



NATIONAL COUNCIL OF NONPROFITS

National voice. State focus. Local impact.

2015 - 2016

The Years in ^P Review

“What’s past is prologue,” William Shakespeare and the National Archives building tell us. If so, then the public policy threats and opportunities that challenged charitable nonprofits in 2015 forecast what’s ahead in 2016. The network of the National Council of Nonprofits directly advocates at the local, state, and federal levels. Based on our network’s nationwide experiences last year, we anticipate action on the following dozen issue areas, and more, in the year ahead.

Clear and Present Dangers

1. Taxes, Fees, PILOTs: Nationwide, we see a consistent trend of state and local governments, eager for new revenue, trying to take resources from tax-exempt nonprofits by seeking to impose taxes and fees, or demanding payments in lieu of taxes (PILOTs).

The [Maine](#) and [North Carolina](#) Legislatures considered several proposals to grant cities greater power to assess nonprofits new taxes or fees or to create a task force to study the issues; none of the bills passed. [North Carolina](#) lawmakers also narrowly rejected a measure that would have capped the value of the sales tax exemption for larger nonprofits, while [Alabama](#) imposed new registration requirements on nonprofits exempt from the state sales tax. In [Philadelphia](#), the newly elected Mayor promised new spending on the campaign trail that he wants to fund by demanding “voluntary” PILOTs from local nonprofits.

It is essential that nonprofits that receive tax exemptions recognize that the exemption is part of the social compact between governments and nonprofits and that the compact is a relationship that must be maintained. *Can your nonprofit afford to take \$15,000 - \$100,000 away from your mission every year to instead pay new taxes, fees, or PILOTs to your state, county, city, and/or school district? Is your board prepared to raise that much more money each year?*

2. Challenges to Nonprofit Property Tax

Exemptions: Property owned and operated by nonprofits for charitable purposes is exempt from property taxes in all 50 states. Threats to property tax exemptions come in many forms from all branches of government: state and local legislative bodies trying to rewrite the rules, executive branch tax assessors seeking to reclassify exempt property, and judges trying to legislate from the bench. For instance, last June a New Jersey tax court judge gained national attention when he [revoked the](#)

[long-standing property tax exemption](#) of a major hospital, ruling that in his view nonprofit hospitals of today do not look like charity hospitals of the past and thus no longer deserved tax exempt status. He expressly challenged the [New Jersey Legislature](#) to change the property tax law if it disagreed with him. The Legislature is in the process of doing just that – disagreeing with the judge – by considering legislation that reaffirms the property tax exemption for nonprofit hospitals, while also imposing new fees on the health care institutions that would generate additional revenue for communities in which the hospitals operate. The bill is on a fast-track to passage in 2016, but action reportedly could be slowed because New Jersey municipalities are demanding higher fees than the legislation would generate.

While the judge’s decision in New Jersey was unprecedented, reconsideration of the property tax exemption is becoming common across the country. In early 2015, [Maine’s](#) Governor made national news by proposing the repeal of tax exemptions for some nonprofit properties; a proposal the Legislature soundly rejected. But, [Connecticut](#) granted municipalities the power to tax certain new properties acquired by a nonprofit university or specific hospital systems. [Pennsylvania](#) continues to struggle with a 2012 Commonwealth Supreme Court decision on the standards for property tax exemption, leading to legislation proposing a constitutional amendment. [Montana](#) is now requiring nonprofit property owners to reapply for their exemption(s) early this year. [Montana](#), [Wyoming](#), and other states continue to review tax exemptions and the trade-offs of community benefits.

Is your nonprofit prepared to make the case for how the community in which you work is better off because of your organization?

3. Fiscal Challenges and Budget Gimmicks: When politicians delay substantive action to bicker and posture on fiscal matters, their communities and local nonprofits suffer the consequences. This pattern continues into the New Year in both [Illinois](#) and [Pennsylvania](#), where neither state has enacted a budget for half a year, forcing nonprofits there to bear increased, uncompensated workloads and suffer substantially delayed reimbursements. The same often is true in the case of budget shortfalls, such as in [Alaska](#), [Connecticut and Delaware](#), [Kansas](#), [Louisiana](#), and [Massachusetts](#). Fiscal “crises” also arise as the result of budget gimmicks, such as spending caps and so-called taxpayer bill of rights (TABOR) amendments to state constitutions that limit the power of legislators to address current needs by restricting state spending growth based on arbitrary formulae. A spending cap that has guided budget decisions in [Connecticut](#) since the early 1990s was recently deemed unenforceable in a formal opinion issued by the state Attorney General. This past November, voters in [Colorado](#) had to expressly instruct the Legislature to retain \$66 million in marijuana sales tax receipts because the state revenues grew faster than that state’s TABOR formula – the rate of inflation and population growth. On the other hand, [Washington State](#) voters approved a new budget gimmick that lowers the state sales tax unless the Legislature gives voters the chance to vote on a constitutional amendment that would impose a two-thirds super-majority requirement for laws or other ballot measures that would raise taxes. The next session of the [North Carolina](#) Legislature is expected to take up a TABOR bill.

4. Attempts to Limit Charitable Giving Incentives: As in 2013, nonprofits across the country last year confronted legislatures questioning the value of tax deductions for donations to charitable works. Legislators in [Hawai`i](#), [Kansas](#), [Maine](#), [North Carolina](#), and [Vermont](#) mounted efforts to cap, modify, or repeal state charitable giving incentives, whether motivated by a need to close a budget gap or to generate revenue to pay for politically popular tax cuts. With the exception of Maine, where the giving incentive was the only loss in a long list of anti-nonprofit bills, the nonprofit communities were able to defeat these proposals by demonstrating that state charitable giving incentives are essential to the wellbeing of the citizens of the states and that repeal of the incentives is not cost effective.

Will 2016 present similar budget gap/tax cut demands that put charitable deductions at risk, and will local nonprofits rally together to present a united front in support of the communities they serve?

5. Nonprofit Independence: The Syrian refugee crisis at the end of 2015 was only one example of states seeking to treat charitable nonprofits as subsidiaries of government, and not as independent community-based problem solvers dedicated to the public good. The

Governors of [Indiana](#), [Texas](#), and other states ultimately were forced to back down from their demands that nonprofits not provide humanitarian assistance in relocating refugee families into their states. Sadly, discriminatory treatment of nonprofit contractors is common. [New York’s Legislature](#) tried to impose workplace violence procedures on nonprofit, but not on for-profit, contractors; the Governor vetoed the bill. [New York City](#) considered, but has so far rejected, a call to impose politician-style financial disclosure requirements on some nonprofits (but not on for-profits) that are paid to provide services on behalf of local government. The [New Hampshire](#) Legislature perennially considers a bill to require mandatory board training for nonprofits receiving a certain amount of “publicly supported funds,” without proposing equal treatment of for-profits. [Louisiana](#) actually passed legislation invading the boardroom of a nonprofit domestic violence coalition by mandating internal procedures and imposing a “tell your legislator” penalty that invites additional intrusion into internal operations.

What can nonprofits do to disabuse policymakers of the notion that charitable nonprofits are somehow subsidiaries of government or lack the necessary expertise and acumen to operate without overbearing oversight of elected officials? What will it take for government officials to recognize that nonprofits that provide services on behalf of governments under contracts and grants should be seen as more akin to for-profit roadbuilders and suppliers and less like government agencies and instrumentalities?

Opportunities Abound

6. Payment for Nonprofit Indirect Costs: The “overhead myth” may not yet be dead in private philanthropy, but nonprofits across the country can expect 2016 to be a year in which their organizations can earn due respect and reimbursement for their indirect costs under government contracts and grants. Throughout this past year, nonprofits and governments learned of the game-changing impact of the federal grants reforms known as the [Uniform Guidance](#). Among other things, the new rules expressly require pass-through entities using any federal funds (typically states and local governments, as well as some larger nonprofits) and federal departments/agencies to reimburse a nonprofit for the reasonable indirect costs it incurs in performing services on behalf of governments. [Illinois](#) was the first state to expressly incorporate the cost principles and indirect cost mandate into state procurement law. In November, [Los Angeles County](#) modeled the way for other local jurisdictions to begin implementing new federal rules and improve collaboration between governments, nonprofits, and foundations by directing County staff to ensure that nonprofits are more properly paid for the services that the county contracts with them to provide. Major systems changes take time for the

cultures of nonprofits, foundations, and governments to catch up; 2016 promises to be a big year for nonprofits in this regard.

What can your nonprofit or foundation do to take advantage of the Uniform Guidance and spread the word to others? What steps can state and local governments take now to fully implement the new rules and secure their promise of greater efficiency, reduced bureaucratic waste, and fair treatment? The answer to these questions and more can be found at the [National Council of Nonprofits website](#).

7. Reforming the Government-Nonprofit Contracting & Grantmaking Process:

The nonprofit sector as a whole (although not all nonprofits) earns 32% of its revenue by performing government contracts and grants. But, [as documented in the last several years](#), the related “systems” for government-nonprofit grants/contracts are largely outdated and unnecessarily burdensome for all parties. So it’s exciting to see legislators in North Carolina follow the lead of [Illinois](#), [New Jersey](#), and others in considering measures to streamline government-nonprofit contracting. A North Carolina bill seeks to provide relief to nonprofits by [preventing duplicative monitoring](#) of nationally-accredited nonprofits providing mental health, developmental disability, and substance abuse services through state grants and contracts. Lawmakers there could also call for a comprehensive [study of bureaucratic red tape](#) that nonprofits experience when they provide public services through state grants and contracts. Earlier in 2015, the Kentucky Legislature voted unanimously to create the [Government Nonprofit Contracting Task Force](#), with multiple seats at the table for nonprofits, for the purpose of identifying ways to eliminate redundant, unreasonable, or unnecessary laws, regulations, or policies that negatively affect nonprofit government contracting or funding. Contracting and grantmaking reforms are expected to be high on policy agendas in 2016 as state and local governments, preferably in collaboration with nonprofits, revise statutes, policies, and procedures to implement grants reforms in the federally-mandated [Uniform Guidance](#).

8. Creating New Giving Incentives: In 2015, nonprofits not only drove back most efforts to curb charitable giving incentives (see number 4, above), but they promoted new ones as well. And that momentum continues. [Colorado](#) is considering the creation of a state tax credit to promote endowments at nonprofits and community foundations. [Indiana](#) passed a similar proposal last year, limited only to community foundations. [Connecticut](#) increased the amount of tax credits that may be donated by businesses to support

neighborhood assistance, and [Minnesota](#) considered a bill to create an early education tax credit for donations to “qualified foundations.”

Are there opportunities in your state to expand giving to the work of charitable nonprofits in communities?

9. Stand for Your Mission through Everyday Advocacy:

Opportunities in the policy arena abound – every day – when individuals committed to the mission of a nonprofit ask themselves this simple question: *Who can I talk to today to advance our mission?* Sometimes the opportunity is simply to explain how a policy – whether set by a business, government, or others – gets in the way of the greater good. Sometimes the need arises to promote the mission by speaking up against bad ideas (see numbers 1-5, above). Reports, such as these from [California](#), [Maine](#), and [Utah](#), provide excellent data to demonstrate the economic impact of the nonprofit community at large. A very powerful tool for advancing mission is the engagement of boards, as made easy through the [Stand For Your Mission](#) initiative. The campaign, launched in late 2014 and widely distributed last year, is designed to raise awareness – specifically among nonprofit board members – that being an external advocate for the nonprofit’s mission is an [expected role for every board member](#). The tools in the campaign help to unleash the full potential of nonprofit organizations to advance their missions in their local communities by engaging board members more directly as advocates on behalf of their organizations.

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10. Eradicating Ignorance: Let’s face it, with all of the real threats and potential opportunities, the nonprofit community – board members, staff members, advisors, funders, volunteers, vendors, clients, and others – needs to do a better job of explaining to policymakers, news media, and the public what nonprofits do and how nonprofits operate. Proof that ignorance persists is a trio of bills from 2015. Legislators in [South Carolina](#) seriously considered “protecting” for-profit veterinarians from the charitable work of nonprofit animal shelters by prohibiting mobile nonprofit clinics from operating within seven miles of a for-profit animal hospital. The [Kansas](#) Legislature almost passed a bill aimed at limiting the power of public-sector unions that would have blocked state employees from contributing to charitable nonprofits through payroll deductions, a proposal which could have resulted in a \$1.5 million reduction in donations to United Way in the state. But the worst bill of the year actually passed, in [Louisiana](#), where legislators targeted one nonprofit for extraordinary burdens, invading its boardroom and imposing a requirement that it report to individual

legislators if a grievance procedure is instituted against one of their constituent organizations.

What bills will be introduced in 2016 that demonstrate ignorance of nonprofit operations, bias in favor of for-profits, or partisan motivations? And what can nonprofits be doing now (Hint: advocating, telling your story) to educate policymakers and others before a bad idea germinated into legislation?

future contracts and grants through which charitable nonprofits perform services in communities on behalf of governments.

When employment legislation is proposed in your state, will your nonprofit be prepared to make a mission-based analysis of how the measure would affect the people served as well as the ability of the organization to meet operational demands?

Swinging in the Balance

11. Employment Policy Issues: State and local governments are becoming more engaged in debates over employment standards in their communities. More than a dozen major cities, more recently **Los Angeles** and **New York**, have enacted minimum wage hikes that apply to some nonprofit and for-profit employers. The **Governor of New York** is proposing similar phased-in hikes across the state. Washington, DC is considering **universal paid leave** legislation that would impose a new one-percent payroll assessment on private-sector employers – including charitable nonprofits and private foundations – to provide covered employees with up to 16 weeks of paid leave. The nonprofit community typically is not of one mind on specific employment policy legislation because the proposals affect the work of and people served by charitable nonprofits differently, depending on each organization’s mission and focus area. One consistent position, and indeed fundamental fairness, dictates that any changes in government-mandated employment policies should incorporate revisions to existing and

12. New Funding Mechanisms: Interest continues in new funding mechanisms such as social impact bonds (SIB) and pay-for-success (PFS) programs, even as the results have ranged from failure in **New York**, continued hope in **Colorado**, and mixed or disputed findings in **Salt Lake City**. Under a SIB or PFS arrangement, private investors put up the initial money to fund a social intervention or experiment, and the government repays the loan with interest only if pre-determined social outcome targets, or performance measurements, are met. Nonprofits have raised concerns that the focus on performance metrics can actually divert attention away from hard-to-measure, but still promising, policy and program changes, or that metrics chosen for a specific project could be so easy to reach that there is actually no risk to investors, a presumed hallmark of such programs.

*Do new funding mechanisms “look better on paper than in reality” and violate the common-sense adage that “there’s no free lunch,” as **one report recently declared**, or is this a promising concept that is still being beta tested?*



Readers can download a PDF version of this report at www.councilofnonprofits.org/2015-2016-years-in-preview. Stay up-to-date on these, and other, policy issues affecting nonprofits by signing up for *Nonprofit Advocacy Matters* – delivered free to your inbox every other Monday – at www.councilofnonprofits.org/connect.