ASSEMBLY, No. 3981

STATE OF NEW JERSEY

216th LEGISLATURE

INTRODUCED DECEMBER 15, 2014

Sponsored by:
Assemblyman VINCENT MAZZEO
District 2 (Atlantic)
Assemblyman JOHN J. BURZICHELLI
District 3 (Cumberland, Gloucester and Salem)
Assemblyman BOB ANDRZEJCZAK
District 1 (Atlantic, Cape May and Cumberland)
Senator STEPHEN M. SWEENEY
District 3 (Cumberland, Gloucester and Salem)
Senator JIM WHELAN
District 2 (Atlantic)

SYNOPSIS

"Casino Property Taxation Stabilization Act."

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 6/26/2015)

AN ACT concerning the taxation of certain property licensed for casino gaming, amending R.S.54:5-6, and supplementing chapter 4 of Title 54 of the Revised Statutes.

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

1. (New section) This act shall be known and may be referred to as the "Casino Property Taxation Stabilization Act."

2. (New section) The Legislature finds and declares that:

a. In 1976, the voters of the State approved an amendment to the New Jersey Constitution (Article IV, Section VII, paragraph 2, subparagraph D), which authorized casino gaming in Atlantic City.

b. For over 30 years, casinos grew and profited in Atlantic City, until competition from other states in our region, particularly Pennsylvania, siphoned off much of the out-of-State and foreign gamblers who had frequented Atlantic City casinos for many years.

c. The regional competition in casino gaming has had a deleterious effect on Atlantic City in several ways, including: an increase in unemployment due to the recent closing of four casino properties, representing fully one-third of the number of casinos operating in Atlantic City in 2013; a strain on Atlantic City's municipal budget due to property tax refunds required by successful assessment appeals of casino gaming properties; and an increased property tax burden on Atlantic City and Atlantic County residents based on the decreasing value of casino gaming properties.

d. The accurate assessment of casino gaming properties is especially difficult because they are unique properties and their year-to-year value is greatly influenced by the performance of casino gaming properties in other nearby states and by extreme weather events like Super Storm Sandy.

e. It is appropriate for the Legislature to address the extraordinary situation in Atlantic City by devising a program that avoids costly assessment appeals for both the casino operators and Atlantic City, and that provides a certain mandatory minimum property-tax related payment by casino properties that Atlantic City can rely upon each year.

f. Article VIII, Section I, paragraph 2 of the New Jersey Constitution empowers the Legislature to grant property tax exemptions by general law.

g. It is constitutional to classify Atlantic City, the only municipality wherein casino gaming is authorized, as a special class unto itself for economic purposes related to casino gaming. Courts

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.

have routinely concluded that the Legislature has the ability to address the concerns of Atlantic City and the casino industry separately from other local entities and industries due to the unique role casino gambling plays in Atlantic City and the State. The fact that, even though almost 40 years have passed since the approval of casino gambling in New Jersey, Atlantic City remains the only municipality wherein casino gaming is authorized, proves that its unique classification continues to allow the Legislature to treat it as a special case under State law, and permits changes to the casino "experiment" in Atlantic City.

h. Casino gaming properties represent a unique classification of property that can be exempted from normal property taxation by general law, in favor of a certain guaranteed mandatory minimum payment in lieu of property taxes when it is primarily in the public interest to do so.

i. In the interest of the revitalization of Atlantic City and the continuation of the casino industry and its associated economic benefits to the State, it is reasonable that the Legislature, in seeking to revitalize the city, should choose to experiment with a payment in lieu of property tax mechanism to address the issues of persistent property tax appeals and the damage that those appeals, together with declining casino property values, have wrought on the tax bases of both Atlantic City and Atlantic County.

j. It is a primary public purpose to grant casino gaming properties an exemption from normal property taxation for a limited period of time, in exchange for a guaranteed mandatory minimum payment in lieu of property taxes, because Atlantic City will be able to depend on a certain level of revenue from casino gaming properties each year, making the local property tax rate and need for State aid less volatile; casino revenue supports many social programs, such as property tax relief for seniors, medical assistance, housing for disabled residents, transportation assistance, and other social services programs for elderly and disabled New Jerseyans; casinos provide a unique recreational experience to the residents of New Jersey within the State; and because, with a long-term predictable payment in lieu of property tax liability, casino gaming properties will know how much of their income will be required to pay their obligation to Atlantic City, Atlantic County, and the Atlantic City School District. This ability to depend on a stable payment in lieu of property tax obligation will in turn help to stabilize the casino business models and the workforce required to run those business models, and the casino gaming properties will be better able to compete with out-of-State casino gaming properties in the region to preserve, and perhaps grow, the many benefits that casino gaming has brought to the State, and more particularly, to the Atlantic City region.

k. It is also a primary public purpose to stabilize the casino industry for the benefit of the casino employee workforce, many of whom have worked in the casinos since the first casino opened over 30 years ago. It is anticipated that the financial stability granted to the casino gaming properties by a guaranteed mandatory minimum payment in lieu of property taxes for a 15-year period will greatly enhance the ability of the casino gaming properties to adapt their business models to the changes in the regional casino gaming market, which will in turn allow them to remain open for business and to pay their employees good wages and benefits, including health care and pension benefits, for many years to come.

l. This plan to provide a guaranteed minimum in lieu of property tax payment for 15 years, and ending casino property tax appeal litigation would provide some economic stabilization to Atlantic City and allow it time to plan for its future, which it cannot do if it descends further into an economic free-fall.

m. The public purpose of a property tax exemption and payment in lieu of property tax program for casino gaming properties seems evident without examining the specific local, regional, and Statewide economic benefits of the continued success of the casino industry and the general economic viability of Atlantic City. Arguably, the local, regional, and State economies could be bolstered by such a property tax exemption and, thus, be seen by a court as a primary public purpose furthered by the legislation. The exemption of casino property from property taxation is a proper exercise of the Legislature's power to grant property tax exemptions by general law, since Atlantic City casinos are a unique classification which does not exclude any similar properties in the State. Such an exemption primarily furthers several public purposes, while providing an incidental benefit to casino properties.

3. (New section) a. As used in this section, "gross gaming revenue," (GGR), means the total amount of revenue raised through casino gaming from all of the casino gaming properties located in Atlantic City; and

"casino gaming property" means one or more parcels of real property, and any adjacent property utilized in connection with such property, upon which there is located a facility licensed to be used for casino gaming in 2014 or thereafter, whether or not in actual operation, which has more than 500 guest hotel rooms, and is not subject to recorded covenants prohibiting casino gaming.

b. Beginning with tax year 2015, and for the next succeeding 14 tax years, casino gaming properties located in the City of Atlantic City are exempt from local property taxation on real property and improvements, including accessory hotels, conference centers, parking garages , and other appurtenant facilities. The provisions of this section shall not apply to any casino property that operates under a small scale casino facility license or a staged casino facility license pursuant to section 1 of P.L.2010, c.115 (C.5:12-80.1).

c. The owners of casino gaming properties shall collectively organize as the Casino Operator's PILOT Council, hereinafter referred to as the "council." Any new owner of a casino gaming property following the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) shall automatically become a member of the council.

d. (1) In exchange for the property tax exemption granted in subsection b. of this section, each member of the council shall sign a financial agreement with the City of Atlantic City promising to make quarterly payments to the city of its allocated portion of an annual amount of $120 million for tax year 2015. Each casino gaming property shall be responsible for the payments allocated to that property and shall be subject to the lien provisions of R.S.54:5-6 if those payments are not made.

(2) For tax year 2016 and for each tax year thereafter, the amount of the payment in lieu of property taxes owed to the city by the council shall increase by the increase in the amount of inflation, as measured by the Consumer Price Index for All Urban Wage Earners and Clerical Workers (CPI-W), as calculated by the Bureau of Labor Statistics in the United States Department of Labor for the prior year, but not to exceed two percent per year. If the amount of inflation decreases in any year, the payment shall be adjusted lower by the amount of the decrease, but not by more than two percent per year.

The amount of the payment in lieu of property taxes shall be $120 million as long as the total GGR generated in Atlantic City remains between $2.2 billion and $2.6 billion. If the GGR falls outside those parameters, the payment in lieu of property taxes commencing for the next succeeding year shall be adjusted as follows:

If the amount of the GGR is between $3.4 billion and $3.8 billion, the payment in lieu of property taxes shall be $165 million;

If the amount of the GGR is between $3.0 billion and $3.4 billion, the payment in lieu of property taxes shall be $150 million;

If the amount of the GGR is between $2.6 billion and $3.0 billion, the payment in lieu of property taxes shall be $130 million;

If the amount of the GGR is between $2.2 billion and $2.6 billion, the payment in lieu of property taxes shall be $120 million;

If the amount of the GGR is between $1.8 billion and $2.2 billion, the payment in lieu of property taxes shall be $110 million;

If the amount of the GGR is between $1.4 billion and $1.8 billion, the payment in lieu of property taxes shall be $90 million;

If the amount of the GGR is $1.4 billion or less, the payment in lieu of property taxes shall be $75 million.

(3) The amount of the payment in lieu of property taxes owed pursuant to this subsection shall be calculated annually each calendar year for each casino gaming property using a formula implemented by the council using the following criteria:

The geographic footprint of the real property, expressed in acres, owned by each casino gaming property;

The number of hotel guest rooms in each casino gaming property; and

The gross gaming revenue of the casino in each casino gaming property from the prior calendar year.

Each of these three criteria shall bear equal weight in the formula implemented by the council pursuant to this paragraph, provided that during 2015, 2016, 2017, 2018, and 2019, if the formula results in any individual casino gaming property being allocated an amount that is in excess of the total real property taxes due and payable by the casino gaming property in 2014, then that casino gaming property shall receive a credit against the obligation of the operator of that property under paragraph (2) of subsection a. of section 3 of P.L.1984, c.218 (C.5:12-144.1) in the amount of such excess. If, after that credit against the obligation of the operator of that property under paragraph (2) of subsection a. of section 3 of P.L.1984, c.218 (C.5:12-144.1), that casino gaming property would still be liable for a payment in lieu of property taxes in excess of the total real property taxes due and payable by the casino gaming property in 2014, the casino gaming property shall not be required to make any additional payment in lieu of property tax payment. Instead, any additional amount that would have been owed by that casino gaming property shall be added, by proportional share, to the payment in lieu of property taxes to be paid by every other casino gaming property in order to provide Atlantic City the total amount of the payment in lieu of property taxes due and owing for that tax year.

e. When a new casino gaming property is added or when an existing casino gaming property no longer qualifies as a casino gaming property as defined in subsection a. of section 3 of P.L. , c. (C.) (pending before the Legislature as this bill), Atlantic City's financial agreement with the council shall be amended to reflect the change and the allocation of the payment in lieu of property taxes between the council members.

f. The provisions of R.S.54:5-6 shall apply to any amount required to be paid under section 3 of P.L. , c. (C.) (pending before the Legislature as this bill) and the municipality shall have the same rights against any casino gaming property for such unpaid amounts relating to that property as if such amounts were unpaid property taxes.

4. (New section) In addition to the amounts required to be remitted under section 3 of P.L. c. (C.) (pending before the Legislature as this bill), the council shall make a separate payment of $30,000,000 to the City of Atlantic City in tax years 2015 and 2016. The amount under this section shall be remitted by each casino gaming property that operates a casino during the year

in which the payment is due and shall be based on the proportion of gross gaming revenue of the casino in each casino gaming property in the prior year.

5. (New section) Annually, a portion of the payment in lieu of property tax moneys collected pursuant to section 3 of P.L. , c. (C.) (pending before the Legislature as this bill) shall be remitted to the county and the school district for their own purposes. These moneys shall be remitted to the county and to the school district in the same manner as property taxes are paid to counties and school districts pursuant to R.S.54:4-74, R.S.54:4-75, and R.S.54:4-76.

6. (New section) a. On January 1, 2028, there shall be established the Atlantic City Review Commission, to review and determine the efficacy of the payment in lieu of property tax program established by P.L. c. (C.) (pending before the Legislature as this bill). Specifically, the commission shall determine: the economic vitality and viability of Atlantic City's casinos; the economic vitality and viability of Atlantic City government; the effect of the payment in lieu of property tax program on the economic viability of the casinos, and on Atlantic City's ability to fund its own government and to provide services to the residents of Atlantic City; and the feasibility of continuing the payment in lieu of property tax program for an additional period of time.

b. The commission shall consist of seven members:

A member of the public, appointed by the Governor, who shall be the Chairperson of the Commission;

The Commissioner of Community Affairs or the commissioner's designee;

The Atlantic City Mayor or the mayor's designee;

The Atlantic County Executive or the county executive's designee;

A representative of the casino industry, appointed by the Governor;

A representative of a casino employees' union, appointed by the Governor upon the recommendation of the President of the Senate; and

A representative of the business community of Atlantic City appointed by the Governor upon recommendation of the Speaker of the General Assembly. This member shall not be an executive or an employee of any of the casinos in Atlantic City. This member shall be appointed from, and shall represent on the commission, the interests of the non-gaming business interests in the city.

c. The commission shall issue its findings and recommendations in writing not later than July 1, 2028 to the Governor, the President of the Senate, and the Speaker of the General Assembly pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1).

7. R.S.54:5-6 is amended to read as follows:

54:5-6. Taxes on lands and payments in lieu of property taxes pursuant to section 3 of P.L. , c. (C.) (pending before the Legislature as this bill) shall be a continuous lien on the land on which they are assessed and all subsequent taxes, or payments in lieu of property taxes pursuant to section 3 of P.L. , c. (C.) (pending before the Legislature as this bill), as appropriate, interest, penalties and costs of collection which thereafter fall due or accrue shall be added to and be a part of such initial lien.

(cf: P.L.1994, c.32, s.5)

8. This act shall take effect immediately, and shall apply to tax year 2015 and to the next succeeding 14 tax years.

STATEMENT

This bill, to be known and referred to as the "Casino Property Taxation Stabilization Act," is intended to address the dire situation that has occurred in Atlantic City this year, with the closure, as of the end of October, of four of the 12 casinos in the city, and the possible closing of a fifth casino in the near future. These closures, coupled with large property tax refunds owed by the city to several of the casinos as the result of successful real property assessment appeals, which have also reduced casino property values, have created fiscal challenges for the city. In addition, all of Atlantic County's property taxpayers will have to pay more property taxes for county purposes due to the city's declining property values.

The purpose of this bill is to provide certainty to the casinos with respect to their financial obligation to Atlantic City, and to provide certainty to Atlantic City about the financial obligation of the casinos to Atlantic City, Atlantic County, and the Atlantic City School District.

This bill would require that, beginning with tax year 2015, and for the next succeeding 14 tax years, casino gaming properties located in the City of Atlantic would be exempt from local property taxation on real property and improvements, including accessory hotels and parking garages. The bill defines "casino gaming property" to mean one or more parcels of real property, and related adjacent properties, upon which a facility licensed to be used for casino gaming in 2014 or thereafter is located, whether or not in actual operation, and having not less than 500 rooms. Instead, for that 15-year period, the casino gaming properties would be responsible for the payment to the city of an annual payment in lieu of tax (PILOT), based on casino gaming revenues.

The bill requires that the owners of casino gaming properties holding casino gaming licenses must collectively organize as the "Casino Operator's PILOT Council" (council), for the purpose of determining each casino's fair share of the annual PILOT payment to Atlantic City. In exchange for the property tax exemption granted in the bill, each member of the council must sign a financial agreement with Atlantic City promising to make quarterly payments to the city of a portion of an annual amount of $120 million for 2015. For 2016 and thereafter, the amount of the payment in lieu of property taxes owed to the city by the council shall increase by the increase in the amount of inflation, as measured by the Consumer Price Index for All Urban Wage Earners and Clerical Workers (CPI-W), as calculated by the Bureau of Labor Statistics in the United States Department of Labor, but not to exceed two percent per year. If the amount of inflation decreases in any year, the payment must be adjusted lower by the amount of the decrease, but not by more than two percent per year.

In each of tax years 2015 and 2016, and in addition to the annual PILOT payment required under this bill, the council would be required to make a separate payment of $30 million to Atlantic City. This separate payment would be remitted by each casino gaming property that operates a casino during the year in which the payment is due and be based on the proportion of gross gaming revenue of the casino in each casino gaming property in the prior year.

The amount of the PILOT shall be fixed at $120 million as long as the total gross gaming revenue (GGR) generated in Atlantic City remains between $2.2 billion and $2.6 billion. If the GGR falls outside those parameters, the payment in lieu of property taxes is to be adjusted as follows:

If the amount of the GGR is between $3.4 billion and $3.8 billion, the payment in lieu of property taxes shall be $165 million;

If the amount of the GGR is between $3.0 billion and $3.4 billion, the payment in lieu of property taxes shall be $150 million;

If the amount of the GGR is between $2.6 billion and $3.0 billion, the payment in lieu of property taxes shall be $130 million;

If the amount of the GGR is between $2.2 billion and $2.6 billion, the payment in lieu of property taxes shall be $120 million;

If the amount of the GGR is between $1.8 billion and $2.2 billion, the payment in lieu of property taxes shall be $110 million;

If the amount of the GGR is between $1.4 billion and $1.8 billion, the payment in lieu of property taxes shall be $90 million;

If the amount of the GGR is $1.4 billion or less, the payment in lieu of property taxes shall be $75 million.

The amount of the payment in lieu of property taxes owed under the provisions of the bill by each casino gaming property shall be calculated each calendar year for each casino gaming property using a formula implemented by the council using the following criteria:

The geographic footprint of the real property owned by each casino gaming property;

The number of guest rooms in each casino gaming property; and

The gross gaming revenue of the casino in each casino gaming property from the prior calendar year.

Each of those three criteria shall bear equal weight in the formula created by the council, provided that during 2015, 2016, 2017, 2018, and 2019, if the formula results in any individual casino gaming property being allocated an amount that is in excess of the total real property taxes due and payable by the casino gaming property in 2014, then such property shall receive a credit against the obligation of the operator of that property under paragraph (2) of subsection a. of section 3 of P.L.1984, c.218 (C.5:12-144.1) in the amount of such excess. If, after that credit against the obligation of the operator of that property under paragraph (2) of subsection a. of section 3 of P.L.1984, c.218 (C.5:12-144.1), that casino gaming property would still be liable for a payment in lieu of property taxes in excess of the total real property taxes due and payable by the casino gaming property in 2014, the casino gaming property shall not be required to make any additional payment in lieu of property tax payment. Instead, any additional amount that would have been owed by that casino gaming property shall be added, by proportional share, to the payment in lieu of property taxes to be paid by every other casino gaming property in order to provide Atlantic City the total amount of the payment in lieu of property taxes due and owning for that tax year.

When new casino properties are added or when existing casino properties close, Atlantic City's financial agreement with the council must be amended to reflect the change and the allocation of the payment in lieu of property taxes.

The bill also requires that the PILOT payments, in the same manner as property taxes, shall be a continuous lien on the land on which they are assessed. All subsequent PILOT payments in lieu of property taxes, interest, penalties, and costs of collection which thereafter fall due or accrue would be added to and be a part of such initial lien.

The bill also requires the establishment, on January 1, 2028, of the Atlantic City Review Commission, to review and determine the efficacy of the payment in lieu of property tax program established by this bill. Specifically, the commission shall determine: the economic vitality and viability of Atlantic City’s casinos; the economic vitality and viability of Atlantic City government; the effect of the payment in lieu of property tax program on the economic viability of the casinos, and on Atlantic City’s ability to fund its own government and provide services to the residents of Atlantic City; and the feasibility of continuing the payment in lieu of property tax program for an additional period of time.

The commission shall consist of seven members:

A member of the public, appointed by the Governor, who shall be the Chairperson of the Commission;

The Commissioner of Community Affairs or the commissioner's designee;

The Atlantic City Mayor or the mayor's designee;

The Atlantic County Executive or the county executive's designee;

A representative of the casino industry, appointed by the Governor;

A representative of a casino employees' union, appointed by Governor upon the recommendation of the President of the Senate; and

A representative of the business community of Atlantic City appointed by the Governor upon recommendation of the Speaker of the General Assembly. This member shall not be an executive or an employee of any of the casinos in Atlantic City. This member shall be appointed from, and shall represent on the commission, the interests of the non-gaming business interests in the city.

The commission is required to issue its findings and recommendations in writing not later than July 1, 2028 to the Governor, the President of the Senate, and the Speaker of the General Assembly.