LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 1135

STATE OF NEW JERSEY
219th LEGISLATURE

DATED: SEPTEMBER 23, 2020

SUMMARY

Synopsis: Reinstates prior property tax exemption for nonprofit hospitals with on-site for-profit medical providers; requires some of these hospitals to pay community service contributions; establishes Nonprofit Hospital Community Service Contribution Study Commission; prohibits certain third-party property tax appeals.

Type of Impact: Potential increase in State expenditures; indeterminate impact on local finances.

Agencies Affected: Nonprofit Hospital Community Service Contribution Study Commission, certain municipalities and counties.

Office of Legislative Services Estimate

Fiscal Impact	Tax Year 2021 and Thereafter
State Cost	Potential Indeterminate Increase
Local Finances	Indeterminate Impact

- The Office of Legislative Services (OLS) concludes that the bill would have an indeterminate impact on local finances associated with the annual payment of community service contributions by property tax-exempt nonprofit hospitals and the prohibition of certain third-party property tax appeals. The OLS also estimates the bill could potentially increase State expenses due to the operation of the Nonprofit Hospital Community Service Contribution Study Commission.

- By exempting certain nonprofit hospital facilities from property taxation, and requiring those facilities to make annual community service contributions to the host counties and municipalities, the bill is expected to increase the miscellaneous revenues of certain local government units throughout the State by roughly $18.2 million. This figure would be reduced based on existing settlement agreements between hospitals and their host municipalities.

- A hospital would be exempt from its community service contribution if it can certify that it did not balance bill or collect payment from an individual for inpatient services rendered by its employed physicians during the current calendar year and the hospital has provided community benefit over the preceding three years averaging at least 12 percent of the hospital's total expenses. Hospitals qualifying for this exemption would reduce the $18.2 million figure above.

- Additionally, the OLS cannot predict whether the collection of community service contributions by counties and municipalities will impact the total revenues of those local government units, given that such impact would depend on the spending decisions of each local government unit and the resulting impact on its property tax levy.

BILL DESCRIPTION

This bill would reinstate the property tax exempt status of nonprofit hospitals and satellite emergency care facilities, including hospital property that is leased to or otherwise used by a profit-making medical provider for medical purposes. Under the bill, these hospitals would instead be required to pay annual community service contributions to their host municipalities to offset the costs of municipal services, which also benefit hospitals and their employees.

Under the bill, for tax year 2021, the annual community service contribution for a hospital would be equal to $2.50 a day for each licensed bed at the hospital in the prior tax year, and the contribution for a satellite emergency care facility would be equal to $250 for each day in the prior tax year. For tax year 2022 and each tax year thereafter, the per day amount used to calculate the community service contribution for a hospital and a satellite emergency care facility would increase by two percent over the prior tax year. The number of licensed beds per hospital would not be less than the number of such beds in existence on January 1, 2020.

If a hospital and municipality have entered into a voluntary agreement prior to the bill's enactment, the hospital would be required to pay the greater of the community service contribution required under the bill. Additionally, an annual community service contribution would be reduced by the amount of any payments made by a nonprofit hospital for the same purposes to a host municipality, pursuant to a voluntary agreement between the hospital and municipality that was operative in the prior tax year.

The bill requires municipalities to provide five percent of an annual community service contribution, or a voluntary payment that counts against such contribution, to the county in which the municipality is located to offset services expenses borne by the county, which benefit the hospital.

The bill also requires that a hospital would not have to pay a community service contribution to a municipality under the bill for a tax year if, prior to December 1 of the pre-tax year, the hospital certifies to the Department of Health that it did not balance bill or collect payment from an individual for inpatient services rendered by its employed physicians during the current calendar year and the hospital provided community benefit over the preceding three years averaging at least 12 percent of the hospital's total expenses, as reflected in IRS Form 990, Schedule H.

The bill also establishes a permanent commission, known as the Nonprofit Hospital Community Service Contribution Study Commission, to study and issue a report to the Governor and the Legislature on the annual community service contribution system created by the bill. The initial report is due within one year of the effective date of that provision of the bill, and subsequent reports are due every three years from that effective date.

The bill also prohibits the assessment of a nonprofit hospital as an omitted property for tax years 2014 through 2020. The bill clarifies that nothing in the bill should be construed to require a municipality to refund any taxes paid on such property as a result of such omitted assessments or regular assessments pursuant to any previous settlement of litigation or other agreement for those tax years.

The bill also prohibits property taxpayers from filing property tax appeals with respect to the property of others. Under current law, property taxpayers may challenge the assessment or exempt status of their own property as well as that of any other property in their county. The bill would not disturb the ability of local governments to appeal the assessment or exempt status of any property in the applicable county.

Lastly, the bill clarifies that the process for challenging the exempt status of property is the same process for challenging the assessed valuation of property, consistent with existing practice.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that the bill would have an indeterminate impact on local finances. Although the collection of community service contributions from property tax-exempt nonprofit hospital facilities is expected to increase the miscellaneous revenues of certain municipalities and counties, given the manner in which property tax levies are calculated, the impact of the bill on total revenues is expected to vary depending on the spending decisions of each local government unit that collects the contributions. The bill also prohibits property taxpayers from filing property tax appeals with respect to the property of others. Eliminating this option would reduce property tax appeals, which the OLS estimates would contribute to a reduction in local government expenses.

The bill also could potentially increase State expenditures associated with the operation of the Nonprofit Hospital Community Service Contribution Study Commission, established to be in but not of the Department of Health (DOH).

<u>Local Fiscal Impact</u>

By restoring the property tax exemption of certain nonprofit hospital facilities (i.e., acute care hospitals and its onsite for-profit medical providers, satellite emergency care facilities) and requiring those facilities to pay annual community service contributions to their host municipalities and counties, the bill is expected to have an indeterminate impact on county and municipal finances. Specifically, the bill would cause certain local government units to realize increased miscellaneous revenues due to the collection of community service contributions.

When a local government unit anticipates an increase in miscellaneous revenue, such as the collection of community service contributions, the property tax levy may be reduced such that total revenues remain unchanged, absent any increases in total spending or decreases in other revenues. However, the OLS cannot predict the impact of these increased collections on the total revenues of those local government units, given that such impact would depend on the spending decisions of the local government unit and the resulting impact on the property tax levy.

This analysis assumes that all nonprofit hospital facilities subject to the bill are currently exempt from the regular system of ad valorem taxation. Although the Tax Court of New Jersey ruled in 2015 that a specific nonprofit hospital was not entitled to a property tax exemption, the OLS cannot presume that the court's holding will be applied to other nonprofit hospitals or that the valuation method used as part of the settlement of that case will be adopted as the standard method for assessing nonprofit hospital property. However, in the wake of this decision, many municipalities entered into settlement agreements with nonprofit hospital facilities, through which a portion of those facilities could be assessed for property taxes. Increased miscellaneous revenues resulting from the bill would be reduced based on existing settlement agreements between hospitals and their host municipalities.

The OLS notes that if a hospital and municipality have entered into a voluntary agreement prior to the bill's enactment, the hospital would be required to pay the greater of the community service contribution required under the bill. Similarly, following the enactment of the bill, an annual community service contribution would be reduced by the amount of any payments made by a nonprofit hospital for the same purposes to a host municipality, pursuant to a voluntary agreement between the hospital and municipality that was operative in the prior tax year.

Additionally, for tax years 2014 through 2020, property that would have been exempt from taxation pursuant to this bill, had the bill been effective in those tax years, would not be assessed as an omitted assessment pursuant to P.L.1947, c.413 (C.54:4-63.12 et seq.) or as a regular assessment pursuant to R.S.54:4-11. The bill does not require a municipality to refund any taxes paid on such property.

The Composition of Local Revenue

The total revenues of a county or municipality are comprised of four sources: surplus revenues; delinquent taxes; miscellaneous revenue (e.g., payments in lieu of taxes, State aid, grants, etc.); and property taxes. The property tax is considered a residual tax, wherein the total amount of revenue to be raised through property taxation (i.e., the property tax levy) is calculated by subtracting the local government unit's anticipated surplus revenue, delinquent taxes, and miscellaneous revenue from the total amount necessary to support the local government unit's anticipated annual expenditures. As noted previously, when a local government unit anticipates an increase in miscellaneous revenue, such as the collection of community service contributions, the property tax levy may be reduced such that total revenues remain unchanged, absent any increases in total spending or decreases in other revenues.

The Collection of Community Service Contributions

In clarifying the property tax-exempt status of nonprofit hospitals, including satellite emergency care facilities and onsite for-profit medical providers, the bill requires those facilities to pay annual community service contributions, from which 95 percent would be remitted to the facility's host municipality and five percent to the facility's host county for county-provided services. Under the bill, nonprofit acute care hospitals would be liable for an annual community service contribution equal to $2.50 per day for each licensed bed in the facility during the prior tax year. Nonprofit satellite emergency care facilities would instead be required to make annual contributions equal to $250 per day of operation in the prior tax year.

According to a 2019 OLS Fiscal Estimate, information published by the DOH disclosed that there are 19,990 licensed hospital beds located within acute care hospitals owned by nonprofit organizations, not including those owned by public entities. The information also indicated that no facilities were currently licensed as satellite emergency care facilities (i.e., satellite emergency departments). The information also does not include any nonprofit hospital beds that may have been assembled, temporarily or permanently, in response to COVID-19. Under the bill, the number of licensed hospital beds, for the purpose of calculating the annual community service contribution, would not be less than the number of such beds in existence on January 1, 2020.

By multiplying the total number of licensed hospital beds by the daily rate of $2.50, the OLS estimates that the payment of community service contributions could generate a total of $18,240,875, assuming that each licensed hospital bed constitutes an acute care bed. Given the distribution of these contributions amongst municipalities and counties, miscellaneous municipal revenues are expected to increase by approximately $17,328,831 (i.e., $18,240,875 X 0.95), whereas miscellaneous county revenues are expected to increase by $912,044 (i.e., $18,240,875 X 0.05).

Alternative to the Community Service Contributions

Under the bill, a hospital would not have to pay a community service contribution to a municipality under the bill for a tax year if, prior to December 1 of the pre-tax year, the hospital certifies to the DOH that it did not balance bill or collect payment from an individual for inpatient services rendered by its employed physicians during the current calendar year and the hospital provided community benefit over the preceding three years averaging at least 12 percent of the hospital's total expenses, as reflected in IRS Form 990, Schedule H.

The "2020 Economic Impact Report" prepared by the New Jersey Hospital Association compiles data gathered through Acute Care Hospital Cost Reports that 71 acute care hospitals filed in 2018 with the New Jersey Department of Health, along with other publicly available data sources. According to the report, total expenditures in 2018 reached $24.7 billion, including $3.2 billion in community benefits. The $3.2 billion includes free or discounted care provided, charity care for those without insurance, unpaid costs for Medicare and Medicaid beneficiaries, unpaid and uncollectable patient care costs ("bad debt"), and community health improvement services.

At the State level, the $3.2 billion in community benefits equate to nearly 13 percent of total expenditures. The OLS notes that this is the Statewide contribution rate and each individual hospital's rate will vary. However, if a hospital maintains a three-year average of at least 12 percent for community service contributions, along with certifying that it did not balance bill or collect payment from an individual for inpatient services rendered by its employed physicians during the current calendar year, then a hospital would not be required to provide a community service contribution and the $18.2 million in miscellaneous local revenues projected above would not be fully realized.

The OLS also notes that the bill's provisions concerning a hospital not balance billing or collecting payment from an individual for inpatient services would only apply to a small subset of hospitals in the State. While P.L.2018, c.32, referred to as the "Out-of-network Consumer Protection, Transparency, Cost Containment, and Accountability Act" (C.26:2SS-1 et seq.), addresses many issues concerning balance billing and surprise billing from out-of-network service providers, nearly all hospitals that accept insurance are contractually obligated to charge individuals for inpatient services. Only the small number of hospitals in the State operating solely on donations and contracts, which do not balance bill or charge individuals for inpatient services, would be eligible to satisfy this criteria.

The Impact of Community Service Contributions on Total Revenue

As noted above, the OLS is unable to predict whether the collection of annual community service contributions would increase the total revenues of any local government unit that receives such payments. Given the manner in which property tax levies are calculated for municipalities and counties, the impact of the bill on total local revenues is expected to vary depending on the spending decisions of each local government unit that receives community service contributions. The collection of community service contributions could serve as a substitute for revenues that otherwise would have been collected through property taxation, thereby holding total revenues constant.

State Fiscal Impact

The enactment of the bill could potentially increase State expenditures associated with the operation of the Nonprofit Hospital Community Service Contribution Study Commission, established to be in but not of the DOH. All commission members would serve without compensation, but would 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.

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).