Montana Nonprofit Association

February 13, 2017
Response to HB331

HB331 requires that any nonprofit who compensates a key employee more than $250,000 would have its property tax exemption revoked. The bill passed out of the house late last week and will be heard early this week by the full House.

Key Points in Opposition

Existing Statute Regulates Excessive Compensation

When nonprofit boards make compensation decisions, they are already required to follow existing IRS regulations that prohibit excessive compensation. If they don't comply with statute they risk revocation of their tax-exempt status or stiff fines. Here is a link to an easy to digest GuideStar article on the current statute related to executive compensation. Nonprofits must use some type of process to ensure compensation isn't excessive, and market rate is an acceptable benchmark. If it is found executive compensation is excessive, a nonprofit can lose their tax-exempt status, or more commonly, be assessed a fine. In the case of HB331, policymakers are suggesting an arbitrary limit that is not supported in statute, and the "punishment" is harsher than what is most likely recommended for excess compensation – which is a fine (excise tax, sanction).

For Montana policy makers to go above and beyond the laws already in place is out of character and unnecessary, particularly in a state where many professionals are already being paid less than the national market rate.

Appropriate Compensation is a Board of Director's responsibility and a market issue – not Government's

The rationale provided by the bill sponsor for the arbitrary $250,000 threshold is that anyone in the nonprofit sector who makes more than this is in it for personal wealth, not mission. However, some subsectors and/or organizations are large or complex enough to necessitate compensation above this threshold in order to attract qualified candidates. To do otherwise is a failure of the board of directors, who would be jeopardizing the mission by not ensuring sufficient resources are in place for mission attainment. It is the board's responsibility to set the compensation level for the CEO, and it is the community's responsibility to communicate concern about this to the board. To our knowledge, it is unprecedented for government to set nonprofit CEO compensation in any state.

Employee compensation is a market issue. It is unusual and out of character for Montana policy makers to insert government into market issues. There is no logical relationship between property tax exemption, (a tax status granted for charitable use of property) and key employee compensation (a human resource issue determined by the market and set by a board of directors.)

The Slippery Slope

HB331 is concerned with executive compensation. What will come next? Concern about budget size, endowment size, amount of assets, or square footage of property? This is a slippery slope that would also set a precedent for government interference in nonprofit compensation that is unequaled anywhere in the nation.

What is the bill really about?

It's possible HB331 isn't really about compensation, but rather about property tax exemption. If that's the case, lawmakers should address the real issue in a more straightforward manner.

Who is impacted?

We know there were at least 39 organizations and 257 key employees that fit the criteria of the bill. In addition to hospitals, some of the organizations that would have been impacted by this in 2015 (last available compensation data) include Rocky Mountain Elk Foundation, Easter Seals Goodwill of the Northern Rocky Mountains, University of Great Falls (Private college), Yellowstone Boys and Girls Ranch Foundation. And in amongst the large hospitals are several small critical access hospitals who struggle to secure leaders, such as Sidney, Glendive and Miles City to name a few. Many of the names on the list we assembled based on 990s are physicians, and without extensive research it's difficult to say exactly how many key employees – other than physicians– would be impacted.

Questions about Applicability

We have some questions about the applicability of the bill:

1) Who will be in charge of determining exactly how much of a CEO's time is spent in Montana if it is a CEO of a regional or national nonprofit?
2) The fiscal note did not include any costs related to monitoring or record keeping that would increase as a result of the bill.
3) We were curious as to how much payroll and income taxes would decrease if employees who currently are compensated at a high level were replaced with employees compensated at $250,000 or less.

We at MNA recognize a healthy nonprofit sector is necessary to Montana's vitality and livability. Nationally and in our state, the nonprofit sector reflects our shared wishes for a society characterized by both a small government and the quality of life we want for ourselves and others in our communities.

In this context, the business and government sectors have actively supported the role of a "third sector", doing the work they will not or cannot do. Nonprofits have become a primary partner to government, working in communities on government's behalf even when the cost of doing so is grossly out of sync with reimbursement, requiring supplemental fundraising. Nonprofits accept the responsibilities and expectations we are entrusted with. We carry out our work upholding the highest professional standards possible in our given industries. We simply can't do that without appropriately qualified professionals.

Federally and at the state and local levels, tax policy is one way the public and private sectors recognize and support the unique role of nonprofits and the resulting charitable benefits they bring to communities. HB331 is not only illogical tax policy and self-defeating HR policy, it also second guesses nonprofit leaders - both in the board room and at the executive level, sending a poor message from policy-makers to their partners in the nonprofit sector.