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**IDENTIFYING QUESTIONS POSED BY SENATE BILL No. 4 - 2015
TO AMEND THE PENNSYLVANIA STATE CONSTITUTION TO PROVIDE
GENERAL ASSEMBLY AUTHORITY WITH REGARD TO
EXEMPTIONS FROM TAXATION FOR
INSTITUTIONS OF PURELY PUBLIC CHARITY**

Proposal:

Senate Bill No. 4 (2015, PN 168) would amend the Pennsylvania State Constitution.

The Constitution presently states at Article 8, Section 2 (a) (5) that the General Assembly may by law exempt:

“Institutions of purely public charity, but in the case of any real property tax exemptions only that portion of real property of such institution which is actually and regularly used for the purposes of the institution.”

The new language of Senate Bill No. 4 would add a new provision to section (b), creating subsection (b) (vii) of this provision, granting additional authority to the General Assembly, to permit the legislature to:

“Establish uniform standards and qualifications which shall be the criteria to determine qualification as institutions of purely public charity under clause (v) of subsection (a) of this section.”

Impact:

The proposed change is presented as consistent with other Constitutional language relative to “Exemptions” authority, granting the General Assembly the power to enact laws that “establish standards and qualifications” for other specific exemptions, such as exemptions connected to land preservation, blighted properties, or relief based on age, disability or poverty.

A desire or need for the additional language is explained by the decision of the Pennsylvania Supreme Court in 2012, in *Mesivtah Eitz Chaim of Bobov, Inc. v. Pike County Board of Assessment Appeals*, 44 A.3d 2 (Pa. 2012) (*Pikes County*). In that decision, the majority of the court determined that there was a constitutional “minimum” for exemption of taxes, and that although the legislature had the power to enact legislation addressing such charitable exemptions, it could not “lessen the constitutional minimum by broadening the

definition of 'purely public charity' in the statute." The proposed amendment would thus seek to give an expressly constitutional grant of authority to the legislature to enact "standards and qualifications," which appears intended to give the legislature greater power to determine the parameters of "institutions of purely public charity."

The constitutional minimum, as determined by the Pennsylvania Supreme Court, was described in *Hospital Utilization Project v. Commonwealth*, 487 A.2d 206 (Pa. 2007), and has come to be known as the HUP test, defining an institution of purely public charity by the following criteria:

- (a) Advances a charitable purpose;
- (b) Donates or renders gratuitously a substantial portion of its services;
- (c) Benefits a substantial and indefinite class of persons who are legitimate subjects of charity;
- (d) Relieves the government of some of its burden; and
- (e) Operates entirely free from private profit motive.

The *Pikes County* case confirmed the continued validity of the HUP test, despite or notwithstanding the legislature's enactment of Act 55 as the "Institutions of Purely Public Charity Act," 10 P.S. Sections 371-386, that specifically addresses, attempts to clarify, and, arguably, redefines or narrows the grounds for purely public charities as set forth in the HUP test.

Open Questions:

1. If adopted, does Senate Bill 4 validate the actions of the legislature, at least for the future, for defining, through legislation, institutions of purely public charity?
2. Would there still be a "constitutional minimum" for "institutions of purely public charity" that is determined "only" by the Pennsylvania judiciary?
3. Could the Pennsylvania Supreme Court evaluate or re-evaluate the "constitutional minimum factors" that are set forth in its HUP test, in light of a grant of express authority for the legislature to adopt "uniform standards and qualifications" for tax-exempt, charitable status?

Of these three questions, in attempting to predict answers, perhaps the most significant question is number 2. The Pennsylvania Supreme Court has consistently held that the state Constitution gives "the ultimate power and authority to interpret the Pennsylvania Constitution" to the judiciary, and "in particular" to the Supreme Court. *Pike County*, supra, 44 A.3d at 8-9; *Stilp v. Commonwealth*, 905 A.2d 918, 948 (Pa. 2008). The new language, added to Article 8, Section 2(b) does not eliminate reference to "institutions of purely public charity" at Section 2(a), and thus, the judiciary may continue to recognize its essential authority to recognize a constitutional "minimum" for such exemptions. During the hearing, I am prepared to discuss potential areas of concern, arising from what appear to be threshold questions.