

SENATE, No. 1394

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Senator CHRISTOPHER J. CONNORS

District 9 (Atlantic, Burlington and Ocean)

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

As introduced.



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

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

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

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

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

40 (1)**】** There shall be paid **【**during the State fiscal year 1998 and**】**
41 during each fiscal year **【**thereafter**】** from the "Energy Tax Receipts
42 Property Tax Relief Fund" to the municipalities of the State **【**the
43 sum of \$740,000,000 or**】** the amount determined pursuant to
44 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.

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

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

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

20 (3) A portion of the \$740,000,000 or the amount determined
21 pursuant to subsection e. of this section shall be allocated in a
22 manner that provides that each municipality shall receive an amount
23 equal to the difference, if any, between the amount it received
24 pursuant to paragraph (2) of this subsection and the sum of the
25 amounts that the municipality received pursuant to the certification
26 made in the 1997 calendar year released by the Division of Local
27 Government Services in the Department of Community Affairs as
28 the fiscal year 1998 estimated franchise and gross receipts taxes
29 State aid distribution of \$685,000,000 and the certification of the
30 1997 fiscal year distribution of \$45,000,000.

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

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

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

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

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

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

10 (2) correct equitable distortions, as determined by the State
11 Treasurer, resulting from the application of section 2 of P.L.1980,
12 c.10 (C.54:30A-24.1) and section 4 of P.L.1980, c.11 (C.54:30A-
13 61.1).

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

18 e. 【The】 If the amount credited to the "Energy Tax Receipts
19 Property Tax Relief Fund" 【shall be \$745,000,000 for State fiscal
20 year 1999, \$750,000,000 for each of State fiscal years 2000 and
21 2001, \$755,000,000 for State fiscal year 2002, and】 for 【each】 a
22 fiscal year 【thereafter the】 is an amount 【equal to】 less than or
23 greater than the amount credited in the prior fiscal year 【multiplied
24 by the sum of 1.0 and the index rate or zero, whichever is greater.
25 As used in this section, "index rate" means the rate of annual
26 percentage increase, rounded to the nearest half-percent, in the
27 Implicit Price Deflator for State and Local Government Purchases
28 of Goods and Services, computed and published quarterly by the
29 United States Department of Commerce, Bureau of Economic
30 Analysis, calculating the annual increase therein at the second
31 calendar quarter which occurred in the next preceding State fiscal
32 year. The Director of the Division of Local Government Services
33 shall promulgate annually the index rate to apply in the next
34 following State fiscal year which shall be the same as the index rate
35 determined pursuant to section 4 of P.L.1983, c.49 (C.40A:4-
36 45.1a)】 the amount of aid distributed to a municipality shall be
37 reduced or increased, as the case may be, in proportion to the
38 amount of aid distributed to the municipality in the prior State fiscal
39 year. Any amount of aid distributed to a municipality in excess of
40 the amount distributed to the municipality from the "Energy Tax
41 Receipts Property Tax Relief Fund" during the State fiscal year
42 2002 shall be used solely and exclusively by each municipality for
43 the purpose of reducing the amount the municipality is required to
44 raise by local property tax levy for municipal purposes.

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

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

9
10 2. Section 4 of P.L.1997, c.167 (C.52:27D-441) is amended to
11 read as follows:

12 4. a. The annual appropriations act for each State fiscal year
13 commencing with fiscal year **【1998】 2019** shall appropriate the full
14 amount credited to the "Energy Tax Receipts Property Tax Relief
15 Fund" pursuant to the provisions of section 2 of P.L.1997, c.167
16 (C.52:27D-439), and distribute to each municipality during the
17 fiscal year 【an amount not less than \$740,000,000 or】 exclusively
18 from the sources credited to the fund pursuant to that section, the
19 amount determined pursuant to subsection e. of section 2 of
20 P.L.1997, c.167 (C.52:27D-439) from the "Energy Tax Receipts
21 Property Tax Relief Fund" pursuant to the provisions of that section
22 **【2 of P.L.1997, c.167 (C.52:27D-439), for the purposes of that**
23 **fund】.**

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

35 c. The Director of the Division of Taxation shall, no later than
36 five days after certification by the Director of the Division of
37 Budget and Accounting in the Department of the Treasury pursuant
38 to subsection b. of this section that the provisions of subsection a.
39 of this section have not been met or have been violated by an
40 amendment or supplement to the annual appropriations act, notify
41 all taxpayers that have filed a return under the Corporation Business
42 Tax (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) during the
43 previous calendar year, other than taxpayers that are gas, electric,
44 and gas and electric, or telecommunications public utilities as
45 defined pursuant to subsection (q) of section 4 of P.L.1945, c.162
46 (C.54:10A-4) pursuant to the amendment to that section 4 made in
47 section 2 of P.L.1997, c.162, that the taxpayer shall have no
48 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	\$470,300,000	\$789,000,000
2016	\$187,000,000	\$789,000,000
2017 est.	\$304,600,000	\$789,000,000
2018 est.	\$328,400,000	\$789,000,000