June 14, 2013

To: Senator Michael J. Rodrigues, Chair
    Representative Jay R. Kaufman, Chair
    Joint Committee on Revenue

From: Michael Weekes, President/CEO

Re: Testimony in opposition to House Bill 2642 and Senate Bill 1308, An Act Relative to payments in lieu of taxation by organizations exempt from the property tax

Chairman Rodrigues, Chairman Kaufman and members of the Joint Committee on Revenue, thank you for the opportunity to submit testimony in opposition to House Bill 2642 and Senate Bill 1308, legislation that would give cities and towns the authority to force nonprofit, tax-exempt organizations operating for the public’s benefit to make payments in lieu of taxes.

As you know, the Providers’ Council is a statewide association of home- and community-based human services organizations that provide an array of services on behalf of the Commonwealth. The Council, the state’s largest human services membership association, feels these bills have the potential to be devastating to both the community-based human services sector in Massachusetts, as well as the state’s most vulnerable residents who turn to this sector to receive essential care.

**Human services nonprofits in Massachusetts**

Nearly all of the organizations in the human services sector are registered as tax-exempt nonprofits that provide community-based care to one-in-ten Massachusetts residents. 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). These organizations, therefore, receive exemptions from income taxes (both federal and state) and local property taxes.

The primary focus of these nonprofit human services organizations is twofold: to care for the state’s most vulnerable residents and to provide a benefit to the public and the communities they serve. The Providers’ Council fully supports federal and state law that through this tax exemption, the value these charitable organizations provide to the community is far greater and more
impactful than any potential tax contributions they could make. These organizations were formed to serve the public good, and they provide essential services on behalf of the Commonwealth of Massachusetts to care for the state’s residents.

Tax-exempt, community-based human services organizations make many contributions, including:

- taking care of residents who are sick, elderly or disadvantaged;
- educating our young people who may be at risk;
- supporting individuals with disabilities;
- caring for those with a mental illness;
- sheltering those experiencing homelessness;
- assisting individuals with a visual or hearing impairment;
- protecting women and children who may be in danger;
- helping our veterans and our nation’s heroes who protect our country; and
- providing residents with services that might otherwise be unavailable but are essential to protect and care for people in our society.

If not for the work of charitable human services nonprofits, communities across the state would need to find different, more costly, and perhaps inefficient solutions to these public issues.

**Problems with these PILOT bills**

The Providers’ Council and its members recognize the revenue issues facing governments at the federal, state and local levels. Most of our state’s nonprofits, particularly human services organizations, also struggle with revenue problems and stagnant state funding; these organizations are often asked to do more with less, which could compromise the level and quality of services nonprofits deliver.

These bills, as proposed here, seek to circumvent state and federal law. They would extract revenue from nonprofits to make a payment to a municipality, masking a “tax” as a fee or a payment in lieu of a tax. There are multiple reasons we feel these bills should not be reported favorably out of the Joint Committee on Revenue.

1. **Nonprofits are tax-exempt entities.** Our nation and our communities have a long-established compact that nonprofits will
serve our most vulnerable residents and contribute to the public good without regard to personal benefit. The trade off is that these organizations are exempt from property taxes. The focus of nonprofits is not in increasing shareholder value but value to the public. Our nation and our local communities are enriched by the value these organizations provide, and in the case of human services organizations, they are our society’s safety net. They should not be weakened by diverting funds to various municipal purposes.

2. **Unclear funding mechanism for PILOT payments.** These bills do not explicitly state how the PILOT payment of 25 percent of “the amount that would be paid if the property were not exempt from taxation” would be paid. This legislation affects all nonprofits, but the Commonwealth of Massachusetts is a significant funding source to many nonprofit human services organizations. Would these nonprofits, which are tax-exempt under both federal and state law, receive a reimbursement for services then redirect to make a payment in lieu of taxes to the municipality? Certainly, they should not be expected to divert dollars from taking care of the most vulnerable residents in the Commonwealth to provide a tax payment to a municipality. Additionally, the people human services providers serve are often in the safety net. It’s unconscionable for providers to charge our clients, consumers, the elderly and children at risk an additional PILOT “fee,” and then deny service to those unable to pay. If we did, they would be without services and without the very purpose of our existence in society – to help our most vulnerable. There is no “safety net” for our human services safety net.

3. **Foundations and other grant-distributing organizations may consider PILOTs a violation of donor intent.** Many human services organizations do private fundraising to diversify their revenue stream and attempt to generate additional dollars to pay for operations. Much of this funding comes from foundations, other charitable organizations and private donors who wish that their money be used to provide services to vulnerable individuals. Expecting human services organizations and other nonprofits to engage in private fundraising to simply pay a PILOT is a violation of donor intent and would most likely distribute funds in a way incongruous with the donors’ desires. Society wants our human services nonprofits focused
on raising funds for essential services rather than complying with an ill-advised “volunteer” payment scheme.

4. **The nonprofit sector is a major job creator, and it would be negatively impacted by PILOTs.** While our sector does not have the highest paying jobs, it does lift many out of poverty and into the workforce. If we diverted already scarce dollars that employ program staff, it would lead to a loss of jobs in the very populations we want to help. Not only would PILOTs create a loss of services, but they would also mean a loss of jobs, as program funding would be diverted to municipal purposes.

**Conclusion**

We ask that you do not give these bills a favorable report. As written, these bills seek to undermine state and federal law and allow municipalities to charge a tax, fee or payment in lieu of taxes in direct violation of M.G.L. Chapter 59, Section 5, Clause 3 and section 501(c)(3) of the internal revenue code.

These bills would pressure nonprofits to make payments in lieu of taxes when the organizations already provide so much more to cities and towns through their social missions. Organizations may be faced with denying our youth a summer job; a person with a disability a job opportunity; a homeless person a bed; or our elderly a meal to name few harmful consequences. In addition, not only would instituting PILOTs thwart a donor’s intent, it could mean job losses in communities that are often struggle to provide them. Human service organizations are located throughout the state and often employ individuals with the greatest barriers to employment.

We hope this committee agrees that the value provided by these organizations far outweighs any potential benefit municipalities would gain through demanding a payment in lieu of taxes and shattering the social compact for which we have worked so long to build.

Thank you for your time and your careful consideration of these potentially damaging proposals that would force demands for payments on our nonprofit, community-based human services sector and harm our sector’s ability to care for clients on behalf of the Commonwealth of Massachusetts. We hope you will recognize and respect the wishes of the nonprofit community and not pass these harmful proposals that seek to extract needed funds from services provided to our state’s most vulnerable residents.