

PROVIDERS' COUNCIL

June 13, 2017

To: Senator Michael D. Brady, Chair
Representative Jay K. Kaufman, Chair
Joint Committee on Revenue

From: Michael Weekes, President/CEO

Re: Testimony in opposition to House 1565, House 2594, House 2596 and
House 3526

Chairman Brady, Chairman Kaufman and members of the Joint Committee on Revenue, thank you for the opportunity to submit testimony in opposition to four bills that seek to institute payments in lieu of taxes or create burdensome regulations for tax-exempt nonprofit organizations.

The Providers' Council is the state's largest association of community-based human services organizations that provide an array of services on behalf of the Commonwealth. We assert these bills have the potential to be devastating to both the nonprofit human services community in Massachusetts, as well as the state's most vulnerable residents who receive essential care from this sector.

Human services nonprofits

Organizations in the human services sector are registered primarily as tax-exempt nonprofits that provide community-based care. These organizations are classified as charitable tax-exempt nonprofit organizations – both under state law (M.G.L. Chapter 59, Section 5, Clause 3) and under federal law (section 501(c)(3) of the Internal Revenue Code). Therefore, they are eligible to receive exemptions from income taxes (both federal and state) and local property taxes as they perform charitable purposes.

The primary focus of these nonprofit human services organizations is to care for the state's most vulnerable residents and, by doing so, to provide a social and economic benefit to the public they serve and the communities in which they're based. The Providers' Council agrees with the rationale codified in federal and state law that the value these charitable organizations provide to communities and their residents is far greater and more impactful than any potential tax payments.

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These tax-exempt, community-based human services organizations deliver essential services to our Commonwealth's most vulnerable populations, often on behalf of the state itself. They care for our sick, abused, elderly and disadvantaged; educate our youth; support our veterans; serve individuals with a disability or those experiencing homelessness; and provide residents with services that might otherwise be unavailable or too costly. If not for our sector, communities would have to find alternative solutions to these public issues that may be increasingly costly and more inefficient.

Problems with these PILOT proposals

While the Council is cognizant of the revenue problems facing governments at the federal, state and local levels, we do not believe any of these bills are an appropriate way for municipalities to consider raising additional revenue. Our community-based human services sector is experiencing financial stress too. Demands that nonprofits make payments in lieu of taxes violate the social compact with the human services sector, which provides care to one-in-ten state residents.

These bills, as proposed, seek to circumvent state and federal law by attempting to extract revenue from nonprofit human services organizations to make a payment or other concessions to a municipality. There are multiple reasons these bills should not receive a favorable report.

- 1. Nonprofits are tax-exempt entities:** Nonprofits have agreed to serve the public's interest without regard to personal benefit, and in exchange, they are exempt from property taxes. Whether legislation refers to it as a tax payment, a fee or a PILOT, the thrust of these bills is to force nonprofits to make payments based on their property's value, a percentage thereof or other factors. The true value nonprofits provide to communities is on display every day through the services they offer.
- 2. Ambiguous language regarding PILOT funder:** Some of these bills make it unclear who would be funding proposed PILOTs. They do not indicate if the state or nonprofits would be expected to make PILOT payments. We oppose any legislation where nonprofits may be asked to make a payment, or where cities or towns may discriminate against siting nonprofits due to the state's inability to make PILOT payments to

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municipalities. We cannot ethically uproot clients from their homes if the state fails to make a PILOT payment.

- 3. State contracts do not include money for PILOTs:** Nearly all human services nonprofits rely primarily on state contracts for funding, and the state does not include extra funds in these contracts to account for a payment in lieu of taxes. If human services nonprofits were forced to make a payment in lieu of taxes, the Executive Office of Health and Human Services would need to increase occupancy costs for the entire sector and increase the cost of government to provide these public benefits. These costs have been calculated with the expectations that nonprofits are tax exempt.

Specific discussions of these four bills

While the Providers' Council is submitting this testimony in opposition to four bills, there are specific issues that may be germane to one bill – but not the others. We feel the following specific issues regarding these four bills merit further discussion:

- I.** House 1565, *An Act relative to payments in lieu of taxation by organizations exempt from the property tax*

This bill would give municipalities the ability to force nonprofits to make a payment in lieu of taxes “equal to 25 percent of the amount that would be paid if the property were not exempt from taxation.” The bill simply masks the tax as a payment in lieu of taxes.

Additionally, many human services organizations would need to do private fundraising to diversify their revenue streams and attempt to generate additional dollars to pay for operations. Expecting these organizations and other nonprofits to engage in private fundraising to pay a PILOT would likely be a violation of donor intent and would most likely distribute funds in a way incongruous with the donors' desires or clients' needs.

- II.** House 2594, *An Act relative to tax exempt property*

This bill would create a right-of-first-refusal process where nonprofits wishing to sell property or change its use – who already have a fully executed purchase-and-sale agreement – would have to give a municipality the first right to

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purchase the property. The proposal would put an unfair and undue burden on human services organizations and make it difficult for them to get fair market value when selling their property or create barriers to changing its use. For example, it would:

- Interfere with the operational, fiscal and long-term strategic planning considerations of human service providers. Organizations would be less inclined to change the use of a property to better serve state residents, as a city or town could threaten to invoke this proposed provision and take the land;
- Single out nonprofit property owners and organizations, creating unequal requirements for them not faced by any other business, organization or resident of the Commonwealth;
- Deflate nonprofit property values and shrink the potential market for buyers of said property with the lengthy and impractical appraisal process that is proposed in the legislation; and
- Have a chilling effect of essentially giving a community the ability to deny access to services that have been changed or adjusted at a property owned by a nonprofit organization.

III. *House 2596, An Act establishing a special commission on payment in lieu of taxes to municipalities in which group homes are located*

This bill would create a special commission to study establishing a payment in lieu of taxes mechanism for municipalities in which group homes are located. It is unclear in this legislation if community-based nonprofit organizations would be required to make these payments in lieu of taxes. Further, if passed, it would create an undue financial burden on nonprofit human service providers and the taxpayers of the Commonwealth.

Disturbingly, the commission this act seeks to establish would exclude the voice of the community-based human services sector from the conversation.

IV. *House 3526, An Act relative to community tax relief*

This bill would seek to create a separate category of “large public charity” and force those organizations to make PILOT payments if acquiring property. As we have stated, nonprofits should not be forced to make PILOT payments as many, particularly in human services, are working for the public benefit.

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Further, this bill would force the more than 38,000 nonprofits in the Commonwealth to provide complete salaries, benefits and additional compensation information for the more than 500,000 employees who work in the state's nonprofit sector – and mandate that the Attorney General review the entire database annually. We feel this is an extensive overreach to ask nonprofits to file salary information for every employee working on their staff. Further, it is far in excess of guidelines already created by the federal Internal Revenue Service for the class of “highly compensated employees” which must be reported annually and subject to review by our state Attorney General's Office.

Conclusion

We ask that you do not give these four bills a favorable report. As written, these bills threaten both our state's residents' choice to live in any community of their choosing as well as the nonprofit, community-based human services organizations that take care of the Commonwealth's most vulnerable.

Collectively, these four bills:

- seek to circumvent state and federal laws by pressuring nonprofits to make payments in lieu of taxes;
- divert scarce money for programs and wages to municipal coffers;
- force both nonprofit property owners and employees to be subject to requirements not faced by any other business owner or residents in the Commonwealth;
- make it harder for vulnerable populations to live where they choose in Massachusetts; and
- shatter the social compact that government and nonprofits have worked so long to build.

Thank you for your time and your consideration of these potentially damaging proposals that would force demands for payments on our nonprofit, community-based human services sector. We would be happy to meet with you to discuss any of these bills in further detail.