

ASSEMBLY, No. 3482

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:

Assemblyman GERARD SCHARFENBERGER, PHD
District 13 (Monmouth)

SYNOPSIS

Revises Energy Tax Receipts Property Tax Relief Aid program; requires all energy taxes to be paid directly to municipalities.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the distribution of Energy Tax Receipts
2 Property Tax Relief Aid and amending P.L.1997, c.167.

3

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

6

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

9 2. a. (1) Commencing July 1, 1997 there is established the
10 "Energy Tax Receipts Property Tax Relief Fund" as a special
11 dedicated fund in the State Treasury into which there shall be
12 credited annually, commencing in State fiscal year 1998 and
13 concluding in State fiscal year 2021, the sum of \$740,000,000 or
14 the amount determined pursuant to subsection e. of this section
15 from the following: net payments under the "Sales and Use Tax
16 Act," P.L.1966, c.30 (C.54:32B-1 et seq.) from sales and use of
17 energy or utility services, net payments under the Corporation
18 Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.)
19 from gas, electric, and gas and electric public utilities, whether
20 municipal or otherwise, that were subject to tax pursuant to the
21 provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to January
22 1, 1998, net payments under the Corporation Business Tax Act
23 (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) from
24 telecommunications public utilities that were subject to tax pursuant
25 to the provisions of P.L.1940, c.4 (C.54:30A-16 et seq.) as of April
26 1, 1997, net payments under P.L.1940, c.5 (C.54:30A-49 et seq.)
27 from sewerage and water corporations, net payments under the
28 "Transitional Energy Facility Assessment Act," P.L.1997, c.162
29 (C.54:30A-100 through C.54:30A-113), and such sums from the
30 General Fund as may be necessary to provide that the annual
31 amount credited to the fund shall equal \$740,000,000 or the amount
32 determined pursuant to subsection e. of this section.

33 (2) Commencing in State fiscal year 2022, and for each fiscal
34 year thereafter, the State Treasurer shall:

35 (a) determine the aggregate amount of Energy Tax Receipts
36 Property Tax Relief Aid that shall be provided to municipalities
37 throughout the State, as calculated pursuant to paragraph (2) of
38 subsection e. of this section;

39 (b) determine the amount of Energy Tax Receipts Property Tax
40 Relief Aid that shall be provided each municipality in the State, as
41 calculated pursuant to subsection b. of this section;

42 (c) direct each energy taxpayer liable for payment of energy
43 taxes during that fiscal year to make direct payment of such tax
44 liabilities to one or more municipalities, as designated by the State

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 Treasurer, such that each municipality receives the amount
2 determined under subparagraph (b) of this paragraph;

3 (d) when the aggregate amount of Energy Tax Receipts Property
4 Tax Relief Aid is determined by the amount set forth in
5 subparagraph (a) of paragraph (2) of subsection e. of this section,
6 the State Treasurer shall make such additional payments as are
7 necessary, from the Property Tax Relief Fund, to ensure that each
8 municipality receives the amount determined under subparagraph
9 (b) of this paragraph;

10 (e) establish any requirements, as the State Treasurer may deem
11 appropriate, concerning the payments made pursuant to
12 subparagraphs (c) or (d) of this paragraph, including but not limited
13 to dates on which each payment shall be provided; and

14 (f) advise each municipality of the name of each energy
15 taxpayer that shall make direct payment of energy taxes to the
16 municipality, the amounts owed therefrom, and the dates on which
17 each payment shall be provided.

18 (3) The amount of any payment made pursuant to subparagraph
19 (c) of paragraph (2) of this subsection may be taken as a credit by
20 the energy taxpayer making the payment against the energy tax
21 liability of the energy taxpayer, as prescribed by the State
22 Treasurer. The payments made pursuant to this paragraph shall be
23 deemed to be payments of State taxes for purposes of the "State
24 Uniform Tax Procedure Law," R.S.54:48-1 et seq.

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

35 b. Notwithstanding the provisions of P.L.1940, c.4 (C.54:30A-
36 16 et seq.), P.L.1940, c.5 (C.54:30A-49 et seq.) and any other
37 provision of law concerning the apportionment and distribution by
38 the State of taxes paid by public utilities,

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

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

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

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

15 (3) A portion of the \$740,000,000 or the amount determined
16 pursuant to subsection e. of this section shall be allocated in a
17 manner that provides that each municipality shall receive an amount
18 equal to the difference, if any, between the amount it received
19 pursuant to paragraph (2) of this subsection and the sum of the
20 amounts that the municipality received pursuant to the certification
21 made in the 1997 calendar year released by the Division of Local
22 Government Services in the Department of Community Affairs as
23 the fiscal year 1998 estimated franchise and gross receipts taxes
24 State aid distribution of \$685,000,000 and the certification of the
25 1997 fiscal year distribution of \$45,000,000.

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

31 (5) Commencing in State fiscal year 2022, and during each State
32 fiscal year thereafter, if the total energy taxes due and payable
33 during that fiscal year exceed the amount that would have been
34 otherwise deposited into the "Energy Tax Receipts Property Tax
35 Relief Fund" during that fiscal year, then the difference shall be
36 distributed amongst all municipalities in proportion to the equalized
37 assessed valuation of real and personal property owned by all
38 energy taxpayers located within each municipality, as determined
39 by the State Treasurer.

40 c. (1) 【The】 Except as otherwise determined by the State
41 Treasurer pursuant to subparagraph (e) of paragraph (2) of
42 subsection a. of this section, the funds distributed pursuant to
43 paragraphs (2) and (4) of subsection b. of this section shall be
44 distributed annually to municipalities on the following schedule:
45 July 15, 35% of the total amount due; August 1, 10% of the total
46 amount due; September 1, 30% of the total amount due; October 1,
47 15% of the total amount due; November 1, 5% of the total amount
48 due; and December 1, 5% of the total amount due.

1 (2) The funds distributed pursuant to paragraph (3) of
2 subsection b. of this section, prior to January 1, 2002 for all
3 municipalities, and distributed after January 1, 2002 for
4 municipalities operating on a State fiscal year basis, shall be
5 distributed annually to those municipalities on or before June 30.
6 The funds distributed after January 1, 2002 pursuant to paragraph
7 (3) of subsection b. of this section to calendar year municipalities
8 shall be distributed annually on or before July 15, except as
9 otherwise determined by the State Treasurer pursuant to
10 subparagraph (e) of paragraph (2) of subsection a. of this section.

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

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

17 (2) correct equitable distortions, as determined by the State
18 Treasurer, resulting from the application of section 2 of P.L.1980,
19 c.10 (C.54:30A-24.1) and section 4 of P.L.1980, c.11 (C.54:30A-
20 61.1).

21 The director shall report to the Legislature, on or before July 15,
22 1997, the amount and distribution of the corrections pursuant to
23 paragraphs (1) and (2) of this subsection.

24 e. **【The】** (1) Concluding in State fiscal year 2021, the amount
25 credited to the "Energy Tax Receipts Property Tax Relief Fund"
26 shall be \$745,000,000 for State fiscal year 1999, \$750,000,000 for
27 each of State fiscal years 2000 and 2001, \$755,000,000 for State
28 fiscal year 2002, and for each fiscal year thereafter the amount
29 equal to the amount credited in the prior fiscal year multiplied by
30 the sum of 1.0 and the index rate or zero, whichever is greater.

31 (2) Commencing in State fiscal year 2022, and for each fiscal
32 year thereafter, the aggregate amount of Energy Tax Receipts
33 Property Tax Relief Aid provided to all municipalities, as
34 determined by the State Treasurer pursuant to subparagraph (a) of
35 paragraph (2) of subsection a. of this section, shall be the greater of:

36 (a) the amount that would have been otherwise deposited into
37 the "Energy Tax Receipts Property Tax Relief Fund" for that fiscal
38 year, as determined by paragraph (1) of this subsection; or

39 (b) the amount equal to the total energy taxes due and payable
40 during that fiscal year.

41 (3) As used in this section, "index rate" means the rate of annual
42 percentage increase, rounded to the nearest half-percent, in the
43 Implicit Price Deflator for State and Local Government Purchases
44 of Goods and Services, computed and published quarterly by the
45 United States Department of Commerce, Bureau of Economic
46 Analysis, calculating the annual increase therein at the second
47 calendar quarter which occurred in the next preceding State fiscal
48 year. The Director of the Division of Local Government Services

1 shall promulgate annually the index rate to apply in the next
2 following State fiscal year which shall be the same as the index rate
3 determined pursuant to section 4 of P.L.1983, c.49 (C.40A:4-45.1a).

4 (4) Any amount of aid distributed to a municipality in excess of
5 the amount distributed to the municipality from the "Energy Tax
6 Receipts Property Tax Relief Fund" during the State fiscal year
7 2002 shall be used solely and exclusively by each municipality for
8 the purpose of reducing the amount the municipality is required to
9 raise by local property tax levy for municipal purposes.

10 f. Notwithstanding any other provision of this section or any
11 other provision of law to the contrary, if any municipality paid a
12 county for an amount for county purposes from the amount it
13 received from its apportionment of taxes according to the
14 limitations on the municipalities apportionment under section 4 of
15 P.L.1980, c.11 (C.54:30A-61.1), the highest amount of that
16 payment during calendar years 1994, 1995, and 1996 shall be paid
17 annually directly to that county by the State Treasurer and be
18 deducted from that municipality's distribution otherwise determined
19 pursuant to paragraph (2) of subsection b. of this section.

20 g. As used in this section:

21 "Energy taxes" includes the net payments under the "Sales and
22 Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) from sales and
23 use of energy or utility services, the net payments under the
24 Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1
25 et seq.) from gas, electric, and gas and electric public utilities,
26 whether municipal or otherwise, that were subject to tax pursuant to
27 the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to
28 January 1, 1998, the net payments under the Corporation Business
29 Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) from
30 telecommunications public utilities that were subject to tax pursuant
31 to the provisions of P.L.1940, c.4 (C.54:30A-16 et seq.) as of April
32 1, 1997, the net payments under P.L.1940, c.5 (C.54:30A-49 et
33 seq.) from sewerage and water corporations, and the net payments
34 under the "Transitional Energy Facility Assessment Act," P.L.1997,
35 c.162 (C.54:30A-100 through C.54:30A-113).

36 "Energy taxpayer" means any entity responsible for payment of
37 energy taxes.

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

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

42 4. a. (1) The annual appropriations act for each State fiscal
43 year commencing with fiscal year 1998, and concluding in State
44 fiscal year 2021, shall appropriate and distribute during the fiscal
45 year an amount not less than \$740,000,000 or the amount
46 determined pursuant to subsection e. of section 2 of P.L.1997, c.167
47 (C.52:27D-439) from the "Energy Tax Receipts Property Tax Relief

1 Fund" pursuant to the provisions of section 2 of P.L.1997, c.167
2 (C.52:27D-439), for the purposes of that fund.

3 (2) The annual appropriations act for each State fiscal year
4 commencing with State fiscal year 2022 shall appropriate and
5 distribute during the fiscal year such amounts as are necessary to
6 comply with the requirements set forth in section 2 of P.L.1997,
7 c.167 (C.52:27D-439).

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

19 c. The Director of the Division of Taxation shall, no later than
20 five days after certification by the Director of the Division of
21 Budget and Accounting in the Department of the Treasury pursuant
22 to subsection b. of this section that the provisions of subsection a.
23 of this section have not been met or have been violated by an
24 amendment or supplement to the annual appropriations act, notify
25 all taxpayers that have filed a return under the Corporation Business
26 Tax (1946), P.L.1945, c.162 (C.54:10A-1 et seq.) during the
27 previous calendar year, other than taxpayers that are gas, electric,
28 and gas and electric, or telecommunications public utilities as
29 defined pursuant to subsection (q) of section 4 of P.L.1945, c.162
30 (C.54:10A-4) pursuant to the amendment to that section 4 made in
31 section 2 of P.L.1997, c.162, that the taxpayer shall have no
32 liability pursuant to the provisions of P.L.1945, c.162 for any
33 corporation business tax for the taxpayer's current privilege period,
34 notwithstanding any other provision of law to the contrary.
35 (cf: P.L.1997, c.167, s.4)

36

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

38

39 4. This act shall take effect immediately.

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41

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STATEMENT

43

44 This bill revises the Energy Tax Receipts Property Tax Relief
45 ("ETR") Aid Program by requiring all energy taxes to be paid
46 directly to municipalities.

47 Historically, energy providers and public utility companies were
48 required to pay gross receipts and franchise taxes based on their use

1 of public lands. For many decades, these taxes were paid directly to
2 municipalities as a means of compensation for hosting such
3 facilities. In the 1980s, the State began to collect these taxes on
4 behalf of municipalities, distribute a portion of the proceeds to
5 municipalities as State aid, and retain the remaining revenues for
6 other State purposes. In the late 1990s, this practice was continued
7 when the State established the ETR Aid program after reforming the
8 taxation of energy providers and public utility companies.

9 Under current law, the State is required to annually deposit a
10 statutorily determined amount of monies into the “Energy Tax
11 Receipts Property Tax Relief Fund” and distribute those monies to
12 municipalities as ETR Aid. Every year, the total distribution of
13 ETR Aid is required to increase based on inflation. During any year
14 in which the State fails to provide this aid, the State is required to
15 forego the collections of certain taxes on energy providers and
16 public utilities (e.g., sales tax collections for energy services,
17 corporation business tax collections from certain public utility
18 companies, etc.), hereinafter referred to as “energy taxes.”

19 Under this bill, the ETR Aid program would be restructured to
20 reflect the original design of the gross receipts and franchise taxes,
21 wherein all energy taxes were paid directly to municipalities.
22 Beginning in Fiscal Year 2022, and during each year thereafter, the
23 bill requires the State Treasurer to: (1) determine the aggregate
24 amount of ETR Aid provided Statewide; (2) determine the amounts
25 provided to each municipality; (3) direct each energy taxpayer to
26 make direct payment of energy taxes to one or more municipalities;
27 and (4) advise each municipality of the name of each energy
28 taxpayer that would make direct payment of energy taxes to the
29 municipality, the amounts owed therefrom, and the dates on which
30 each payment would be provided.

31 The State Treasurer would also be required to establish
32 additional requirements concerning the payment of ETR Aid,
33 including but not limited to dates on which each payment would be
34 provided. The bill provides that whenever an energy tax payment is
35 made directly to a municipality, the amount of the payment may be
36 taken as a credit against the tax liability of the energy taxpayer, as
37 prescribed by the State Treasurer.

38 Additionally, the bill provides that beginning in Fiscal Year
39 2022, the aggregate amount of ETR Aid provided during any fiscal
40 year is required to equal the greater of: (1) the total amount that
41 would have been otherwise provided under current law; or (2) the
42 total amount of energy taxes due and payable during that fiscal
43 year. Consequently, the bill would prevent the State from retaining
44 any portion of these energy tax collections for other State purposes.

45 Under the bill, if the total energy taxes due and payable during
46 any fiscal year exceed the amount of ETR Aid that would have been
47 otherwise provided under current law, then the difference would be
48 distributed amongst all municipalities in proportion to the equalized

1 assessed valuation of real and personal property owned by all
2 energy taxpayers located within each municipality, as determined
3 by the State Treasurer. Alternatively, the bill also provides that if
4 the total energy taxes due and payable during any fiscal year is less
5 than the amount of ETR Aid that would have been otherwise
6 provided under current law, then the State Treasurer is required to
7 make such additional payments as are necessary, from the Property
8 Tax Relief Fund, to ensure that each municipality receives the
9 amount owed.

10 During any fiscal year in which the State fails to comply with the
11 requirements of this bill, the State would be required to forego the
12 collection of all energy taxes.