ASSEMBLY, No. 2457

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 3, 2020

Sponsored by:
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SYNOPSIS

Requires certain energy tax receipts to be paid directly to municipalities.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 2/13/2020)

AN ACT concerning collection of energy tax receipts and amending 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. (1) Commencing July 1, 1997 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 and concluding in State fiscal year 2017, the sum of $740,000,000 or the amount determined pursuant to subsection e. of this section 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, 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 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.

(2) Commencing with State fiscal year 2018, the State Treasurer shall determine the amount calculated pursuant to subsection e. of this section, and shall advise each entity that was responsible for payments deposited under paragraph (1) of this subsection of the amounts currently due to or for each municipality, based on the formula provided in subsection e. of this section. The State Treasurer shall determine which entity that was responsible for payments deposited under paragraph (1) of this subsection shall make payment to which municipality, the timing of the payment, and such other conditions as the State Treasurer may prescribe. The amount of a payment made pursuant to this subsection may be taken as a credit by the entity making the payment against that entity's liability for the entity's respective tax or taxes enumerated by

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.

subsection (1) of this section, as prescribed by the State Treasurer. The payments made pursuant to this paragraph shall be deemed to be payments of State taxes for purposes of the "State Uniform Tax Procedure Law," R.S. 54:48-1 et seq. The State Treasurer shall also, at the same time, advise each municipal tax collector of the entities responsible for payments to or for the municipality and of the amounts due under this section.

(3) Notwithstanding any provision of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the State Treasurer may adopt immediately upon filing with the Office of Administrative Law such regulations as the State Treasurer deems necessary for the efficient administration of this section which shall be effective for a period not to exceed 360 days following the date of enactment of P.L. , c. (C.) (pending before the Legislature as this bill) and may thereafter be amended, adopted or readopted by the commission in accordance with the requirements of P.L.1968, c.410.

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 through State fiscal year 2017, 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.

(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.

(5) Commencing with State fiscal year 2018, the share of the amount, determined pursuant to paragraph (2) of subsection a. of this section, of each municipality that is not a qualified municipality shall be collected directly by each municipal tax collector from the energy taxpayers. Commencing with State fiscal year 2018, the share of the amount, determined pursuant to paragraph (2) of subsection a. of this section, of each qualified municipality shall be collected by the State Treasurer from the energy taxpayers and applied by the State Treasurer pursuant to the provisions of the "Municipal Qualified Bond Act," P.L.1976, c.38 (C.40A:3-1 et seq.) and any remaining amount shall be distributed to the qualified municipality.

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% 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.

e. (1) (a) 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 State fiscal year thereafter through State fiscal year 2013 the amount equal to the amount credited in the prior State fiscal year multiplied by the sum of 1.0 and the index rate or zero, whichever is greater. The total amount from which the State Treasurer shall determine the apportionment of energy tax receipts to be collected by each municipality shall be $1,108,115,000 for State fiscal year 2014, and for each State fiscal year thereafter, that total amount shall equal the total amount for the prior State 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). Any amount of aid distributed to or collected by 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.

(b) Any amount of aid distributed to or collected by a municipality in excess of the amount distributed to the municipality from the “Energy Tax Receipts Property Tax Relief Fund” during State fiscal year 2013 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, or to rehire uniformed members of a police or fire department laid off in any of the four previous fiscal years, to reduce municipal debt, or to pay for extraordinary costs incurred by a local unit directly related to an emergency declared by the President of the United States or the Governor.

(2) (a) In State fiscal year 2014 there shall be credited an amount sufficient to provide to each municipality 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, 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 the General Fund as may be necessary, an additional amount equal to or greater than the difference between the sum of Consolidated Municipal Property Tax Relief Aid and Energy Tax Receipts Property Tax Relief Aid paid to that municipality in fiscal year 2008 and the sum of Consolidated Municipal Property Tax Relief Aid and Energy Tax Receipts Property Tax Relief Aid paid to that municipality in fiscal year 2012. In each fiscal year thereafter, the State Treasurer shall determine the amount to be apportioned to each municipality by multiplying the amount apportioned in the prior fiscal year by the sum of 1.0 and the index rate, or 1.0, whichever is greater.

(b) Notwithstanding the provisions of subparagraph (a) of this paragraph the amount credited in State fiscal year 2014 shall be 20% of the amount determined pursuant to subparagraph (a) of this paragraph, the amount credited in State fiscal year 2015 shall be 40% of the amount determined pursuant to subparagraph (a) of this paragraph, the amount credited in State fiscal year 2016 shall be 60% of the amount determined pursuant to subparagraph (a) of this paragraph, and the amount credited in State fiscal year 2017 shall be 80% of the amount determined pursuant to subparagraph (a) of this paragraph.

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.**]** (Deleted by amendment, P.L. , c.) (pending before the Legislature as this bill)

g. As used in this section, qualified municipality means a municipality that has issued qualified bonds pursuant to the "Municipal Qualified Bond Act," P.L.1976, c.38 (C.40A:3-1 et seq.).

(cf: P.L.2002, c.3, s.1)

2. Section 3 of P.L.1997, c.167 (C.52:27D-440) is amended to read as follows:

3. If, in any State fiscal year, 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, 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) exceed $1,425,000,000, 75% of that amount of net payments in excess of $1,425,000,000 shall be ⟦credited to the "Energy Tax Receipts Property Tax Relief Fund" in addition to the amount credited pursuant to section 2 of P.L.1997, c.167 (C.52:27D-439), for distribution⟧ allocated to municipalities ⟦as⟧ for collection as additional aid.

(cf: P.L.1997, c.167, s.3)

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

4. a. (1) The annual appropriations act for each State fiscal year commencing with State fiscal year 1998 and concluding with State fiscal year 2017 shall appropriate and distribute during the fiscal year an amount not less than $740,000,000 or the amount determined pursuant to paragraph (1) of 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 section 2 of P.L.1997, c.167 (C.52:27D-439), for the purposes of that fund.

Of the amounts appropriated and distributed pursuant to this paragraph, not less than $880,000,000 in State fiscal year 2014, $973,100,000 in State fiscal year 2015, $1,065,400,000 in State fiscal year 2016, and $1,157,700,000 in State fiscal year 2017 shall be derived from the following sources: 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, net payments under P.L.1940, c.5 (C.54:30A-49 et seq.) from sewerage and water corporations, and net payments under the "Transitional Energy Facility Assessment Act," P.L.1997, c.162 (C.54:30A-100 through C.54:30A-113).

(2) The annual appropriations act for each State fiscal year commencing with State fiscal year 2014 shall appropriate and apportion to each municipality an amount not less than the amount apportioned to each municipality pursuant to paragraph (2) of subsection e. of section 2 of P.L.1997, c.167 (C.52:27D-439).

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 (1946), 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)

4. This act shall take effect immediately and shall first be applicable to State fiscal year 2014.

STATEMENT

This bill changes the manner in which energy tax receipts are distributed to municipalities. Under current law, energy tax receipts are all collected by the State. Often, through the annual appropriations act, the State retains a portion of the energy tax receipts that are directed to be distributed to municipalities under statutory law. This bill requires, commencing with State fiscal year 2014, that the State Treasurer make the calculation of the amounts due to municipalities pursuant to statutory law, adjusting for inflation, and that payments be made directly to the municipalities by the energy taxpayers. In State fiscal year 2014, the amount to be apportioned to, and collected by, the municipalities will be $1,108,115,000. That represents the amount required to be distributed to municipalities under the statutory provisions of the "Energy Tax Receipts Property Tax Relief Act," P.L.1997, c.167, (C.52:27D-438 et seq.), including annual increases for inflation. The State Treasurer will make this apportionment and advise each energy taxpayer of the amounts to be remitted directly to each municipality, based on the existing statutory apportionment method, and advise each municipality of the amounts due.

This bill also requires the State to distribute to each municipality an amount equal to the difference between its total payment of Consolidated Municipal Property Tax Relief Aid (CMPTRA) and Energy Tax Receipts Property Tax Relief Aid (ETR Aid) in fiscal year 2008 and fiscal year 2012. This additional State aid will restore approximately $331 million in reductions to CMPTRA and ETR Aid that were made due to State budget constraints in fiscal years 2009, 2010, and 2011.

The bill also modifies the existing Energy Tax Receipts Property Tax Relief Act “poison pill” protection because the aid which had been distributed by the State will be directly paid by the energy taxpayers and to ensure that each municipality receives its share of energy tax receipts in an amount equal to the difference between its total payment of Consolidated Municipal Property Tax Relief Aid and Energy Tax Receipts Property Tax Relief Aid in fiscal year 2008 and fiscal year 2012.

Municipalities will be permitted to use the additional State aid to reduce the amounts they are required to raise by local property tax levy for municipal purposes, to reduce municipal debt, rehire police officers and firefighters laid off in the previous four fiscal years, and for extraordinary costs related to an emergency declared by the President of the United States or the Governor.

The bill also provides an exception for municipalities that issue bonds pursuant to the “Municipal Qualified Bond Act.” To assist municipalities in issuing bonds, that act allows municipalities to have various resources including State Aid held by the State Treasurer, who pays the amounts due under the bonds directly to the

paying agent. So that this program can continue effectively, the amendments make an exception to the general rule that Energy Tax Relief will be paid directly to municipalities. For a municipality that issues or has outstanding bonds under the act, the energy taxpayers will make payment to the State Treasurer, who will distribute any overage to the municipality.

The purpose of this legislation is to ensure that municipalities are able to collect the amounts of energy tax receipts that they were originally promised when the State revised the collection and distribution process in 1997. This bill does not change the requirement under current law that amounts received by a municipality in excess of the amounts received in State fiscal year 2002 must be used for property tax relief.