that , except in the case of a qualified nonprofit
29 acute care hospital as provided in section 2 of P.L. _____,
30 c. (C. _____) (pending before the Legislature as this bill), if any
31 portion of a building used for hospital purposes is leased to profit-
32 making organizations or otherwise used for purposes which are not
33 themselves exempt from taxation, that portion shall be subject to
34 taxation and the remaining portion only shall be exempt; all
35 buildings owned or held by an association or corporation created for
36 the purpose of holding the title to such buildings as are actually and
37 exclusively used in the work of two or more associations or
38 corporations organized exclusively for the moral and mental
39 improvement of men, women and children; all buildings owned by a
40 corporation created under or otherwise subject to the provisions of
41 Title 15 of the Revised Statutes or Title 15A of the New Jersey
42 Statutes and actually and exclusively used in the work of one or
43 more associations or corporations organized exclusively for
44 charitable or religious purposes, which associations or corporations
45 may or may not pay rent for the use of the premises or the portions
46 of the premises used by them; the buildings, not exceeding two,
47 actually occupied as a parsonage by the officiating clergymen of
48 any religious corporation of this State, together with the accessory

1 buildings located on the same premises; the land whereon any of the
2 buildings hereinbefore mentioned are erected, and which may be
3 necessary for the fair enjoyment thereof, and which is devoted to
4 the purposes above mentioned and to no other purpose and does not
5 exceed five acres in extent; the furniture and personal property in
6 said buildings if used in and devoted to the purposes above
7 mentioned; all property owned and used by any nonprofit
8 corporation in connection with its curriculum, work, care, treatment
9 and study of men, women, or children with intellectual disabilities
10 shall also be exempt from taxation, provided that such corporation
11 conducts and maintains research or professional training facilities
12 for the care and training of men, women, or children with
13 intellectual disabilities; provided, in case of all the foregoing except
14 for a qualified nonprofit acute care hospital, the buildings, or the
15 lands on which they stand, or the associations, corporations or
16 institutions using and occupying them as aforesaid, are not
17 conducted for profit, except that the exemption of the buildings and
18 lands used for charitable, benevolent or religious purposes shall
19 extend to cases where the charitable, benevolent or religious work
20 therein carried on is supported partly by fees and charges received
21 from or on behalf of beneficiaries using or occupying the buildings;
22 provided the building is wholly controlled by and the entire income
23 therefrom is used for said charitable, benevolent or religious
24 purposes; and any tract of land purchased pursuant to subsection (n)
25 of section 21 of P.L.1971, c.199 (C.40A:12-21), and located within
26 a municipality, actually used for the cultivation and sale of fresh
27 fruits and vegetables and owned by a duly incorporated nonprofit
28 organization or association which includes among its principal
29 purposes the cultivation and sale of fresh fruits and vegetables,
30 other than a political, partisan, sectarian, denominational or
31 religious organization or association. The foregoing exemption
32 shall apply only where the association, corporation or institution
33 claiming the exemption owns the property in question and is
34 incorporated or organized under the laws of this State and
35 authorized to carry out the purposes on account of which the
36 exemption is claimed or where an educational institution, as
37 provided herein, has leased said property to a historical society or
38 association or to a corporation organized for such purposes and
39 created under or otherwise subject to the provisions of Title 15 of
40 the Revised Statutes or Title 15A of the New Jersey Statutes.

41 As used in this section **["hospital"]** :

42 "Acute care hospital" means the same as that term is defined in
43 section 2 of P.L. , c. (C.) (pending before the Legislature
44 as this bill).

45 "Hospital purposes" includes qualified nonprofit acute care
46 hospitals, health care facilities for the elderly, such as nursing
47 homes; residential health care facilities; assisted living residences;
48 facilities with a Class C license pursuant to P.L.1979,

1 c.496 (C.55:13B-1 et al.), the "Rooming and Boarding House Act of
2 1979"; similar facilities that provide medical, nursing or personal
3 care services to their residents; and that portion of the central
4 administrative or service facility of a continuing care retirement
5 community that is reasonably allocable as a health care facility for
6 the elderly , but does not include acute care hospitals that do not
7 meet the requirements of a qualified nonprofit acute care hospital,
8 as that term is defined in section 2 of P.L. ,
9 c. (C.) (pending before the Legislature as this bill), which
10 acute care hospitals shall be subject to taxation except as may be
11 otherwise provided pursuant to subsection c. of section 1 of P.L. ,
12 c. (C.) (pending before the Legislature as this bill).

13 "Qualified nonprofit acute care hospital" means the same as that
14 term is defined in section 2 of P.L. , c. (C.) (pending
15 before the Legislature as this bill).
16 (cf: P.L.2011, c.171, s.4)
17

18 4. This act shall take effect on the first day of the tax year next
19 following the date of enactment, except that subsection d. of section
20 1 of this act shall take effect immediately and except the
21 Commissioner of Health may take any anticipatory administrative
22 action in advance as shall be necessary for the implementation of
23 this act.
24
25

26 STATEMENT

27

28 This bill would tie the property taxation of a non-profit acute
29 care hospital to the percentages of community benefit expenses and
30 community building activities out of total hospital expenses that the
31 hospital reports to the Internal Revenue Service. The bill would
32 clarify that complex modern nonprofit hospitals, which provide
33 nonprofit medical services while also hosting for-profit medical
34 activities, may remain exempt from property taxation if certain
35 minimum percentages of community benefit expenses or
36 community building activities are reported, but may be responsible
37 for either providing some financial support to their host
38 municipalities or may be subject to full property taxation if such
39 hospitals' community benefit expenses or community building
40 activities percentages are lower.

41 The Tax Court recently held that a nonprofit hospital was not
42 entitled to a property tax exemption because profit-making medical
43 services were provided throughout the hospital, and there was no
44 separate accounting of nonprofit and for-profit medical activities to
45 delineate exempt property from non-exempt property. Since for-
46 profit medical services are commonly provided at nonprofit
47 hospitals, this ruling could potentially be applied to many other
48 nonprofit hospitals throughout the State. This bill would eliminate

1 any uncertainty over the property tax exempt status of nonprofit
2 hospitals that lease space to or share space with for-profit medical
3 providers, but still qualify as nonprofit institutions, by establishing
4 clear and specific guidelines for when such hospital properties are
5 exempt from property taxation, subject to a payment in lieu of
6 taxation requirement, or subject to full property taxation.

7 Specifically, a nonprofit hospital would be exempt from property
8 taxation if the average of its reported community benefit expense
9 percentages of total expense on its Internal Revenue Service Form
10 990, Schedule H, filed with the Internal Revenue Service for a three
11 year period is five percent or greater or the average of its combined
12 community benefit expense and community building activities
13 percentages of total expense reported on those filings is 10 percent
14 or greater. Such hospital would be subject to a mandatory payment
15 in lieu of taxation agreement with its host municipality if the
16 average of its community benefit expense percentages of total
17 expense is five percent or greater, but not greater than eight percent,
18 and the average of its combined community benefit expense and
19 community building activities percentages of total expense is less
20 than 10 percent. If the average of such hospital's community
21 benefit expense percentages of total expense is greater than eight
22 percent or the average of its combined community benefit expense
23 and community building activities percentages of total expense is
24 10 percent or greater, the hospital may, but is not required to, enter
25 into a payment in lieu of taxation agreement with its host
26 municipality.

27 A nonprofit hospital would be subject to full property taxation if
28 the average of its community benefit expense percentages of total
29 expense is less than five percent and the average of its combined
30 community benefit expense and community building activities
31 percentages of total expense is less than 10 percent. The
32 municipality in which such hospital is located may forego property
33 tax collection against such hospital and implement a payment in
34 lieu of taxation agreement instead.