

COMMONWEALTH OF PENNSYLVANIA

Auditor General

March 12, 2015

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 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 | Possible NEGATIVE Outcomes |
|---|--|
| <ul style="list-style-type: none"> • 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). | <ul style="list-style-type: none"> • 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 <i>purely public charities</i> 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 | Possible NEGATIVE Outcomes |
|--|---|
| <ul style="list-style-type: none"> • The courts would continue to have the authority to define a “purely public charity.” * | <ul style="list-style-type: none"> • 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. |

**Note: The courts may follow the case law criteria established in the 1985 HUP Case front and center in determining whether or not a nonprofit meets the criteria for “purely public charity.”*

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.¹

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 ²

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

²Salamon, 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.

- 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.⁴

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 as exempt from taxation. State exemption of charitable nonprofits from property tax is the norm.⁵

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.

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.

⁶ Thompson, 2015

⁷ Brody, E. (2010). *All charities are property-tax exempt: Some are more exempt than others*. New England Law Review. New England School of Law.

⁸ Thompson, 2015