

The Truth About PILOTs and Public Schools

Hoboken's three charter schools -- HoLa Dual Language, Elysian Charter, and Hoboken Charter -- recently collaborated to develop and circulate a Frequently Asked Questions ("FAQ") document regarding Payment in Lieu of Taxes programs ("PILOT") in response to Mayor Ravi Bhalla's statement that the PILOT fund would have "no effect" on charter schools. The contents of the FAQ are factually and legally erroneous. In an effort to correct the public understanding of PILOT program purposes and its implementation within Hoboken, this document offers the truth on these subjects, backed up by specific verifiable legal authorities.

Question Presented	Charter Schools' "Answer"	The Truth
1. What is a PILOT and how does this impact education funding?	<p><i>Municipalities use Payments in Lieu of Taxes (PILOTs) to encourage development of a project that might not otherwise be financially attractive to developers. Through a PILOT program, the developer receives a reduction of property taxes. When a property is designated as a PILOT, it no longer pays toward the local tax levy. The local tax levy is the amount we all pay in property taxes to fund all of our public schools, charter and district alike.</i></p> <p>PILOTs negatively impact public education as PILOTs do not require payment into the local tax levy for all school districts. However, the Hoboken City Council admirably and responsibly addressed this issue in the 770 Jackson PILOT by earmarking monies for Hoboken public schools. If 770 Jackson was not PILOTed, that property would pay into the local levy and the property tax money would be allocated to all four districts under the state funding formula for public districts and public charters.</p>	<p>The charter schools' assertion that property tax money is “allocated to all four districts under the state funding formula for public school districts and public charters” is false. Charter schools are <u>not</u> considered school districts under New Jersey school laws relative to taxing authorities. <i>See N.J.S.A. 18A:7G-3.</i> School districts can assess taxes, issue bonds and receive funding through the State school funding formula. <i>See, e.g., N.J.A.C. 6A:23, et seq.</i> (school district may put to voters the matter of exceeding the tax levy limitation, pursuant to <i>N.J.S.A. 18A:7F-5.d (9)</i>; <i>N.J.A.C. 6A:26-3</i> (permit school district to initiate capital projects and to issue new bonds for capital improvements to improve existing facilities or to build new facilities). Charter schools can do <u>none</u> of those things.</p> <p>Instead, charter schools receive the entirety of their operating revenues <u>from the local school district</u> in the form of tuition payments. <i>N.J.S.A. 18A:36-12.</i> Statute dictates the composition of charter schools' tuition and does not include PILOT payments among charter schools' revenue sources.</p> <p>The charter schools' response to Question 1 overlooks a key attribute of a PILOT agreement. The purpose of the payment in lieu of taxes is to compensate the municipality and <u>other impacted taxing authorities</u> for the cost of services that will still need to be provided to the businesses and residents of the new development. <i>N.J.S.A. 40A:20-2; N.J.S.A. 40A:21-2</i> ("Legislative Findings" for Long-Term and Short-Term PILOT Programs). This is a very important concept as it explains why charter schools are <u>not</u> entitled to receive PILOT payments. It is because they are not a taxing authority that would otherwise have been able to draw on the increased ratables of the development. In addition, charter schools will not be impacted by the development since they have fixed enrollments established in their charter, which can only be increased through an application to the Commissioner of Education. <i>See N.J.A.C. 6A:11-2.6, et seq.</i> Thus, charter schools will not be impacted by any additional enrollments resulting from the new development, while the Hoboken Public School District, as operated by the Board of Education, will. <i>See N.J.S.A. 18A:36-12.</i> Only the Hoboken Public Board is a public school district that holds taxing authority. It, therefore, is the only</p>

		school entity in Hoboken eligible for payments in lieu because it, not charter schools, will be directly impacted by a change in ratables due to the PILOT agreement.
2. Do charter schools receive fixed funding or tuition from the state?	No, charters do not receive tuition or fixed funding from the state. Instead, charter funding is calculated by the NJDOE in accordance with NJ Statute 18A:36A-12. Generally, charter funding is based on two variables: local tax levy and total enrollment. That amount is then discounted to 90% with the Board of Education retaining 10%. Charters are primarily funded from the local property tax levy and experience funding fluctuations both up and down, the same as the Hoboken BOE.	<p>Charter school tuition payments are calculated strictly pursuant to a <u>statutory</u> formula.</p> <p>The assertion that the Hoboken Board of Education retains “10% of each per-pupil dollar transferred to charter schools” is misleading. It fails to put in perspective the financial burden placed on the Hoboken School District by the charter schools. In fact, the 90% funding amount does not provide a benefit to the Hoboken School District, but represents an acknowledgement by the New Jersey Legislature that the charter school drains resources from the local district in many ways.</p> <p>For example, special education students with high needs placements will not be enrolled in the charter school on a proportional basis; student transportation must be provided by the resident district; and fixed cost such as utilities and maintenance are not impacted by year-to-year fluctuations in enrollment. It is these types of costs to the district that the Charter School Act was intending to account for establishing a contribution amount.</p>
3. What does the 2016 resolution actually say?	In 2016, the Council introduced a resolution to restore education funding for the 770 Jackson Street PILOT. The resolution states the following: The Resolution (“Resolution”) requires “that the Project pays its fair share of school taxes in order to enable the School District to continue to provide a thorough and efficient education to the children of the City of Hoboken, and to relieve non-abated property owners within the City of Hoboken from subsidizing any tax burden triggered by the Long Term Exemption Law, arising out of this Project.” PILOT funding is intended as a substitute for the local property taxes that would have been paid if the property was not subject to a PILOT. If these property taxes were paid, they would have contributed to the regular funding formula that distributes tax revenues to all four districts in order to run their public schools (each charter school is considered by the state of NJ as its own, separate district). Again, the local levy supports all public schools, including public charter schools.	<p>The purpose of the payment in lieu of taxes is to compensate the municipality and other impacted taxing authorities for the cost of services that will still need to be provided to the businesses and residents of the new development and is <u>not</u> intended as a substitute for local property taxes. <i>See N.J.S.A. 40A:20-2; N.J.S.A. 40A:21-2.</i></p> <p>"The Legislature finds that the various statutes authorized by Article VIII, Section I, paragraph 6 of the New Jersey Constitution permitting municipalities to grant for periods of five years' exemptions or abatements, or both, from taxation in areas in need of rehabilitation have proven to be effective in promoting the construction and rehabilitation of residential and commercial and industrial structures in areas threatened with economic and social decline."</p> <p>Charter schools are not entitled to receive PILOT payments because they are not impacted by the property being assessed. Once again, the charter schools mischaracterize their designation. Charter schools are <u>not</u> school districts. Charter schools receive statutory tuition payments from the local district for educating some of the district's students. Accordingly, they have no greater standing than any other service provider to one of the impacted taxing authorities.</p>
4. Are charters school funded	Yes, public charters like public districts rely on local levy funds to educate students.	Unlike the Hoboken School District and other school districts, charter schools have no authority to levy taxes and receive their revenues.

through these funds?		
5. How do you know that charter students were meant to be included in the 2016 resolution?	The PILOT's Fiscal Analysis includes the public charter students and the charter public school budgets in projecting the impact of the PILOT on Hoboken Schools. This is accurate because PILOTS impact all public schools, district, and charter. To not include each of the public schools that were used to calculate the payment would be a direct conflict of the resolution language.	One of the individuals who drafted the resolution (<i>i.e.</i> , Mayor Bhalla) released a statement that the PILOT fund is meant for the Hoboken Public School District <u>only</u> , and the PILOT fund would have "no effect" on charter schools. (See Mayor Bhalla's complete statement: https://local.nixle.com/alert/8291508/?fbclid=IwAR0wXmcQtu3R09JOU1AQRU93r_m_KcX2Frk8vuzzWMb-WaT-ZNiFHigE_dY). Only the Hoboken Public Board of Education is a public school district with taxing authority and, therefore, the only school entity in Hoboken that will be directly impacted by a change in ratables. The charter schools will not be impacted by the new development as the district will and for this reason, the charter schools simply have no right to PILOT funds.
6. How does the charter enrollment cap play a role in the situation?	The enrollment cap is irrelevant. First, not every resident at 770 Jackson is new to Hoboken; some already lived in Hoboken and moved to 770 Jackson, so they are not new students. Second, charter students already live at 770 Jackson and under the enrollment cap argument, those students would be unfunded pupils at the charter schools. Lastly, the most important reason the enrollment cap argument fails is because the language of the resolution clearly intends this to be a replacement of the lost taxes from the PILOT, not because of a hypothetical influx of new students from one new development. All properties pay into the local levy because that's how ALL public schools are funded. The loss to the local levy because of a PILOT affects ALL of the schools--regardless of their enrollment going up or down.	<p>It is important to understand that charter schools are not neighborhood schools that must grow as the neighborhood population grows. Charter schools are open enrollment schools that can accept students up to its maximum enrollment from anywhere in the district and also from outside the district. Students from the new development have a legal right to attend the district schools but not the charter schools. <i>N.J.S.A.</i> 18A:36A-8; <i>N.J.A.C.</i> 6A:11-4-11 ("Lottery" – the statute and regulations only allow a set number of students to attend the charter school, and selection is based on a lottery). The charter schools cannot accept them if they are at the maximum enrollment set in their charter.</p> <p>It is impossible to craft an argument that charter schools will be impacted in the same way as the local district. The charter school's maximum enrollment will be the same before the development opens and will remain the same after the development opens. For this reason, they will <u>not</u> see a reduction of per pupil funding due to the PILOT program.</p> <p>The Hoboken Board of Education is quite different and will be severely impacted. It has no maximum enrollment and must enroll every student who arrives in Hoboken. Ordinarily, it would draw directly on the tax base to pay for these additional students; however, due to the PILOT agreement, which removes these taxes, the Board will not see the benefit of the ratables. It is clear that PILOT agreements were intended to address the predicament faced by the Hoboken Board of Education. Misunderstanding this, the charter schools appear to have taken an opportunistic stance.</p>
7. If this PILOT payment is not shared with our Hoboken charter schools, how will this impact a	<i>If these funds are not allocated, HBOE will be lowering per-pupil funding for 30% of Hoboken's public students. Charter school funding is determined by a formula that is completely dependent on local property taxes. Under current law, any tax revenue that would have come from the PILOTed property would have been shared with</i>	As discussed above, the tuition payment calculation is derived from statute and is based on the sending district's program budget. The program budget of the sending district includes certain State aid paid to the district as well as the district's local levies. Most importantly, the maximum enrollment of the charter schools will not be increasing as a result of the new development. The enrollment impact will be solidly borne by the neighborhood schools of the local district. Only the Hoboken Public School District will be impacted. Only the Hoboken Public School District holds a legal and practical entitlement to PILOT funds.

charter student in Hoboken?	<i>charter schools. A very basic way to think of charter funding is as an algebraic equation. The per pupil funding amount is the local property tax levy divided by student enrollment. Under the current proposal, the overall levy (numerator) will stay flat as none of the revenue will be considered local property tax levy and will instead be directed to one district as a supplemental payment outside of the local levy. Meanwhile, enrollment will be increasing (denominator). The result will be reduced per pupil funding, thus hurting every child that attends a public charter school in Hoboken.</i>	
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