ASSEMBLY, No. 2710

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:
Assemblywoman VALERIE VAINIERI HUTTLE
District 37 (Bergen)

SYNOPSIS

Restores property tax exemption for nonprofit hospitals with for-profit medical providers on-site; requires these hospitals to pay community service contributions to host municipalities; establishes Nonprofit Hospital Community Service Contribution Study Commission.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning the property tax exempt status of nonprofit hospitals, supplementing chapter 48 of Title 40 and chapter 4 of Title 54 of the Revised Statutes, and amending R.S.54:4-3.6.

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

1. (New section) a. The owner of property used as an acute care hospital or satellite emergency care facility, which is exempt from taxation pursuant to section 3 of P.L. , c. (C.) (pending before the Legislature as this bill), shall, except as may otherwise be provided under subsection e. of this section, annually remit to the Department of Health a community service contribution to be distributed to the municipality in which the licensed beds of the exempt acute care hospital are located or, in the case of a satellite emergency care facility, to the municipality in which such facility is located.

b. (1) The annual community service contribution required pursuant to subsection a. of this section shall be equal to $2.50 a day for each licensed bed at the exempt acute care hospital property in the prior tax year, except that in the case of a satellite emergency care facility the contribution shall be equal to $250 a day in the prior tax year for each such facility.

(2) For tax year 2021 and each tax year thereafter, the per day amount used to calculate an annual community service contribution for an acute care hospital and a satellite emergency care facility shall increase by two percent over the prior tax year. The Commissioner of Health shall annually promulgate the per day amount to apply for each tax year.

(3) An annual community service contribution shall be payable to the Department of Health in equal quarterly installments. The first installment shall be payable on February 1, the second installment on May 1, the third installment on August 1, and the fourth installment on November 1.

(4) Upon receipt of a community service contribution installment, the Department of Health shall forthwith distribute the installment to the applicable recipient municipality.

(5) Upon receipt of a community service contribution installment, the municipality shall forthwith remit five percent of the installment to the county in which the municipality is located.

c. The obligation to remit an annual community service contribution pursuant to this section is legal, valid, and binding. If a community service contribution installment is not paid as and when due pursuant to subsection b. of this section, the unpaid balance shall constitute a municipal lien on the acute care hospital

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 <u>thus</u> is new matter.

property after 30 days, and shall be enforced and collected in the same manner as unpaid property taxes.

d. (1) A municipality shall use the proceeds of a community service contribution installment, and any interest accrued on any unpaid balance thereof, solely and exclusively to fund police or fire protection; first aid, emergency, rescue, or ambulance services; or any other public safety service; or to reduce the property tax levy.

(2) A county shall use the proceeds of a portion of a community service contribution installment solely and exclusively to fund any public safety service provided by the county.

e. (1) An owner required to remit an annual community service contribution pursuant to this section may, by February 1, apply to the New Jersey Health Care Facilities Financing Authority in the Department of Health for the issuance of a certificate exempting the owner from that requirement for the current tax year for exempt property used as an acute care hospital, including a satellite emergency care facility, in a municipality, if that acute care hospital or satellite emergency care facility, as the case may be, is in financial distress or at risk of being in financial distress. At the same time such an application is made, the applicant owner shall provide notice to the chief financial officer of the municipality in which the acute care hospital or satellite emergency care facility that is the subject of the application is located.

(2) An application pursuant to this subsection shall include the audited financial results for the acute care hospital or satellite emergency care facility from the prior tax year or other relevant financial records and proof that notice of the application was provided to the chief financial officer of the municipality in which the acute care hospital or satellite emergency care facility that is the subject of the application is located. If audited financial results from the prior tax year are not available by February 1, a certification of the chief financial officer of the acute care hospital or satellite emergency care facility shall be submitted by that date, and audited financial results shall be submitted within 15 days of such results being completed.

(3) The authority shall issue a determination on an application submitted pursuant to this subsection by April 1, or within 60 days of receipt of the audited financial results if such results are submitted after February 1. In making such determination, the authority may consider factors including, but not limited to, whether the acute care hospital or satellite emergency care facility had a negative operating margin in the prior tax year based on the audited financial results from that tax year, whether the owner is not in full compliance with the financial terms of any bond covenants related to the acute care hospital or satellite emergency care facility, the overall financial health of the hospital system if the acute care hospital or satellite emergency care facility is part of a hospital system responsible for the debts and liabilities of the acute care

hospital or satellite emergency care facility, or whether the acute care hospital or satellite emergency care facility is a safety net hospital or facility.

(4) If the authority determines that an acute care hospital or satellite emergency care facility that is the subject of an application submitted pursuant to this subsection is in financial distress or at risk of being in financial distress, the authority shall grant the application and issue a certificate exempting the owner from the annual community service contribution otherwise required for the acute care hospital or satellite emergency care facility to the municipal tax collector of the municipality otherwise owed the contribution. A certificate issued pursuant to this paragraph shall be valid for the current tax year.

(5) If the authority denies an application, any community service contribution installment owing shall bear interest from the original payment date pursuant to subsection c. of this section.

f. The Commissioner of Health, in consultation with the New Jersey Health Care Facilities Financing Authority in the Department of Health and the Director of the Division of Local Government Services in the Department of Community Affairs, shall, by January 1, 2021, adopt regulations necessary to effectuate the provisions of this section pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), which shall include specific guidelines for what constitutes financial distress or at risk of being in financial distress for purposes of qualifying for an exemption certificate pursuant to subsection e. of this section.

g. As used in this section:

"Acute care hospital" means a hospital, other than a hospital which is exempt from taxation as public property pursuant to R.S.54:4-3.3, which maintains and operates organized facilities and services as approved and licensed by the Department of Health for the diagnosis, treatment, or care of persons suffering from acute illness, injury, or deformity and in which all diagnosis, treatment, and care are administered by or performed under the direction of persons licensed to practice medicine or osteopathy in the State of New Jersey, and includes all land and buildings that are used in the delivery of health care services by such hospital and its medical providers or that are used for the management, maintenance, administration, and security of such hospital and its medical providers.

"Licensed bed" means one of the total number of acute care beds for which an acute care hospital is approved for patient care by the Commissioner of Health.

"Medical provider" means an individual or entity which, acting within the scope of a licensure or certification, provides health care services, and includes, but is not limited to, a physician, physician assistant, psychologist, pharmacist, dentist, nurse, paramedic, respiratory care practitioner, medical or laboratory technician,

ambulance or emergency medical worker, orthotist or prosthetist, radiological or other diagnostic service facility, bioanalytical laboratory, health care facility, and further includes administrative support staff of the individual or entity.

"Owner" means an association or corporation organized as a nonprofit pursuant to Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes exclusively for hospital purposes that owns an acute care hospital.

"Satellite emergency care facility" means a facility, which is owned and operated by an acute care hospital or its nonprofit parent corporation, and which provides emergency care and treatment for patients.

2. (New section) a. There is established, in but not of the Department of Health, a commission to be known as the Nonprofit Hospital Community Service Contribution Study Commission. The commission shall consist of nine members as follows: the Commissioner of Health, ex officio; two members of the Senate to be appointed by the President of the Senate, who shall not both be of the same political party; two members of the General Assembly to be appointed by the Speaker of the General Assembly, who shall not both be of the same political party; two members, appointed by the Governor, who are mayors of municipalities receiving community service contributions pursuant to section 1 of P.L. , c. (C.) (pending before the Legislature as this bill); and two members, appointed by the Governor, who are chief executive officers of nonprofit hospitals assessed community service contributions pursuant to section 1 of P.L. , c. (C.) (pending before the Legislature as this bill). Each member may designate a representative to attend meetings of the commission, and each designee may lawfully vote and otherwise act on behalf of the member who designated that individual to serve as a designee. The members shall serve for terms of three years, commencing on the date of appointment, and may be reappointed. Vacancies in the membership of the commission shall be filled for the unexpired terms in the same manner as the original appointments.

b. The members shall be appointed within 60 days following the effective date of P.L. , c. (C.) (pending before the Legislature as this bill). The commission shall organize as soon as practicable after the appointment of a majority of its members and shall select a chair and a treasurer from among its members, and a secretary who need not be a member of the commission. The presence of five members of the commission shall constitute a quorum. The commission may conduct business without a quorum, but may only vote on the issuance of the report required to be submitted to the Governor and the Legislature pursuant to subsection e. of this section, and on any recommendations, when a quorum is present.

c. All commission members shall serve without compensation, but shall be eligible for reimbursement of necessary and reasonable expenses incurred in the performance of their official duties within the limits of funds appropriated or otherwise made available to the commission for its purposes.

d. The commission may meet and hold public hearings at the place or places it designates during the sessions or recesses of the Legislature.

e. The commission shall study the implementation of P.L. , c. (C.) (pending before the Legislature as this bill) and shall issue a report to the Governor and the Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), every three years on or before the anniversary of the effective date of P.L. , c. (C.) (pending before the Legislature as this bill); provided, however, that the initial report shall be issued within one year following the first organizational meeting of the commission. The report shall include an analysis of the financial impact of P.L. , c. (C.) (pending before the Legislature as this bill) on both nonprofit hospitals assessed community service contributions thereunder and the municipalities receiving such contributions, the adequacy of the amount of the community service contributions, and an analysis of the administration and equity of these contributions. The report shall include any recommendations that the commission determines would improve the administration, equity, or any other aspect of the nonprofit hospital community service contribution system established by P.L. , c. (C.) (pending before the Legislature as this bill), and shall include an assessment of the adequacy of the amount of the community service contributions.

3. (New section) a. Property, including land and buildings, used as an acute care hospital or satellite emergency care facility, which is owned by an association or corporation organized as a nonprofit association or corporation pursuant to Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes exclusively for hospital purposes, shall be exempt from taxation, provided that, except as provided in subsection b. of this section, if any portion of the property is leased to a profit-making organization or otherwise used for purposes which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining portion only shall be exempt from taxation.

b. If any portion of an acute care hospital or satellite emergency care facility is leased to or otherwise used by a profit-making medical provider for medical purposes related to the delivery of health care services of the acute care hospital, that portion shall be exempt from taxation.

c. As used in this section:

"Acute care hospital" means a hospital which maintains and operates organized facilities and services as approved and licensed

by the Department of Health for the diagnosis, treatment, or care of persons suffering from acute illness, injury, or deformity and in which all diagnosis, treatment, and care are administered by or performed under the direction of persons licensed to practice medicine or osteopathy in the State of New Jersey, and includes all land and buildings that are used in the delivery of health care services by such hospital and its medical providers or that are used for the management, maintenance, administration, and security of such hospital and its medical providers.

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

"Satellite emergency care facility" means a facility, which is owned and operated by an acute care hospital or its nonprofit parent corporation, and which provides emergency care and treatment for patients.

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

54:4-3.6. The following property shall be exempt from taxation under this chapter: all buildings actually used for colleges, schools, academies or seminaries, provided that if any portion of such buildings are leased to profit-making organizations or otherwise used for purposes which are not themselves exempt from taxation, said portion shall be subject to taxation and the remaining portion only shall be exempt; all buildings actually used for historical societies, associations or exhibitions, when owned by the State, county or any political subdivision thereof or when located on land owned by an educational institution which derives its primary support from State revenue; all buildings actually and exclusively used for public libraries, asylum or schools for adults and children with intellectual disabilities; all buildings used exclusively by any association or corporation formed for the purpose and actually engaged in the work of preventing cruelty to animals; all buildings actually and exclusively used and owned by volunteer first-aid squads, which squads are or shall be incorporated as associations not for pecuniary profit; all buildings actually used in the work of associations and corporations organized exclusively for the moral and mental improvement of men, women and children, provided that if any portion of a building used for that purpose is leased to profit-making organizations or is otherwise used for purposes which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining portion only shall be exempt;

all buildings actually used in the work of associations and corporations organized exclusively for religious purposes, including religious worship, or charitable purposes, provided that if any portion of a building used for that purpose is leased to a profit-making organization or is otherwise used for purposes which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining portion shall be exempt from taxation, and provided further that if any portion of a building is used for a different exempt use by an exempt entity, that portion shall also be exempt from taxation; all buildings actually used in the work of associations and corporations organized exclusively for hospital purposes, except for an acute care hospital or satellite emergency care facility, which shall instead be subject to the provisions of section 3 of P.L. , c. (C.) (pending before the Legislature as this bill), provided that if any portion of a building used for hospital purposes is leased to profit-making organizations or otherwise used for purposes which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining portion only shall be exempt; all buildings owned or held by an association or corporation created for the purpose of holding the title to such buildings as are actually and exclusively used in the work of two or more associations or corporations organized exclusively for the moral and mental improvement of men, women and children; all buildings owned by a corporation created under or otherwise subject to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes and actually and exclusively used in the work of one or more associations or corporations organized exclusively for charitable or religious purposes, which associations or corporations may or may not pay rent for the use of the premises or the portions of the premises used by them; the buildings, not exceeding two, actually occupied as a parsonage by the officiating clergymen of any religious corporation of this State, together with the accessory buildings located on the same premises; the land whereon any of the buildings hereinbefore mentioned are erected, and which may be necessary for the fair enjoyment thereof, and which is devoted to the purposes above mentioned and to no other purpose and does not exceed five acres in extent; the furniture and personal property in said buildings if used in and devoted to the purposes above mentioned; all property owned and used by any nonprofit corporation in connection with its curriculum, work, care, treatment and study of men, women, or children with intellectual disabilities shall also be exempt from taxation, provided that such corporation conducts and maintains research or professional training facilities for the care and training of men, women, or children with intellectual disabilities; provided, in case of all the foregoing, the buildings, or the lands on which they stand, or the associations, corporations or institutions using and occupying them as aforesaid, are not conducted for profit,

except that the exemption of the buildings and lands used for charitable, benevolent or religious purposes shall extend to cases where the charitable, benevolent or religious work therein carried on is supported partly by fees and charges received from or on behalf of beneficiaries using or occupying the buildings; provided the building is wholly controlled by and the entire income therefrom is used for said charitable, benevolent or religious purposes; and any tract of land purchased pursuant to subsection (n) of section 21 of P.L.1971, c.199 (C.40A:12-21), and located within a municipality, actually used for the cultivation and sale of fresh fruits and vegetables and owned by a duly incorporated nonprofit organization or association which includes among its principal purposes the cultivation and sale of fresh fruits and vegetables, other than a political, partisan, sectarian, denominational or religious organization or association. The foregoing exemption shall apply only where the association, corporation or institution claiming the exemption owns the property in question and is incorporated or organized under the laws of this State and authorized to carry out the purposes on account of which the exemption is claimed or where an educational institution, as provided herein, has leased said property to a historical society or association or to a corporation organized for such purposes and created under or otherwise subject to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes.

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

“Acute care hospital” means the same as that term is defined in section 3 of P.L. , c. (C.) (pending before the Legislature as this bill).

“Hospital purposes" includes, health care facilities for the elderly, such as nursing homes; residential health care facilities; assisted living residences; facilities with a Class C license pursuant to P.L.1979, c.496 (C.55:13B-1 et al.), the "Rooming and Boarding House Act of 1979"; similar facilities that provide medical, nursing or personal care services to their residents; and that portion of the central administrative or service facility of a continuing care retirement community that is reasonably allocable as a health care facility for the elderly.

“Satellite emergency care facility” means the same as that term is defined in section 3 of P.L. , c. (C.) (pending before the Legislature as this bill).

(cf: P.L.2011, c.171, s.4)

5. This act shall take effect on January 1, 2021, except that the Commissioner of Health may take any anticipatory administrative action in advance as shall be necessary for the implementation of this act.

STATEMENT

This bill would restore the property tax exempt status of a nonprofit hospital with on-site for-profit medical providers as long as the hospital remains organized as a nonprofit institution under State law, and would require these nonprofit hospitals to pay an annual community service contribution to their host municipalities. The bill would clarify that modern, complex nonprofit hospitals that provide nonprofit and for-profit medical services remain entitled to a property tax exemption for the portions of hospital property used for the delivery of health care services of the hospital. The bill would also make these hospitals responsible for providing some financial support to their host communities to offset the costs of public safety services, such as police and fire safety services, which directly benefit these hospitals and their employees. This bill would establish a clear and predictable system in which nonprofit hospitals make a reasonable contribution to their host communities, while providing these hospitals a measure of tax relief to help them continue to fulfill their nonprofit mission.

In a 2015 decision, the Tax Court held that a nonprofit hospital was not entitled to a property tax exemption because nonprofit and for-profit medical services were provided throughout the hospital in a commingled manner that did not allow taxing authorities to distinguish taxable for-profit uses of the hospital property from tax-exempt nonprofit uses of the property. Since for-profit medical services are commonly provided at nonprofit hospitals, municipalities began challenging the property tax exempt status held by other nonprofit hospitals, creating uncertainty and questions of fairness over the tax obligations of these non-profit hospitals. This bill would eliminate any uncertainty over the property tax status of nonprofit hospitals that use for-profit medical providers to help deliver their services, but still qualify as nonprofit institutions, while ensuring that a readily calculable fair share contribution is made to compensate host communities for the significant sums they expend providing essential services that benefit these hospitals.

The bill requires municipalities to provide five percent of a nonprofit hospital community service contribution to the county in which the municipality is located to offset public safety services expenses borne by the county that benefit the hospital.

The bill also permits a nonprofit hospital to apply to the New Jersey Health Care Facilities Financing Authority for an exemption from a community service contribution if the hospital or its satellite emergency care facility is in financial distress or at risk of being in financial distress. Notice of such an application is required to be provided to the municipality in which the hospital or satellite emergency care facility that is the subject of the application is located.

Hospitals owned by the State or any political subdivision thereof are not subject to the community service contribution required by the bill.

Portions of a nonprofit hospital that are leased to or used by a for-profit medical provider to deliver services independent of those provided by the hospital would be subject to property taxation in the same manner as for-profit gift and food shops.

The bill also establishes a permanent commission, known as the Nonprofit Hospital Community Service Contribution Study Commission, to study and issue a report, every three years, on the community service contribution system created by the bill. The initial report is due within one year of the first organizational meeting of the commission. The report may include any recommendations on how to improve the administration, fairness, or any other aspect of this system, but must include an assessment of the adequacy of the amount of the community service contributions.