Supplemental Submission to the Tax Revision Commission
Consortium of Universities of the Washington Metropolitan Area

The Consortium of Universities of the Washington Metropolitan Area submits this additional information to the Tax Commission in response to the May 29, 2013 report of Michael Bell and Daniel Muhammad on tax exempt properties (the "Bell Report"),[1] as well as in response to questions that arose during the Consortium's testimony on June 24th.

This is the third submission or testimony that the Consortium has offered on the topic of Payments in Lieu of Tax (PILOT). In the prior two submissions, we stated our strong opposition to implementing a PILOT program in the District of Columbia.

- In our December 4, 2012 testimony, we suggested that the Tax Revision Commission's research directive on the topic was poorly worded and would not elicit a robust evaluation of PILOT and their potential value or harm in the District of Columbia. Our opposition was based on three principals—(1) PILOT programs are rare and of relatively modest value to most municipal governments that have instituted them; (2) PILOT programs are particularly ill-suited for the District of Columbia; and (3) A PILOT could reduce valuable services provided by universities even as they collect limited revenue.[2]
- In our May 3, 2013 submission to the Commission we provided more detail to support our opposition. We noted that (1) the mission of higher education fully justifies its tax exempt status; (2) the District of Columbia's unique regulatory environment makes PILOT particularly ill-suited and unfair for local institutions; and (3) higher education institutions provide additional value to the District that further undercut arguments in favor of PILOT.[3]

On May 29, 2013, the Commission received the Bell Report as its first commissioned research on the topic. According to the Tax Revision Commission Research Agenda the "recommended agenda [was] rooted in the TRC's legislative charge" and it reflected the Commissioners' interests.[4] Presumably, it was and remains the Commission's intent to use this research to generate its policy response to the topic of Payments in Lieu of Tax in the District of Columbia. Indeed, on September 26,

[1] "Properties Exempt from Paying Real Property Taxes in the District of Columbia," Michael E. Bell, Daniel Muhammad, May 29, 2013, Prepared for the District of Columbia Tax Revision Commission.
[2] See "Testimony Before the Tax Revision Commission: Public Input on Research Agenda," December 4, 2012, delivered by Sally Kram, Director of Government and Public Affairs.
[3] See Letter from Sally B. Kram to Chair Williams from the Consortium of Universities of the Washington Metropolitan Area, May 3, 2013, delivered as a public statement on June 24, 2013.
[4] See Proposed D.C. Tax Revision Commission Research Agenda, for Discussion at the September 10, 2012 Meeting of the D.C. Tax Revision Commission and REVISED for discussion at the October 1, 2012 Meeting, and further REVISED for discussion at the November 19, 2012 Meeting. Available at <http://www.dctaxrevisioncommission.org.

2013, the Tax Revision Commission posted a list of Policy Options based on proposals received by the Commission during its one year of meetings. Item 51 proposed the "Develop[ment] [of a] Boston-like PILOT program (negotiate revenue)."[5]

Summary: A "Boston-Like PILOT" Would Be Bad Policy for the District

In this document, the Consortium takes an unequivocal position that PILOT is wrong for the District. We base our position on two premises, both of which are grounded in the Bell Report.

1. What works in Boston cannot be presumed to work in the District. Why? Because the tax revenue structures, exempt property distribution, and municipal expenditures between the two are not comparable. A "Boston-like PILOT" is not justified under the District's historical approach to local taxation nor under the standards governing the Commission's own work. Why? First, because the Bell Report failed to answer the arguments offered in the previous Consortium submissions and testimony.[6]
2. Second, the report failed to present a compelling case under the Council's enabling legislation or the Commission's own internal framework to suggest the need for implementation of a PILOT program in the District of Columbia. Specifically, any proposal to impose a PILOT program [7] on District nonprofits in general, or universities in particular, would fail to positively respond to the three overarching questions the Commission is considering,[8] and would

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[5] See DC Tax Revision Commission Policy Options: Deliberations Draft [September 26, 2013] hereinafter referred to as the "TRC Policy Options." It should be noted that only two of the Bell Report's six policy options—the implementation of a PILOT program and a more standardized evaluation of the exemptions—were included in the Policy Options. The four other policy options were: (1) No Change, See Bell Report, pg. 39; (3) Limit the value of real property exempt from taxation for individual properties, Bell Report, pg. 40; (4) Reevaluate using property tax exemptions to promote affordable housing Bell Report, pg. 41; and (6) Phase out property tax exemptions for selected properties. Bell Report, pg. 45. Proposal (2)---to establish clear criteria for granting property tax exemption and review such exemptions, Bell Report, pg. 39, seemed to be captured by items 52-54 on the list of TRC Policy Options.

[6] We recognize that some of the material the Consortium submitted as Addendum 1 and Addendum 2 to its May 3rd letter to Commission Chair Anthony Williams was included as part of the Bell Paper's discussion of the benefits provided by higher education institutions to District residents. See pg. 22-23. However, these illustrations of higher education activity were not intended on their own to provide substantive basis for argument for or against PILOT.

[7] This submission is focused on the PILOT program discussed at length by the Bell Report that would be imposed on tax exempt property. That is separate and apart from the District's existing PILOT program focused on new development and redevelopment as described on page 33 of the Bell Report.

[8] The three overarching questions as presented in the hearing notice of the Tax Revision Commission's June 24th public hearing are: "First, does the tax system support the District's needs, both today and in the future?; Second, does the tax system encourage residents and business to locate in the District (this question includes the issue of fairness for both residents and businesses)?; And third, is the tax system easy and efficient to administer both from the perspective of taxpayer compliance and District enforcement?" See Attachment 1, Letter to Sally Kram from TRC Executive Director Gerry Widdecombe, May 23, 2013 (Hereinafter referred to as the 'TRC Letter').

contradict the five policy issues the Commission is reviewing as it considers revisions to the District's tax policy.[9]

In sum, a PILOT program would be wrong for the District because:

- It would adopt a new, far-reaching policy without a strong analysis justifying the new program;
- It would discourage business growth and job creation in a sector that has been steadily growing throughout the recession;
- It would further muddle an already complicated and opaque tax system; and
- It would be unfair to the colleges and universities without effectively broadening the tax base.[10]

As we show in more detail in the following sections, a PILOT program would not create a sustainable revenue stream for the District into the future; would not encourage business growth and job creation in the District; and would not create a modern, simplified and transparent new addition to the District's tax code.[11] Moreover, directly importing the Boston model, as proposed in the Bell Report and included in the Tax Revision Commission's (TRC) Policy Options would be ill-conceived due to the numerous fundamental differences between Boston and the District in terms of available revenue sources and patterns of expenditures.

Argument 1: The Bell Report Does Not Demonstrate That a PILOT Would Meet the Standards Set for the Tax Revision Commission's Review

In its enabling legislation, the Tax Revision Commission was directed to, among other things, ". . .[a]nalyze the District's current tax system in terms of revenue productivity and stability, efficiency, equality, simplicity of administration and effect upon the District's economy;"[12]. The enabling statute went on to direct the Commission "[t]o identify economic activities that are either beneficial or detrimental to the District's economy and which should either be encouraged or

[9] The five factors underlying the Commission's consideration as discussed in the public hearing notice for the June 3rd meeting were "(1) provide for fairness in apportionment of taxes; (2) broaden the tax base; (3) make the District's tax policy more competitive with surrounding jurisdictions; (4) encourage business growth and job creation; and (5) modernize, simplify and increase transparency of the District's tax code." See Tax Revision Commission Public Hearing Notice, May 31, 2013 (Hereinafter referred to as the "TRC Public Hearing Notice.").

[10] The third factor listed in the Commission's Public Hearing Notice was whether the new revenue proposal would "make the District's tax policy more competitive with surrounding jurisdictions." While we do not believe that imposing a PILOT on nonprofits in the District of Columbia would make the District more competitive with neighboring jurisdictions, it is impossible to predict whether such an action would make it less competitive. As a result, that factor is not discussed in this submission.

[11] See TRC Letter.

[12] See DC Code Sec. 47-462 (b)(1)

discouraged through tax policy;"[13] and "[t]o establish criteria and a conceptual framework for evaluating current and future taxes."[14] .

The Council's intent is clear from its direction in the Code—that new or broadened revenue sources must be explored as possible substitutes for current uncompetitive rates to meet the District's revenue needs, **but they must be evaluated carefully in terms of their equity and their effect on economic growth."**[15] (emphasis added).

Despite this intent, the Bell Report did not provide any analysis to show whether adopting a PILOT program would put the District into an more competitive situation,[16] whether such a program would be fair, or whether PILOT would exert a positive impact on economic growth. Furthermore, despite the clear directive from the Council that the Commission lay the economic ground work for any broad-based tax change proposed, the Commission's review of nonprofit taxation was limited to how tax exempt properties were "proliferating" and how they "might contribute to the cost of services they consume through payments-in lieu of taxes (PILOT), the provision of services-in-lieu of taxes (SILOT) or other means." [17] The Bell Report that resulted from this charge had an even narrower focus—a better understanding of the composition of exempt properties in the District, an exploration of alternatives for generating revenues from exempt properties, and, presumably, evidence of how the new revenue stream would offset the cost of delivering government services to these properties. [18] However, even based on this narrowed research criteria, the Commission was never provided with:

- an analysis of how the percentage of tax exempt property has actually changed in the District;
- an analysis of how the proportion of exempt property by sector differs between Boston and the District;
- an explanation of why the cost of services consumed was the sole variable used in determining value, and by extension, equity, in implementing a broad-based PILOT program; nor

[13] Id, (b)(3)
[14] Id., (b)(5)
[15] Id.,(4). Additional Council findings related to concerns that District residents and businesses were overburdened by current tax levels (1); that present tax policies are in need of evaluation (3); and that since the last study of the District's taxes, change has occurred (5).
[16] While this paper will not explore competitiveness per se, it should be noted that imposing a PILOT program in the District of Columbia would be unique to the region.
[17] The research directive to the staff was as follows: "This paper will review discussing the proliferation in properties that are totally exempt from the real property tax and how they might contribute to the cost of services they consume through payments-in-lieu of taxes (PILOT), the provision of services-in-lieu of taxes (SILOTS) or other means." See Proposed Tax Revision Commission Research Agenda, Item 20, Draft Revised, November 13, 2013.
[18] The Bell Report states in the introduction that its purpose is "to gain a better understanding of the composition of exempt properties in the District, **explore alternatives for generating revenues from exempt properties to offset, at least partially, the cost of delivering government services to them** and identify alternative policy options to be discussed by the Tax Revision Commission (emphasis added). See Bell Report, page 5.

- a detailed analysis of the types of services used by tax exempt entities and how this drains city resources.[19]

Despite its stated purpose, the Bell Report did not examine evidence to test the proposition of tax exempt property proliferation. Nor was the potential economic value of the nonprofit sector meaningfully explored.[20]

Of perhaps greater concern is that in its discussion of PILOT and other mechanisms to "tax" previously exempt property, the Bell Report identified eight large cities where PILOT or alternative means for assessing "taxes" on tax exempt entities had been implemented. Those cities included: Boston, Philadelphia, Providence, Baltimore, Detroit, Indianapolis, Minneapolis and Pittsburgh.[21] With perhaps the exception of Indianapolis, these cities saw deep fiscal distress over the past decade with revenue sources drying up, state funding declining and moderate to severe population loss.[22] In contrast, over the same period, the District's economy and population has been on an upswing with property values showing a net increase in value.

The Bell Report has other serious limitations. For instance, the Report does not point out the differences in the effectiveness of the various PILOT programs, does not provide detail about the ongoing litigation in various jurisdictions regarding PILOT, and does not note the fact that some programs have lapsed or are no longer vigorously enforced. What the Bell Report does, though, is present an especially impassioned argument in support of the Boston model, without ever noting that revenue from property taxes is the only source of tax revenue controlled at the local level under Massachusetts law, or that it constitutes the lion's share of revenue for the City of Boston.[23]

Because of these serious flaws, we argue that an uncritical acceptance of the Bell Report's recommendation of a Boston-style PILOT program for the District of Columbia be rejected since such a program would not serve the interests of the District or its residents.

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[19] The Bell Report simply states "Regardless of one's opinion on the fairness of targeting such [tax exempt] entities, the fact remains that they possess far more wealth than other exempt organizations, disproportionately erode the tax base by owning large pieces of real estate, and **consume more municipal services.** (emphasis added). See p. 26.

[20] Commission staff self-limited its analysis recommending that the "Commission's scope cannot extend to a detailed analysis of non-profit's non-tax contributions to the D.C. community given the complexity of this analysis." See Tax Revision Commission Research Agenda, Item 20, as revised, November 13, 2012.

[21] See Bell Report, pg. 4.

[22] The Bell Report, referencing the adoption of PILOT in cities facing financial distress, wrote "PILOT's may seem negligible in comparison to lost tax revenue, but they can still be a valuable revenue source for **cash-strapped municipalities**.(emphasis added). Pg. 35.

[23] See page 13 of this submission for a more detailed analysis of the Boston PILOT program.

Given the District's robust economic health that is projected into the future,[24] the Commission must realistically consider whether (a) introducing a broad-based new tax system at this time is necessary, and (b) if so, whether the analytic requirements explicitly set forth in the Code regarding new taxes have been met. The Consortium argues firmly that the answer is resoundingly "no" to both issues. Because of the District's strong fiscal health, a radical step such as the adoption of a PILOT program would be entirely unjustified. The failure of such a program to meet Code requirements provides additional support for this conclusion.

Argument 2: A PILOT Program Imposed on Universities Would Not Be Fair

The first criterion identified by the Tax Revision Commission for its work is "fairness in apportionment of taxes[25]" in allocating the costs of financing government. This point was driven home during the Consortium's June 24, 2013 testimony when Tax Commission Chair Anthony Williams posed a key question: "Why should universities enjoy the advantages of real property tax exemption which are denied to a small, struggling business owner?" While small businesses are certainly important to economic development in the District of Columbia, there are important differences between commercial businesses and nonprofit universities that justify tax exemption for the latter. These include the following:

- Nonprofit entities operate under a different business model, making comparisons with for-profit businesses complex. For one thing, for-profit corporations exist to create a return for their owners/investors; nonprofit universities do not. The core mission of universities is education, which has long been recognized as a societal benefit of such importance as to warrant an exemption. Also, if private nonprofit universities did not exist,

[24] See "D.C. Ups Revenue Forecast $190M in 2013," Michael Neibauer, *Washington Business Journal*, February 22, 2013; available at: <http://www.bizjournals.com/washington/blog/2013/02/dc-ups-revenue-forecst-190-m-in-2013.html>"D.C.'s Pensions are Looking Pretty," District of DeBonis Blog, Michael DeBonis, *Washington Post*, March 22, 2013; available at http://www.washingtonpost.com/blogs/mike-debonis/wp/2013/03/11/d-c-s-pensions-are-looking-pretty/; "70 Percent of D.C. Union Workers Getting Raises, "Tom Sherwood, *News Channel 4*, April 18, 2013; available at:,http:///www.bizjournals.com/Washington/blogs/first-read-dmv/70-of-DC-Union-Workers-Getting-Raises-203513591.html>; "D.C. CFO Projects Revenue Boom," Michael Neibauer, *Washington Business Journal*, June 24, 2013; available at: <http:www.bizjournals.com/Washington/blog/2013/06/dc-cfo-projects-revenue-boom.html> "D.C. Council Votes to Lower Sales Tax," Andrea Noble, *The Washington Times*, June 26, 2013; available at: <http:///washington times.com/news/2013/jun/26/dc-council-votes-to-lower-sales-tax/?page=all; . DeBonis, Mike. "Humming Economy May Give D.C. Mayor Opportunity to Address Affordable Housing," Washington Post, (Feb.4, 2013), available at: http://articles.washingtonpost.com/2013-02-04/local/36744954_1_budget-surplus-city-tax-revenues-tax-increases. DeBonis, Mike. "Another revenue windfall for D.C. government," Washington Post, (June 24, 2013), available at: http://www.washingtonpost.com/blogs/mike-debonis/wp/2013/06/24/another-revenue-windfall-for-d-c-government/.

[25] In recommending PILOT as a policy option, the Commission staff states that at least one of the goals is fairness. See TRC Policy Options, item 51.

the government would have to step in and provide sufficient resources to public universities to meet all of the educational needs. This is the bedrock principle that has universally justified tax exemption for higher education in this country. Commercial businesses are important, but their contributions to the public good and their relationship to government are very different from those of educational institutions. For this reason, no state has deemed it appropriate to exempt commercial businesses as a class from property taxes.

- In the District of Columbia, higher education is the only "business" whose customer base is limited by law. Commercial businesses are free to serve as many customers as they can handle. Not so with universities. Local universities must operate under enrollment caps set by the Zoning Commission that restrict the growth of new "customers" (i.e., students) thereby reducing potential revenue to universities (through tuition and fees) and to the District (through sales tax, for instance). Because it is unlikely that the Commission would recommend a new tax on any other entity that was prohibited from generating the revenue to pay the tax by growing its business, a move to do so aimed solely at universities would be particularly unfair.
- In addition, higher education institutions in the District of Columbia are the only businesses that operate under employment caps. If a university has reached its employment cap, additional employees cannot be added for any reason. Private sector companies can add employees to expand and improve customer service, among other reasons, in order to generate a higher rate of return on investment. This option is not available to higher education institutions in the District of Columbia.
- Accordingly, any significant new financial burden imposed on universities could create an upward pressure on tuition and potentially threaten some students' access to higher education. Without considering the actual details of colleges and universities' nonprofit business model, the Bell Report asserts that universities should be taxed by the District because they are more financially able to contribute.[26] This blithe, unsubstantiated statement assumes that all higher education resources are as fungible as commercial businesses' resources. This assumption is patently false. Unlike a for-profit sector business in which revenue/cash is highly flexible (i.e., can be used for most any purpose under the law), the use of such resources in colleges and universities, like most nonprofits, is limited by law and the restrictions imposed by donors. For example, if a university

[26] See Bell Report pg. 25 -26 quoting "Payments in Lieu of Taxes: Balancing Municipal and Nonprofit Interests," Lincoln Institute of Land Policy, Policy Focus Report, 2010 (Hereinafter referred to as "Lincoln Institute 2010 Policy Report" " . . .[T]he fact remains that they [nonprofits with the most valuable property holdings] possess far more wealth than other exempt organizations . . .". The Bell Report does not explore whether nonprofit property wealth in the District of Columbia translates into fund liquidity.

receives a federal grant to promote a certain research project, it may not, by law, distribute those funds to a non-research purpose, such as paying a PILOT. Similarly, philanthropic gifts are nearly always limited by the directives of their donors, so are unavailable for any other purpose. In short, the endowments held by colleges and universities are essentially unavailable from the perspective of PILOTS. That leaves tuition as the other obvious source. However, private nonprofit colleges and universities are heavily tuition dependent for their operations, and, as such, are increasingly looking for ways to reduce costs rather than pass cost increases, such as PILOTS, through to students.[27] Passing the cost of PILOT onto students through increased tuition or a dedicated fee would be a deeply flawed public policy, widely perceived as unfair, as Pittsburgh, for example, can attest. By the same token, potentially forcing students to receive fewer services for the same cost because colleges and universities must reduce expenses by eliminating services in order to pay PILOT is equally unfair.

In sum, the evidence clearly demonstrates that a PILOT program in the District of Columbia would be unfair both to local universities and their students.

Argument 3: PILOT Would Not Broaden the Tax Base

The nonprofit sector, like the for-profit sector, is under continued stress due to the ongoing struggling economy. Within the broader nonprofit sector, higher education institutions are under unique pressure. In January 2013, Moody's Investors Service downgraded the entire higher education sector to a negative outlook. Even prestigious, top-tier research universities are now under threat from declining enrollment, government spending cuts, and concerns regarding returns on investment.

Even so, the District's economy is heavily dependent on the higher education sector for jobs[28] and non-government related economic development. This reliance could be jeopardized by the imposition of PILOT for little or no gain. Given the economic challenges facing colleges and universities, experience elsewhere shows that the

[27] A point not discussed in any materials reviewed by the Bell Report is the District's unique Human Rights Act which prohibits discrimination due to matriculation status . See - D.C. Human Rights Act, D.C. Code Ann. §§ 2-1401.01 -2-1411.06 . None of the jurisdictions with a "student tax" referenced in the Bell Report (Pittsburgh, pg. 28; Providence, pg. 28 and Montclair, NJ, pg. 29) have similar legal protection for students.

[28] Outside of the federal government, Consortium institutions and affiliated hospitals are collectively the largest employers in the District. . The top fifteen university and affiliated hospital employers in the District of Columbia in 2012 included: 1) George Washington University; 2) Georgetown University; 5) Howard University; 6) Georgetown University Hospital; 7) American University; 8) Catholic University; 12) Howard University Hospital; and (14) George Washington University Hospital. District of Columbia 2012 Comprehensive Annual Report (CAFR), pg. 188.

revenues actually generated by PILOT could be significantly less than projected.[29] Thus, the financial health of the nonprofit sector in general, and universities in particular, is inextricably linked to the District's financial future.

PILOT programs are generally proposed as "base-broadening" tactics because it is assumed that they collect funds from nonprofits that do not contribute monetarily to their home jurisdictions,[30] thereby increasing the burden paid by other taxpayers. In reality, local universities already pay for a wide variety of services just like for-profit businesses do, as well as provide a variety of services on their campuses that result in the reduced need for and use of public services than is the case for typical commercial business. In many instances, services provided by the universities have a positive impact beyond their campus boundaries for the benefit of the city as a whole. Additionally, in the key areas of public safety, health services, transportation, and public works, local universities mitigate the government's costs of providing services to their properties:

- In the area of public safety, universities provide their own campus police forces that offset many of the responsibilities of the Metropolitan Police Department on and around local campuses. Recent crime statistics show the result. Of the approximately 36,762 crimes that occurred in the District in 2012-2013, only 609—or 1.6%—were committed on, or within 1000 feet, of a campus of local university.
- In the area of health services, many local universities provide such services through related hospitals, health clinics, mobile vans and similar outreach services. A few universities have their own ambulance service or similar means to transport those with health care needs. Thus, not only do members of the local university communities have less need to use public health services, in many instances the health care services provided by local universities extends to the broader community. For example, during the September 16, 2013, mass shooting at the Washington Navy Yard, George Washington University's EMeRGE Ambulance service provided ongoing transport to "regular" calls while the DC Fire and Emergency

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[29] Since PILOT's are, by definition, voluntary, a university experiencing financial stress may not be able to pay the full amount negotiated. . Smaller colleges and universities may not be able to free up any money at all because of even more limited resources. In 2012, the Boston program collected 91% of what the city requested. A good return, but less than the 100% which might be anticipated by the budget. See "Boston's New PILOT Program Completes First Year," Boston Municipal Research Bureau, January 4, 2013, No. 13-1 (Hereinafter referred to as the "Boston Municipal Research Bureau Report."). For a general discussion of the revenue potential of PILOTS see "The Municipal Fiscal Crisis and Payments in Lieu of Taxes by Nonprofits," Daphney A. Kenyon and Adam H. Langley, Lincoln Institute of Land Policy, *Land Lines*, April 2011.

[30] "Properties exempt from paying the local property tax consume publicly provided community good and services. Unless they help pay the cost of providing these services, other taxpayers who do not get preferential treatment by the property tax system (or other tax adjustments) end up paying a larger share of those costs." Bell Report, pg. 25.

Management Service (FEMS) was engaged in responding to the Navy Yard tragedy.

- In the area of transportation, while local universities benefit from the general transportation system provided in the area, these institutions make their own contributions as well. Most universities assume responsibility for the maintenance and snow removal of the public sidewalks and streets on and adjacent to their campuses. Several universities provide regular shuttle services between campuses and to METRO stations, and make such services available to non-university riders at no cost. In addition, while students, faculty and staff use METRO transportation on a regular basis, these users pay full fare and thus help to support the entire system.
- Supporting public works projects also include upgrading and improving significant parts of the public infrastructure. Like the District's for-profit companies, District universities contribute to the city's water and sewer systems and pay for both services at market rates reflecting their usage and square footage. Universities invest millions of dollars in maintaining publically available campus green spaces,[31] street lights, and in some cases sidewalk and street repair and other public improvements that traditionally are the responsibility of the local municipality.

In addition to government-like services , the benefits local universities provide to the District and its residents are broader and deeper than those of a typical commercial establishment. In purely economic terms, local universities have more far-reaching economic impacts that extend beyond employment and related income taxes to include significant procurement and construction activities (and the jobs that these create) as well the multiplier effects of the buying habits of students, [32] faculty, staff, visitors and alumni.

More difficult to quantify but no less real are universities' contributions to quality of life issues that no commercial business could match, including research and health related activities that directly benefit District residents and society as a whole, cultural and educational activities for local residents, and service as centers of knowledge and facilitators of debate on major issues of the day for the broader community. Commercial businesses generally cannot match the variety and scope of the beneficial impacts of local universities. The quality of life aspect is one widely

[31] Two D.C. campuses—American University and Catholic University of America—have been designated by the Arbor Day Foundation as "Tree Campus USA Universities" for their dedication to campus forestry management and environmental stewardship.

[32] Students make up over 10% of the District's population (over 80,000 full time and 20,000 part time students, compared to the Districts population of 632,323 in 2012. Data compiled from Integrated Postsecondary Education Data System (IPEDS), available at :<nces.ed.gov/ipeds>.

recognized by economic development experts as often making the difference in where a corporation establishes its locations.

Finally, the Bell Report focuses on the public services used by District nonprofits, but it overstates the cost of such services to those nonprofits. While the Consortium acknowledges that local universities derive public benefits in a general fashion from their location in the District, there is ample evidence that their use of public services is far less than that of commercial establishments. [33] Once the picture of the type of services used by nonprofits is clearer, the services nonprofits in general and universities in particular provide in the course of pursuing their academic missions should be considered as part of the calculus of whether these institutions are "carrying their weight.[34]"

In sum, assessing a PILOT without considering the value of the services and economic impact of colleges and universities runs the risk of reducing the ability of universities to provide the services and value add described above without collecting enough money to offset the loss.[35] Rather than growing the tax base, such an approach raises the possibility of increasing District costs for services thereby effectively reducing tax collection—while "broadening" the base, the government would incur greater costs and less revenue—seemingly the antithesis of good tax policy. Furthermore, the enrollment and employment caps directly imposed by the District deprive it of tax revenues in already existing categories. Imposing a PILOT, then, not only would fail to broaden the tax base, it could have exactly the opposite effect.

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[33] Of the major areas of public expenditures identified in a recent Lincoln Institute of Land Policy study on fiscally standardized cities database, the District's colleges and universities use virtually no education services, social service or income maintenance services. Their use of the transportation system is largely tilted towards public transit rather than roads since many students are not permitted to bring cars to campus Within the environment and housing cluster, students make much less use natural resources or parks and recreation since they typically have recreational options on campus. Within the public expenditures of government administration, Interest on public debt, utility expenditures and miscellaneous, the benefits of these services generally accrue over the space of some years. Students rarely remain residents long enough to accrue such benefits. As was noted in the Mayor's PILOT Tax Force report, the bulk of city services used by college students are focused on the public safety cluster with some elements of the public works cluster including snow removal and street lights. See Lincoln Institute of Land Policy Fiscally Standardized Cities Database, http://www.lincolninst.edu/subcenters/fiscally-standardized-cities/ Accessed on September 26, 2013, Mayor's PILOT Tax Force: Final Report & Recommendations, Boston, MA, December 2010. Hereinafter referred to as "Mayor's PILOT Task Force Report."

[34] The examples discussed in this paper are not exhaustive and quite possibly underrepresentative. The simple truth is that many of the benefits that local institutions provide are not routinely tracked by their administrations because they arise holistically from the long history and culture of education and service universities foster and make possible.

[35] Indeed, the Bell Report notes that PILOT may seem negligible in comparison to lost tax revenue, but they "can still be a valuable revenue source for cash-strapped municipalities." See pg. 35. As noted earlier in this paper, the District is not cash-strapped in the same sense as other municipalities considering PILOT.

Argument 4: A PILOT Would Not Stimulate Business Growth

Implementing a PILOT program now would be particularly unfortunate as the nation in general and the District in particular continue to face a sluggish employment market in the non-university sector. The fact is that even during the height of the recession, between 2008 and 2012, the education sector added jobs at a greater rate than all other sectors in the District of Columbia.[36] Adding new costs with a PILOT program would make adding jobs a less likely option for universities forced to spend funds on PILOT rather than potentially on wage increases, thereby negatively impacting the District's goal of growing its economy.

While the Bell Report notes the potential challenges in designing a PILOT program,[37] at no point does it analyze how such a program could affect District job creation or business growth. Without such analysis it is impossible to anticipate how the program would impact the District's economy.[38] Even in the absence of PILOT there was already substantial evidence that some universities are looking beyond the District's borders to address their growth needs.[39] Adding PILOT might only exacerbate this trend and, in conjunction with the enrollment and employment caps discussed earlier, would further affect the goal of job creation.

Simply put, the Bell Report has failed to meet the parameters of the Tax Revision Commission's charge of evaluating proposals to encourage business growth.[40]

Argument 5: A Boston Model PILOT in the District Would Decrease Transparency and Increase Administration Burden

Adopting the Boston PILOT program would not modernize, simplify nor increase the transparency of the District's tax code. Indeed, though touted as a "best

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[36] Stephen Fuller, Regional Economic Trends in the Washington, D.C. Region, School of Public Policy George Washington University, (Presented to the Commission on Jan. 7, 2013), available at: http://media.wix.com/ugd//ddda66_41f6f73b00c11ac668a638f511561d44.pdf.
[37] See Bell Report, pgs. 35-38.
[38] In a footnote, the Bell report cites the Lincoln Institute Policy Report, 2010 in the observation that higher PILOT payments by nonprofits "**could** reduce property taxes on for-profit businesses, which in turn **could** increase employment in the private sector," Bell Report, pg. 44. The comment is not footnoted, however, in the Policy Report so it is hard to know how it reaches the conclusion that a for-profit company would spend excess revenue generated from lower taxes on employees rather than share holder dividends or higher salaries for their executives. See Lincoln Institute 2010 Policy Report, pg. 34.
[39] Georgetown University opened its Educative Education program in Arlington, VA. George Washington University moved much of its back-office operations to Loudoun County, VA and has since opened several research facilities there. Howard University is eyeing development on property it owns in Greenbelt, MD.
[40] TRC Public Hearing Notice, consideration (4) "encourage business growth and job creation."

practice,"[41] the Boston PILOT program is not an appropriate model for the District of Columbia for the following reasons.

- Sources of revenue in Boston are very different from those in the District. For example, Boston is much more reliant on local property tax than the District (56% of Boston's revenue is derived from this source as compared to 33% in the District). Thus, Boston faces greater financial pressure to address the shortfall from exempt properties through other means.[42]
- In Boston, a greater percentage of the number of properties are exempt as compared to the District. Some 48% of the properties are exempt in Boston versus 37% in the District.[43] This discrepancy is further compounded by the fact that Massachusetts limits the amount property taxes may be increased each year to 2.5% without a referendum.[44]
- The way in which Boston spends its money is also very different. Boston spends about 34% of its budget on public safety, justice, and public works, while the District spends only about 20%.[45] Therefore, selecting 25% as the calculation for what percentage of the city's budget is used by the District's nonprofits for the services they used as proposed by the Bell Report would be purely arbitrary and would not reflect the actual costs assumed by the city.[46]
- Boston does not cap its university enrollment or employment. This aspect of zoning law is unique to the District of Columbia.

Because of these differences between Boston and the District, it is hard to know whether the Boston program is a "best practice" that the District could import. Boston's program is uniquely tailored to Boston. That city has had a long history of

[41] While the Bell Report reviews several options, Policy Option 5 suggests the development of a traditional PILOT program "along the lines of the program in Boston which has been characterized as "best practices."' See Bell Report, pg. 43.

[42] See Boston's Payment in Lieu of Tax Program: A Review of the Program's Development, Implementation and Results," Matt Englander, Director of Tax Policy, City of Boston Assessing Department report stating that property taxes comprise nearly two-thirds of Boston revenues.. The Bell Report states that 31.6% of the District's real property tax base was exempt from paying taxes in 2012. See pg. 7, Table 3.

[43] See Englander , "Boston is 52% tax exempt,". DC figure is quoted in the Bell Report, pg 3.

[44] See Englander, Slide 4, "The Problem."

[45] See attachment 2, drawn from Lincoln Institute of Land Policy Fiscally Standardized Cities Database, (Accessed on September 26, 2013) available at: http://www.lincolninst.edu/subcenters/fiscally-standardized-cities/

[46] It is not entirely clear how the 25% figure was calculated in Boston. The Mayor's PILOT Tax Force Report mentions the types of services that should be charged against non-profits in the April 27, 2009 meeting notes. (See pg. 27). It was clarified at the June 11, 2009 meeting that only services of "direct public benefit" such as snow removal on public streets rather than on university campuses could reduce the cost of city services. (See pgs. 31-32.) By September 29, 2009. The Task Force had agreed that the city would negotiate a 25% PILOT since "approximately 25% of the City's budget is allocated for core City services such as police protection, fire protection and public works—services consumed by tax-exempt institutions." See pg. 35. "Core city services" was not defined in the Mayor's PILOT Tax Force Report.

collecting PILOT[47]. As part of its program review prior to the (Boston) Mayor's PILOT Taskforce establishment and deliberations, Boston city officials developed a detailed plan to reevaluate the value of tax exempt property.[48] Boston city officials then spent several months developing a community service credit component to accurately reflect the real value of the city's nonprofit community.[49] The Bell Report makes no similar programmatic proposal[50]. Rather, by recommending the importation of the ill-fitting Boston model, the Bell Report invites the possibility that the District's proposed new program could be complicated, opaque, and complex from the beginning.

Most important, the Boston model does not meet the TRC's stated requirement of increasing transparency and ease of administration. This is due to the use of arbitrary rules regarding the amount of credit colleges and universities receive for services provided that benefit the citizens of Boston (which is arbitrarily limited to 50% of the tax burden) and the computational process involved in setting the tax burden in the first place (as an arbitrary percentage of assessed value). Given the inherent difficulties in establishing assessed value generally and nonprofit property in particular, the process of establishing base value will be fraught with difficulty. Additionally, any limit on the value of direct services nonprofits provide would lack an empirical foundation, resulting in a completely arbitrary tax rate and tax burden.

Thus, far from increasing transparency, a Boston-like PILOT would create more arbitrary decisions, and more room for obfuscation of the taxation process and rationale. [51]

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[47] "Beginning in the early 1970's, Boston began seeking payments from its nonprofit organizations as a way of offsetting the loss of revenue and the increase in public service demands associated with the institutions it hosts," "Payments in Lieu of Taxes: The Boston Experience, Ronald W. Rakow, Lincoln Institute of Land Policy, *Land Lines,* January 13, 2013, pg. 2. "In 1961, the first payments-in-lieu-of-taxes were made to the City of Boston . . .," Boston Municipal Research Bureau Report, pg. 2.

[48] See Mayor's PILOT Task Force Report, pg. 6. The process began in 2007 with results reported in 2009.

[49] The topic of community service value was discussed by the Boston PILOT Task Force at 10 of its 11 meetings covering a period of more than a year. See Mayor's Task Force Report, pgs. 13-19.

[50] The Bell Report references the work done by Boston on its tax exempt property assessments but does not discuss the time Boston spent on the project. See Bell Report, pg. 43, footnote 17. In addition, as noted before, the Bell Report discusses the community service value of each category of exempt property, see pgs. 17-24, as well as the general topic of recognizing fair value for in-kind contributions by tax exempt organizations, see pgs. 30-31, but pursuant to the research agenda, it does not delve into how specific programs in the District could be evaluated against a PILOT payment.

[51] In one of the few papers on Boston's PILOT program NOT drafted by Boston city officials or scholars affiliated with the Lincoln Institute of Land Policy, Emily LaClair cautioned that "without a systemized process, PILOT payments represent an inequitable and inefficient method of revenue generation," "Payments in Lieu of Taxes: Calculating the Fiscal Impact of Boston's PILOT Program, Emily LaClair, *The Public Purpose*, 2011.

Conclusion: A PILOT Applied to District Universities Would Be Bad Public Policy

Based on the premise that good public policy should be perceived as fair to all, the proposed PILOT, if it targets only higher education institutions would be, on its face alone, bad policy because it singles out one subsector of all nonprofit organization..[52] Three questions were posed by the Tax Revision Commission in its letter to prospective witnesses in advance of the June 24th public hearing.[53] The analyses we have provided in this document provide the answers.

1. First, adoption of a PILOT program in the District would not solve its tax system needs now or into the future, since it is entirely unclear whether the District would receive net new revenue from the imposition of PILOT.
2. Second, PILOT would not encourage nonprofit businesses to locate or expand in the District.
3. Third, PILOT would not be easy or efficient for the District to administer either to prospective nonprofit taxpayers or to District tax assessors.

A PILOT program targeting universities in the District would create a new class of "taxed" and "untaxed" participants based on a potentially dubious calculus that is really a distinction without a difference. Specifically, nonprofit universities would be taxed; other nonprofit organizations would not be. Readers need to understand that one of the key factors changed in the 2010 revision of the vaunted Boston PILOT program was its expansion to ***all*** of the city's tax exempt property owners of a certain size.[54] Note further that this expansion occurred even though universities in Boston own a much higher percentage of exempt properties than do universities in the District of Columbia.[55] Additionally, a large number of non-D.C.-based higher education institutions own property in the District but, at present, are not being targeted.[56] Limiting the program to only colleges and universities in the District will, as Boston found,[57] will make the Boston PILOT model an even worse public

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[52] The previous Tax Revision Commission failed to propose a PILOT on nonprofits because of this difficulty. "Although the Commission finds that many of these [nonprofit] organizations should be required to contribute to the cost of government, **it is unable to recommend an administratively and legally** acceptable system for differentiating those organizations that should pay from those that should not," *Taxing Simply, Taxing Fairly: District of Columbia Tax Revision Commission Full Report*, September 1998, pg. 97.

[53] See TRC Letter,

[54] "The [Boston PILOT Task Force] believes that all non-profit institutions should participate in the PILOT program. While significant focus has been placed on the City's medical and educational institutions, the City's museums, cultural facilities, and other significant non-profits share a similar interest in the City." See "Mayor's PILOT Task Force" Task Force Recommendations, pg. 11.

[55] Universities make up only 6.8% of tax exempt property in the District (by value) compared to the total tax exempt percentage (less government) of 36%. Bell Report, p. 22.

[56] According to Consortium research, the District is home to 114 higher education institutions, some of whom are located on tax exempt. See Attachment 3, D.C. Higher Education Institutions, August 2010

[57] See Englander, Findings, ". . .the PILOT program was the most successful in the country yet: **payments lacked consistency & fairness between nonprofit contributors;** and PILOT revenue represented a small fraction of the City's total revenue. (emphasis added.)

policy choice for the District of Columbia as a whole. In summary, force-fitting a program designed to meet the unique needs of another jurisdiction into the District would create unanticipated consequences and cause more problems than it would solve.

At a time of current and projected fiscal surpluses, the Tax Revision Commission would do better to explore options other than importing an ill-fitting program from a dissimilar jurisdiction. When presented with the same question, the Wooster, MA city council decided against a PILOT program noting:

> "While difficult fiscal times always push City leaders to consider new revenue streams, this survey of data regarding PILOT suggest that the City will be better served by increasing the tax base through economic development projects in collaboration with the institutions of higher learning—using WPI and Clark as models—rather than attempting to tax the City's nonprofits."[58]

A similar approach by the Tax Revision Commission would be in the best interest of the District residents, for-profit and nonprofit businesses now and into the future. We believe it is far better to forge a partnership between higher education and the District, agree on the services to be provided by each, and work together for the betterment of District residents.

[58] Worcester Regional Research Bureau, "Will PILOT Fly in Worcester? Taxing Nonprofits and Other Options," March 2004, included in "PILOTS: Payments in Lieu of Taxes," Report by the Town Manager's Office, Town of Andover, MA, July 2013.