

## Dauphin County Public Meeting to Discuss Constitutional Amendment on Tax-Exempt Properties, Public Charities Testimony - March 31, 2015

[Scott Bishop](#) - Senior Vice President, Legislative Advocacy - The Hospital & Healthsystem Association of Pennsylvania (HAP)

[Kim Bracey](#) – Mayor - City of York

[Richard Curl](#) - President and Chief Executive Officer - Harrisburg Area YMCA

[Jenny Englerth](#) – CEO - Family First Health

[Anne L. Gingerich](#) - Executive Director - Pennsylvania Association of Nonprofit Organizations

[George P. Hartwick III](#) – Commissioner - Dauphin County

[Jim Hertzler](#) - Commissioner – Cumberland County

[Richard J. Schuettler](#) - Executive Director – Pennsylvania Municipal League

### Testimony of the PA Municipal League Regarding Senate Bill 4 of 2015

Before Auditor General DePasquale

March 31, 2015

Presented by: Richard J. Schuettler, Executive Director, PML

Thank you for the invitation to provide testimony on our concerns with Senate Bill 4. I am Richard Schuettler, Executive Director of the Pennsylvania Municipal League (PML). PML represents over 90 full service communities all host to tax-exempt entities. The impact of tax-exempt property locally has been a perennial legislative issue for PML. Our members are concerned about the impact of shifting more property tax burden to residents and businesses especially when tax rates in urban centers are already higher than in the neighboring suburbs. Senate Bill 4 has brought tax-exempt issues to the front burner this session.

We appreciate the work you and your office have done to raise the awareness of the potential impact of SB 4, as well as your initiative in holding public meetings across the Commonwealth. There have been very few opportunities for public comment and debate on SB 4 as it progressed through the Legislature and now it is in the home stretch to becoming a ballot question in November.

PML does not dispute the Legislature's role in making law and we do not dispute the value and services that non-profit entities bring to our communities. Our concern lies with the Constitutional nature of SB 4 and the uncertainty of how its adoption would impact an already strained local tax base.

Frankly, we don't understand the need for a Constitutional measure when the Legislature is charged with the power to make and change the laws of this Commonwealth. We are concerned with the ultimate impact of SB 4. What will be the outcome if the voters approve the measure? Will the Legislature work to find consensus among the stakeholders and amend Act 55 accordingly? Or, will Act 55 become the new, lower standard without further discussion or amendment? We don't believe there will be much incentive to make changes to Act 55 once the Constitution is amended. Will the court system be forever blocked from ruling on an appeal from either side? We believe these are all fair questions that have not been answered as SB 4 has made its way through the General Assembly.

These questions ultimately come from our members' legitimate worry over the continued erosion of the local tax base and the cost to the taxpayer. Fiscal strain from a variety of sources, including the unfunded mandate of property tax-exemption, is a daily battle being waged at the local level; and the taxpayers are losing. Will SB 4 exacerbate that struggle? We have no way

of knowing, but must assume that it will. At least with outright amendments to Act 55, we would have concrete language to debate and the ability to make our case for or against specific provisions.

The testimony presented by Duquesne University Law Professor Nicholas Cafardi, at the only hearing hosted by the Legislature, added some legal framework to the debate that left many, including PML, justified in our concerns. Professor Cafardi questioned not only the Legislature's authority to be the sole entity defining purely public charity, but also whether the language of SB 4 actually matched the Legislature's intention. He also reminded all that tax exemption is a privilege, not a right. If nothing else, the professor's testimony should give pause to the Legislature.

PML is hopeful Senate Resolution 28 is that pause. Senate Resolution 28 followed closely on the heels of SB 4, but instead of a party-line vote, it enjoyed unanimous support as it was adopted by the Senate and sent to the House.

As you know, SR 28 calls for the creation of a joint committee of House and Senate appointees. The Committee is charged with studying tax-exemptions for purely public charities. It may conduct hearings and collect information and must produce a report outlining its findings on whether the laws of the Commonwealth need to be revised to achieve an appropriate balance between the cost of local services and protection of purely public charities and their tax-exempt status. PML supports this concept and views the study as necessary for sorting out the issues and gaining answers to our questions before the Constitutional amendment goes forward.

Looking into the future, the ideal result of a study and recommended legislation, from PML's perspective, would be revenue to help offset this unfunded mandate on local government. Representative Freeman has introduced legislation for several sessions now providing state funds to municipalities with a high percentage of tax-exempt property. Other ways to offset the loss of tax revenue would be an assessment on the amount of payroll paid by each tax-exempt entity and the authorization to assess fees for specific services, such as street cleaning, snow removal and public safety. These assessments could be offset by voluntary payments in lieu of taxes. PML also supports regular re-assessment with the necessary tools to cover the cost of that mandate on counties.

Furthermore, PML is willing to consider the suggestions outlined by Professor Cafardi in his testimony that would make the rules more reliable for tax-exempt entities, such as protection from frivolous challenges and tax-exemptions that are immune from challenge for a specific period of time. There must be a combination of ideas that will reach the ultimate goals for both sides of the issue - fairness and balance.

Again, PML appreciates the invitation and looks forward to future opportunities to participate in this important and timely debate.

Thank you.

#### **Statement of Commissioner Jim Hertzler**

March 31, 2015, Auditor General Public Meeting

Room B-EA, East Wing, Capitol, Harrisburg, PA

RE: Constitutional Amendment on Tax-Exempt Properties

General DePasquale, thank you for affording me this opportunity to join you today, to offer some thoughts on the provisions of Senate Bill 4 - a proposed constitutional amendment that seeks to reserve to the General Assembly the full discretionary authority to determine what constitutes an institution of purely public charity for real estate tax exemption purposes.

As a point of clarification, and although I was recently appointed and am privileged to serve as the chair of the Assessment and Taxation Committee of the County Commissioners Association of Pennsylvania

(CCAP), my comments today are my own, as an individual member of the Cumberland County Board of Commissioners, and do not necessarily reflect the views of my Cumberland County commissioner colleagues or CCAP.

Clearly, it appears that what sparked the perceived need by the proponents of Senate Bill 4 to amend our Constitution on this matter was the split (4-3) decision of our state's highest court 3 years ago that upheld a Commonwealth Court decision that a religious summer camp in the Poconos was not exempt from local real estate taxes.

Specifically, it appears that the Supreme Court's determination, as part of its ruling, that the "General Assembly cannot displace our interpretation of the Constitution" is what has set the stage for this separation of powers debate on whether it's the judiciary or the legislature that has the ultimate authority to define what constitutes an institution of purely public charity for tax exemption purposes. The courts had previously established their own, 5 point standard for what qualifies as an institution of purely public charity and the Legislature, subsequently, had passed a law intended to provide further clarification to the courts' five point standard. From a layman's perspective, the 2012 court ruling, in effect, said that we, the courts, will make our own interpretations of the words in the Constitution, thank you. And the legislature, with this proposed amendment to the Constitution, seems to be saying we'll see about that.

From my perspective, as a county commissioner, however, what really matters -- at the end of this tussle between our courts and the Legislature - is what this all means for our taxpayers.

Understanding that our Legislature is always subject to political and special interest pressure, I would say that there's certainly a concern that the move to amend our Constitution to, in effect, make the Legislature the ultimate arbiter on this subject could lead to an expansion of the tax exemption to more and more entities, fully deserving or not.

And that, the fear is, would undoubtedly result in a tax increase for everybody else.

In my home county, at present, we already have 1,962 properties with an assessed value of \$3.9 billion that are exempt from real estate taxes. And, while those properties include government and school buildings that would be exempt in any event, the fact is that any additional properties that would be relieved of their tax burden would just shift their burden onto the backs of all other property owners. And, of course, those who would be hurt the most are our fixed income seniors who are just trying to make ends meet to stay in their homes, as well as our first time homebuyers who are fighting to keep up with the mortgage, car and utility payments and all of the other bills associated with raising a family today.

Of course, the few words in the proposed Constitutional amendment don't tell us what the Legislature would do with this new Constitutional authority if granted.

And, therein lies the rub.

If it is the intention of the General Assembly to just clarify, and not expand the purely public charity exemption, then I believe it's incumbent upon our Legislature to clearly state that intent -- perhaps in Legislation that would only become law subject to the approval of the Constitutional amendment -- and well in advance of our citizens being subjected to the question of whether to amend the state Constitution.

Because, I would assert -- if the Legislature completes 2<sup>nd</sup> session approval of the proposed Constitutional amendment without fully delineating intent -- the odds of the Constitutional amendment being affirmatively approved by the voters of this Commonwealth will be quickly reduced to a slim chance to none. And, especially so, if it becomes a question of ordinary, hard-working citizens paying higher taxes to subsidize a tax break for an expanded list of a select few.

Again, thank you for the opportunity to comment. And, thank you for holding these public meetings on this important issue.

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**Statement of Dauphin County Commissioner George P. Hartwick III  
Before the Pennsylvania Auditor General's Public Hearing  
March 31, 2015**

I want to thank the Honorable Eugene DePasquale, Auditor General of Pennsylvania, for allowing me to speak on state Senate Bill 4, also known as the Purely Public Charity Amendment, which is of critical importance to all levels of local government and school districts throughout the state.

The main source of revenue for local governments and school districts is through property taxes. SB 4 represents a real threat to both the revenue stream local governments and school districts depend upon - as well as to property owners who would almost certainly see their property taxes increase if this legislation passes.

At issue is the ability of local governments and school districts to negotiate Payments In Lieu of Taxes, or PILOT agreements, with non-profit entities. If necessary, the taxing jurisdiction can take a nonprofit to court and argue why at least some payment should be made.

In 2012, the Pennsylvania Supreme Court in *Mesivtah Eitz Chaim of Bobov, Inc. v. Pike County Board of Assessment Appeals* reaffirmed a 1985 ruling and stated that in order to be considered a "purely public charity," the following criteria must be met:

- Advance a charitable purpose;
- Donate or render gratuitously a substantial portion of its services;
- Benefit a substantial and indefinite class of persons who are legitimate subjects of charity;
- Relieve the government of some of its burden; and
- Operate entirely free from profit motive.

SB 4 calls for an amendment to Pennsylvania Constitution that would give the Legislature the final say on over which nonprofits are "purely public charities." If passed, it would take the courts out of the equation.

The end result of SB 4 would be to remove the leverage local taxing jurisdictions have to negotiate PILOT agreements with non-profits.

Such an outcome would add to the economic burden of every Pennsylvanian. This is not hyperbole, but simple truth.

In 2015, revenue from property taxes will generate 53 percent of Dauphin County's \$191 million operating budget, or General Fund. This the money that is used to pay for county services and responsibilities ranging from the court system and emergency 911 dispatching to programs that help our community's seniors and families. Municipalities and school districts likewise rely on property taxes to pay for the majority of their operations.

In Harrisburg alone, nearly 11 percent of the properties are owned by tax-exempt, non-governmental entities – limiting the local revenue that can be raised by millions of dollars.

The ability to offset at least a portion of this lost revenue through PILOT agreements is critical. Last year, Dauphin County received more than \$800,000 from PILOT agreements, including almost \$72,000 from PinnacleHealth System and \$100,000 from the Hershey Medical Center.

Earlier this year, the nonprofit Milton Hershey School offered an agreement that would give the Lower Dauphin School District \$110,000 for the 2014-15 school year as recompense for its campus expansion. Similarly, the Harrisburg School District negotiated an agreement with PinnacleHealth that will give the district \$1.25 million annually.

The above is just a small sample of the PILOT agreements that counties, municipalities and school districts across Pennsylvania negotiate with the tax exempt entities they host.

At the end of last year, your office released a report that looked at the potential revenue Dauphin and nine other counties lost in 2014 due to property tax exemptions. Your report found that for non-profit medical facilities alone, the property tax revenue came to more than \$177 million. In Dauphin County, it came to \$16.5 million.

For the last decade, Dauphin County boards of commissioners have held the line on property taxes, but every year it becomes more difficult as demand for services grow. If local taxing entities are left without any muscle to negotiate PILOT agreements, the burden of paying for local services will fall more heavily on the rest the community's property owners.

In opposing SB 4, I want to be clear that I am not advocating completely stripping property tax exemption for non-profits, nor am I talking about going after small, neighborhood charities like food banks or clinics. But it is only fair that larger non-profits, such as hospitals and universities, pay something toward the services provided by their host communities.

Should SB 4 become law, it would set a dangerous precedent – stripping local governments and voters of the ability to make decisions for their communities and shifting that power to the state Legislature and influential lobbyists working on behalf of well-funded non-profits.

A January 23 editorial by John L. Micek of Harrisburg's *PennLive.com* clearly expressed what is at risk:

*... A coalition of powerful interest groups is pushing an amendment to the Pennsylvania Constitution that would change the way the state determines which non-profit organizations have to pay property taxes and which do not.*

*The amendment is on the legislative fast track. And if it becomes the law of the land, it will become permanently harder for cash-strapped cities and towns to pay for public services such as snow removal to fire protection that you take for granted... And that in turn, will probably drive up your property tax bill while clout-heavy and monied special interests skate.*

I hope these hearings help get the message out to all Pennsylvanians that SB 4 is not in the public's interest and should be opposed at every turn.

**Public Meeting on**

## **Senate Bill 4**

**Held by Pennsylvania Auditor General Eugene DePasquale**

### **Written Statement of**

**Anne L. Gingerich, Executive Director, Pennsylvania Association of Nonprofit Organizations**

Honorable Eugene DePasquale, Auditor General of Pennsylvania,

As the Executive Director of the Pennsylvania Association of Nonprofit Organizations (PANO), I am honored to testify about the implications that Senate Bill 4 may have on high valued organizations such as veterans groups, domestic violence prevention programs, churches, museums, hospitals, institutions of higher education, economic development organizations, land trusts, social service agencies, environmental organizations and many other organizations that play a significant economic role in Pennsylvania and enhance the high quality of life throughout our Commonwealth.

### **SENATE BILL 4**

Senate Bill 4 is a short, straight-forward piece of pending legislation that proposes a constitutional amendment giving the state legislature the authority to define a “purely public charity” in Pennsylvania.

### **PANO’S POSITION**

PANO represents all types of nonprofits in the Commonwealth of Pennsylvania, big and small, east, middle and west—whose interests sometimes conflict with each other. Because PANO believes that we together are better than any entity is separate, we find common ground whenever possible.

PANO has taken a neutral stance on Senate Bill 4. We support the year-long process for study and public hearings proposed for a “select committee” in a separate piece of pending legislation—Senate Resolution 28.

The nonprofit community unites around the following common, mutually desired outcomes regardless of the process followed to meet them.

1. We focus on the significant, positive role the nonprofits play in the wellbeing of communities. We are partners with public institutions in serving public needs. Nonprofits give rather than take resources from our communities.
2. Nonprofits should be exempt from certain types of business taxes paid by for-profit companies so they can more efficiently meet their missions.
3. The rules for these exemptions should be fair, consistent and predictable and should not vary from town-to-town or year-to-year.

4. We seek unity in an already divided community. Conversations around Senate Bill 4 may not only polarize the for-profit, government and nonprofit sectors, but divide the nonprofit sector itself. We are already defending our positions rather than focusing our efforts on what we (e.g. nonprofit, for-profit and government) can do together to move the quality of life forward throughout the Commonwealth.

5. We seek the highest possible awareness of the general public around this issue. Senate Bill 4 would move this issue to the voting public via a referendum—a public that may not understand the far-reaching effect of their decision on the quality of life in local communities. Those long-term effects are yet unknown, even to decision-makers.

#### **SUPPORT FOR THE JOINT SELECT COMMITTEE (SENATE RESOLUTION 28)**

PANO needs more information to take a more definitive position on Senate Bill 4. Thus, PANO supports Senate Resolution 28, which recently passed the Senate in a unanimous vote and is now pending in the House. SR 28 seeks to establish a Joint Select Committee on Institutions of Purely Public Charity which would collect input from stakeholders, review the impact of purely public charities on local government, study the economic impact of nonprofit services to the residents of Pennsylvania in general and determine if revisions are needed in Commonwealth law to “achieve the appropriate balance between the cost of services provided by local governments and the protection of our public charities.”

#### **PANO SEEKS CLARITY**

PANO recommends that policy proposals affecting the tax status of nonprofit organizations in Pennsylvania should be evaluated using the following five questions:

1. Does the proposal strengthen or undermine the capacity of the nonprofit sector to do good work benefiting individuals and families in need, local communities and the overall economy?
2. Does the proposal help to create a process that is fair, consistent and predictable in all communities?
3. Does the proposal contribute to a flexible process that can take into consideration the varying circumstances of a wide variety of nonprofit organizations with different sizes and different charitable fields?
4. Does the proposal facilitate the effective operation and smooth interaction of all branches of government, including local government, state government and the judicial system?
5. Is the proposal based on valid research, comprehensive data and practical experience over time, rather than reacting to isolated, exceptional circumstances?

PANO believes that SB 4 currently does not provide clear answers to these questions. SB 4 asks for constitutional approval of additional legislative authority to set standards. But because the bill itself does not actually contain those standards, PANO cannot really know whether or not SB 4 ultimately help to improve the environment for nonprofits or not. The select committee proposed by SR 28 would help to provide important answers and give communities an opportunity to become fully informed and engaged in the process.

The tables below describe PANO’s outstanding questions around Senate Bill 4.

#### **IF SENATE BILL 4 PASSES...**

PANO believes that the nonprofit sector could experience the following positive OR negative outcomes: **Possible POSITIVE Outcomes**

- ☐ Resulting legislation may provide clarity to the criteria needed to determine nonprofit tax exemption and result in uniform rulings in the court system.
- ☐ Nonprofits could have the ability to influence their local delegation to support their cause.
- ☐ Nonprofits would have an immediate opportunity to educate the public about the return on investment nonprofits bring to their local communities (due to the referendum).

#### **Possible NEGATIVE Outcomes**

- ☐ Resulting legislation may be less supportive of nonprofits than the criteria defined in Act 55.
- ☐ Resulting legislation may create separate classes of nonprofits, leading to more rather than less confusion about the definition of *purely public charities* pitting small nonprofits against large nonprofits.
- ☐ The public may not fully understand what they are voting on in the required referendum

#### **IF SENATE BILL 4 DOES NOT PASS...**

PANO believes that the nonprofit sector could experience the following positive OR negative outcomes: **Possible POSITIVE Outcomes**

- ☐ The courts would continue to have the authority to define a “purely public charity.” \*

#### **Possible NEGATIVE Outcomes**

- ☐ Nonprofits may have less influence over local and state judges than with their state senators and representatives.
- ☐ The court system would continue to make decisions on a case-by-case basis\* vs. a common set of standards—a situation which has led to inconsistency in some court rulings.
- ☐ Nonprofits currently being brought to court by local municipalities would have to prove their charitable status under two sets of criteria (e.g. first the criteria defined in the 1985 HUP Case AND then the criteria defined in Act 55).
- ☐ Small nonprofits may be pitted against large nonprofits in the court system as well as in the public.

#### **THE COMPLEXITY OF THE ISSUES**

The depth and breadth of the nonprofit sector create challenges whenever structure and funding issues come into play. Thus, PANO appreciates the opportunity to underscore the complexity of the issues—

starting but not limited to the differing viewpoints and opinions expressed in the case law, constitutional terminology and statutes that form Senate Bill 4's history. Adding to this complexity are the sheer numbers of stakeholders impacted by this issue:

- ☐ The 67 counties in our Commonwealth
- ☐ Our 500 school districts
- ☐ Our 2,562 municipalities
- ☐ Our 50 state senators
- ☐ Our 235 state representatives
- ☐ Our judges (90+) presiding in Pennsylvania's Judicial System
- ☐ The estimated 19,430 nonprofits who hold properties valued at of \$100,000 or above.<sup>1</sup>

### **Nonprofits as Partners of Government**

With increasing levels of poverty and decreasing revenue and property values, local municipalities struggle to meet the needs of their constituents. And in doing so, they look to their long-time partners in meeting critical community needs—the nonprofit community. Nonprofits have historically played a significant role in carrying out the work that is also the responsibility of the government but beyond its means.

No one questions the importance of charitable work contributed by nonprofit organizations—anchor institutions in communities both large and small. Nonprofits tutor children, feed the hungry, care for the sick, shelter the victims and help the unemployed to find work. The real return on investment to the local economy is unquestioned.

Most individuals and entities also agree that the vast majority of nonprofits should be exempt from business taxes paid by for-profit corporations. Nonprofits provide crucial services and draw important federal and grant dollars with accompanying jobs into local communities. Nonprofits are organized solely to benefit the people they serve and are represented by volunteer boards of directors. Nonprofits give up their rights to profit, political engineering and privacy (e.g. nonprofits are the most transparent sector in the country).

### **Third-Largest Employer**

Many individuals understand the above mentioned public and community benefits that nonprofits bring to their communities—which provide an economic return on investment. However, they do not necessarily think about the additional economic benefit provided by this sector.

- ☐ Across the country, nonprofits employ **10.1%** of the total private workforce, making the nonprofit sector the third largest sector in the country.
- ☐ **18 times more** workers than the utility industry
- ☐ **15 times more** than the mining industry
- ☐ **10 times** more than agriculture
- ☐ **5.5 times** more than the real estate industry <sup>2</sup>

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1 Kenyon, D. A., & Langley, A. H. (2011). The property tax exemption for nonprofits and revenue implications for cities. Urban Institute.

2 Salamon, L. M., Sokolowski, S.W. & Geller, S. (2012). Holding the fort: Nonprofit employment during a decade of turmoil. *Nonprofit Employment, Bulletin No. 39*. John Hopkins University. 5 of 6

☐ In Pennsylvania, according to the U.S. Bureau of Labor Statistics, **18,1483** nonprofits employed **775,248** employees who earned over **\$36 billion** in wages. And this group includes only a portion of the **50,000+** nonprofits doing good work throughout the Commonwealth.

Nonprofit employers pay social security and Medicare taxes on the compensation they pay their employees. Their employees pay state and federal income and social security taxes on these earnings, as well as Medicare and unemployment taxes in most cases. These employees further use their earnings to buy goods, on which they also pay state sales tax and homes, on which they pay local real estate tax. Most of the income passing through the nonprofit sector is and has already been taxed. Most Pennsylvania-based nonprofits are not exempt from sales tax and thus pay a state sales tax on purchases made.

In addition, many nonprofits already make payments in lieu of property taxes to help defray the cost of police, fire and other services. They further open their facilities to community members and provide free services for area citizens.

#### **NONPROFITS ARE NOT THE ONLY TAX-EXEMPT ENTITIES AT THE TABLE**

Government entities also play a critical role in community wellbeing and also do not pay taxes on the government buildings owned and used by the 67 counties, 500 school districts, 2,562 municipalities and the Commonwealth itself. If each entity owns a minimum of two (2) buildings, these properties encompass a minimum of over 6,200 tax-exempt properties throughout the state. In addition, for-profit developers are given tax breaks to build and bring business to struggling urban areas.

Thus, when the issues of meeting the bottom line arise in local jurisdictions, representatives from the government, for-profit and nonprofit sectors should all be at the table. We together truly are better at collectively solving problems than any entity is separate.

#### **HOW OTHER STATES DEFINE PURELY PUBLIC CHARITIES**

The “separation of powers” question is treated differently in different states. The tests for which charitable nonprofits are exempt from property taxes and which are not, vary from state to state. Interpretations of state laws create variations in application from county to county and even from assessor to assessor. One thing that keeps nonprofit executives and board members awake at night is the uncertainty of how local political process will change their ability to meet needs of the people they serve.

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1. **Every state exempts the property of charitable nonprofits from taxation.** As noted above, the tests vary by state for determining which type of nonprofit and which parcels of property are exempt from taxation. State exemption of charitable nonprofits from property tax is the norm. 5

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3 501-c-3s covered with unemployment insurance

4 Thompson, D.L. (2015). *Public Hearing on Purely Public Charities and Senate Bill 4 for Commonwealth of Pennsylvania's Senate Finance Committee on February 4, 2015*. Written Testimony of David L. Thompson, Vice President of Public Policy. National Council of Nonprofits

5 Bowman, W. & Fremont-Smith, M.R. (2006). *Nonprofits and state and local governments. Nonprofit and Government: Collaboration and Conflict*, 181,203. 6 of 6

**2. Every state limits exemption to properties that are both owned by a charitable nonprofit and used for the charitable purpose of the organization.** Ownership by the nonprofit is not enough; the property must be used to advance the nonprofit's mission. Several states continue to apply the exemption when a nonprofit owner rents the facility to another charitable nonprofit, thus preserving the charitable use requirement. 6

**3. The source of authority for exempting the property of charitable nonprofits from taxation falls into three categories:**

- ☐ In 18 states, the exemption of charitable nonprofits is mandated in their state constitutions.
- ☐ Twenty-five (25) state constitutions (including Pennsylvania) grant the legislature the authority to exempt nonprofit properties from taxation.
- ☐ Seven (7) state constitutions have no provision for taxes or exemptions . 7

As PANO understands it, Senate Bill 4 seeks to extend the power of the state legislature to not only grant tax exemption to nonprofits but to define what makes a purely public charity.

According to David L. Thompson from the National Council of Nonprofits, the tests established in Pennsylvania and particularly in Act 55, include the most restrictive criteria in the United States. Act 55 is one of the most detailed statutes in the country and provides relatively clear criteria for each of the five parts of the test for property tax exemption. Furthermore, Act 55 disqualifies far more nonprofits than any other state statute. 8

#### **CONCLUSION**

In conclusion, I thank the Auditor General for this opportunity to review the potential impacts that Senate Bill 4 may have on the nonprofit sector. Our broad membership base holds differing viewpoints on the potential results. However, we generally seek the following common outcomes regardless of the process required to reach these outcomes:

☐ Nonprofits should be exempt from certain types of business taxes paid by for-profit companies so they can more efficiently meet their missions.

☐ The rules for these exemptions should be fair, consistent and predictable and should not vary from town-to-town or year-to-year.

☐ We seek unity in solving common community problems both within the nonprofit sector and among the nonprofit, government and for-profit sectors.

**We believe that we together are better than any one of us is separate.**

Comments on Purely Public Charities  
Jenny Englerth, CEO, Family First Health  
March 31, 2015

My name is Jenny Englerth and I serve as the CEO of Family First Health which provides primary medical and dental care to over 24,000 individuals in York and Adams Counties. On behalf of my health center and the Pennsylvania Association of Community Health Centers (PACHC), I thank you for the opportunity

to speak with you today about the work we provide our communities and how the issue before you today – tax fairness for non-profit organizations impacts Community Health Centers.

Before commenting on the issue before you today, please allow me to provide background on our organizations as it is crucial to understand in a discussion about non-profit organizations and the benefits that we each provide our communities. PACHC has 50 member organizations that include Federally Qualified Health Centers (FQHCs), FQHC Look-Alikes and Rural Health Centers each with a commitment to their community to provide high quality primary medical, dental and behavioral health care services to their patients. As of today, these Community Health Centers comprise the largest network of primary care providers, with locations in 49 counties of our Commonwealth. They serve as a safety net, as 92 percent of our patients have incomes at or below 200 percent of the federal poverty level and 25 percent are uninsured. Furthermore, by federal law health centers may only be established in areas determined to be Medically Underserved Areas or Health Professional Shortage Areas, meaning they can only locate in and serve patients in communities that sorely lack access to health care.

Pennsylvania is fortunate to have the network of health centers that exist today as there are now over 250 Community Health Center sites across the state serving more than 700,000 Pennsylvanians annually in underserved rural and urban areas. Nationally, more than 23 million people are served by health centers, proven providers that curb the rising cost of health care in the nation.

Community Health Centers have enjoyed bipartisan support both at the state level and nationally since their inception 50 years ago because of the demonstrated positive impact they have on health, healthcare costs and economic revitalization. In fact, a nonpartisan study conducted by George Washington University found that health centers on average save taxpayers and the health system \$1,263 per patient per year. In Pennsylvania, that translates into nearly \$880 million in savings because health centers help individuals get well and stay well by providing vulnerable Pennsylvanians a quality “medical home” for their primary medical, dental and behavioral health needs, thereby decreasing the need for costly inpatient and emergency care.

Pennsylvania’s health centers are a wonderful example of a public-private partnership that works with great success and positive health outcomes. These outcomes are a direct result of the high-quality and professional primary medical, dental and behavioral health care that is provided in Community Health Centers across the nation every day.

Unfortunately, since 2012’s *Mesivtah Eitz Chaim of Bobov, Inc. v. Pike County Board of Assessment Appeals* court decision, several of my colleagues have had their non-profit status challenged despite the positive impacts they provide their communities and patients. This is an alarming trend of health centers becoming the targets for arbitrary and inconsistent property taxes. To date, three health centers in different regions of the state – Butler, Fulton and Franklin counties – have been adversely impacted by the issue you are seeking input on today.

At the beginning of this process, each health center is forced pay expensive legal fees in order to understand the tax bill they receive and their options. After legal consultation for this sudden tax assessment, their options (all of which are costly) are to accept the assessment, to fight it, or to agree to payments or services in lieu of taxes. The costs of this tax must come out of operations – meaning cuts in jobs, services and/or the number of people served—and taxpayers and local governments and communities will pay the price. For Community Health Centers in particular, the unexpected and significant financial impact of the costs directly related to challenging purely public charities are difficult to absorb with their limited resources and create potential challenges for patients as there will be fewer dollars available to provide access to care. It also contradicts the purpose of non-profits as they offer services to those in need, reducing the burden on local government and improving the health of local communities.

Furthermore, each local government entity – county, municipality, and school district each have their own perspective of which organization they choose to tax and the rate of the tax. This interpretation varies from each community. The tax applied in one community will not be the same within that county, neighboring county or across the state. This is an inconsistent and arbitrary policy that cannot continue. We also have concerns that the current environment is conceding significant state tax policy from the legislature to the local level which we believe also gives you apprehension in your role as a constitutional officer based on previous statements.

For the Community Health Center sites that have been affected by this environment, the taxes sought by local government are over \$473,000. However, using the before-mentioned George Washington University study, we believe had these dollars stayed in the Community Health Centers, they could have saved patients and residents in those counties up to \$44 million by managing chronic health conditions and diverting the use of hospital emergency departments as a form of primary care. We simply do not believe that the status quo is a prudent or effective system as it limits quality services that could be offered to our communities.

We were pleased with the clarity provided by the Institutions of Purely Public Charity Act (Act 55 of 1997), and were disappointed when the Pennsylvania Supreme Court decision recreated uncertainty and instability on this issue. Act 55's largest contribution was codifying the Hospital Utilization Project (HUP) test. As you know, the HUP test itself states that charities must meet the following criteria:

- 1) advances a charitable purpose,
- 2) donates or renders gratuitously a substantial portion of its services,
- 3) benefits a substantial and indefinite class of persons who are legitimate subjects of charity,
- 4) relieves the government of some of its burden, and
- 5) operates entirely free from private profit motive.

We assert that Community Health Centers meet all of these objectives. As I understand it unfortunately, the property tax exemptions to date have been based on the challenge that they do not relieve

government of some of its burden. My colleagues and I are simply shocked by this assertion and disagree with it but that is part of the confusion and inconsistency that the current climate allows.

For these reasons, we have urged passage of Senate Bill 4 in its current form as it moves forward in the legislative process. Community Health Centers NEED a resolution to this problem and believe that state lawmakers should be responsible for creating our laws. Upon passage of SB 4 this session, as the second consecutive session in the Constitutional amendment process, the voting public will be empowered to decide whether the courts or the General Assembly has the authority to govern the laws affecting non-profit organizations such as our health centers. Should the electorate agree with us at that point in time, and then we will be able to further build on today's dialogue. Until that time, non-profit organizations such as our community health centers will continue to face the financial hardship these new taxes create for organizations such as our members that provide a public service.

A vote for SB 4 is not a vote for the status quo—it is a vote for a democratic process that ensures fairness in treatment of local charitable organizations across the Commonwealth and that moves us toward clarity, consistency and predictability for organizations that don't have the financial resources to survive with anything less. A vote for SB 4 is a vote to let the voters decide.

I thank you for your time and for your interest and welcome any questions that I may be able to answer.

## **Pennsylvania State Alliance of YMCAs**

### **Testimony – Tax Exemption for Charitable Organizations (Senate Bill 4)**

#### **The Honorable Eugene DePasquale, Auditor General of the Commonwealth**

The Pennsylvania State Alliance of YMCAs is pleased to present this testimony to Auditor General Eugene DePasquale on tax exemption for charitable organizations and the impact of Senate Bill 4.

The State Alliance is comprised of the 65 YMCA associations and 112 branch locations across the Commonwealth. Pennsylvania is blessed to have more YMCAs than any other state in the nation. In fact, 6.6 percent of all Pennsylvanians live within three miles of a YMCA.

For 164 years, the YMCA has been a fixture in communities across the United States and Pennsylvania. Founded by George Williams in London as a refuge for Bible study and prayer for young men to escape the hazards of life on the street, the YMCA has historically sought to meet the social needs of citizens in their communities.

The YMCA has been a source of housing for men since the 1860's to help provide a way for men to get back on their feet after enduring hardships of many kinds. Among those who have called the YMCA home include: Dr. Martin Luther King, Jr, Andy Rooney, Dan Rather, novelist Jack Kerouac and former UN Ambassador Andrew Young. Today, housing for homeless and transient men and women remains an affordable option at YMCAs, such as those in Bethlehem, Harrisburg, Reading and York, and in Pittsburgh.

In 1936, the YMCA Youth and Government program was started in New York state to teach youth about the roles and functions of government and to encourage their participation in it. Pennsylvania's Youth and Government program is in its 69<sup>th</sup> year as a teen leadership and civic engagement program. Its graduates have gone on to successful careers as leaders in government, business, health care and many others where they display the YMCA core values of honesty, caring, respect and responsibility. State Representative Brian Ellis (R-Butler), a member of the House Republican Leadership, is an alum of Pennsylvania's YMCA Youth and Government program.

Today, the YMCA in the Commonwealth is a broad-based, community-serving charitable organization whose mission is to put Christian principles into practice through programs that help build healthy, spirit, mind and body for all. The Y is available to all regardless of whether they can afford to pay for the programs and services. The Y does not discriminate on the basis of race, ethnicity, religion, age or gender.

Across Pennsylvania in 2013, YMCAs serve 1,018,239 members and registered participants. In other words, 1 out of every 12 Pennsylvanians is either a member of the Y or a program participant.

Volunteers of all ages, teens through seniors, enrich their communities by donating their time and energy as child care aides, swim instructors, tutors, mentors, coaches, chaperones, etc. Pennsylvania YMCAs are blessed by the services of more than 31,000 volunteers whose donated time is valued in excess of \$710,000. ***In the Harrisburg area, the Y's utilize the services of more than 1,300 volunteers, each of whom is now expected, in addition to donating their time and energy, to paying for clearances allowing them to work with or around children.***

YMCAs are also the largest provider of child care services in the Commonwealth, providing preschool, before and after school care, and summer day and resident camp programs. One in every five children served by Pennsylvania YMCAs receive subsidized care valued in excess of \$12.8 million. Without this support through the Y, parents may not be able to go to school or work and children would be at home, without supervision, in those critical after school hours.

***Our Harrisburg Area YMCA strives every day to carry out this mission by working with community organizations, government agencies, and school districts to provide vital services such as mentoring at-risk youth referred by our courts and school districts; in collaboration with the Veterans Administration, providing transitional housing for homeless veterans. In association with the PA Dept. of Health, leading smoking cessation and diabetes prevention programs. Through the Dauphin County Department of Drug & Alcohol, leading substance abuse prevention classes, thru Dauphin County Family & Youth, offering bullying prevention in our schools, Working with the Department of Defense, providing free family memberships for***

***families of deployed military personnel, and even opening our doors at no cost to our Armed Forces Recruiting Offices, which utilize the Y to prepare recruits for the rigors of basic training, including the Air Force Pararescue, Navy SEAL SWCC (Special Warfare Craft Combatant), Navy Air Rescue, and the Navy EOD (Explosive Ordnance Disposal Unit).***

As a community-based non-profit organization, the YMCA addresses these needs, not only for those who can afford it, but for everyone in our communities. So how do YMCAs in Pennsylvania ensure that no one is denied the opportunity access quality childcare and youth development programs as well as preventive health support? Ys have the tremendous support of their communities as demonstrated through a variety of contributed support measures.

In 2013, Pennsylvania YMCAs received \$11,303,744 in Annual Support contributions; \$447,227 from partnerships with the United Way; \$685,043 in bequests and legacies from those for whom the Y has had a lasting impact; and, \$3,997,683 in contributions for capital projects. As you can see, Pennsylvanians value the work of the YMCA as a charitable organization in the community.

***We help teach children with Autism to make friends. We offer struggling working parents financial assistance for child care so they can choose work over welfare. Last year alone, the Harrisburg Area Y provided over \$329,000 in direct financial assistance to 1,474 individuals and families in need of child care, summer camp and healthy activities for themselves and their families; and we underwrote another \$1,743,776 in subsidized services, totaling over \$2,000,000 in assistance in 2014.***

Unfortunately, the Pennsylvania Supreme Court changed the landscape for charitable organizations, including the Y, in the 2012 Pike County case *Mesivtah Eitz Chaim of Bobov, Inc v. Pike County Board of Assessment Appeals*.

In the *Mesivtah* case, a deeply divided court ruled that the five criteria established by the court in 1985 (often referred to as the HUP test) were a constitutional minimum in determining whether an entity was a purely public charity. It stated that these criteria must be met before the provisions of Act 55 of 1997 (Institutions of Purely Public Charity Act) could even be applied. Charitable organizations knew immediately that this decision would result in tax challenges by governmental entities seeking to replenish their coffers at the expense of local charities.

Shortly after the 2012 Supreme Court decision, circumstances changed dramatically for the Warren County YMCA in rural Warren County, Pennsylvania. Without warning, the Y received notice from the county that their property tax exemption was being revoked on four separate parcels of land, including their main building. The tax bill they received was in excess of \$170,000. Recognizing the damaging impact this tax assessment would have on their ability to serve the community, the Y appealed to the Board of Assessment Appeals. They were denied and immediately filed an appeal in the Warren County Court of Common Pleas.

In the interim, as they await their court date, the Warren County Y has spent tens of thousands of dollars on legal fees preparing to defend their charitable status. As a result, these are dollars not being

spent on child care, teen and senior programs and other services the Y provides for the citizens of Warren County.

The community recently rallied behind the Warren County YMCA by packing a county commissioners' meeting and urging the commissioners to drop the challenge. Community members in Warren understand the value of the programs and services the Y offers at affordable costs and recognize that, if the Y is forced to close its doors as a result of a successful challenge, the most needy of the community currently served through the YMCA will suffer. The county will be forced to bear the burden of paying for these programs and services.

The inconsistency with which courts interpreted the 1985 HUP test was the genesis for the enactment of the Institutions of Purely Public Charity Act in 1997. The General Assembly, in a bipartisan manner, worked with governmental associations and charitable organizations to craft a law all parties were satisfied would protect the ability of charities to engage in their community work while protecting the fiscal interests of local governments.

For the last 18 years, Act 55 has been the benchmark for determining whether an entity warrants tax exempt status as a purely public charity. The 2012 Mesivtah case has unraveled the work done to enact Act 55 and has essentially rendered the law moot unless a charity can fully document how it meets the 5-prong HUP test. It has created a tremendous sense of uncertainty in the nonprofit community about whether a local government will seek new revenue by revoking long-standing tax exemptions of successful and community-dependent charities.

The precedent set by the Mesivtah case, establishes such restrictive criteria that it jeopardizes the existence of the true "community center," where community members of all socio-economic levels come together to care for themselves and each other, to strengthen the community. By taking away the ability to allow those who can afford to pay for services to co-mingle with those who benefit from charitably-funded services, this ruling will further the divide between the have's and the have not's and fracture the sense of social responsibility that sustains a well-functioning community. By limiting charitable organizations' options for sustainable funding, denying the ability to for nonprofit organizations to subsidize charitable donations with fees for services from those who can afford to pay, the existence of many nonprofit organizations is threatened.

Make no mistake, the YMCA understands and appreciates the fiscal challenges facing our counties, municipalities and school districts across the Commonwealth. This is why the YMCA and other charitable organizations frequently reach out to local governments to build relationships and partnerships to provide programming.

For example, both the Lebanon Valley Family YMCA and the Central Bucks Family YMCA have worked with neighboring schools to offer **free** afterschool programs for their students. The Clearfield YMCA provides **free** swim lessons for every 3<sup>rd</sup> grader in their community thanks to a partnership with the school district. These partnerships relieve these school entities of the burden of paying for such programs. Instead, the YMCA provides a safe, nurturing environment for children and absorbs the costs associated with the programs.

The constitutional amendment proposed in Senate Bill 4 would give the General Assembly, the elected representatives of the taxpayers, the final authority to *“Establish uniform standards and qualifications which shall be the criteria to determine qualification as institutions of purely public charity...”* As explained in a legal opinion of the Legislative Reference Bureau, Senate Bill 4 would *“place the authority to define “institution of purely public charity” squarely in the hands of the General Assembly.”* Although some legal scholars have questioned the efficacy of Senate Bill 4, the Reference Bureau states that Senate Bill 4 *“clearly and unequivocally”* provides the final authority to the General Assembly.

It is our belief that Senate Bill 4 will restore the clarity and consistency in determining whether an entity qualifies as a public charity, thus eligible for tax exempt status. The 65 YMCAs in Pennsylvania need this clarity and consistency to continue functioning as they have for 164 years.

The State Alliance supports Senate Bill 4, urges its passage by the Pennsylvania House of Representatives and approval of the voters in November. The Alliance thanks Auditor General Eugene DePasquale for convening these hearings and inviting Pennsylvania YMCAs to participate.

Respectfully submitted,

Richard Curl  
President and Chief Executive Officer  
Harrisburg Area YMCA

## **Written Testimony on Senate Bill 4’s Proposed Constitutional Amendment**

Tuesday, March 31, 2015

Harrisburg, Pennsylvania

Mayor C. Kim Bracey

Thank you, General DePasquale. Greetings from our City of York and York County, where we are proud of your diligent, honorable service to the citizens of our Commonwealth as our Auditor General. And I'm especially proud to call you friend.

Thank you also for releasing a report on the potential loss of tax revenues to local municipalities due to nonprofit organizations. Thanks also for sponsoring public hearings throughout Pennsylvania on this not widely known effort to pass a Constitutional Amendment that would give the power of determining what entities are tax exempt to the General Assembly.

The loss of tax revenue due to nonprofit organizations, broadly defined, has become an increasingly controversial topic as municipalities and school districts struggle to meet increasing costs. Your December report, looking into 10 counties, estimated the potential tax loss at \$1.5 billion.

Hearings like these are important for, as I discuss the heady issues of tax burden and application with citizens, I know that many of our own citizens do not know Pennsylvania's broad tax exemption of a host of entities that populate and expand in our urban cores.

In Pennsylvania, tax exempt real estate consists of post-secondary schools, county, state and federal government buildings, a hospital, churches, social service agencies, and non-school educational venues and charities. Also, my fellow third class city Mayors and I also can attest that the agencies that occupy the tax exempt real estate serve large populations who do not live in the City. The harsh reality is that every non-city resident who attends college, receives health care, uses state and county government services, attends religious services, receives social services, enjoys entertainment at our Santander Stadium, attends performing arts venues, or receives charitable assistance in our York has that service subsidized by the taxpaying residents of the City of York.

As you know, the Senate voted in February to pass Act 4 and send to the House of Representatives. Senate Bill 4 would authorize a constitutional amendment referendum to be placed on the November ballot to alter the constitution to strip the judiciary of its power to determine if an organization meets tax exempt status and instead give it to the Legislature.

I have seven concerns with Senate Bill 4, the so called Purely Public Charity amendment – one with regard to legislative process and six with regards to substance and consequences.

With regard to process, and your hearings are a great start in addressing this concern, I'm concerned that our citizenry knows very little about Act 4 and its possible major effects. I also think that it is entirely too quick to place this constitutional amendment referendum on the November ballot.

If this bill is not scuttled altogether, as I think it should be, at the very least, we should ensure ample reflection and public deliberation on a bill that would have a huge impact on municipalities' tax bases as well as the implementation of tax fairness throughout Pennsylvania.

For example, Senate Resolution 28 would establish a committee that would conduct a year-long study, including public hearings, to ensure voters are informed about the pros and cons of the amendment. As General DePasquale well knows, it took our General Assembly six years to pass a rather innocuous "no texting while driving" law, but now we appear to be rushing through a Constitutional Amendment of major long-term importance without robust public knowledge and input.

A Constitutional Amendment is no small thing, and it deserves widespread, robust, statewide education and discussion.

Now, here are my six concerns as to the substance and repercussions of Act 4.

First, why wrest control from the judiciary when a rational process is in place and the process of the legislature determining non-profit status is uncertain? The Supreme Court of Pennsylvania and the lower courts are adequately equipped with competent, rational judges and staff who have the objectivity and skills to analyze these cases on a case-by-case basis as they arise. To me, in a state with so much diversity, depth and breadth of non-profits, as well as disparity in CEO pay, it's illogical to treat all non-profit entities alike or as a monolith.

Also, to think that the General Assembly can develop, pass, and implement standards that are more concrete and uniform than the five part HUP test, applied since 1985, is debatable at best.

In its decision in *Hospital Utilization Project v. Commonwealth*, 487 A.2d 1306 (Pa.1985), the Pennsylvania Supreme Court, based on more than a century of judicial precedent, elaborated the criteria an institution must meet to be deemed a "purely public charity." That interpretation provides that institutions of purely public charity must: (1) advance a charitable purpose, (2) donate or render gratuitously a substantial portion of its services, (3) benefit persons who are legitimate subjects of charity, (4) relieve the government of some of its burden and (5) operate entirely free from a private profit motive.

This historic, thorough, and detailed standard is based on the common law and has governed the legal determination of "purely public charities", the phrase used in our state constitution, for more than a century.

Why replace standard legal process and five-part accountability test that is embedded in common law and has worked well? We simply do not know what type of system the General Assembly might ultimately implement, and for us to think that such standards will not be malleable, loose, and even confusing based on politics, regional political clout, and mega charities' lobbying efforts would make us naïve at best.

Second, we talk an awfully lot at the state level about the need for local control and flexibility. But, when the rubber hits the road as with this senate bill, it appears that local control and flexibility are just talking points in Harrisburg and little more.

Our local municipalities and school boards should have local control, flexibility, and discretion. They should have the ability to work with institutions and non-profits to analyze local contexts and/or to work out payment arrangements or payments-in-lieu of taxes that work based on local needs.

As a last resort, if there is an honest, honorable agreement to disagree, then the matter can be taken to court, where each party will receive a fair hearing and, if they do not prevail, chances to appeal the ruling. We live in a civilized, democratic society with due process and the right to resolve redresses peacefully through the courts.

I want to stress that there is no statewide war on nonprofits. In a state of remarkable diversity and breadth, in a state with non-profit entities of an incredibly array of shapes and sizes of non-profits and CEO salaries, a reasonable discussion and analysis of what is a "truly charitable organization," what is a

“mega charity,” and who should pay property taxes should exist. Further, reasonable difference of opinions are to be expected at times.

I whole heartedly agree, then, with my friends, Scranton Mayor Bill Courtright and Allentown Mayor Ed Pawlowski, who expressed their concerns that Act 4 amendment would result in established standards being reduced and quash the ability of municipalities to challenge a nonprofit’s status.

Third, is this truly a pressing statewide concern that requires an overhaul of the current historic rational review process? After reviewing the testimony from your previous hearings, I question if this is truly a raging, widespread state problem and if Senate Bill 4 is in search of a problem that does not really exist on a statewide level.

I fully understand that the issue is hot and heavy in Pittsburgh, where there is much debate about the tax status of the University Pittsburgh Medical Center over the last few years. Yet, in south central Pennsylvania, I am unaware of many, if any contentious relations, let alone legal challenges, between municipalities and key institutions, such as hospitals and colleges. I can only speak for our City of York, but our relations with our key institutional entities and our non-profits is respectful, cordial, and collaborative, and *not* in courtrooms.

Fourth, accountability. I was moved by the testimony of Lois Campbell, Executive Director of the Pennsylvania Interfaith Impact Network, who testified in Pittsburgh.

**And I quote:**

Can any of our towns and cities deliver these things if our largest employers and landowners are not held to the highest of standards and accountable to the communities that subsidize them? . . . For this reason, the leaders of PIIN don’t think this amendment serves Pennsylvania well at all. Charities must be held to a high standard because when they are not, they burden people instead of lightening their load.

**End of quote.**

Non-taxing entities must be accountable and live up to the historically strict standards of what qualifies as tax exempt. Throwing out the judiciary’s five-part test likely would lead to less accountability, and that would be bad not just for our tax bases but for our communities and the people whom they serve. We should also note that leaders of many profits like Lois are opposed to Act 4. Again, treating all non-profits alike with a blanket exemption does not do justice to the diversity facts on the ground.

My fifth concern as to substance and repercussions has to do with tax base erosion because of a blanket exemption coupled with creeping and ongoing expansions of non-taxed entities.

The vast majority of our non-profit entities are noble in mission, purpose, and practice. Yet, let’s be honest: A few skirt the line between charity and profit motive, and sometime the line is incredibly blurry and made incredibly blurry by some ambitious non-profit leaders of so-called mega-charities. Also, such entities will fight like heck to avoid tax payments or even PILOTs. A blanket tax exemption, as could be the case with Act 4, would be detrimental to our municipalities, particularly landlocked urban cores and struggling boroughs, and make public-private partnerships more tenuous, if not contentious.

This is critically important: Let's keep in mind that tax exempts grow and grow significantly over time, especially in our urban cores and our struggling boroughs. Colleges, hospitals, non-profit medical centers, and other non-profits grow their physical footprints, acquire and build new buildings, and acquire adjacent parcels for parking. Throughout our Pennsylvania, all of these acquisitions and expansions make sense at the micro level. But, combined, they wreak havoc on our cities' tax bases as the value of properties that are tax exempt grows and grows and grows with no end in sight while the municipalities remain landlocked and fully built out.

So where does that leave us? Essentially, municipalities are left to go hat-in-hand to collect payments in lieu of taxes or PILOTS. Frankly, in the long term, consistently robust contributions from our tax exempt community and meaningful reimbursement formulas are vital to our city's successes.

But relying on Payments-in-Lieu-of-Taxes or "PILOTS" simply is not enough for cities like York throughout Pennsylvania, and eliminating a tax entity's ability to challenge an institution's tax exempt status would make matters considerably worse.

In York, 37% of the value of our real estate is tax exempt and 40% of our total number of properties is tax exempt. My understanding is that Pittsburgh's value of tax exempt properties is 40% and Harrisburg's is 50%.

In York, we look at that 37% as follows. Imagine if a business could only operate at 63% of its capacity each year or that it had to pay for 37% of its workforce even though that part of the workforce produced no company revenues. Imagine if a manufacturing plant had to service and maintain 37% of its machinery each year even though that 37% produced no company revenues. Imagine if a hospital could only seek and accept payment for 63% of its patient stays each year.

Essentially, that's what the concentration of tax exempts in our county seat means to York's bottom financial line each year. Indeed, many landlocked core communities possess a disproportionate and upwardly creeping percentage of tax-exempt properties and the creeping expansions keep coming.

York is landlocked at 5.2 square miles. But we are not compensated for the infrastructure and safety costs required for serving such concentrations. Combined, such properties are assessed at \$578 million, which equates to \$11 million in lost city tax revenue per year. That would be the equivalent of 110 police officers or essentially our entire police force.

We try to keep pace through our Fair Share program, which seeks annual payments in lieu of taxes or PILOTS from our tax exempts. York's Fair Share program brought in only \$156,653.44 in 2013, and \$97,129.38 has been collected in 2014.

Unfortunately, thus far, despite enduring efforts, our cumulative PILOT revenues fall way short of the real public costs associated with our concentration of tax-exempt properties.

Let's explore what other Pennsylvania communities are able to achieve.

From their PILOT programs, the City of Pittsburgh gets \$2.6 million per year, and the City of Erie gets about \$1 million per year.

Our sister City of Lancaster brings in over \$1.75 million in voluntary contributions each year to support its general fund.

Of the \$1,750,000 contributed to Lancaster, \$1,380,000 comes from Lancaster General Hospital and \$200,000 from Franklin and Marshall College with the remainder from all other tax exempt organizations.

LGH and F&M, then, represent about 90% of the total PILOTS Lancaster receives each year. That is in line with the national average of PILOT contributions. A large scale annual contribution from the hospital and college has been in place since the 1990s, and this helps the city plan its budget year after year.

In addition, and this is important, F&M pays its full freight in taxes on 46 plus city properties it owns, bringing in \$309,000 to the city's general fund per year. The hospital does the same on city properties that it owns, bringing in another \$237,000 to the city per year.

So, the total amount derived from Lancaster's PILOTS and voluntarily tax assessed properties from all tax exempt entities is \$2,296,000. That is direct cash to Lancaster's general fund.

In 2013, the combined total that the Borough of State College received for its PILOT agreement was \$579,099.48.

This analysis leads to my sixth concern: unintended consequences. Whether or not municipalities like the City of Pittsburgh, the City of Erie, the Borough of State College, or the City of Lancaster would receive such substantial PILOT contributions in a world where there is absolutely *no* reflective process or legal chance of challenging institutions' tax exemption status is not known. Act 4 could lead to more institutions going their own ways, shaving off or even eliminating PILOTS, shaving off or even eliminating property taxes paid on properties that they own, and essentially telling municipalities to go pound sand. Let us be wary of what we ask for. I can envision negative unintended consequences if this bill is rushed through and passed.

## **Conclusion**

Thank you again for your leadership and for hosting these critical hearings. For the six foregoing reasons, I am firmly opposed to Act 4 – both procedurally and substantially. And I thank you for the opportunity to air my concerns today.

## **Statement of The Hospital & Healthsystem Association of Pennsylvania**

Before Pennsylvania Auditor General

Presented by

Scott Bishop

Senior Vice President, Legislative Advocacy

The Hospital & Healthsystem Association of Pennsylvania (HAP)

Harrisburg, PA

March 31, 2015

Auditor General DePasquale, I am Scott Bishop, Senior Vice President, Legislative Advocacy for The Hospital & Healthsystem Association of Pennsylvania (HAP). HAP represents and advocates for nearly 240 acute and specialty care hospitals and health systems across the state and the patients they serve.

I appreciate the opportunity to present why hospitals and health systems across the Commonwealth support Senate Bill 4—a Constitutional amendment that will restore the legislature’s authority to establish uniform standards and qualifications as the criteria to determine the tax-exempt status of nonprofit entities.

To be clear, Pennsylvania nonprofit hospitals recognize that tax exemption is a privilege, not a right. For a hospital to be tax exempt, they must fulfill specific obligations to their communities, and they consistently do so. In fact, the reason that having clear and concise criteria set in law is so critically important is that statutory directives ensure that already limited resources remain targeted to the Commonwealth’s most important health and community priorities instead of being wasted on unnecessary legal disputes.

It is equally important to clarify that Senate Bill 4 does not seek to strip the judiciary of its power to judge whether an entity is an institution of purely public charity. Rather, since the courts have never declared Act 55 of 1997 to be unconstitutional or in conflict with any other statute, they should apply the provisions of Act 55, not a judicially created rule, to determine tax status.

Some historical perspective will help illustrate why the need for Senate Bill 4 is so pressing.

In 1985, in *Hospital Utilization Project v. Commonwealth*, the Pennsylvania Supreme Court created a five-prong test (now referred to as “the HUP test”) to determine whether an institution should be deemed to be an “institution of purely public charity.” Under this test, an institution qualified as an “institution of purely public charity” if it:

- Advances a charitable purpose.
- Operates entirely free from private profit motive.
- Donates or renders gratuitously a substantial portion of its services.

- Benefits a substantial and indefinite class of persons who are legitimate objects of charity.
- Relieves the government of some its burden.

For the decade that followed the *Hospital Utilization Project* decision, there was a surge of litigation by local governments and school districts against nonprofits. As a result, instead of clarifying the situation, inconsistent court rulings created confusion and costly legal battles.

Then, in 1997, the Pennsylvania General Assembly unanimously approved The Institutions of Purely Public Charity Act (Act 55 Of 1997), which established clear, concise standards for determining the tax-exempt status of nonprofits. Act 55 uses the same five criteria established by the Supreme Court in 1985 as the framework for defining an “institution of purely public charity,” but elaborates on how an entity must demonstrate satisfaction of each criterion. In addition, Act 55 included two unique provisions—promotion of voluntary agreements with local governments, and prohibition of competition with small businesses.

This legislation was the product of a multi-year, bipartisan compromise between local governments, school boards, nonprofit entities, and lawmakers. At the time of the enactment of Act 55, no other state had developed such comprehensive requirements for state tax exemption. In fact, the law still provides one of the strictest sets of standards in the entire country.

The sole purpose of Act 55 was to eliminate inconsistency created by the *HUP* test and to clarify what an organization needed to do to be tax exempt. And, for fifteen years, Act 55 served its purpose. Prior to Act 55 of 1997, there were at least 20 ongoing legal challenges between hospitals and political subdivisions. Following enactment of the law, there were very few legal challenges.

However, during 2012, in the court case *Mesivtah Eitz Chaim of Bobov, Inc. v. Pike County Board of Assessment Appeals*, the Pennsylvania Supreme Court turned Act 55 on its head by ruling that the courts, not the legislature, have responsibility for determining the tax-exempt status of nonprofits. The result of this decision is that the Court has chosen to ignore Act 55 as the appropriate means to determine the tax status of nonprofits in the Commonwealth. Further, they are summarily dismissing what current Chief Justice Thomas Saylor referred to in his dissenting opinion in *Mesivtah* as “an integrated legal test blending the Judiciary’s well-crafted *HUP* test with the wide-ranging policymaking experience of the Legislature.” Justice Saylor went on to say that, so long as Act 55 is constitutional (no court has ever said otherwise), he would “defer to the General Assembly’s reasonable policy determination that an organization satisfying the criteria set forth in Act 55 is a purely public charity.”

History has proven that the *Mesivtah* decision will return us to a time of great inconsistency and great confusion for nonprofits. Decisions can vary from county to county and court to court. Senate Bill 4 provides the opportunity to restore fairness and provide clarity on the criteria for tax-exempt status. Concise standards established in law will enable nonprofits to prove whether they deserve to be tax exempt.

While there have been questions raised about the validity of Senate Bill 4, the state's Legislative Reference Bureau recently issued an important advisory opinion stating that Senate Bill 4 will effectively amend the State Constitution to give the General Assembly the authority to define an institution of purely public charity. Specifically:

- “The term ‘institution of purely public charity’ is no longer a term that must be defined exclusively by the judiciary. As a result, it is appropriate that SB 4 authorizes the General Assembly to actually define an institution of purely public charity by establishing uniform standards and qualifications for this purpose.”
  
- In the 2005 decision, *Bergdoll v. Commonwealth*, the court determined that a Constitutional amendment “granting the General Assembly authority to legislate in a particular area of law previously under the purview of the judicial branch is a proper exercise of the people’s power under the Constitution.”

While it is understandable that different lawyers may have different opinions on the language, there must be no confusion about what this proposal does and does not do.

There has been confusion about the purpose of Senate Bill 4, created in part by misinformation about the proposal. The one-and-one-half-page bill calls for only one action: returning to the legislature the authority to establish uniform standards and qualifications as the criteria to determine the tax-exempt status of nonprofit entities.

As a result, Senate Bill 4 does not increase the number of tax-exempt entities. Senate Bill 4 does not raise taxes. Senate Bill 4 does not ensure the loss of government services in communities. Senate Bill 4 does not create any barrier for local governments wanting to challenge the tax status of a nonprofit.

We would note that, as local governments and elected officials discuss the need for addition revenues, it is critical that they look beyond institutions of purely public charity to other tax-exempt properties. For instance, a March 2009 Pennsylvania Legislative Budget and Finance Committee report revealed that, actually, local government entities account for the largest share of tax-exempt properties. In fact, when tax-exempt properties held by local public authorities were combined with those held by local government, they account for 50 percent or more of all tax-exempt properties.

A second point of misinformation that requires some discussion revolves around the timing of Senate Bill 4. Quite simply, it is not being rushed through the legislative process. In fact, this legislation is undergoing thorough legislative deliberation, and the public will play a defining role going forward. The Pennsylvania Senate first took up the language of Senate Bill 4 in Spring 2012. Then, in 2013, the state legislature debated and passed Senate Bill 4 for the first time. As the legislature is debating the issue for a second time, hearings are being held. Further, after the House approves Senate Bill 4, voters will have an opportunity to vote “yes” or “no” on whether to give the General Assembly the authority to establish the standards. Should the voters return authority to the legislature, constituents will be able to share their opinions with their elected officials during the legislative process.

Finally, it is irresponsible for anyone to suggest that hospitals are not contributing their fair share to the economic vitality of communities in this Commonwealth. In addition to making direct monetary contributions to help governments provide key services,

hospitals offer free dental and eye care, free immunizations, free nutrition programs and meals, free domestic violence counseling, free drug and alcohol education, free screenings for the poor, elderly, and disabled. The list goes on. Further, what Pennsylvania hospitals aren't paying in taxes to fund indiscriminate government operations, they invest in the technology, personnel, and infrastructure that patients and their families count on to ensure that they get the health care they need 24 hours a day, seven days a week.

All told, Pennsylvania hospitals contribute nearly \$6 billion annually in free or subsidized health care, essential medical research and education, and major community improvement initiatives. They contribute nearly \$100 billion to the state's economy (total annual direct and ripple effect), and hospitals support nearly 600,000 jobs (both direct employees and positions supported by hospitals). Those 600,000 employees all pay taxes. This is much more than just paying a tax bill to help local governments keep the lights on. This is hospitals and health systems investing substantial resources to strengthen communities in ways that no government program could begin to accomplish.

Every dollar a hospital is asked to put towards an arbitrary tax bill to fund general government operations is a dollar they can't invest in a program to provide thousands of free flu shots to kids or to bring additional surgeons to a region so families don't have to travel for complicated care or to sponsor signature events that significantly bolster regional economic development. For small hospitals and those with negative operating margins, property taxes could consume a substantial portion of net cash flow and require difficult choices about services and programs. The bottom line is that if hospitals are forced to redirect resources without consideration of the investments and contributions that tax exemption allows them to do, someone will need to fill that void. It will certainly not be government.

Again, Pennsylvania hospitals are mindful that tax exemption is a privilege, not a right. The vital role hospitals and health systems play in their communities clearly demonstrates that they respect this privilege and they will continue to earn it.

In closing, we are pleased to be joined by a broad coalition of organizations and their members who support Senate Bill 4: Association of Independent Colleges & Universities of Pennsylvania, LeadingAge PA, Lutheran Services in Pennsylvania, the Pennsylvania Association of Community Health Centers, the Pennsylvania Association of Independent Schools, the Pennsylvania Association of Rehabilitation Facilities, the Pennsylvania Bar Association, the Pennsylvania Catholic Conference, the Pennsylvania Catholic Health Association, the Pennsylvania Chamber of Business and Industry, the Pennsylvania Community Providers Association, the Pennsylvania Institute of Certified Public Accountants, the Pennsylvania Jewish Coalition, the Pennsylvania Alliance of State YMCAs, and the United Way of Pennsylvania.

Thank you again for the opportunity to participate in this discussion. I would be happy to answer any questions you may have.