



WYOMING LEGISLATIVE SERVICE OFFICE

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Issue Brief: *Payments in Lieu of Taxes (PILT)*

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by:

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ISSUE

This document provides an explanation of how the PILT program works to provide compensation to Wyoming counties for losses to their tax bases due to the presence of federal lands within their borders.

SUMMARY

The PILT program helps to offset lost tax revenue by authorizing the Bureau of Land Management (BLM) to make payments to local governments under a complicated formula. Congress has failed to fully fund the PILT program since 1994. As a result, states receive a prorated share of the authorized amount. Wyoming ranks ninth in total dollars received under the PILT program. To receive more, Wyoming could explore pass through options that would reduce prior year payments under the Standard Method Calculation and continue to support the efforts of Wyoming's Congressional delegation in calling for full funding of the program.

BACKGROUND

Fifty percent of Wyoming land is owned and managed by the federal government. Federal lands are not subject to property taxes, a major source of revenue for county governments. Under current federal law, local governments are compensated through various programs for losses to their tax bases due to the presence of federally-owned land within their borders. The most widely applicable program, administered by BLM, applies to many types of federally-owned land and is known as the PILT program. According to the Congressional Research Service (CRS), the Payments in Lieu of Taxes Act of 1976 (P.L. 94-

565, 31 U.S.C. 6901-6907, as amended) was passed at a time when U.S. policy was shifting from one of disposal of federal lands to one of retention. The current BLM's regulations governing the procedures for disbursing PILT became effective on September 22, 2000. (43 CFR 1881) The law recognizes that the inability of local governments to collect property taxes on federally-owned land can create a financial impact. PILT are made in addition to other federal revenues that the federal government transfers to the states, such as those derived from commercial activities on federal lands including oil and gas leasing, livestock grazing, and timber harvesting.

CALCULATING PILT

Congress appropriates funding for the PILT program each year. The BLM allocates payments to local governments according to a formula in the PILT Act that includes population, receipt sharing payments, and the amount of federal land within an affected county.

The procedure used to calculate PILT payments is somewhat complex. A simplified procedure is presented in Table 1. Authorization for PILT payments is based on a number of factors including:

- The number of eligible federal acres in the county;
- The population in the county;
- The payments made to the county by the federal government in the prior year; and
- The increase in the Consumer Price Index during the year.

The formula in the PILT Act sets the total dollar amount that is authorized to be transferred to the states. However, Congress has failed to appropriate the full amount authorized under the law since 1994. Instead, Congress sets annual PILT program funding limitations that affect the actual payments transferred to the states under the program. Funding limitations are equitably applied to all payments under the program. Any PILT payment or portion of a payment that is not made as a result of funding limitations is not carried forward to future years.

Determination of the PILT for a county requires the use of the above stated factors in a process of two calculations, a standard and a minimum. The

Standard Method Calculation multiplies the acres of entitlement land by a standard rate, subtracting prior year's payments and compares the estimated payment to a population limit. The Minimum Method Calculation is used when significant revenue sharing in the previous year would mean no PILT in the current year for the county. The Standard and Minimum Method Calculations are compared to each other and the larger of the two is used as the amount authorized for PILT. The main difference between the Standard and Minimum Method Calculations is that the Minimum Method uses a different per acre rate and does not take into account the prior year's revenue sharing payments.

TABLE 1. SAMPLE PILT CALCULATION FOR ALBANY COUNTY, WYOMING 2002.

CALCULATING PILT			
Standard Method Calculation		Minimum Method Calculation	
Acres of entitlement land	678,852	Acres of entitlement land	678,852
Multiplied by dollars per acre (standard)	\$1.99	Multiplied by dollars per acre (standard)	\$0.27
Subtotal	\$1,350,915.48	Subtotal	\$183,290.04
Subtract prior year's payments	\$67,696.00		
<u>Estimated payment based on acreage</u>	<u>\$1,283,219.48</u>	<u>Estimated payment based on acreage</u>	<u>\$183,290.04</u>
<i>Compared to:</i>		<i>Compared to:</i>	
Population unit	32,000	Population unit	32,000
Multiplied by unit per capita rate	\$65.18	Multiplied by unit per capita rate	\$65.18
Subtotal	\$2,085,760.00	Subtotal	\$2,085,760.00
Subtract prior year's payments	\$67,969.00		
<u>Est. payment population limited</u>	<u>\$2,018,064.00</u>	<u>Est. payment population limited</u>	<u>\$2,085,760.00</u>
Does the population ceiling apply?	No	Does the population ceiling apply?	No
Smaller of Standard Method Calculations	\$1,283,219.48	Smaller of Minimum Method Calculations	\$183,290.04
Larger of Standard or Minimum Calculations		\$1,283,219.48	
Congressionally mandated prorated share		0.59701812	
<u>Net Payment to county</u>		<u>\$766,105.00</u>	
Effective payment per entitlement acre		\$1.1285	

Source: Foulke, T. et al., *2002 Payment in Lieu of Taxes (PILT) to Wyoming Counties: Albany*, B-113AL (University of Wyoming: Cooperative Extension Service, 2003)

ELIGIBLE LANDS

According to the BLM and the formula established by the PILT Act, there are three categories of entitlement lands:

- Federal lands in the National Forest System, lands administered by the BLM, lands in federal water resource projects,

dredge areas maintained by the U.S.

Army Corps of Engineers, inactive and semi-active Army installations, and some lands donated to the federal government (section 6902 payments);

- Federal lands acquired after December 30, 1970, as additions to lands in the National Park System or National Forest

Wilderness Areas (section 6904 payments); and

- Federal lands in the Redwood National Park or land acquired in the Lake Tahoe Basin near Lake Tahoe under the Act of December 23, 1980 (section 6904 or 6905 payments).

Only designated lands are eligible for PILT; other federal lands such as active military bases, federal office buildings and the like are not part of the lands eligible for the PILT program.

The calculation described in the above section is used to determine payments for section 6902 lands, which make up the majority of lands under the program. Section 6904 and 6905 payments are computed differently for lands acquired for addition to the National Forest or National Park systems. Section 6904 payments occur infrequently in a few Wyoming counties and do not add a significant amount to the PILT. Section 6905 payments are not paid on lands in Wyoming.

POPULATION PAYMENT LIMITS

The PILT Act restricts the payment a county may receive based on population as determined by census. The limit is calculated using a sliding scale of dollars per capita multiplied by the population unit. The population unit is the population rounded to the nearest thousand if the population exceeds 5,000. However, the actual population is used for counties with populations under 5,000. For purposes of the PILT calculation, a county may not be credited with a population greater than 50,000. The less populous counties have a large per capita unit rate, but the ceiling is higher for the more populous counties. Estimated PILT payments are compared to the county ceiling amount.

PRIOR YEAR'S PAYMENTS

Using the Standard Method, prior year's revenue sharing only counts federal payments going directly into the county general fund. Prior year payments are federal payments to local governments under programs other than PILT during the previous fiscal year. According to the BLM, these include those made under the Refuge

Revenue Sharing Fund, the National Forest Fund, the Taylor Grazing Act, the Mineral Leasing Act for acquired lands, and the Federal Power Act. The PILT Act requires the governor of each state to report these payments to the BLM each year.

In Wyoming, this currently applies only to the National Forest Fund (16 USC 500). Under this program, the U.S. Forest Service pays 25 percent of a National Forest's annual revenues to the state for forest lands within each county. The state, in turn, distributes these funds back to the counties. State statutes mandate that a minimum of 5 percent be used for education and roads (W.S. 9-4-504). Currently, five percent of the money received by the state goes to the school district and the remaining 95 percent goes to counties. The prior year payment is included in the PILT calculations only if the funds go to a local unit of general government. This means that if the county is allowed to include the monies in its general fund, the payment is included as a prior year's payment. Money that is required by state statute to be applied to a non-general unit of government, such as a school district, is not included in the PILT calculation. Thus, the 95 percent that goes to Wyoming counties is counted toward the prior year's payment. The five percent that goes to schools "passes through" the county and is not counted toward the prior year's payments.

STATE PASS-THROUGH LAWS

States may have laws that allow counties to increase their payments above the calculated standard amount if they are paid under the formula that deducts their prior year payments from other agencies. Only the amount of federal land payments actually received by counties in the prior fiscal year are deducted. Some states require that the payments from federal agencies "pass through" the county government to some other entity (typically a school district), rather than accrue to the county government itself. Thus, if a county receives a federal land payment, but is required by State law to pass all or part of this payment to fiscally and politically independent school districts, or other special purpose districts, such redistributed payments are considered to

have not been received by the county and are not deducted from the standard calculation. The five percent of the National Forest Fund that goes directly to Wyoming school districts is an example of a "pass through" law.

The governor of each state gives the Secretary of the Interior an annual statement on the amounts actually paid to each county under the relevant agencies' payment laws. BLM cross checks each governor's report with the records of the payment programs of federal agencies.

ADJUSTING FOR INFLATION

Congress has allowed for adjustments for inflation in the authorization levels for PILT. The standard and minimum rates, as well as the payment ceilings, are adjusted based on the change in the Consumer Price Index for the prior fiscal year. However, it should be stressed that changes in payment authorization levels do not necessarily lead to a commensurate increase in the funds appropriated to the counties.

CALCULATING THE COUNTY'S PAYMENT

Calculations and comparisons between the standard and the minimum provisions are made and the county is authorized to receive an amount equal to the larger of the two calculations. However, this amount is not automatically appropriated. Until about 1994, the full amount authorized under the law had generally been appropriated. But the value of the payments fell due to inflation.

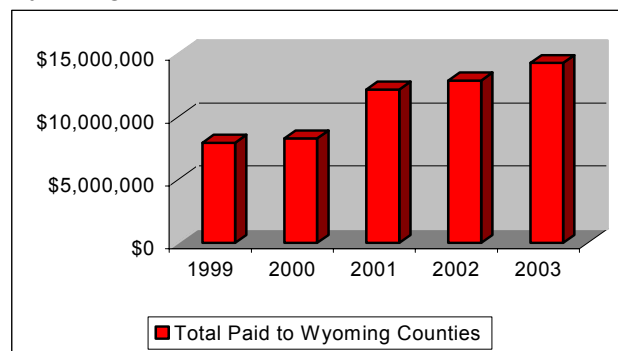
Congress amended the law in 1994. The amendment to PILT focused on increasing the total payments, building in inflation protection, and making certain additional categories of land eligible. After the amendments passed, the increasing discrepancy between appropriations and the rapidly rising authorization levels led to continued frustration among local governments and prompted intense interest among some members of Congress in increasing appropriations. The members of Wyoming's Congressional delegation have been strong advocates for full PILT funding. To a certain degree, these efforts have been successful:

appropriations have increased significantly in the last five years. However, the gap between authorization and appropriation has continued.

PAYMENTS TO WYOMING

Overall, PILT payments to Wyoming counties increased 10.8 percent from FY2002 to FY2003 (\$12,908,750 to \$14,305,824) despite a minimal loss of total acres of federal lands (11,794). Wyoming ranked ninth among the states in total PILT payments in FY2003. All of the top ten states were western states. Figure 1 illustrates the even more dramatic five-year trend. PILT payments increased 79.5 percent (\$7,969,204 to \$14,305,824) since FY1999.

FIGURE 1. Total annual PILT payments to Wyoming Counties, 1999 to 2003



Source: LSO generated from BLM data.

This trend is mainly due to the large increase in the prorated share appropriated by Congress. The prorated share (the percentage that was funded) for the years 1998 through 2000 varied from 41 and 45 percent. The boost in funding in 2001 moved the prorated share up to 58.8 percent. Previous and subsequent increases in PILT have been due to incremental changes in several key variables in the formula, including the per-acre rate and the population rate. These adjustments have helped the payments keep ahead of inflation but have not resulted in significant real growth in PILT. The overriding factor in determining PILT, however, is the prorated share authorized by Congress each year. Attempts at full funding are ongoing by various congressional delegations.

FUNDING

The law sets the calculation method and rates, but funding is part of the overall federal budget responsibility of Congress and the president. Congress has had to face serious conflict between competing pressures of counties claiming mistreatment as the appropriations fall farther behind PILT's rising authorization levels, and the efforts to reduce federal spending. The question of whether to fund PILT to the fully authorized amount is a perennial issue

In FY2003, Congress appropriated \$218.5 million for the PILT program. Of this amount, approximately \$400,000 was earmarked for administrative expenses necessary to run the program and the remaining \$218.1 million was distributed to approximately 1,900 local government units.

FURTHER ISSUES

Various issues have arisen concerning the PILT program since it was created in 1976. One is that the value of payments was undeniably eroded by inflation. This concern was addressed, at least at the authorization level, in the 1994 amendments. However, actual appropriations remain far below authorized payment levels. In FY2002, the appropriation of \$209,364,595 was 59.7 percent of the full authorized amount. This represents an improvement over 1999 when the appropriations amounted to only 41.0 percent of the authorized amount.

CRS notes that another issue now being debated is the inclusion of some or all Indian lands in the lands eligible for PILT. Local governments cannot tax many categories of Indian-owned lands. In some counties, this means a substantial portion of the land is not taxable. The remaining tax burden, therefore, falls more heavily on other property owners. To help compensate for this loss, some counties have proposed that Indian lands (variously defined) be included among those eligible for PILT. If that change in the authorizing statute were to occur, either appropriations would have to increase proportionately, or other counties would receive less than they now do.

CONCLUSION

PILT remains a significant revenue source for most Wyoming counties even though they have no control over its calculation or distribution. The \$14,305,824 that Wyoming received in PILT for FY2003 does assist Wyoming counties to offset losses to their tax bases due to the inability to tax federal lands. This amount, however, still falls below the full amount authorized by Congress. Wyoming could increase total payments received by the federal government by exploring pass through options that would reduce prior year's payments under the Standard Method Calculation and by continuing to support calls for full PILT funding. Questions may still remain as to the tax equivalency of the PILT program. At a minimum, however, such arguments need to recognize the difference between funded and unfunded PILT obligations.

CONTACTS FOR MORE INFORMATION

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ADDITIONAL READING

Pindell, D. et al, *Wyoming Payments in Lieu of Taxes*, B-1055 (University of Wyoming: Cooperative Extension Service, 1998)

Corn, M., *PILT (Payments in Lieu of Taxes): Somewhat Simplified*, RL31392 (Congressional Research Service: The Library of Congress, May 6, 2002)

Wyoming Economic Atlas.
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