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The Charitable Property-Tax Exemption and PILOTs

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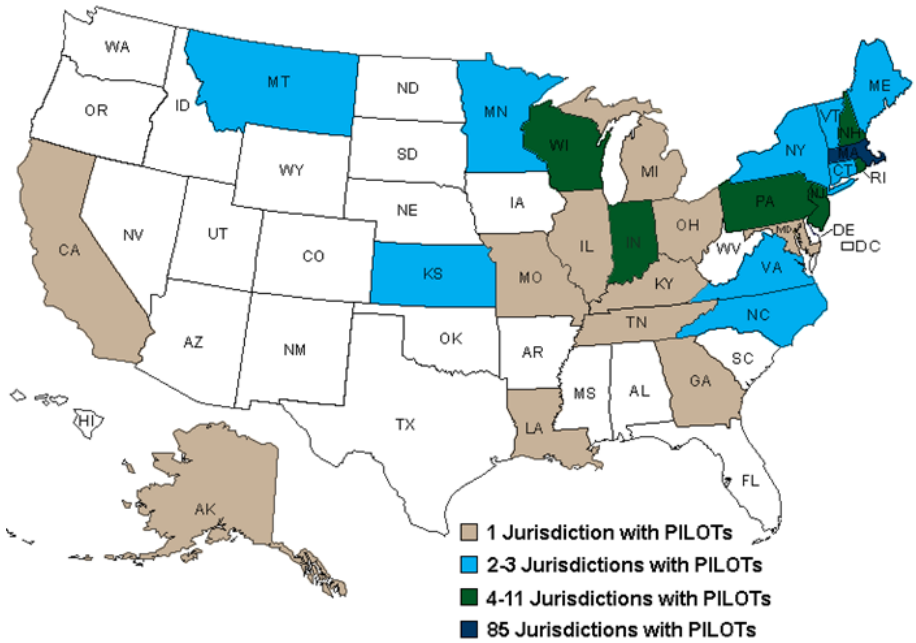
Driven by increasing pressure on local budgets, some municipalities have sought a reexamination of the property-tax exemption for nonprofit organizations provided by state law. The property tax is a major source of revenue for many municipalities and, unlike many other forms of taxation, often directly relates to local governmental services provided to real estate (such as water utilities or police and fire protection). In addition, large nonprofits such as universities and hospitals may own significant portions of land within a given city, and not all nonprofits serve the local community. As a result of these features, taxable property owners can be seen to subsidize services to nonprofit property owners.

In the absence of state-level alteration of property-tax exemption, some cities have begun asking nonprofits for voluntary PILOTs, or Payments in Lieu of Taxes—an attempt to collect a portion of the property tax revenue which would be owed if nonprofits were not tax-exempt. Sometimes these payments may take the form of Services in Lieu of Taxes (SILOTs), although monetary payment is usually preferred by local governments. According to research from the Lincoln Institute of Land Policy, PILOTs have been used in at least 154 jurisdictions in 27 states over the last decade.

However, concerns have arisen regarding PILOTs, as these payments are often negotiated on an ad-hoc basis. Not only can they take widely different forms, resulting in different treatment of similar nonprofits, but they can also seem arbitrary and secretive. Nonprofit organizations worry further that the accepted use of PILOTs could

States with Jurisdictions Collecting PILOTs

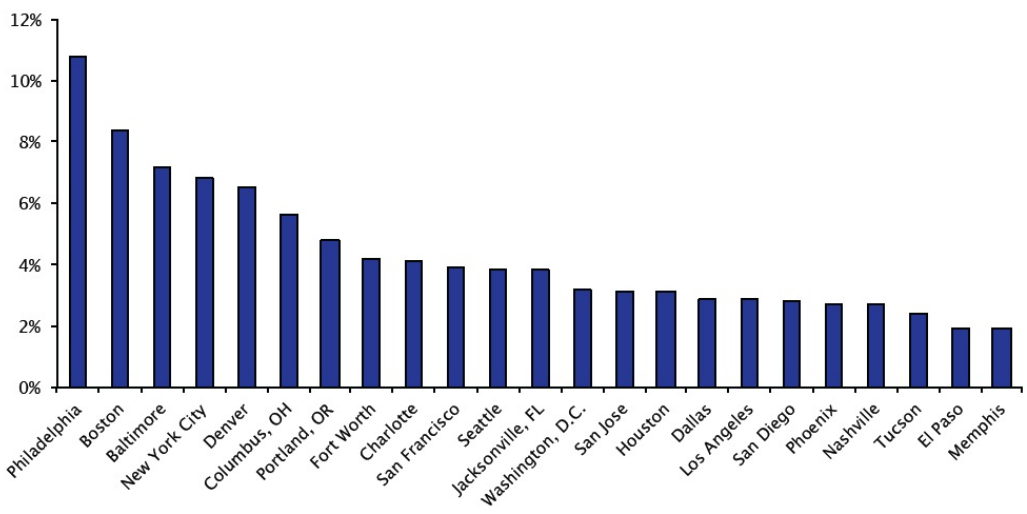


Daphne Kenyon. 2012. "Payments in Lieu of Taxes: Balancing Municipal and Nonprofit Interests." Urban Institute conference on "State and Local Budget Pressures: The Charitable Property-Tax Exemption and PILOTs," on May 21, 2012 at the Urban Institute.

lead to an erosion of their traditional tax-exempt status or establish a precedent for the government to look to nonprofits to fix their budgetary shortfalls (anecdotes abound where cities used underhanded tactics such as denying building permits to induce cooperation). Battles between municipalities and charities over PILOTs can be time-consuming and counterproductive without even raising much money.

The conference, "State and Local Budget Pressures: The Charitable Property-Tax Exemption and PILOTs," hosted on May 21, 2012 by the Urban Institute, sought to examine from all sides the issues surrounding the property-tax exemption for nonprofits. The first panel laid out the current political landscape, including which nonprofits benefited the most from tax exemption for property. The second session took a closer look at the major pressure points where exemption was challenged: nonprofit hospitals and institutions of higher education. Finally, the third panel debated the merits and flaws of PILOTs and discussed options for the future.

Estimated Value of Exempt Property Owned by Nonprofits as a Percent of Total Property Value (2006)



Source: Lipman (2006).
Notes: These statistics should be viewed as rough estimates. Policymakers should exercise caution when drawing conclusions from these data, because the quality of assessments of exempt property is wide-ranging and often unreliable.

Source: Daphne A. Kenyon and Adam H. Langley. 2011. "The Property Tax Exemption for Nonprofits and Revenue Implications for Cities." Washington, DC: The Urban Institute. http://www.urban.org/publications/412460.html

Definitional Challenges

PILOTs, or Payments in Lieu of Taxes, occur when a nonprofit organization makes a payment to the government in place of the taxes that it is exempt from. Similarly, SILOTs, or Services in Lieu of Taxes, reflect expenditures or services the nonprofit organization donates to the community. Most municipal governments prefer cash payments, but PILOTs and SILOTs may be combined.

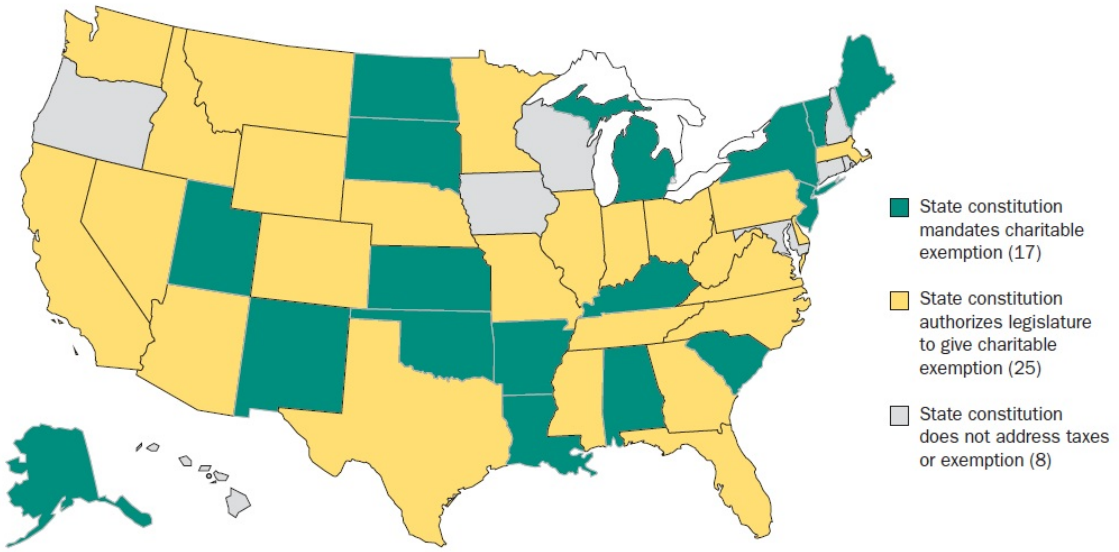
Understanding the use of PILOTs is complicated, as payments from nonprofits to local governments may or may not be explicitly designated as a replacement for taxes. G. Reynolds Clark, Vice Chancellor for Community Initiatives and Chief of Staff in the Office of the Chancellor at the University of Pittsburgh, noted that when

Pittsburgh nonprofits set up the Pittsburgh Public Service Fund, they specifically avoided the word "PILOT"; these nonprofits did not want to suggest that they were anything other than tax-exempt. Daphne Kenyon, economist and visiting fellow at the Lincoln Institute of Land Policy, also found that the language of PILOTs might be shunned for political reasons: some nonprofit organizations with policies never to make PILOTs have been known to give the government "gifts." Kenyon's research deemed all voluntary payments, regardless of designation, made by nonprofits to municipalities as a PILOT.

Another issue of definition concerns what qualifies as a tax-exempt nonprofit organization. Evelyn Brody, professor of law at the Chicago-Kent College of Law, raised the point that state laws are not always consistent regarding what types of organizations are exempt from property taxes, even in some cases offering partial exemptions. Some states have the nonprofit exemption written into their constitutions, making changes to the current law more difficult, but even here there may be some leeway as to which organizations qualify. How does one define an "institution of purely public charity"? Pennsylvania and Illinois have both seen litigation reach its supreme court over whether state legislation can define "charity" or if, instead, the courts have the last word in interpreting the constitutional term. Other states, such as California, have raised the issue of whether the exemption should be limited to those who provide community benefits to California residents—a criterion which can be difficult to apply practically and consistently with the Commerce Clause of the U.S. Constitution.

Charitable nonprofit organizations cover a wide variety of groups, ranging from soup kitchens to churches to museums. In the legal sense, a charity may earn a surplus (it just cannot distribute profits to private persons); moreover, a charity may charge for their services and need not limit their charitable purposes to serving the poor. The

Charitable Tax Exemption in State Constitutions



Source: Daphne A. Kenyon and Adam H. Langley. 2010. *Payments in Lieu of Taxes: Balancing Municipal and Nonprofit Interests*. Cambridge: Lincoln Institute of Land Policy. https://www.lincolninst.edu/pubs/dl/1853_1174_PILOTs%20PFR%20final.pdf.

definition of a charity for tax-exemption purposes has become particularly blurred in the case of nonprofit hospitals and institutions of higher education. Woods Bowman, economist and Professor of Public Services Management at DePaul University in Chicago, noted that hospitals are more likely to be the focus of PILOTs or face challenges to their exempt status as they do not match the ideal image of charities.

Unlike other types of nonprofits such as churches and educational institutions which are often are categorically property-tax exempt in state constitutions, nonprofit hospitals are not. Nonprofit hospitals differ from every other nonprofit institution in that they are part of an integrated network of profit-making enterprises such as pharmacies and insurance companies, many hospitals outsource key mission-specific departments to for-profit companies, and often fail to act 'charitably' when they pursue bad debts.

Although they do not share the same aforementioned negatives as nonprofit hospitals, nonprofit colleges and universities, which are also large real-estate owners, similarly find themselves more frequently asked to make PILOTs. Matt Hamill, Senior Vice President of the National Association of College and University Business Officers, explained that colleges often tended to rely on a "sovereignty theory" to justify their exemption; separately, the services provided to the community by hospitals and educational institutions might also support tax-exemption, as discussed in more detail below. In the end, however, the difficulty of evaluating claims for PILOTs rests on an ambiguous rationale for the nonprofit tax exemption.

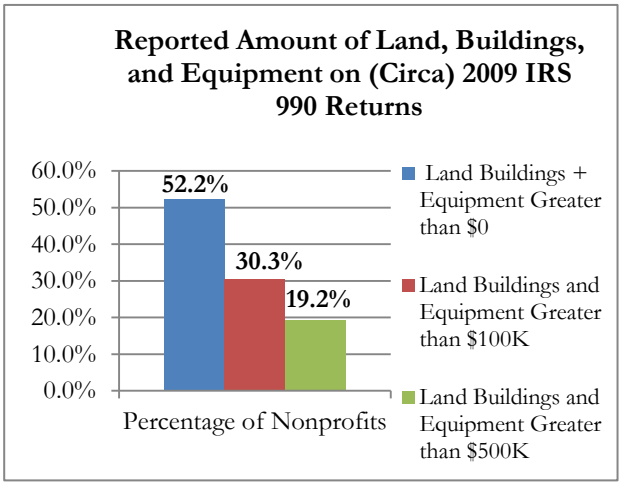
It is worth noting that the same questions can be raised regarding many other types of nonprofits, including cultural organizations such as museums, organizations which conduct research, and religious organizations (depending on their activities). "Eds and meds," however, have become focus points for PILOTs because of their large physical presence. As a purely practical matter for cities in search of revenue, tax exemption might appear to be, at least in part, negotiable. Brody's research (including a bibliography of issues relating to the charitable property-tax exemption) indicates a rising quid-pro-quo rationale, under which charities are expected to show that they provide something to the community in exchange for their exemption. Does the extent to which charities accede to PILOT requests signal their acceptance of this view—and thus perhaps reflect a shifting balance of power between nonprofits and government—or, rather their willingness to be "good community citizens" as part of their charitable purposes? Or both?

The Current Landscape for the Property-Tax Exemption

Joseph Cordes, professor of economics and Director of the School of Public Policy and Public Administration at the George Washington University, took a closer look at the numbers behind the nonprofit property tax exemption—who benefits, who pays, and how much. The nonprofit organizations which benefit the most from property-tax exemptions are obviously the ones owning the most real estate. Cordes found that the data provided by states on this topic are limited, and thus he also consulted digitized IRS 990 returns maintained by the National Center on Charitable Statistics.

He found that only about half of nonprofits report owning any real property, with less than a third owning property worth over $100,000, and about a fifth over $500,000. The organizations most likely to own property are large and well-established, and provide goods/services that are land-intensive (such as hospitals, higher educational institutions, and housing-related nonprofits; his data did not include religious organizations). Larger organizations receive the most in absolute terms. However, smaller organizations might actually find the exemption of

greater relative importance to them, being worth a larger share of their lesser revenues. The Boston PILOT taskforce (looking at hospitals and universities) found that the exemption could be worth approximately 1-10 percent of the organization's total revenue, which would be a huge marginal adjustment for charities.



Source: National Center for Charitable Statistics, Digitized 990 Data, 2012. Joseph Cordes. Presentation on "The Nonprofit Property Tax Exemption: Who Benefits, Who Pays, and by How Much?" for The Urban Institute's conference on "State and Local Budget Pressures: The Charitable Property-Tax Exemption and PILOTs," on May 21, 2012.

Additionally, Cordes attempted to calculate how the presence of exempt nonprofit organizations would increase the property-tax rate for everyone else. Cordes calculated a range of values, hovering around one percent. The actual effects of the exemption are more subtle, as this could include the impact of government revenue shortfalls. Finally, Cordes laid out some policy options, suggesting that if we look at the charitable property-tax exemption as a subsidy, then we should design it accordingly. The current exemption favors certain types of nonprofits but not others, notably those charities that do not require highly taxable property to operate or lease the real estate they occupy.

Thomas Longoria, associate professor of political science at Texas State University, examined public perceptions of nonprofit organizations as a variable for municipalities to use or consider in requesting PILOTs. Longoria reasoned that local government officials theoretically would consider public opinion of nonprofits before asking for PILOTs, and that a positive opinion would make them less likely to do so. Using data from a 2008 Government Finance Officers Association (GFOA) survey, he found that officials' perceptions of political and administrative costs is correlated with whether they requested or considered requesting a PILOT. Political costs were considered by the majority to be heavier than administrative costs, likely influenced by a broad community of support for the exemption. These results show that perceptions matter in influencing the behavior of local governments.

Rick Cohen, national correspondent at *Nonprofit Quarterly*, discussed trends in media coverage of PILOTs. His experience found that the public is usually sympathetic to charitable organizations, but does not always extend this sympathy to large nonprofits with significant assets. An important issue is whether people perceive the organization in question as being charitable: the public views a museum differently from a soup kitchen. He also found that support for the exemption for religious organizations is waning. As for the city governments themselves, the issue is less about charity and more about obtaining money by any means. For this reason, other nonprofit funding, such as grants, is also beginning to shrink. Cohen found that PILOT requests are strategically targeted at organizations that tend to offer benefits only to certain groups and not to the community as a whole. He also found that smaller nonprofits are still affected, despite receiving less media attention. Organizations needing to interact with the government are more vulnerable, leading to accusations that nonprofits "buy" certain permits or permissions through PILOTs, which could be seen as bribery or extortion, depending on the situation. By hearsay there may be some truth to these claims: Cohen cited a letter from an

animal rescue group that was required to pay PILOTs in order to keep their adoption permits. Nonprofits in turn have attempted to adapt and make themselves useful to local governments or help with their fiscal problems.

Hospitals and Universities

Nonprofit hospitals, colleges, and universities have become targets in the debate over the nonprofit property-tax exemption and PILOTs. Both types of organizations are large land owners and have less of a "charitable" image.

Woods Bowman, economist and Professor of Public Services Management at DePaul University in Chicago, presented his research into the nonprofit tax exemption for hospitals. Bowman highlighted that the property tax is different from other taxes in that the government recalculates the tax every year to generate the target amount of revenue. This is the only tax where the money to be collected is fixed and the rate itself changes to raise it, meaning that exemptions do not necessarily reduce property tax revenue. Instead they tend to raise tax rates on others, which is, of course, unpopular.

A possible solution would be to eliminate exempt status for hospitals, but this could have negative effects on the quality of care; loss of exemption might lead nonprofit hospitals to convert to for-profit status, and some studies indicate that nonprofit hospitals perform better than for-profit hospitals. (This is not a universal conclusion so the potential change is difficult to predict.) Eliminating the exemption would be unlikely to decrease the activity of hospitals but would raise their costs.

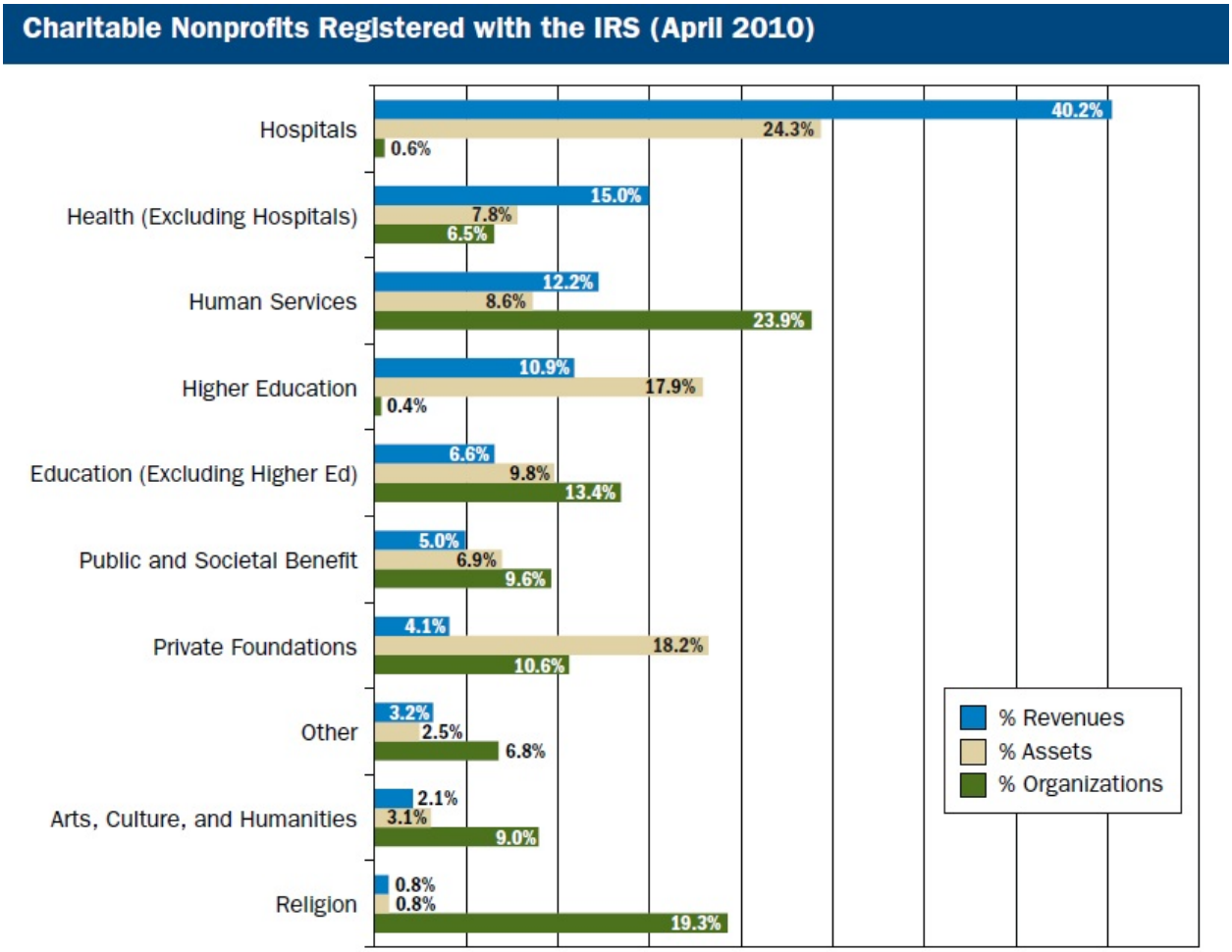
In Bowman's opinion, PILOTs commercialize charity, do not apply to nonprofits equally, lack transparency, and do not raise much money. Possible alternatives to both the status quo and PILOTs are: (1) eliminate eligibility for nonprofit status, which was the policy response to Blue Cross and Blue Shield, (2) eliminate the exemption, (3) levy tax but give tax credits for charitable contributions received, (4) levy tax but give tax credits for charity care given to members of the community, or (5) assess impact fees for future expansion and renovation. Bowman pointed out that eliminating nonprofit status or tax exemption is likely to change health care delivery in ways that would be hard to predict. He added that tax credits should logically apply to all hospital, including for-profits. (See Illinois legislation in Brody's bibliography.) Bowman prefers the last option.

Finally, even if we maintain the status quo, Bowman argues that the effect of hospitals' property-tax exemption on taxpayers is much less than people think. Removing property from the tax rolls lowers property values, but this "windfall loss" to current owners benefits the next generation through a lower cost for property. (By the same token, removing exemption for hospitals should be capitalized into higher prices for homesellers.) For this reason, Bowman proposes the imposition of "impact fees" as a one-time fee on nonprofits when they purchase property and remove it from tax rolls, to compensate taxpayers.

Keith Hearle, Founder and President of Verité Healthcare Consulting, LLC, also discussed the property tax exemption and hospitals, drawing on his own experience working with nonprofit hospitals. After seeing studies showing that nonprofit hospitals operated similar to for-profit hospitals, the Catholic Health Association became concerned that the current reporting system is inadequate. Hearle worked with them to develop a new system of reporting, that included variables such as charity care, losses on Medicaid, community health improvement services, education and research, and donations by the hospital to community organizations (such as local clinics). Nonprofit hospitals should show how they respond to local needs by improving local access to care, advancing health knowledge through research, and reducing government burden. This echoed sentiments expressed earlier

in the day: simply being a nonprofit was no longer enough for governments to be willing to afford tax-exempt status. Instead, the new rationale rests on benefits provided to the local community, which then raises the question of what share of activity could "reasonably" go to the local community. A few states have even considered setting a legal threshold, as in an early proposal in Illinois where a would-be exempt hospital must devote eight percent of its expenses to charity care. Hearle also voiced some of the qualms nonprofit hospitals have about PILOTs, including that they pull money from healthcare into a general operating fund for the government, thus decreasing money spent on public health.

Matt Hamill, Senior Vice President of the National Association of College and University Business Officers tackled the second topic of the colleges and universities panel. Higher educational institutions often operate as a community within a community, which has both upsides and downsides for the city they reside in. Possible benefits from a local college or university include stability, jobs, attracting diverse students, bringing in money from students and faculty, hosting cultural and sporting events, partnering with K-12 education, and supporting the local economy. Hamill also challenged the notion that colleges and universities "owed" the government money for property-tax funded government services,



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noting that these institutions often maintain their own roads and sidewalks, provide their own security (campus security jurisdiction sometimes extends beyond campus to student housing), and operate transportation services. This ties in with the "sovereignty" argument for applying the property-tax exemption to colleges and universities. Hamill reasoned that in the current budget environment politicians tend to focus on the negatives with local nonprofit colleges and universities instead of taking a global perspective on what role they play in the community.

Designing a PILOT Program

Whether PILOTs are a justifiable or optimal resolution is still debated, but not all PILOT programs are created equal. If a city, state, or locality is attempting to use PILOTs, the program should be well-designed, adhere to standards of fairness, and successfully induce cooperation from nonprofits in order to collect revenue. One of the major topics of the conference was what a well-designed PILOT program would look like.

Daphne Kenyon, economist and visiting fellow at the Lincoln Institute of Land Policy, presented research on this topic developed with Adam Langley, research analyst in the Lincoln Institute's Department of Valuation and Taxation. Their study had to wrestle with the initial problem of defining PILOTs, since (as previously mentioned) the use of "PILOTs" and particularly the term "taxes" is sensitive for nonprofits. The definition settled upon in the study included all voluntary payments made by nonprofits to municipalities as a substitute for property taxes, regardless of whether they were called "PILOTs."

Kenyon described three forces driving recent interest in PILOTs: revenue pressure on state and local governments, increasing scrutiny of nonprofits, and an anti-tax environment. The survey in her report found that 154 jurisdictions in 27 states have received PILOTs, which were most common in the northeast, particularly Massachusetts where 85 jurisdictions with PILOTs were identified.

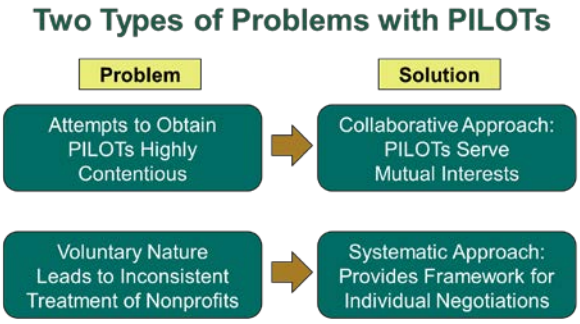
PILOTs almost always result from spontaneous requests for money rather than a policy, and thus inevitably lead to inconsistent treatment of nonprofits. For this reason, Kenyon favored a collaborative approach to PILOTs, drawing from the city of Boston's example of a carefully designed PILOT program. She further qualified that not all local governments should use PILOTs—factors such as the presence of

City	Year	PILOT Revenue ($)	City Budget ($ Millions)	Property Tax ($ Millions)	PILOTs as % City Budget	PILOTs as % Property Tax
Baltimore, MD	FY11	5,400,000	2,936.0	765.7	0.18	0.71
Boston, MA	FY10	17,432,359	2,394.0	1,528.7	0.73	1.14
Bristol, RI	FY09	181,852	43.8	32.5	0.41	0.56
Cambridge, MA	FY08	4,508,000	466.7	238.7	0.97	1.89
Lebanon, NH	FY10	1,280,085	42.3	17.2	3.03	7.43
New Haven, CT	FY10	7,500,000	648.6	206.8	1.16	3.63
Pittsburgh, PA	FY11	2,800,000	507.8	130.6	0.55	2.14
Princeton Borough, NJ	FY10	1,180,496	24.7	10.4	4.78	11.37
Providence, RI	FY10	3,686,701	444.5	284.5	0.83	1.30
Worcester, MA	FY11	590,000	506.1	215.2	0.12	0.27

Source: Authors' research. Daphne A. Kenyon and Adam H. Langley. 2011. "The Property Tax Exemption for Nonprofits and Revenue Implications for Cities." Washington, DC: The Urban Institute. http://www.urban.org/publications/412460.html

significant property owned by nonprofits, and the degree to which the government relies on property tax should be taken into account. Systematic PILOT programs work best in communities with a large number of nonprofits and a good relationship between nonprofits and the government. Kenyon warned that nonprofits could also feel threatened by a systematic approach, as this could be seen as mandating payments.

In addition, Kenyon described different ways to decide which nonprofits to solicit PILOTs from: using a threshold of property values or annual revenues, creating a list of general principles and soliciting those nonprofits who did not meet these standards, or simply including all nonprofits. She additionally noted that nonprofits are more likely to be willing to pay PILOTs if the funds are earmarked for a particular purpose that the nonprofit could see as having positive benefit, instead of just for the city's general operating fund. Kenyon suggested that a positive relationship with nonprofits to pursue mutual benefits is more desirable than focusing only on raising revenue for the municipality.



Source: Daphne Kenyon. Presentation on "Payments in Lieu of Taxes: Balancing Municipal and Nonprofit Interests" for The Urban Institute's conference on "State and Local Budget Pressures: The Charitable Property-Tax Exemption and PILOTS," May 21, 2012.

Ron Rakow, Commissioner of the City of Boston Assessing Department, described his personal experience as a member of the Boston Mayor's PILOT Task Force. Boston has had a PILOT program since 1925, perhaps due to an unusually large non-profit sector. The recent redesign by the Task Force was compatible with many recommendations concerning PILOT programs mentioned earlier: it included a broad range of representatives from nonprofit institutions, labor, the business community, community groups, and the government; developed a methodology for valuing community benefits and a standard level of contributions; and sought to create a long-term, sustainable relationship with the city's nonprofit institutions. The process was extensive, lasting two years, and focused heavily on being transparent and open to the public.

The Task Force recommended that: PILOTS would remain voluntary; all nonprofits would be asked to contribute except those with total property value less than $15 million; PILOTs would be calculated based on 25 percent of what the nonprofit's property would yield if taxable; a dollar-for-dollar credit would be offered for SILOTs but would be limited to 50 percent of the payment; institutions would receive a credit on their PILOT in the amount of real estate taxes paid on properties that would ordinarily qualify for a tax exemption based on use; and the new program would be gradually phased in over a five-year period. Qualifying SILOTs should directly benefit Boston residents; support the city's mission and priorities; offer ways the city and institution could collaborate to meet shared goals; and be quantifiable.

Overall, the new PILOT program was considered a success; for the first half of fiscal year 2012, the city received $9.9 million in payments, 92 percent of the $10.8 million requested, and a 24 percent increase over what would have been paid under the prior PILOT program.

Rakow highlighted a few lessons from the program. First, nonprofit organizations vastly prefer to give services that benefit the community over giving cash; thus, Boston's preference for cash might need to yield by increasing the 50-

percent credit limit on SILOTs. Second, museums and other cultural institutions face a different economic model than hospitals and universities, requiring different treatment. Finally, a successful PILOT program requires time, effort, commitment, and a strong long-term relationship with nonprofit organizations.

On the Ground with PILOTs: Arguments For and Against

Opinions on PILOTs were divided among presenters. Not surprisingly, Ron Rakow (representing the Boston PILOT Task Force) argued in favor of PILOTs, while the representatives of nonprofits, G. Reynolds Clark and David Thompson, argued against them. The Lincoln Institute of Land Policy holds no official opinion on PILOTs; Lincoln researchers Kenyon and Langley weighed both sides of the issue and ended up "cautiously in favor" of PILOTs, with caveats including the necessity to work with the community and consider potential problems.

Arguments in favor of PILOTs include the need for governments to obtain revenue, fair payment by nonprofits, and addressing unfairness issues with exemption. As mentioned earlier, nonprofits may provide national or international services but place all the burden of their tax-exempt status on the local community. Negative effects include potential decrease in charitable activity, the unreliable and relatively small amounts of revenue generated, the secretive and inefficient nature of PILOTs, and the horizontal and vertical inequities. Inequities in PILOTS are particularly difficult to counteract because PILOTs are voluntary.

PILOT Contributions to Municipal Revenues

City	Revenue Generated ($)	City Budget ($)	Year	Revenue Generated as Share of Total Budget (%)
Baltimore, MD	5,000,000	1,493,018,000	FY2001	0.33
Boston, MA	15,685,743	2,380,000,000	FY2009	0.66
Bristol, RI	2,100,000	44,017,031	FY2009	4.77
Butler, PA	15,000	8,442,098	FY2010	0.18
Cambridge, MA	4,508,000	466,749,012	FY2008	0.97
Detroit, MI	4,160,000	2,460,000,000	FY1998	0.17
Lebanon, NH	1,280,085	42,312,510	FY2010	3.03
Minneapolis, MN	158,962	1,400,000,000	FY2009	0.01
New Haven, CT	7,500,000	648,585,765	FY2010	1.16
Pittsburgh, PA	4,416,667	496,611,848	FY2007	0.89
Providence, RI	2,500,000	444,544,123	FY2010	0.56

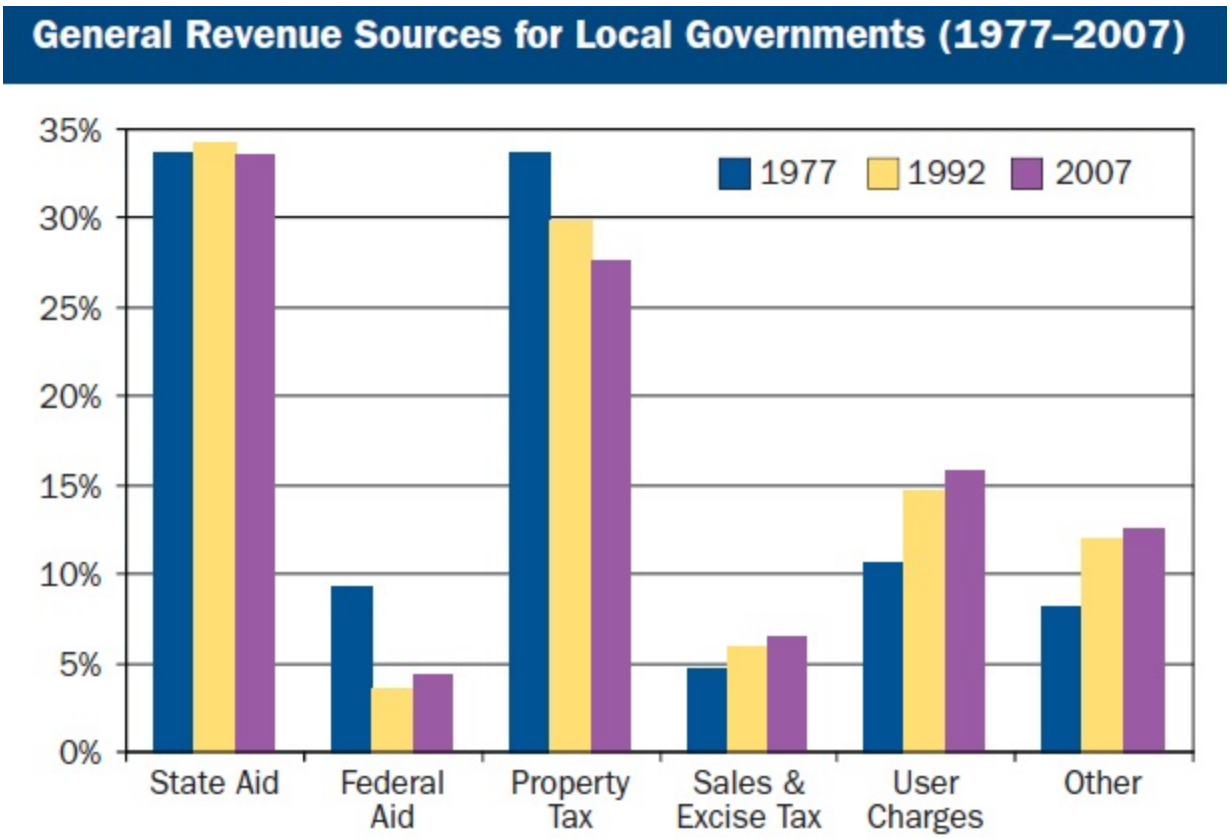
Source: Daphne A. Kenyon and Adam H. Langley. 2010. *Payments in Lieu of Taxes: Balancing Municipal and Nonprofit Interests*. Cambridge: Lincoln Institute of Land Policy. https://www.lincolninst.edu/pubs/dl/1853_1174_PILOTs%20PFR%20final.pdf.

G. Reynolds Clark, Vice Chancellor for Community Initiatives and Chief of Staff in the Office of the Chancellor at the University of Pittsburgh, spoke on behalf of the Pittsburgh Public Service Fund. He described how Pittsburgh's brush with bankruptcy in the early 2000s led then-Mayor Thomas J. Murphy to call for financial support from the nonprofit community. A large portion of the city's property is exempt from taxation, most owned by the government and 15 percent owned nonprofit organizations (3.5 percent by the University of Pittsburgh).

During those challenging years, the city initially denied the University a building permit, a move seen designed to increase pressure on the University to make PILOTs. Following extensive negotiation with the mayor and city council, in 2006 a coalition of more than a hundred nonprofit organizations calling itself the Pittsburgh Public Service Fund committed itself—as a group—to make three annual gifts to the city totaling over $13 million. Negotiations in subsequent years proved difficult, though, and the amount of the Fund's gifts fell. Most recently, the city council, in conflict with current Mayor Luke Ravenstahl, wanted the nonprofit community to commit to a permanent funding stream, a demand the Fund rejected, and even the city could not agree on a strategy. Despite the willingness of nonprofits to make contributions, no agreement was reached. The mayor responded with a tuition tax proposal, which failed in the face of a public outcry and massive protest from students.

After much continued negotiation, in May 2012 the city and the Public Service Fund entered into an agreement to cover the remaining two years of the mayor's term. The agreement specifically does not use the word "PILOT" to avoid suggesting that these transfers are in lieu of taxes that they should be paying. The agreement specifically declares that the city cannot ask for any fees or taxes, and that no promises are made to continue making payments beyond two years. As a caution from past difficulties, a clause was inserted requiring the city to treat all licenses sought by nonprofits the same as for-profits. Clark predicted that only about 30 nonprofits would be willing to make payments to the Fund because Pittsburgh's budget situation had improved. Clark's description of this experience highlighted numerous difficulties posed as theoretical problems in earlier presentations: the use of pressure tactics by government, the principle of whether nonprofits should make payments labeled as taxes, the importance of public opinion to both nonprofits and the government, and whether PILOTs are to be permanent or temporary.

Ron Rakow, Commissioner of the City of Boston Assessing Department, argued in favor of PILOTs from the opposite perspective after working with representatives from nonprofit organizations on Boston's PILOT task force. Rakow began by highlighting that nonprofits in Boston play an important role in the city's economy as employers, as providers of care and services to the most vulnerable, and as centers of education, healthcare, medical research, and culture—but these benefits are spread beyond the borders of Boston, which bears the costs of their property-tax exemption. In contrast to previous presenters, Rakow argued that this problem had existed even before the recent fiscal crisis. Some nonprofits in Boston, for example, have been making payments in lieu of taxes for decades. Tax force findings indicated that if taxable, educational and medical tax-exempt property would have generated $347.9 million annually for Boston. In contrast, during Boston's pre-revision PILOT program, payments from educational and medical institutions were $14.5 million in fiscal year 2009, 4.2 percent the taxable amount.



Source: Daphne A. Kenyon and Adam H. Langley. 2010. *Payments in Lieu of Taxes: Balancing Municipal and Nonprofit Interests*. Cambridge: Lincoln Institute of Land Policy. https://www.lincolninst.edu/pubs/dl/1853_1174_PILOTs%20PFR%20final.pdf.

Our final presenter, David Thompson, Vice President of Public Policy for the National Council of Nonprofits, presented a strong argument against PILOTs and much of the preceding analysis. Thompson took issue with efforts to treat a PILOTs discussion as purely a policy debate when they really amount to political calculations by elected officials on how much they need to balance their own budgets. As examples, he noted that the mayors of Boston, New Orleans, and Chicago all attempted to divert nonprofit resources away from missions, but each politician sought a different method—PILOTs in Boston, taxes in New Orleans, and fees in Chicago—and expressly renounced the alternative forms of diversion as inappropriate for their communities.

Thompson countered the assertion that charitable nonprofits are not paying their fair share by emphasizing that government already struck a deal—the social compact—that grants nonprofits tax exemption in return for dedicating their work to the public good and giving up their rights to profit, privacy, and politics. Unlike businesses and to some extent governments, charitable nonprofits must invest all surplus funds back into their communities, must open their books through IRS Form 990 and other disclosures, and may not support candidates against the politicians that are making aggressive, yet legally unsupportable, demands for payments.

Thompson gave specific advice to nonprofits that receive requests for PILOTs. First, they must

make sure that the "ask" is truly an "ask," and not a veiled threat of retaliation, such as through public shaming, denied zoning variances, or calls for constitutional or statutory changes. Second, the form of the "ask" matters. Thompson said that nonprofits should walk away if local policymakers open the dialogue with factual misrepresentations and assertions that nonprofit aren't already contributing to the community and aren't already reducing the burden on government and making the budget gap smaller. Third, every nonprofit should ensure that the government seeking revenue is a good and honorable business partner. A nonprofit should not consider payments to a city that owes it money or routinely pays late for work previously performed under government contracts. (See research by The Urban Institute and the National Council of Nonprofits for the scope and details of this problem.) Finally, he urged nonprofits to insist on a seat at the table for addressing not merely the short-term fiscal problems that give rise to demands for PILOTs, but to commit to confronting—collaboratively—the systemic problems that the community is facing, and that nonprofits and government officials are all committed to resolving.

Finally, Thompson concluded with the point that characterized the prevailing view among charitable nonprofits, i.e., that they contribute every day to the wellbeing and improvement of their communities, and that while it is valid for governments to ask for help in difficult times since nonprofits exist to solve problems in their communities, governments cannot demand it.

The variety of opinions among the third panel led to an intense discussion. Rakow defended Boston's PILOT program, arguing that different types of nonprofits (colleges versus soup kitchens) deserve to be treated differently, and that these differences had developed since the inception of the exemption, requiring changes to previous policy. Clark addressed the point that nonprofits use city services by describing how the University of Pittsburgh provides its own services—including its own police force, which covers the entire area of Oakland around the University and often responds to non-campus related calls. He also expressed a concern that the University of Pittsburgh, after making payments to the city, had attracted the attention of county governments, which also began talking about seeking payments. Clark said, "Once one camel gets under the tent, other camels are likely to follow."

The issue of the property-tax exemption for nonprofit organizations and payments in lieu of taxes has expanded beyond temporarily cash-strapped cities asking nonprofits for money. This issue has led state and local governments to reexamine their relationship with local nonprofit organizations. This in turn leads to academic questions about the definition of a charity; who benefits from the nonprofit property-tax exemption; and the best solutions to the current situation. The discussion at the Urban Institute's conference on "State and Local Budget Pressures: The Charitable Property-Tax Exemption and PILOTs" covered a range of issues and a variety of perspectives on an important topic that promises to remain significant to municipalities and nonprofits across the country.

Related reading

Event material and audio for "State and Local Budget Pressures: The Charitable Property-Tax Exemption and PILOTs" are available at http://www.urban.org/taxandcharities/events.cfm.

Bob Bauder, *Pittsburgh Expects to Get $3 Million from Its Nonprofits*, Pittsburgh Tribune-Review. March 23, 2012.

Woods Bowman. 2002. "Impact Fees: an Alternative to PILOTs," in Evelyn Brody (ed.), *Property Tax Exemption for Charities: Mapping the Battlefield*. Washington DC: The Urban Institute.

Evelyn Brody. 2012. "Selected Recent Bibliography on Property-Tax Exemption for Charities and Payments in Lieu of Taxes (PILOTs)." Washington, DC: The Urban Institute.

Daphne A. Kenyon and Adam H. Langley. 2011. "The Property Tax Exemption for Nonprofits and Revenue Implications for Cities." Washington, DC: The Urban Institute.

Daphne A. Kenyon and Adam H. Langley. 2010. *Payments in Lieu of Taxes: Balancing Municipal and Nonprofit Interests*. Cambridge: Lincoln Institute of Land Policy.

Massachusetts Council of Human Service Providers, Inc. 2012. *PILOT Bills Sent to "Study"* March 13, 2012.

Joe Smydo. 2012. "Pittsburgh City Council Approves Nonprofit Contribution." *Pittsburgh Post-Gazette*. July 3, 2012.

Worcester Mayor Michael V. O'Brien. 2011. *Strategies for a Workable PILOT Program in Your Community*, presentation to annual meeting of the Massachusetts Municipal Association, January 21, 2011.

Acknowledgments

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This publication is part of the Urban Institute's Tax Policy and Charities project. The purpose of this project is to analyze the many interactions between the tax system and the charitable sector, with special emphasis on the ongoing fiscal debates at both the federal and state levels. For further information and related publications, see our web site at http://www.urban.org/taxandcharities/index.cfm.

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