ASSEMBLY, No. 788

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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SYNOPSIS

Caps State use portion of energy tax revenues and ensures balance of such revenues are paid annually as municipal aid.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

AN ACT concerning certain energy tax revenues and capping the State's skimming of energy tax revenues, amending P.L.1997, c.167 and repealing section 3 of P.L.1997, c.167.

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

1. Section 2 of P.L.1997, c.167 (C.52:27D-439) is amended to read as follows:

2. a. **[**Commencing July 1, 1997 there**]** There is established the "Energy Tax Receipts Property Tax Relief Fund" as a special dedicated fund in the State Treasury into which there shall be credited annually **[**, commencing in State fiscal year 1998,**]** the sum of **[**$740,000,000 or the amount determined pursuant to subsection e. of this section**]** the total annual revenue from the following: net payments under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) from sales and use of energy or utility services, net payments under the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) from gas, electric, and gas and electric public utilities, whether municipal or otherwise, that were subject to tax pursuant to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to January 1, 1998, net payments under the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) from telecommunications public utilities that were subject to tax pursuant to the provisions of P.L.1940, c.4 (C.54:30A-16 et seq.) as of April 1, 1997, and net payments under P.L.1940, c.5 (C.54:30A-49 et seq.) from sewerage and water corporations, **[**net payments under the "Transitional Energy Facility Assessment Act," P.L.1997, c.162 (C.54:30A-100 through C.54:30A-113), and such sums from**]** but net of $403,000,000 from those sources, which amount, but no greater amount thereof, may be credited to the General Fund as **[**may be necessary to provide that the annual amount credited to the fund shall equal $740,000,000 or the amount determined pursuant to subsection e. of this section**]** general State revenue.

b. **[**Notwithstanding the provisions of P.L.1940, c.4 (C.54:30A-16 et seq.), P.L.1940, c.5 (C.54:30A-49 et seq.) and any other provision of law concerning the apportionment and distribution by the State of taxes paid by public utilities,

(1)**]** There shall be paid **[**during the State fiscal year 1998 and**]** during each fiscal year **[**thereafter**]** from the "Energy Tax Receipts Property Tax Relief Fund" to the municipalities of the State **[**the sum of $740,000,000 or**]** the amount determined pursuant to subsection e. of this section.

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.

[(2) A portion of the $740,000,000 or the amount determined pursuant to subsection e. of this section shall be allocated in a manner that provides that each municipality shall receive an amount not less than the largest annual amount received or to be received by the municipality from:

(a) the distribution of $685,000,000 from the proceeds of the public utilities franchise and gross receipts taxes under P.L.1940, c.4 (C.54:30A-16 et seq.) and P.L.1940, c.5 (C.54:30A-49 et seq.) in calendar year 1994, 1995 or 1996; or

(b) the distribution of $685,000,000 from the proceeds of the public utilities franchise and gross receipts taxes under P.L.1940, c.4 (C.54:30A-16 et seq.) and P.L.1940, c.5 (C.54:30A-49 et seq.) or from taxes and assessments collected in replacement of such taxes as released by the Division of Local Government Services in the Department of Community Affairs as fiscal year 1998 estimated franchise and gross receipts taxes State aid distributions by municipality prior to the certification of apportionment of such funds by the Director of the Division of Taxation and the amounts required pursuant to subsection d. of this section.

(3) A portion of the $740,000,000 or the amount determined pursuant to subsection e. of this section shall be allocated in a manner that provides that each municipality shall receive an amount equal to the difference, if any, between the amount it received pursuant to paragraph (2) of this subsection and the sum of the amounts that the municipality received pursuant to the certification made in the 1997 calendar year released by the Division of Local Government Services in the Department of Community Affairs as the fiscal year 1998 estimated franchise and gross receipts taxes State aid distribution of $685,000,000 and the certification of the 1997 fiscal year distribution of $45,000,000.

(4) The portion of the $740,000,000 or the amount, not more than $755,000,000, determined pursuant to subsection e. of this section remaining after the allocations pursuant to paragraphs (2) and (3) of this subsection shall be distributed in proportion to the amounts distributed pursuant to paragraph (2) of this subsection.]

c. [(1)] The funds distributed pursuant to [paragraphs (2) and (4) of subsection b. of] this section shall be distributed annually to municipalities on the following schedule: [July 15, 35% of the total amount due;] August 1, [10%] <u>45%</u> of the total amount due; September 1, 30% of the total amount due; October 1, 15% of the total amount due; November 1, 5% of the total amount due; and December 1, 5% of the total amount due.

[(2) The funds distributed pursuant to paragraph (3) of subsection b. of this section, prior to January 1, 2002 for all municipalities, and distributed after January 1, 2002 for municipalities operating on a State fiscal year basis, shall be distributed annually to those municipalities on or before June 30.

The funds distributed after January 1, 2002 pursuant to paragraph (3) of subsection b. of this section to calendar year municipalities shall be distributed annually on or before July 15.**]**

d. **[**The allocation set forth in paragraph (2) of subsection b. of this section shall be adjusted to increase each appropriate municipal distribution by the amount necessary to:

(1) make corrections to apportionment valuations or distribution values made by the Director of the Division of Taxation in the Department of the Treasury pursuant to R.S.54:30-2; and

(2) correct equitable distortions, as determined by the State Treasurer, resulting from the application of section 2 of P.L.1980, c.10 (C.54:30A-24.1) and section 4 of P.L.1980, c.11 (C.54:30A-61.1).

The director shall report to the Legislature, on or before July 15, 1997, the amount and distribution of the corrections pursuant to paragraphs (1) and (2) of this subsection.**]** (Deleted by amendment, P.L. , c.) (pending before the Legislature as this bill)

e. **[**The**]** If the amount credited to the "Energy Tax Receipts Property Tax Relief Fund" **[**shall be $745,000,000 for State fiscal year 1999, $750,000,000 for each of State fiscal years 2000 and 2001, $755,000,000 for State fiscal year 2002, and**]** for **[**each**]** a fiscal year **[**thereafter the**]** is an amount **[**equal to**]** less than or greater than the amount credited in the prior fiscal year **[**multiplied by the sum of 1.0 and the index rate or zero, whichever is greater. As used in this section, "index rate" means the rate of annual percentage increase, rounded to the nearest half-percent, in the Implicit Price Deflator for State and Local Government Purchases of Goods and Services, computed and published quarterly by the United States Department of Commerce, Bureau of Economic Analysis, calculating the annual increase therein at the second calendar quarter which occurred in the next preceding State fiscal year. The Director of the Division of Local Government Services shall promulgate annually the index rate to apply in the next following State fiscal year which shall be the same as the index rate determined pursuant to section 4 of P.L.1983, c.49 (C.40A:4-45.1a)**]** the amount of aid distributed to a municipality shall be reduced or increased, as the case may be, in proportion to the amount of aid distributed to the municipality in the prior State fiscal year. Any amount of aid distributed to a municipality in excess of the amount distributed to the municipality from the "Energy Tax Receipts Property Tax Relief Fund" during the State fiscal year 2002 shall be used solely and exclusively by each municipality for the purpose of reducing the amount the municipality is required to raise by local property tax levy for municipal purposes.

f. Notwithstanding any other provision of this section or any other provision of law to the contrary, if any municipality paid a county for an amount for county purposes from the amount it

received from its apportionment of taxes according to the limitations on the municipalities apportionment under section 4 of P.L.1980, c.11 (C.54:30A-61.1), the highest amount of that payment during calendar years 1994, 1995, and 1996 shall be paid annually directly to that county by the State Treasurer and be deducted from that municipality's distribution otherwise determined pursuant to paragraph (2) of subsection b. of this section.
(cf: P.L.2002, c.3, s.1).

2. Section 4 of P.L.1997, c.167 (C.52:27D-441) is amended to read as follows:

4. a. The annual appropriations act for each State fiscal year commencing with fiscal year ⟦1998⟧ 2017 shall appropriate the full amount credited to the "Energy Tax Receipts Property Tax Relief Fund" pursuant to the provisions of section 2 of P.L.1997, c.167 (C.52:27D-439), and distribute to each municipality during the fiscal year ⟦an amount not less than $740,000,000 or⟧ exclusively from the sources credited to the fund pursuant to that section, the amount determined pursuant to subsection e. of section 2 of P.L.1997, c.167 (C.52:27D-439) from the "Energy Tax Receipts Property Tax Relief Fund" pursuant to the provisions of that section ⟦2 of P.L.1997, c.167 (C.52:27D-439), for the purposes of that fund⟧.

b. If the provisions of subsection a. of this section are not met on the effective date of an annual appropriations act for the State fiscal year, or if an amendment or supplement to an annual appropriations act for the State fiscal year should violate the provisions of subsection a. of this section, the Director of the Division of Budget and Accounting in the Department of the Treasury shall, not later than five days after the enactment of the annual appropriations act, or an amendment or supplement thereto, that violates the provisions of subsection a. of this section, certify to the Director of the Division of Taxation that the requirements of subsection a. of this section have not been met.

c. The Director of the Division of Taxation shall, no later than five days after certification by the Director of the Division of Budget and Accounting in the Department of the Treasury pursuant to subsection b. of this section that the provisions of subsection a. of this section have not been met or have been violated by an amendment or supplement to the annual appropriations act, notify all taxpayers that have filed a return under the Corporation Business Tax (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) during the previous calendar year, other than taxpayers that are gas, electric, and gas and electric, or telecommunications public utilities as defined pursuant to subsection (q) of section 4 of P.L.1945, c.162 (C.54:10A-4) pursuant to the amendment to that section 4 made in section 2 of P.L.1997, c.162, that the taxpayer shall have no liability pursuant to the provisions of P.L.1945, c.162 for any

corporation business tax for the taxpayer's current privilege period, notwithstanding any other provision of law to the contrary.
(cf: P.L.1997, c.167, s.4)

3. Section 3 of P.L.1997, c.167 (C. 52:27D-440) is repealed.

4. This act shall take effect immediately.

STATEMENT

This bill limits the amount of annual energy tax revenues that the State may retain as general State revenue to the amount the State budget "skimmed" in fiscal year 1998, or $403 million. The remaining balance must be paid out annually to municipalities so as to provide for enhanced property tax relief. In so doing, the bill ensures that, unlike in some years past, New Jersey's municipalities are not shortchanged when energy-sector tax collections grow.

The State and its municipalities share energy tax revenues. Recent State budgets have routinely shifted the allocation formula in the State’s favor by holding the municipal share flat and apportioning to the State all the revenue growth. The bill breaks this abusive pattern by mandating that the State cannot retain more than the $403 million per year that it “skimmed” in fiscal year 1998 and that any excess amounts are disbursed to municipalities in proportion to each municipality's prior year State aid distribution from this source.

The table below illustrates the allocation of annual energy tax revenues between the State and its municipalities under current law.

Energy Tax Revenue Allocation between State and Municipalities

Fiscal Year	State Use Portion	Municipal Aid
1998	$403,000,000 (Bill’s Cap)	$740,000,000
2008	$948,000,000	$789,000,000
2009	$926,000,000	$789,000,000
2010	$844,000,000	$789,000,000
2011	$841,000,000	$789,000,000
2012	$389,000,000	$789,000,000
2013	$436,000,000	$789,000,000
2014	$337,000,000	$789,000,000
2015 est.	$321,000,000	$789,000,000
2016 est.	$326,000,000	$789,000,000