

THE BOSTON CITY PILOT TASK FORCE: AN EMERGING BEST PRACTICE?

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Abstract: This Article considers the recently created Boston City PILOT Task Force and whether it represents an emerging best practice. The Article examines the use of PILOT agreements in Massachusetts generally and in Boston in particular. The current PILOT program is detailed. The Article then tracks the work of the task force from its inception, through its meetings and deliberations, and ending with its proposed recommendations. The Article analyzes these proposed recommendations and considers whether the Boston City PILOT Task Force represents an emerging best practice.

INTRODUCTION

Boston has long enjoyed a robust nonprofit sector.¹ Moreover, the City of Boston has long sought payments in lieu of taxes (PILOTs) from many of its exempt public charities with real estate holdings.² Boston's current program has been relatively effective in terms of the number of exempt organizations participating as well as the amount of payments collected.³

* Professor of Law, New England School of Law. The author acknowledges the collegiality and cooperation of Stephen Kidder, Chair of the Boston City PILOT Task Force. The author also acknowledges the input of Evelyn Brody, Daphne Kenyon, Adam Langley, and Mike Wheeler as well as the research support of Barry Stearns and Brian Flaherty.

1. See Evelyn Brody, *All Charities Are Property-Tax Exempt, but Some Charities Are More Exempt than Others*, 44 NEW ENG. L. REV. 621 (2010).

2. The Boston program dates back to 1925. *See id.*

3. Janne Gallagher, *The Legal Structure of Property-Tax Exemption in PROPERTY-TAX EXEMPTION FOR CHARITIES* 16 (Evelyn Brody ed., 2002) (citing a report that even "organized programs, such those in Boston . . . are piecemeal in nature, unevenly enforced, difficult to administer, and produce very little revenue in relation to the city's overall tax base." (citation omitted)). "Relative" is certainly the key term as there is clearly much room for improvement. *See Brody, supra* note 1.

Despite its relative success, the City of Boston is re-examining its PILOT program for a number of reasons.⁴ The rationale for doing so seems to be two-fold. The first reason concerns the adequacy of the overall financial contribution made by exempt public charities. The second is internal to the exempt sector and goes to the fairness of the contributions of the exempt organizations relative to one another.

This Article will provide a background on the use of PILOTs in the Commonwealth of Massachusetts generally. It will then examine the work-to-date of the Boston PILOT Task Force. The Article concludes that, while it is premature to declare the Task Force a best practice at this point, the work of the Task Force has certainly been valuable and has added a significant amount of data and discourse to the debate over PILOTs.

I. Tax Exemption for Charities in Massachusetts Generally and the Use of PILOTs

Property owned and used by charitable nonprofit organizations is generally exempt from property tax under Massachusetts General Laws.⁵ Cities and towns have sought voluntary agreements with certain organizations as a way of recovering general costs for providing municipal services or tax revenues lost when taxable property is acquired by a charitable organization and removed from the tax rolls. These agreements are generally known as PILOTs. A key characteristic of such agreements is that they are voluntary; that is, they are not provided for by statute.

Because there is only general data reported on exempt property, and no required reporting for PILOTs, it was difficult to measure the impact of PILOTs in the Commonwealth until the Department of Revenue conducted a comprehensive survey in 2003.⁶ Tax-exempt property is owned

4. MAYOR'S PILOT TASK FORCE, INTERIM REPORT 4 (2009), available at http://www.cityofboston.gov/Images_Documents/PILOT_Interim%20Reporttcm3-8009.pdf [hereinafter INTERIM REPORT]. Mayor Thomas Menino announced the Task Force in January 2009. *Id.*

5. MASS. GEN. LAWS ANN. ch. 59, § 5, cl. 3 (2001 & Supp. 2009); see Tad Heurer & Sandra Shapiro, *Property Tax Exemptions*, in MASSACHUSETTS NONPROFIT ORGANIZATIONS 12-1 (3d ed. Supp. 2008).

6. See generally DIV. OF LOCAL SERVS., MASS. DEPT. OF REVENUE, A STUDY OF CHARITABLE AND EDUCATIONAL PROPERTY TAX EXEMPTIONS (2003). This comprehensive survey covered property class codes 904 and 905. *Id.* at 2. Code 904 applies to exempt property owned and used by private educational institutions, schools, and colleges. *Id.* Code 905 relates to other charitable organizations including hospitals, conservation organizations, and human services organizations. *Id.* Not included were churches, synagogues, and other religious organizations in addition to government-owned property. See *id.* The survey had a strong response with 343 of the Commonwealth's 351 municipalities responding. *Id.* The

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throughout the Commonwealth, with approximately ninety percent of reporting municipalities disclosing such ownership.⁷ The Department of Revenue Survey reflects that approximately \$22 billion worth of property is held by charitable nonprofits.⁸ This figure consists of \$12.4 billion representing educational institutions, schools, and colleges, and \$9.6 billion held by other charitable organizations, including hospitals.⁹

With respect to PILOTs, only 80 out of 308 (26%) reporting communities with educational or other charitable nonprofits disclosed the receipt of PILOTs.¹⁰ Accordingly, seventy-four percent of communities with property owned by nonprofits received no PILOTs. PILOT payments range from a low of \$300 in Easthampton to \$10,383,022 in Boston.¹¹

It is important to note, however, that the PILOT figures may be understated because the reported PILOTs did not include non-contractual payments and payments with services.¹² For example, a gift of a fire engine by a private school to its host community would not be included.

When compared to other large Massachusetts cities such as Springfield and Worcester, Boston's PILOT program seems much more effective. The survey set out the following comparative data for fiscal year 2003:

	Total Value of Education (Code 904) and Other Charitable Orgs. (Code 905)	Total Value of 904 and 905 as a Percentage of Total Value of All Property	PILOTs from 904 and 905	Projected Payments if Exempt Property Were Taxable	PILOT as a Percentage of Amount if Taxable
Boston	\$4,816,894,343	6.35%	\$10,383,022	\$159,728,216	6.5%
Springfield	\$499,255,600	8.30%	\$134,856	\$18,018,135	0.748%
Worcester	\$698,022,300	7.17%	\$24,904	\$23,243,477	0.107%

While the percentage of overall value is relatively similar between educational and other charitable organizations, the amount of PILOT as a percentage of the projected tax levy that is taxable is considerably different.

values provided, however, are not as well-developed due to charitable organizations generally being unconcerned about assessed value since they do not pay property tax.

7. *Id.* at 3.

8. *Id.* at 5.

9. *Id.*

10. *Id.* at 4.

11. *Id.*

12. DIV. OF LOCAL SERVS., *supra* note 6, at 4.

Although these figures are a bit dated, and Worcester has negotiated additional PILOTs,¹³ the comparison clearly reflects the relative effectiveness of the current Boston program.

II. PILOTs in Boston Generally

The current PILOT program appears designed to pick up property either being taken off the tax rolls through acquisition by tax-exempt nonprofits or through redevelopment of property already owned by tax-exempt nonprofits. Thus, the city “initiates” a discussion with nonprofits that are expanding or redeveloping their real estate holdings.¹⁴ The Tax Policy Unit of the assessing department will request a “Pilot Determination Meeting.”¹⁵

The City has long sought PILOTs of twenty-five percent of taxes that the charitable nonprofit would have paid on the property if it was not exempt.¹⁶ The twenty-five percent standard was thought to reflect that portion of the City budget devoted to essential services such as police, fire, and public works.¹⁷ The City acknowledges that PILOT agreements are unique due to the size and usage of the subject property and the following factors represent a sample of what the City may consider in determining the amount of the PILOT agreements:

- if the property was subject to property tax before being acquired by the nonprofit, the City will look to recover some of the lost tax revenue;
- the square footage of the project;
- the use of the property; and,
- the construction costs incurred.¹⁸

13. In 2009, Worcester secured PILOTs from Worcester Polytechnic Institute and the Massachusetts College of Pharmacy and Health Sciences. *See, e.g.*, Press Release, City of Worcester, WPI and City Announce New Voluntary PILOT Agreement (May 12, 2009), available at <http://www.ci.worcester.ma.us/announcements/wpi-and-city-announce-new-voluntary-pilot-agreement>. Springfield is exploring a PILOT program. SPRINGFIELD FINANCIAL CONTROL BOARD, PROJECT PLAN: ESTABLISHMENT OF PAYMENT IN LIEU OF TAXES PROGRAM (PILOT) 1 (2005), available at <http://www.mass.gov/Asfcb/docs/PILOTProjectPlan.pdf>. *But see generally* THE RESEARCH BUREAU, VOLUNTARY CONTRIBUTIONS TO THE CITY OF SPRINGFIELD BY ITS PRIVATE COLLEGES: FINDINGS AND SUGGESTIONS 2 (2007), available at http://www.wrrb.org/documents/Springfield_Final_3.19.07.pdf.

14. INTERIM REPORT, *supra* note 4, at 29.

15. *Id.*

16. *Id.* at 11.

17. *Id.*

18. *Id.* at 29.

A deduction is allowed against PILOTs for “extraordinary community services.”¹⁹ This deduction is capped at twenty-five percent of the PILOT.²⁰ The stated purpose for the deduction is “to encourage non-profit institutions to adopt new community-oriented services or services above and beyond any service or contribution the institution was providing prior to the execution of the PILOT agreement.”²¹ The Assessor’s Office makes clear that allowance of such deductions is “carefully reviewed on an annual basis.”²² Preference is to be given to those programs that support the following initiatives of the Mayor Menino Administration: “promoting education and health, alleviating the fear of crime, expanding jobs and economic development.”²³

Examples of benefits allowed as deductions are academic scholarships, volunteer classes and workshops, and providing a free emergency medical clinic.²⁴ Specifically excluded are any community benefits negotiated between the Boston Redevelopment Authority (“BRA”) and nonprofits.²⁵

III. The Boston PILOT Task Force

As discussed in Part I, the current Boston system is relatively effective compared with other large cities in Massachusetts. Moreover, it is generally viewed as a national leader in PILOTs.²⁶ Proposing change to this system might evoke the old adage, “If it ain’t broke don’t fix it.”²⁷ On the other hand, fiscal pressures abound. Roughly fifty-two percent of the land area in Boston is held as tax-exempt property.²⁸ Thus, the property tax burden is borne by the owners of the remaining forty-eight percent of the

19. *Id.* at 30.

20. INTERIM REPORT, *supra* note 4, at 30.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *See* Gallagher, *supra* note 3; *see also* A2Politico: Ann Arbor Politics Grilled to Perfection, <http://www.a2politico.com/?tag=payments-in-lieu-of-taxes> (Feb. 5, 2010, 09:16 EST).

27. THE YALE BOOK OF QUOTATIONS 441 (Fred R. Shapiro ed., 2006) (attributing quotation to U.S. politician Bert Lance).

28. INTERIM REPORT, *supra* note 4, at 11. This figure appears to include all exempt property such as government owned property and religious use property. *See id.* at 13. The figure of 26.21% used in the 2003 Department of Revenue survey is the figure of codes 904 and 905 of all exempt property and is based on value. DIV. OF LOCAL SERV., MASS. DEPT. OF REVENUE, A STUDY OF CHARITABLE AND EDUCATIONAL PROPERTY TAX EXEMPTIONS 6 (2003).

land area. From a municipal finance perspective, property taxes represent fifty-six percent of the City's budget.²⁹ While the aforementioned breakdown of land area is not based on value, a significant portion of the City's real estate by value is not subject to tax, leaving this substantial burden on the owners of less than fifty percent of the land area in the city. Proposition Two and One-half³⁰ and the Home Rule petition³¹ limit the City's ability to raise additional revenues.³² In addition, state aid to Boston has declined and is expected to continue to do so going forward.³³

The owners of tax-exempt land include a broad range of governmental bodies (federal, state and city) and public charities (including churches, synagogues, educational institutions, and health care organizations). Of the exempt property owned by charitable nonprofits, a "disproportionate" amount (by value) is owned by educational and medical organizations,³⁴ which are significant users of basic city services such as police, fire, and public works.³⁵ The City of Boston has estimated that approximately twenty-five percent of the City's budget goes to providing such safety and public works services.³⁶

29. INTERIM REPORT, *supra* note 4, at 11.

30. MASS. GEN. LAWS ch. 59, § 21C (2008). Proposition Two and One-half restrains the amount of levy that cities and towns can raise in a year as well as how much can be increased from year to year. DIV. OF LOCAL SERVS., MASS. DEPT. OF REVENUE, LEVY LIMITS: A PRIMER ON PROPOSITION 2 ½, at 4 (2007), <http://www.mass.gov/Ador/docs/dls/publ/misc/levylimits.pdf>.

31. MASS. GEN. LAWS ch. 43B, § 15. A home rule petition is "[l]egislation filed to address the needs of a particular municipality or at the request of, and with the approval of, that municipality and which does not affect generally the laws of Massachusetts." Massachusetts Legislative Glossary <http://www.mass.gov/?pageID=aftopic&L=2&L0=Home&L1=Research+%26+Technology&sid=Eoaf> (follow "Legal & Legislative Resources" hyperlink; then follow "Massachusetts Lawmaking Process" hyperlink; then follow "Massachusetts Legislative Glossary" hyperlink); *see also* DAVID J. BARRON, GERALD E. FRUG & RICK T. SU, DISPELLING THE MYTH OF HOME RULE 7 (2004), *available at* http://www.hks.harvard.edu/rappaport/downloads/home_rule/chapter_one_legalstructure.pdf.

32. INTERIM REPORT, *supra* note 4, at 11.

33. *Id.*

34. *Id.*; *see also* Email from Stephen Kidder, Chairman, Boston PILOT Task Force, to Eric Lustig, Professor, New England School of Law (Apr. 11, 2010, 20:44 EST) (on file with author). The Assessor's Office is currently undergoing a detailed study of the values of real estate holdings of cultural nonprofits, which is expected by Labor Day 2010. Thomas Grillo, *Museums May Pay Too*, BOSTON HERALD, Apr. 7, 2010, *available at* <http://www.bostonherald.com/business/general/view.bg?articleid=1245253>.

35. INTERIM REPORT, *supra* note 4, at 11.

36. *Id.*

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The second driving force for the re-examination of Boston's program goes to the existing disparities among contributions of the various nonprofits. The following data relating to higher education institutions was generated by the City of Boston Assessor's Office for the Boston PILOT Task Force.³⁷

Higher Education Institution	Exempt Value for Fiscal Year 2009 (\$)	Tax if Property Was Not Exempt (\$)	PILOT for Fiscal Year 2009 (\$)	PILOT As a Percentage of Tax Revenue if Not Exempt (%)
Berklee College of Music	161,741,600	4,384,815	361,222	8.24
Boston College	561,952,500	15,234,532	293,251	1.92
Boston University	2,115,919,700	57,362,583	4,892,138	8.53
Emerson College	177,826,400	4,820,874	139,368	2.89
Emmanuel College*	166,162	4,477,542	0	0
Fisher College	16,719,000	453,252	0	0
Harvard University	1,477,225,500	40,047,583	1,996,977	4.99
Mass. College of Pharmacy	106,910,300	2,898,338	227,980	7.87
New England School of Law	15,888,500	430,737	13,125	3.05
Northeastern University	1,351,225,100	36,631,712	320,571	0.08
Showa Institute	54,718,800	1,483,427	120,966	8.15
Simmons College	152,572,500	4,136,240	15,000	0.36
Suffolk University	237,230,300	6,431,313	375,290	5.84
Tufts University	151,760,200	4,114,219	152,159	3.7
Wentworth Institute of Technology	207,977,400	5,638,267	40,747	0.72
Wheelock College*	60,362,200	1,636,419	0	0

* No PILOT agreement in place at the time of the Interim Report.

The above data reflects a fairly wide range of PILOT payments, with a number of institutions not making any payment at all. Of those institutions paying PILOTs, a wide range emerges from a low of 0.08% to a

37. *Id.* at 44.

high of 8.53%. Moreover, the universities at the polar ends of this range, Northeastern and Boston University, respectively, are both large universities that one might reasonably expect to have much more similar payments. Similar data was generated with respect to hospitals located in Boston.

Medical Institutions	Exempt Value for Fiscal Year 2009 (\$)	Tax if Property Was Not Exempt (\$)	PILOT for Fiscal Year 2009 (\$)	PILOT As a Percentage of Tax Revenue if Not Exempt (%)
Beth Israel Deaconess Medical Center	823,114,100	22,314,623	167,000	0.75
Boston Medical Center	300,928,700	8,158,177	221,644	2.72
Brigham and Women's Hospital	815,886,700	22,118,688	1,315,822	5.95
Caritas St. Elizabeth's Medical Center**	252,504,700	6,845,402	0	0
Children's Hospital	691,857,800	18,756,265	250,000	1.33
Dana Farber Cancer Institute	226,522,000	6,141,011	131,475	2.14
Faulkner Hospital*	181,881,400	4,930,805	0	0
Massachusetts Bio-Medical Research Corp.	146,236,500	3,964,472	818,728	20.65
Massachusetts General Hospital	1,457,667,100	39,517,355	1,826,618	4.62
New England Baptist Hospital*	144,781,500	3,925,026	0	0
Spaulding Rehabilitation Hospital	86,751,700	2,351,839	77,534	3.30
Tufts Medical Center	581,770,900	15,771,809	1,015,628	6.44

* No PILOT agreement in effect as of Interim Report.

** PILOT in effect but not to be paid until construction is completed.

With the exception of Massachusetts Bio-Medical Research, the PILOT payments (by percentage) from the hospitals appear to be more

closely bunched than the institutions of higher education. Still, a significant difference appears between the high of 6.44% and low of 0.75%.

Members of the Task Force were appointed to represent various city stakeholders or constituencies.³⁸ Dr. Robert Brown, President of Boston University, and Dr. Zorica Pantic, President of Wentworth Institute of Technology, represent colleges and universities on the Task Force. Hospitals are represented by Patricia McGovern, General Counsel and Senior VP for Corporate and Community Affairs at Beth Israel Deaconess Medical Center, and Thomas Glynn, Chief Operating Officer of Partners Healthcare.³⁹ The Executive Director of Codman Square Neighborhood and Development Corporation, Gail Latimore, represents community organizations. James D. Gallagher and Stephen Kidder, Senior VP of Communications, Government and Community Relations for John Hancock Financial Services and Attorney at Hemenway & Barnes, LLP, respectively, represent the Business Community. Stephen Kidder serves as the chair of the Task Force. Labor Organizations are represented by the President of Boston Police Patrolman's Association, Thomas Nee. Finally, the Government is represented by Councilman Stephen Murphy of the Boston City Council.

The process and development of the Task Force has been seemingly collaborative and driven by consensus. But the composition also reflects interesting dynamics. While one could argue that all constituencies are seeking what is best for the City of Boston and the exempt nonprofits, there are clearly diverging interests between the City and the nonprofits. At first glance, the Task Force would seem to be relatively evenly distributed around the divergence. For example, the nonprofit universities and hospitals presumably support relatively smaller PILOT contributions, while the government⁴⁰ and labor side (providing basic services) support the opposite. In addition, businesses that represent taxpaying interests also seem to represent interests seeking greater contribution from the exempt sector. The community service organization might also represent the

38. Mayor's PILOT Task Force Members, http://www.cityofboston.gov/Images_Documents/PILOT_Press_1.27.09.pdf (last visited Apr. 23, 2010).

39. Partners is an integrated health care organization founded by Brigham and Women's and Massachusetts General Hospitals. Other hospitals include Dana-Farber Clinic and Faulkner and Spaulding Hospitals. Partners Healthcare, What Is Partners?, http://www.partners.org/about/about_what.html (last visited Apr. 15, 2010).

40. Indeed Councilor Murphy has been very active in seeking payments to the City from colleges and universities. For example, he has proposed legislation to impose a \$100 fee per semester on nonprofit colleges and universities for each student who is not a Boston resident. Jazmine Ulloa, *Higher College Payments to City Sought*, BOSTON GLOBE, June 20, 2009, at B2, available at http://www.boston.com/news/local/massachusetts/articles/2009/06/20/councilor_pushes_for_higher_college_payments_to_boston/.

interests of resident taxpayers and local businesses. In addition, the Task Force chair is an attorney, categorized under the “business category,”⁴¹ yet his background reflects interests on both sides of the divergence.⁴² Attorney Kidder is a former senior tax official with the Commonwealth and currently sits on various boards of nonprofits.⁴³ Even within groups of nonprofits, members represent nonprofits paying very different percentages as PILOTs.

The Task Force initially articulated the following objectives:

- Set a standard level of contributions—in programs and payments—to be met by all major tax-exempt land owners in Boston.
- Develop a methodology for valuing community partnerships made by tax-exempt institutions.
- Propose a structure for a consolidation program and payment negotiation system, which will allow the City and its tax-exempt institutions to structure longer term, sustainable partnerships focused on improving services for Boston’s residents.
- Clarify the costs associated with providing City services to tax-exempt institutions.
- If necessary, provide recommendations on legislative changes needed at the City or state level.⁴⁴

The Task Force met regularly during 2009 and into the beginning of 2010. The Task Force began its work with the detailed valuation data on Boston property owned by the higher education and hospital charitable nonprofits.⁴⁵ The Task Force also examined the current Boston PILOT program.⁴⁶ In addition to reviewing data from higher education and hospitals, the Task Force looked at data from cultural institutions, private secondary schools,⁴⁷ and several other institutions of higher education. The Task Force also scheduled a public hearing where a wide range of speakers

41. Mayor’s PILOT Task Force Members, *supra* note 38.

42. *See* Hemenway & Barnes LLP, Lawyer Directory, Stephen W. Kidder, <http://www.hembar.com/directory/swkidder.html> (last visited Apr. 15, 2010).

43. *Id.*

44. INTERIM REPORT, *supra* note 4, at 1-2.

45. *See id.* at 4.

46. *Id.*

47. No private primary or secondary school is presently paying a PILOT. *Id.* at 12.

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provided feedback. The attendees included city residents, representatives of neighborhood associations, public service unions, a representative of a large university, a representative of a university trade group, a representative of a hospital trade group, and a representative of a research group.⁴⁸

A great deal of discussion centered on the community benefit deduction.⁴⁹ The Task Force decided to focus on the four largest educational institutions and hospitals and sought additional information from the following: Boston University, Boston College, Northeastern University, Harvard University, Massachusetts General Hospital, Brigham and Women's Hospital, Beth Israel Deaconess Hospital, and Children's Hospital.⁵⁰

With respect to community benefits to be considered for credit against the PILOT, the Task Force set forth the following criteria:

- The services need to *directly benefit City of Boston residents*.
- The services should support the City's mission and priorities with the idea in mind that the City would support such an initiative in its budget if the institution did not provide it.
- The services should emphasize ways in which the City and the institution can collaborate to address shared goals.
- The services should be quantifiable.
- The City must be consistent and transparent in its approach so that institutions can plan appropriately.⁵¹

With respect to the City's priorities and ways to meet the collaboration goals, the Task Force considered:

- Closing the Achievement Gap
- Reducing Violent Crime
- Increasing Workforce Housing
- Improving City Services
- Creating New Jobs

48. *See id.* at 17-19.

49. *Id.* at 5-7.

50. INTERIM REPORT, *supra* note 4, at 5.

51. *Id.* at 7 (emphasis added).

- Narrowing Health Disparities
- Increasing Diversity in Government
- Growing Revenue⁵²

In examining the methodology for establishing the base amount for the PILOT, the Task Force considered three different methods: payments based on units such as number of students or hospital beds; payments based on square footage of property; or payments based on value of property.⁵³ The Task Force concluded that the fair-value method was more fair and equitable, particularly since the nature of the PILOT is to be in lieu of taxes.⁵⁴

At their March 12, 2010 meeting, the Task Force developed the contours of a tentative proposal, which was to set PILOT agreements at twenty-five percent of the amount of tax the nonprofit would pay if the property were subject to tax.⁵⁵ A credit against the PILOT would be allowed for taxes paid on property used for institutional purposes and which would otherwise qualify for exemption.⁵⁶ A further deduction of up to fifty percent of the PILOT (after the aforementioned credit) would be allowed.⁵⁷ At least one Task Force member opposed the use of a fixed or hard fifty percent cap for community-benefit deduction. Boston University President Dr. Robert Brown argued that capping the community-benefit deduction would lead to unintended consequences.⁵⁸ Dr. Brown suggested that such will result in changes to programs in Boston by charitable nonprofit institutions that are beneficial to the community.⁵⁹

The Task Force proposal would provide institutions a transition from their existing PILOT to the newly proposed PILOT. This transition is through a “ramp-up” over five years.⁶⁰ Under the ramp-up, the difference between the proposed new PILOT and the existing PILOT will be added in equal installments over the five-year period following the establishment of

52. *Id.* at 7-8.

53. *Id.* at 8.

54. *Id.* at 9.

55. See Andrew Ryan, *City Asks Exempt Sector for Help*, BOSTON GLOBE, Apr. 6, 2010, at A1, available at http://www.boston.com/news/local/massachusetts/articles/2010/04/06/city_asks_exempt_sector_for_help/.

56. See *id.* Allowing credit for such taxes paid would dramatically increase the current PILOT paid by Northeastern.

57. See Ryan, *supra* note 55.

58. Grillo, *supra* note 34.

59. *Id.*

60. Press Release, Office of the Mayor, City of Boston, PILOT Task Force Considers Policy Recommendations (Apr. 6, 2010), available at http://www.cityofboston.gov/Images_Documents/PILOT%20Task%20Force%20FINAL%20%204-6-10.pdf.

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the new PILOT. The chart below reflects the effect of the proposal on the higher education institutions (assuming full community benefit deduction). Using Berklee College of Music as an example, Berklee's current PILOT agreement (net of any community benefit deduction) is \$149,990. The new proposed PILOT (at twenty-five percent of taxes owed if taxable) would be \$1,096,204. Assuming allowance for the maximum community benefit deduction of \$548,102, Berklee would have a new proposed PILOT of \$548,102. The ramp-up would be based on the difference between the proposed new amount of \$548,102 and the current amount of \$149,990. The difference between these two figures is \$398,112, which is then divided by five for the annual ramp-up of \$79,622. Thus in the first year under the new PILOT, Berklee would pay the current \$149,990 plus the annual ramp-up of \$79,622 for a first year total payment of \$229,612. In each of the succeeding years the annual payment would again increase by the ramp-up amount of \$79,622.

Higher Education Institution	Fiscal 2009 PILOT (net of community benefit deduction) (\$)	Proposed PILOT (25% of tax if taxable) (\$)	Less Credit for Property Tax Paid* (\$)	Less Community Benefit Deduction (max of 50% of proposed PILOT) (\$)	Proposed PILOT (net of deductions and credits) (\$)	Annual Ramp-Up (Phased in over 5 years) (\$)**	Current PILOT Plus Ramp-Up (\$)
Berklee College of Music	149,990	1,096,204	0	548,102	548,102	79,622	229,612
Boston College	293,251	3,808,633	383,249	1,712,692	1,712,692	283,888	577,139
Boston University	4,892,138	14,340,646	3,416,497	5,462,074	5,462,074	113,987	5,006,125
Emerson College	139,368	1,205,219	0	602,609	602,609	92,648	232,016
Emmanuel College	0	1,119,386	0	559,693	559,693	111,939	119,939
Fisher College	0	113,313	0	56,657	56,657	11,331	11,331
Harvard University	1,996,976	10,011,896	0	5,005,948	5,005,948	601,794	2,598,771
Mass. College of Pharmacy	170,985	724,585	0	362,292	362,292	38,262	209,246
New England School of Law	13,125	107,684	0	53,842	53,842	8,143	21,268

Northeastern University	30,571	9,157,928	1,947,985	3,604,971	3,604,971	714,889	745,451
Showa Institute	120,966	370,857	0	185,428	185,428	12,892	133,859
Simmons College	15,000	1,034,060	0	517,030	517,030	100,406	115,406
Suffolk University	375,290	1,607,828	0	803,914	803,914	85,725	461,014
Tufts University	152,159	1,028,555	0	514,277	514,277	72,424	224,582
Wentworth Institute of Technology	31,013	1,409,567	0	704,783	704,783	134,754	165,767
Wheelock College	0	409,105	0	204,552	204,552	40,910	40,910

* Credit for property taxes paid on property used for institutional purposes, which would generally qualify for exemption.⁶¹

** The proposed new PILOT would be ramped up or phased in over five years. The ramp-up would be the difference between the proposed PILOT and the existing PILOT divided by five.⁶²

The following illustrates the effect of the proposal on the hospitals (assuming full community benefit deduction):

Medical Institutions	Fiscal 2009 PILOT (net of community benefit deduction) (\$)	Proposed PILOT (25% of tax if taxable) (\$)	Less Credit for Property Tax Paid* (\$)	Less Community Benefit Deduction (max of 50% of Proposed PILOT) (\$)	Proposed PILOT (net of deduction and credits) (\$)	Annual Ramp-Up (Phased in over 5 years) (\$)**	Current PILOT plus Ramp-Up (\$)
Beth Israel Deaconess Medical Center	167,000	5,578,656	0	2,789,328	2,789,328	524,466	691,466
Boston Medical Center	128,492	2,039,544	0	1,019,772	1,019,772	178,256	306,748
Caritas St. Elizabeth's Medical Center	0	1,711,351	110,609	800,371	800,371	160,074	160,074

61. *Id.*

62. *Id.*

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Children's Hospital	112,004	4,689,066	0	2,344,533	2,344,533	446,506	558,510
Dana Farber Cancer Institute	98,607	1,535,253	0	767,626	767,626	133,804	232,411
New England Baptist Hospital	0	981,527	0	490,628	490,628	98,126	98,126
Tufts Medical Center	885,191	3,942,952	677,411	1,632,771	1,632,771	149,516	1,034,707
Partners Health Care***	3,511,532	18,220,790	3,201,203	7,509,792	7,509,793	799,652	4,311,184

* Credit for property taxes paid on property used for institutional purposes, which would generally qualify for exemption.⁶³

** The proposed new PILOT would be ramped up or phased in over five years. The Task Force proposed adding this ramp-up to the current PILOT.⁶⁴

*** The following hospitals are included in the Partners figure: Brigham and Women's, Faulkner, Massachusetts Bio-Medical Research, Massachusetts General, and Spaulding.⁶⁵

At its April 6, 2010 meeting, the Task Force announced that it would extend its scope to the cultural nonprofits and private secondary schools in Boston.⁶⁶ Chairman Kidder stated that he would send a letter to those institutions.⁶⁷ The Commissioner of the Assessing Department provided that his office hoped to have complete detailed valuation analyses of such institutions later in 2010.⁶⁸ The Task Force also expressed support for some basic de minimus standard under which some small charitable nonprofits would not be expected to enter into a PILOT agreement.

The Task Force released an Executive Summary of the Final Report at its April 12 meeting.⁶⁹ In this summary, the Task Force emphasized "core principles" of "transparency and consistency" as underlying a "fair and

63. *Id.*

64. *Id.*

65. *See* What Is Partners, *supra* note 39.

66. Grillo, *supra* note 34.

67. *Id.*

68. *Id.*

69. *See generally* PILOT TASK FORCE, EXECUTIVE SUMMARY OF FINAL REPORT (forthcoming 2010).

balanced” PILOT program.⁷⁰ The Task Force stated the following elements as reflecting such core principles:

- The PILOT Program Remain Voluntary. The Task Force rejected seeking a statutory requirement as likely to garner strong opposition and to be “counter” to the “partnership between the City and its institutions.”⁷¹
- The Program Should Apply to All Nonprofit Groups. The Task Force specifically extends the program to museums, cultural facilities, and “significant non-profits.” There is no mention of social service nonprofits or religious institutions. There is provision for an exception for “smaller non-profits which may lack the resources to fully engage in the PILOT process. Normally, a threshold of fifteen dollars in assessed value would meet this goal.”⁷²
- Determination of the PILOT Payments. The Task Force kept intact the methodology of basing the amount on the value of the real estate, taking into account size and quality of real estate holdings.⁷³ In addition, the Task Force recommended continuing to use twenty-five percent of the amount to be paid if fully taxed as the PILOT amount.⁷⁴
- Importance of Community Benefit. The Task Force reiterated the importance of community benefits and embraced the guidelines that it had articulated earlier.⁷⁵ Most importantly the Task Force embraced the fifty percent cap for the allowance for community benefit but left the possibility for exceeding the cap “[i]n cases where the City and an institution identify exceptional or extraordinary opportunities to provide services.”⁷⁶
- Phase-in Period. The Task Force embraced a transitional phase-in over a period of at least five years,⁷⁷ which leaves open the possibility for a phase-in

70. PILOT TASK FORCE, EXECUTIVE SUMMARY OF FINAL REPORT (forthcoming 2010) (draft at 1, on file with author).

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.* (draft at 2).

75. *Id.*; see also *supra* text accompanying note 51.

76. PILOT TASK FORCE, *supra* note 70 (draft at 2, on file with author).

77. *Id.*

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period longer than the five-year period initially contemplated.⁷⁸

- Property Tax Credit. Finally, the Task Force included the credit proposed for real estate taxes paid on property which would ordinarily qualify for exemption based on its use.⁷⁹

CONCLUSION

*“In far too many instances, authors fail to define the term best practices and leave it to the reader to glean the meaning from the context.”*⁸⁰

Is the Boston PILOT Task Force an Emerging Best Practice? “Best practices” refers to a program which is a significant improvement over the existing program and can be the basis on which other cities and towns model their own programs. While the Task Force has not issued its final report as of the time this Article was written and submitted, the Task Force has generated an extensive body of work worthy of examination.

The Task Force has organized and made available a great deal of useful data. There are very detailed reports on the values, parcel-by-parcel, held by the higher education and hospital nonprofits.⁸¹ Moreover, very detailed comparative data was generated so that relative real estate holdings and PILOT contributions can be compared within categories of exempt organizations, as well as among higher educational institutions and hospitals, respectively. If nothing else, the transparency of this data highlights the apparent disparities among some similarly situated institutions within each category. Perhaps there are good explanations for the differences.⁸² Or perhaps they reflect the reality of what is at its heart—a voluntary program. This approach would seem to be of use to other large

78. *Id.*

79. *Id.* (draft at 3).

80. Ira P. Robbins, *Best Practices on “Best Practices”*: *Legal Education and Beyond*, 16 CLINICAL L. REV. 269, 291 (2009).

81. *See generally* CITY OF BOSTON ASSESSING DEPARTMENT, EXEMPT PROPERTY ANALYSIS: EDUCATIONAL & MEDICAL INSTITUTIONS FISCAL YEAR 2009 (2009), http://www.cityofboston.gov/Images_Documents/ExemptRPT_09_WEB_tcm1-3932%5B1%5D.pdf. This detailed report was generated by requesting facility information from the institutions. Moreover, the institutions were given an opportunity to provide feedback, which was taken into account where deemed appropriate. *See generally id.*

82. *See for example*, the disclosure of the real estate taxes paid by Northeastern University on real estate, which would ordinarily qualify for exemption. *See INTERIM REPORT, supra* note 4.

cities in and out of Massachusetts and perhaps in even smaller cities and towns.⁸³

From a methodological standpoint, the determination of value, as well as the setting of the proposed PILOT goal of twenty-five percent of value, seem unchanged from the existing program. It is, however, a potentially significant change; the scope of the program would extend to all exempt property owned by charitable nonprofits as opposed to just newly acquired or renovated property. With respect to payment of the proposed PILOTs, the allowance for taxes paid on institutionally used property otherwise qualifying for exemption presents an expansion of the existing program. Moreover, the doubling (from twenty-five to fifty percent) of the amount of allowance for community benefit expenditures represents an important development in recognizing and encouraging partnerships between Boston and its nonprofits. Of course, the close review by the Assessor's Office would still continue, but the criteria are better fleshed out. While particular municipal goals might vary, the methodology of the program should still be a helpful model to other cities and towns.

The real uncertainty with respect to the Task Force's work is whether charitable nonprofits will embrace its findings and recommendations. The amount of proposed PILOTs will be quite significant, particularly with respect to those nonprofits that are currently not paying a PILOT. The proposed minimum five-year ramp-up should help in transition. The bigger question, however, is whether the nonprofit community will accept the proposals in general. The Task Force was established to represent certain stakeholders. While there is nothing to bind the participating institutions to the proposed program, as participants they would presumably be open to considering the new program. But what about the colleges, universities, and hospitals not directly represented? A representative from the Association of Independent Colleges and Universities in Massachusetts stated that the "[nineteen] institutions he represents in Boston were 'stunned and concerned by the [twenty-five] percent number.'"⁸⁴ Interestingly, both universities, represented on the Task Force, Boston University and Wentworth Institute of Technology, are members of the Association of Independent Colleges and Universities in Massachusetts.⁸⁵

83. Towns and cities with relatively few nonprofits might be able to use comparative data from similar communities as well as any statewide data generated. The Lincoln Institute is currently researching a study which might provide such data.

84. Ryan, *supra* note 55.

85. See generally Assoc. of Indep. Coll. and Univ. in Mass.: About AICUM, http://www.masscolleges.org/index.php?option=com_content&task=blogcategory&id=47&Itemid=206 (last visited Apr. 15, 2010).

Representation on the Task Force was limited to higher educational and hospital institutions. The Task Force has decided to extend its work to cultural institutions such as museums as well as secondary schools.⁸⁶ How will these new institutions respond to the Task Force's recommendations since they did not have a representative from either cultural nonprofits or private secondary schools?

To date, there has been no indication of extending the program to social service nonprofits or religious institutions. Yet these institutions also seem to utilize basic services to some extent. Although the Task Force's Executive Summary of Final Report does not specifically mention social service nonprofits or religious institutions, the report does provide that "the [PILOT] program should apply to *all* nonprofits."⁸⁷ Perhaps social service nonprofits and religious institutions would largely fall within the exception for small nonprofits,⁸⁸ with any remaining PILOT amount fully offset by an expanded community-benefit deduction.⁸⁹

Notwithstanding the transparency in the Task Force's process and its composition of representative stakeholders, the most significant hurdle remains: PILOT programs are voluntary from a legal standpoint. The City of Boston might have more leverage to influence nonprofits than other cities and towns; indeed, the comparative data in the 2003 Department of Revenue Study reflects this notion.⁹⁰ Nevertheless, there still must be limits on how much leverage can be exerted. The Task Force's data and recommendations add the potential for peer pressure from the community, particularly those charitable nonprofits that are paying a PILOT reflecting a relatively high percentage of the tax that would be owed if the property were taxable.⁹¹

While Boston can preserve its existing PILOT program and still be a national leader, many other cities and towns cannot. It may well be that the last policy objective articulated by the Task Force will be the most effective: to advocate for a state program that would pay a PILOT to communities hosting nonprofits.⁹²

86. Grillo, *supra* note 34.

87. PILOT TASK FORCE, *supra* note 70, at 1 (emphasis added).

88. *See supra* text accompanying note 72.

89. *See supra* text accompanying note 76.

90. *See generally* DIV. OF LOCAL SERVS., MASS. DEPT. OF REVENUE, *supra* note 7.

91. Indeed, information generated by the Task Force appears to have prompted a pointed commentary by a Boston Globe columnist chiding Boston College and urging it to pay a larger PILOT. Brian McGrory, Editorial, *BC=Beter Contribute*, BOSTON GLOBE, Apr. 16, 2010, at A1.

92. *See, e.g.*, Nicholas Carbone & Evelyn Brody, *PILOTs: Hartford and Connecticut, in* PROPERTY-TAX EXEMPTION FOR CHARITIES, *supra* note 3, at 233-52.