



Background and Evolution of Senate Bill 4

Members of the Pennsylvania General Assembly, led by Senator Mike Brubaker, Chairman of the Senate Finance Committee and Senator Joe Scarnati, President Pro Tempore of the Senate, introduced Senate Bill 4 in the 2013-2014 legislative session. House Democrat Leadership largely opposes this bill. [Click here for voting records.](#)

Senate Bill 4's prime sponsor, Senator Brubaker retired at the end of the 2013-2014 session. Senator Scarnati, the co-prime sponsor, is widely expected to champion this legislation in the 2015-2016 session.

Senate Bill 4 proposes to amend the state Constitution to provide that only the Legislature has the right to determine the qualifications of institutions of "purely public charities." Without the HUP test, Act 55 would be restored as the determinant of whether an organization merits its tax exemptions as a purely public charity.

Senate Bill 4 passed both the House and the Senate in 2013. The Constitution requires that Constitutional amendments must be passed in two consecutive legislative sessions.

If the bill passes next session, it must then go to Pennsylvania voters for approval to amend the Pennsylvania Constitution. This would effectively overrule the *Mesivtah* case and reinstate the more relaxed Act 55 standards for tax exemption.

Impacts of Bill

There are two primary impacts of Senate Bill 4:

1) The HUP test is weakened/removed and the broader Act 55 definition of a purely public charity is reinstated.

HUP Test Criteria:

1. Advances a charitable purpose
2. Donates or renders gratuitously a substantial portion of its services
3. Benefits a substantial and indefinite class of persons who are legitimate subjects of charity
4. Relieves the government of some of its burden
5. Operates entirely free from private profit motive

2) The authority over tax exemption status will rest with the legislature and be removed from the judiciary.

SB4 Arguments

Key criticisms of the bill:

1. Will undermine the power of a municipality to garner revenue from the nonprofit sector because of the ease with which Act 55 is designed and exemption is designated
2. Will increase the likelihood that the designation of a purely public charity/tax exemption will be highly politicized
3. Will remove clarity and consistency to the designation of tax exemption

Proponents of the bill believe:

1. It would relieve the nonprofit sector of justifying tax exemption according to the strict criteria now part of the HUP test
2. Reduce the number of legal challenges

Evolution of SB4

In the spring of 2012, the Pennsylvania Supreme Court revoked the tax exemption for Camp Mesivta, a Jewish summer camp based in Pike County. In their ruling, the Court said that charitable organizations need to meet all five conditions of a “purely public charity” established by its 1985 ruling in *Hospital Unionization Project v. Commonwealth* case. The “HUP” Test.

The Court’s ruling invalidated the broad rules enacted by Act 55 of 1997 and asserted that the determination of charitable status needed to be settled through clarifying the state constitution. In response, the Pennsylvania legislature acted to regain control of determining charitable status by passing SB 4 in June 2013.

All GPNP members are encouraged to follow this discussion. Over the next several months, GPNP will be offering educational sessions on SB4 to develop a formal position on the bill. The first session was held on September 23, 2014. We will be holding a policy discussion with the bill sponsors and leading senate opponents to the bill.

While only two parts, this is a complex bill with far reaching implications. On the one hand it appears to simplify life for the nonprofit sector. But does it? GPNP encourages our members to look deeply at a piece of legislation and consider both short and long term impacts to the sector as a whole. Here are some questions to consider:

Key Considerations

1. By weakening the rules established for the designation of a purely public charity, is there a risk of diluting the character, quality, and charitable nature of the nonprofit sector?
2. What implications does the shift of power from judicial to legislative branches on this issue present?
3. If SB 4 is designed to protect the nonprofit sector, at what cost if any?