



PILT (Payments in Lieu of Taxes): Somewhat Simplified

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Summary

Under federal law, local governments are compensated through various programs for losses to their property tax bases due to the presence of most federally owned land. These lands cannot be taxed, but may create demand for services such as fire protection, police cooperation, or simply longer roads to skirt the federal property. Some of these programs are run by specific agencies, and apply only to that agency's land. The most widely applicable program, administered by the Department of the Interior (DOI), applies to many types of federally owned land, and is called "Payments in Lieu of Taxes," or PILT. The authorized level of PILT payments is calculated under a complex formula. This paper addresses only the DOI PILT program. There is no PILT-like program generally applicable to military lands, but a small fraction of military lands are eligible for the DOI PILT program. Furthermore, PILT does not apply to Indian-owned lands, virtually none of which are subject to local taxes.

This paper explains PILT payments, with an analysis of the five major factors affecting the calculation of a payment to a given county. It also describes the effects of certain changes in PILT in 2008. Previously, annual appropriations were necessary to fund PILT, but a 2008 provision (in P.L. 110-343) for mandatory spending ensured that, beginning with FY2008 and continuing for four more years, all counties will receive 100% of the authorized payment. Efforts have begun to convert the temporary mandatory spending into a permanent feature of PILT. With the enactment of five years of mandatory spending, counties might also renew the long-term debate over the equity of the PILT formula itself in future years.

Other issues have arisen concerning PILT since the program was created in 1976. One is the perceived delay in making PILT payments in 2010. An administrative controversy arose when DOI announced that the PILT payments would be delayed past the normal June issuance. DOI cited various reasons, but counties (many facing falling revenue bases) protested the delay. Checks were eventually issued with only minor delay.

Other issues have been the inclusion of additional lands under the PILT program, particularly some or all Indian lands, which are not now eligible for PILT. Most categories of Indian-owned lands cannot be taxed by local governments. In some counties, this means a very substantial portion of the land is not taxable. The remaining tax burden (for roads, schools, fire and police protection, etc.) 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 payments. Other lands mentioned from time to time for inclusion include those of the National Aeronautics and Space Administration, and the Departments of Defense and Homeland Security. In addition, some counties would like to revisit the compensation formula and emphasize a payment rate more similar to property tax rates (which vary widely among counties), a feature that would be a major change in counties with high property values. Finally, for lands in the National Wildlife Refuge System, some would argue that all lands of the system should be eligible for PILT, rather than limiting the PILT payments to lands reserved from the public domain and excluding PILT payments for acquired lands. The exclusion affects primarily counties in eastern states.

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Generally, federal lands may not be taxed by state or local governments unless the governments are authorized to do so by Congress. Since local governments are often financed by property or sales taxes, this inability to tax the property values or products derived from the federal lands may affect local tax bases significantly. Instead of authorizing taxation, Congress has usually chosen to create various payment programs designed to compensate for lost tax revenue. These programs take various forms. Many pertain to the lands of a particular agency (e.g., the National Forest System or the National Wildlife Refuge System).¹ The most wide-ranging payment program is called “Payments in Lieu of Taxes” or PILT.² It is administered by the Department of the Interior and affects most acreage under federal ownership. Exceptions include most military lands and lands under the Department of Energy (DOE lands have their own smaller payment program).³ In FY2010, the PILT program covered 608.1 million acres, or about 94% of all federal land.

The Payments in Lieu of Taxes Act of 1976 (P.L. 94-565, as amended, 31 U.S.C. §§ 6901-6907) was passed at a time when U.S. policy was shifting from one of disposal of federal lands to one of retention. The policy meant that the retained lands would no longer be expected to enter the local tax base. Because of that shift, Congress agreed with recommendations of a federal commission that if these federal lands were never to become part of the local tax base, then some compensation should be offered to local governments to make up for the presence of non-taxable land within their jurisdictions.⁴ Moreover, there was a long-standing concern that some federal lands produced large revenues for local governments, while other federal lands produced little or none. Many Members felt that the imbalance needed to be addressed. The resulting law authorizes federal PILT payments to local governments that may be used for any governmental purpose.

Many of the issues addressed when PILT was created have continued to the present time. One issue is the appropriate payment level and later erosion of the purchasing power of the payments due to inflation. For many years, counties held that payments were not keeping pace with inflation. Then PILT was amended in 1994. **Figure 1** shows a major increase in the actual dollars appropriated for PILT from FY1993 to FY2010. Even adjusted for inflation, the figure indicates a substantial increase over this period.⁵

¹ For more information on some of these agency-specific payment programs, see CRS Report RL30335, *Federal Land Management Agencies' Mandatory Spending Authorities*, coordinated by Ross W. Gorte; and CRS Report R41303, *Reauthorizing the Secure Rural Schools and Community Self-Determination Act of 2000*, by Ross W. Gorte. The program under the Department of Energy is described in U.S. General Accounting Office [now Government Accountability Office], *Energy Management: Payments in Lieu of Taxes for DOE Property May Need to Be Reassessed*, GAO/RCED-94-204 (Washington, DC: July 1994).

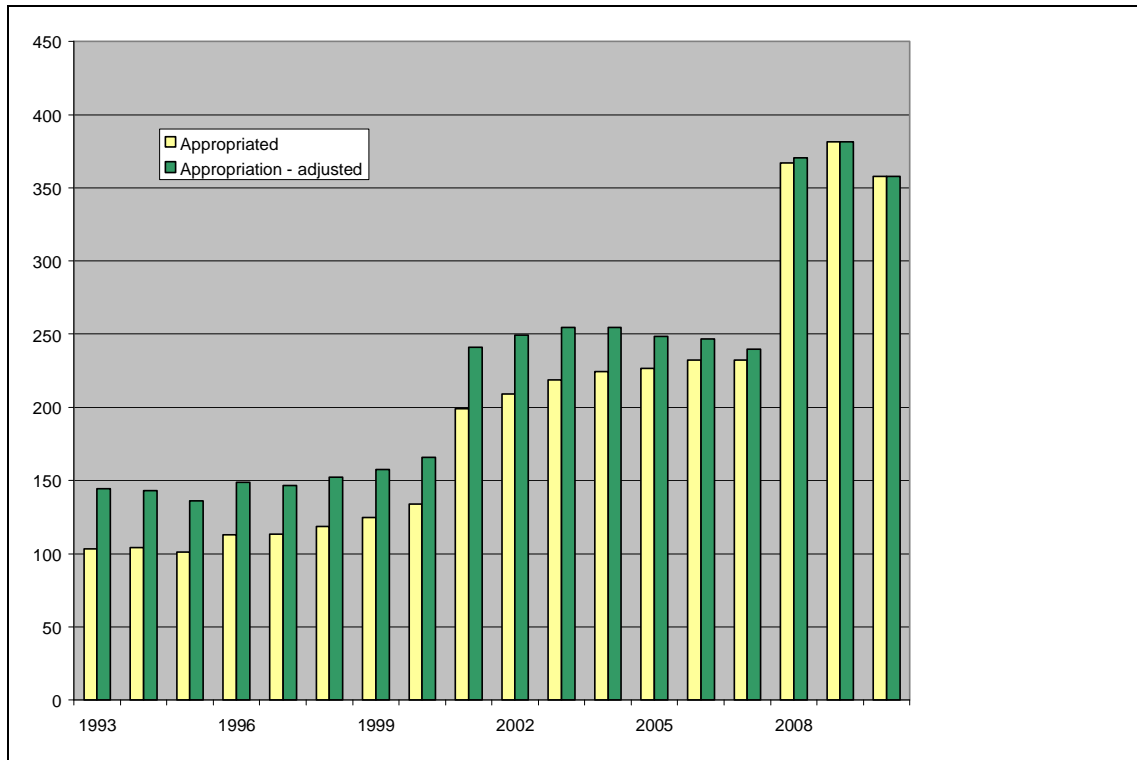
² U.S. Department of the Interior, Office of Budget, *National Summary: Fiscal Year 2010 Payments in Lieu of Taxes*, Washington, DC, 2010. A similar document is issued every year; each contains tables for payments and acreage by state and county. To query data from the most recent fiscal year, see <http://www.doi.gov/pilt/>.

³ A program to support local schools for the presence of children of federal employees, including military dependents, provides some support to local governments, however, and to some extent compensates for lost property tax revenue when military families live on federally owned land. For more information, see CRS Report RL34119, *Impact Aid for Public K-12 Education: Reauthorization Under the Elementary and Secondary Education Act*, by Rebecca R. Skinner and Richard N. Apling.

⁴ U.S. Public Land Law Review Commission, *One third of the Nation's Land: A Report to the President and to the Congress*, Washington, DC, June 1970, pp. 235-241.

⁵ Inflation adjustments in this paper use the implicit price deflator for the Gross Domestic Product. See http://faq.bea.gov/cgi-bin/bea.cfg/php/enduser/std_adp.php?p_faqid=513.

Figure I. Total PILT Payments, FY1993-FY2010, Actual and Inflation-Adjusted (to 2009 Dollars)
(\$ in millions)



But the 1994 amendments, designed to overcome years of erosion due to inflation, have caused the authorized payment level to increase still faster. (See **Figure 2.**)

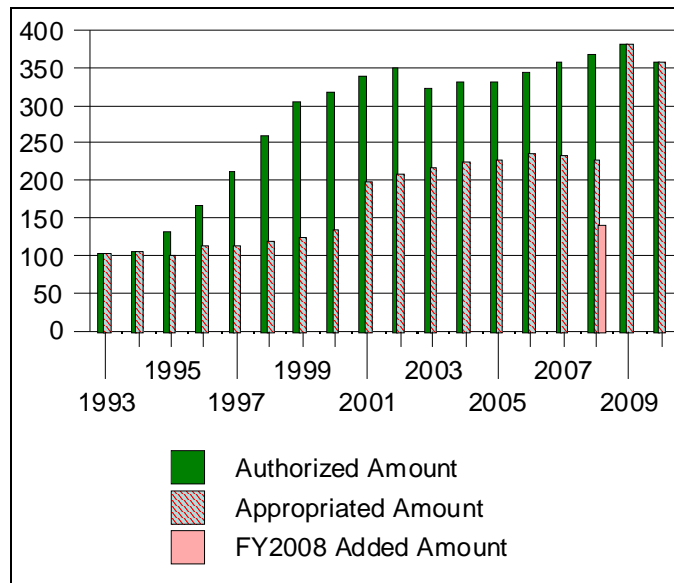
Critics of PILT cite examples of what they view as its “quirkiness.” First, while there is no distinction between acquired and public domain lands⁶ for other categories of eligible lands, acquired lands of the Fish and Wildlife Service (FWS) are not eligible for PILT—to the consternation of many states in the East and Midwest, where nearly all FWS lands are acquired. Second, some of the “units of general local government”⁷ that receive large payments have other substantial sources of revenue, while some of the counties receiving little are relatively poor. Third, a few counties which receive very large payments from other federal revenue-sharing programs (because of valuable timber, mining, recreation, and other land uses) nonetheless are

⁶ *Acquired lands* are those which the United States obtained from a state or individual. *Public domain lands* are generally those which the United States obtained from a sovereign nation.

⁷ *Unit of general local government* is defined in the law (31 U.S.C. § 6901(2)) as “a county (or parish), township, borough, or city where the city is independent of any other unit of general local government, that (i) is within the class or classes of such political subdivisions in a State that the Secretary of the Interior, in his discretion, determines to be the principal provider or providers of governmental services within the State; and (ii) is a unit of general government as determined by the Secretary of the Interior on the basis of the same principles as were used on January 1, 1983, by the Secretary of Commerce for general statistical purposes” plus the District of Columbia, Puerto Rico, Guam, and the Virgin Islands. To avoid the use of the unwieldy *unit of general local government*, the word *county* will be used in the rest of this paper, and must be understood here to be equivalent to the above definition. This shorthand is often used by DOI.

also authorized to receive a minimum payment (33¢/acre)⁸ from PILT. Fourth, in some counties the PILT payment greatly exceeds the amount that the county would receive if the land were taxed at fair market value, while in others it is much less. Given such problems, and the complexity of federal land management policies, consensus on substantive change in the PILT law has been elusive, particularly when Congress has a stated goal of reducing federal expenditures.

Figure 2. Total PILT Payments, FY1993-FY2010
Authorized Amount and Appropriation
 (\$ in millions)



Changes to PILT in the 110th Congress

The Continuing Appropriations Act, 2009 (P.L. 110-329), provided the FY2008 level (\$228.9 million) through March 6, 2009; if this had been the full-year appropriation, it would have constituted roughly 61% of the figure estimated for full payment of the FY2009 authorized level. However, §601(c) of Division C of P.L. 110-343 (the Emergency Economic Stabilization Act of 2008) provided for mandatory spending of the full authorized level for five years—FY2008-FY2012. For FY2008, an additional payment was made to raise the FY2008 level to the full authorized amount, and for FY2009-FY2012, the payments are to be at 100% of the authorized amount.

⁸ This and all subsequent references to payment rates and ceilings are based on FY2010 figures unless otherwise noted.

How PILT Works: Five Steps to Calculate Payment

Calculating a particular county's PILT payment first requires answering several questions:

1. How many acres of eligible lands are in the county?
2. What is the population of the county?
3. What were the *previous* year's payments, if any, for all of the eligible lands under the other payment programs of federal agencies?⁹
4. Does the state have any laws requiring the payments from other federal agencies to be passed through to other local government entities, such as school districts, rather than staying with the county government?
5. What was the increase in the Consumer Price Index during the year?

Each of these questions will be discussed below. Finally, their use in the computation of each county's payment is described.

Step 1. How Many Acres of Eligible Lands Are There?

Nine categories of federal lands are identified in the law as eligible for PILT payments:¹⁰

1. lands in the National Park System;
2. lands in the National Forest System;
3. lands administered by the Bureau of Land Management;
4. lands in the National Wildlife Refuge System that are withdrawn from the public domain;
5. lands dedicated to the use of federal water resources development projects;¹¹
6. dredge disposal areas under the jurisdiction of the U.S. Army Corps of Engineers;
7. lands located in the vicinity of Purgatory River Canyon and Piñon Canyon, Colorado, that were acquired after December 31, 1981, to expand the Fort Carson military reservation;
8. lands on which are located semi-active or inactive Army installations used for mobilization and for reserve component training; and

⁹ Regardless of how many agencies have jurisdiction over these eligible lands in a county, all of their payments are added together, and deducted from the following year's single PILT payment. The formula in 31 U.S.C. § 6903 sets a cap on the total PILT payment for *all* of the eligible land in the county.

¹⁰ See 31 U.S.C. § 6901. The law refers to these nine categories of lands as "entitlement lands," and the term is used throughout the act. However, because *entitlement* is a word which is used in a very different, and potentially confusing, context in the congressional budget process, these lands will be called *eligible lands* in this paper.

¹¹ These lands are under the jurisdiction of the Bureau of Reclamation, for the most part.

9. certain lands acquired by DOI or the Department of Agriculture under the Southern Nevada Public Land Management Act (P.L. 105-263).

Section 6904/6905 Payments

Two sections of the PILT law (31 U.S.C. 6904 and 6905) provide special payments for limited categories of land, for limited periods. These are described in the annual National Summary as follows:

Section 6904 of the Act authorizes payments for lands or interests therein, which were acquired after December 31, 1970, as additions to the National Park System or National Forest Wilderness Areas. To receive a PILT payment, these lands must have been subject to local real property taxes within the five year period preceding acquisition by the Federal government. Payments under this section are made in addition to payments under Section 6902. They are based on one percent of the fair market value of the lands at the time of acquisition, but may not exceed the amount of real property taxes assessed and levied on the property during the last full fiscal year before the fiscal year in which [they were] acquired. Section 6904 payments for each acquisition are to be made annually for five years following acquisition, unless otherwise mandated by law....

Section 6905 of the Act authorizes payments for any lands or interests in land owned by the Government in the Redwood National Park or acquired in the Lake Tahoe Basin under the Act of December 23, 1980 (P.L. 96-586, 94 Stat. 3383). Section 6905 payments continue until the total amount paid equals 5 percent of the fair market value of the lands at the time of acquisition. However, the payment for each year cannot exceed the actual property taxes assessed and levied on the property during the last full fiscal year before the fiscal year in which the property was acquired by the Federal government.

In the FY2010 payments, the Section 6904/6905 payments totaled \$587,638 or 0.16% of the total program. California counties received the largest amount (\$88,856). Twelve states and territories received nothing under these two sections in FY2010. These states were Alabama, Connecticut, Delaware, Iowa, Kansas, New Jersey, North Dakota, Rhode Island, Vermont, and Guam, Puerto Rico and the Virgin Islands.

In addition, if any lands in the above categories were exempt from real estate taxes at the time they were acquired by the United States, those lands are not eligible for PILT, except in three circumstances:

1. land received by the state or county from a private party for donation to the federal government within eight years of the original donation;
2. lands acquired by the state or county in exchange for land that was eligible for PILT; or
3. lands in Utah acquired by the United States if the lands were eligible for a payment in lieu of taxes program from the state of Utah.

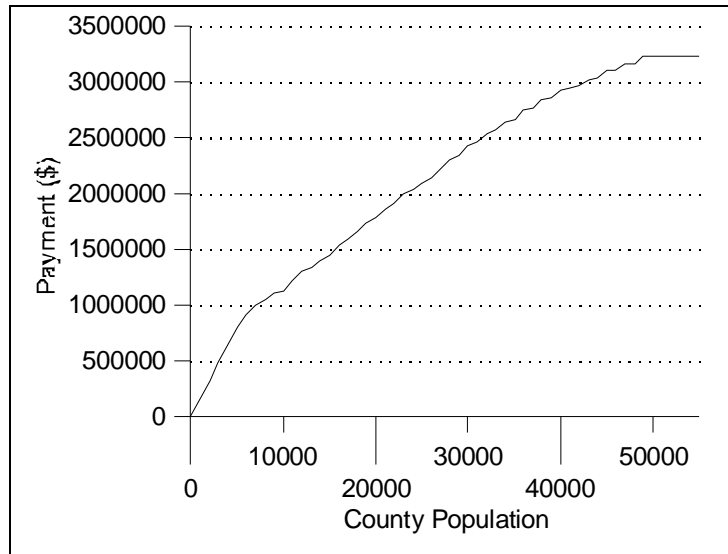
Only the nine categories of lands (plus the three exceptions) on this list are eligible for PILT payments; other federal lands—such as military bases, post offices, federal office buildings, and the like—are not eligible for PILT. The exclusion of lands in the National Wildlife Refuge System that are acquired is an interesting anomaly, and may reflect nothing more than the House and Senate committee jurisdictions at the time P.L. 94-565 was enacted.¹²

¹² At the time, jurisdiction over the National Wildlife Refuge System (NWRS) generally was in one committee, while jurisdiction over public domain lands was within the jurisdiction of a different committees. This was true in both the House and Senate. The committees considering PILT had no jurisdiction over the acquired lands within the NWRS.

Step 2. What Is the Population in the County?

The law restricts the payment a county may receive based on population. For example, for the FY2008 payment, a county with a population of 1,000 people will not receive a PILT payment over \$153,500 (\$153.50 per person); a jurisdiction with a population of 30,000 will not receive a payment over \$2,303,100 (\$76.77 per person). In FY2008, no county may receive a PILT payment over \$3,070,500 regardless of population. **Figure 3** shows the relationship between the population of a county and the maximum PILT payment.

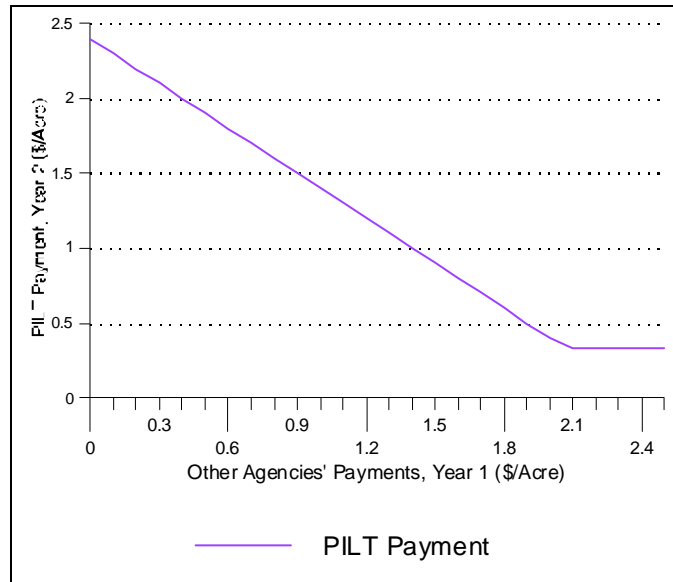
Figure 3. Ceiling Payments Based on County Population Level, FY2010



Step 3. Are There Prior-Year Payments from Other Federal Agencies?

Federal land varies greatly in revenue production. Some lands have a large volume of timber sales, some have recreation concessions such as ski resorts, and some generate no revenue at all. Some federal lands have payment programs for state or local governments, and these may vary markedly from year to year. To even out the payments among counties and prevent grossly disparate payments, Congress provided that the previous year's payments on eligible federal lands from agency-specific payment programs to counties would be subtracted from the PILT payment of the following year. So for a hypothetical county with three categories of eligible federal land, one paying the county \$1,000, the second \$2,000, and the third \$3,000, then \$6,000 would be subtracted from the following year's PILT payment. Most counties are paid under this offset provision, which is called the *standard rate*. In **Figure 4**, the standard rate is shown by the sloping portion of the line, indicating that as the sum of the payments from other agencies increases, the PILT payment declines on a dollar-for-dollar basis.

Figure 4. PILT Payment Level as a Function of Agency-Specific Prior Payments (FY2010)



At the same time, Congress wanted to ensure that each county got *some* PILT payment, however small, even if the eligible lands produced a substantial county payment from other agencies. If the county had payments from three federal payment programs of \$1,000, \$2,000, and \$1 million, for instance, subtracting \$1.003 million from a small PILT payment would produce a negative number—meaning no PILT payment to the county at all. In that case, a *minimum rate* applies, which does not deduct the other agencies’ payments. In **Figure 4**, the flat portion to the right shows that, after the other agencies’ payments reach a certain level (\$2.07 in FY2010), the rate of the PILT payment remains fixed (at \$0.33/acre, for FY2010).

Step 4. Does the State Have Pass-Through Laws?

Counties may receive payments above the calculated amount described above, depending on state law. Specifically, states may require that the payments from federal land agencies pass through the county government to some other entity (typically a county school district), rather than accrue to the county government itself. When counties in a “pass-through” state are paid under the formula which deducts their prior year payments from other agencies (e.g., from the Refuge Revenue Sharing Fund (RRSF; 16 U.S.C. § 715s of FWS), or the Forest Service (FS) Payments to States (16 U.S.C. § 500)¹³), the amount paid to the other entity is *not* deducted from the county’s PILT payments in the following year. According to DOI:

Only the amount of Federal land payments actually received by units of government in the prior fiscal year are deducted. If a unit receives a Federal land payment, but is required by State law to pass all or part of it to financially and politically independent school districts, or

¹³ Under 16 U.S.C. § 500, these payments are made to the states or territories, and must be used for schools or roads in the counties where the national forests are located. Each state has its own rules on the mechanics of that transfer, on the proportion to be used for roads and the proportion for schools. Some states direct that the education portion be given directly to school boards. For more information see CRS Congressional Distribution Memo, *Forest Service Revenue-Sharing Payments: Distribution System*, by Ross W. Gorte, Nov. 19, 1999.

any other single or special purpose district, payments are considered to have not been received by the unit of local government and are not deducted from the Section 6902 payment.¹⁴

For example, if a state requires all counties to pass along some or all of their RRSF payments from FWS to the local school boards, the amount passed along is not deducted from the counties' PILT payments for the following year (31 U.S.C. § 6907). Or if two counties of equal population in two states each received \$2,000 under the FS Payments to States, and State #1 pays that amount directly to the local school board, but State #2 does not, then under this provision, the PILT payment to the county in State #1 will not be reduced in the following year, but that of the county in State #2 will drop by \$2,000. State #1 will have increased the total revenue coming to the state and to each county by taking advantage of this feature.¹⁵

Consequently, the feature of PILT that was apparently intended to even out payments among counties (at least of equal population size) may not have that result if the state takes advantage of this pass-through feature.¹⁶ Under 31 U.S.C. § 6903(b)(2), the governor of each state gives the Secretary of the Interior an annual statement on the amounts actually paid to each county government under the relevant federal agencies' payment laws. DOI checks each governor's report against the records of the payment programs of federal agencies.

In addition, a state may also require that the PILT payment itself go to a smaller unit of government, contained within county (typically a school district) (16 U.S.C. § 6907). If so, one check is sent by the federal government to the state for distribution by the state to these smaller units of government. The distribution must occur within 30 days. As of FY2010, Wisconsin is the only state to have selected this feature of PILT.

Step 5. What Is This Year's Consumer Price Index?

A provision in the 1994 amendments to PILT adjusts the authorization levels for inflation. The standard and minimum rates, as well as the payment ceilings, are adjusted each year. These levels are adjusted based on the change in the Consumer Price Index for the 12 months ending on the preceding June 30. This is an unusual degree of inflation adjustment; no other federal land agency's payment program has this feature. But as will be shown below, increases in the authorization do not necessarily lead to a commensurate increase in the funds received by the counties.

¹⁴ U.S. Dept. of the Interior, *Payments in Lieu of Taxes, Fiscal Year 2010*, p. 11.

¹⁵ Note that even though a county as a whole may benefit from this provision, the county government *itself* may not, if it must forego revenues given directly to its school system.

¹⁶ However, the Supreme Court has held that states cannot direct counties, once they have actually received their PILT payment, to spend their PILT payments (i.e., payments under the DOI-managed program described in this paper) for particular purposes. *Lawrence County v. Lead-Deadwood School District*, No. 40-1, 469 U.S. 256 (1985).

Putting It All Together: Calculating a County's Payment

Knowing the answers to these five questions, one can then make two comparisons to calculate the authorized payment level for a county. (**Figure 5** shows a flow chart of the steps in these comparisons.) FY2010 payment levels are used in this paper for all charts and comparisons.

Alternative A. Which is *less*: the county's eligible acreage times \$2.40 per acre or the county's ceiling payment based on its population? Pick the lesser of these two numbers. From it, subtract the previous year's total payments for these eligible lands under agency-specific payment or revenue-sharing programs of the federal agencies that control the eligible land.¹⁷ The amount to be deducted is based on an annual report from the governor of each state to DOI. This option is called the *standard provision*.

Alternative B. Which is *less*: the county's eligible acreage times 33¢ per acre or the county's ceiling payment? Pick the lesser of these two. This option is called the *minimum provision*, and is used in the counties that received relatively large payments (over \$2.07/acre for FY2010) from other federal agencies in the previous year.

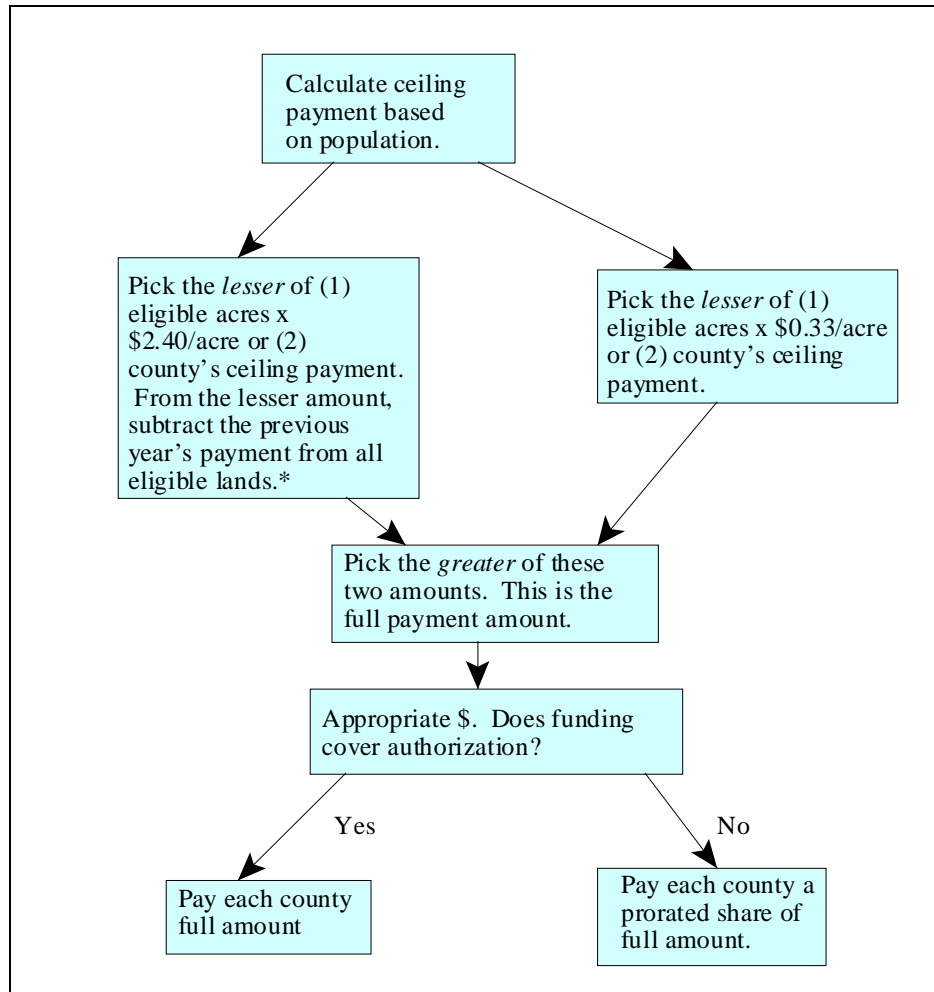
The county is authorized to receive whichever of the above calculations—(A) or (B)—is *greater*. This calculation must be made for all counties individually to determine the national authorization level. From the program's inception through FY2007, the authorized payments were subject to annual appropriations. After passage of P.L. 110-343, this spending is mandatory for FY2008-FY2012. If Congress takes no further action, annual appropriations will again be required for PILT payments in FY2013.

The combination of agency-specific payments and PILT in the standard option means that reductions (or increases) in those other payments in the previous year could be exactly offset by increases (or reductions) in PILT payments. However, for FY2010 (provided that the county's population is not so low as to affect the outcome), PILT payments cannot fall below 33¢ per acre (see Alternative B, above), so the full offset occurs only when the other federal payments in the previous year total less than \$2.07 per acre (i.e., the maximum payment of \$2.40 per acre minus the 33¢ per acre minimum payment from PILT).¹⁸

¹⁷ Payments under the Secure Rural Schools program for Forest Service lands and certain Bureau of Land Management lands are included among those prior year payments to be deducted. See CRS Report R41303, *Reauthorizing the Secure Rural Schools and Community Self-Determination Act of 2000*, by Ross W. Gorte.

¹⁸ To illustrate more concretely, imagine each county as a large bucket, whose sides are marked off in "\$/acre." PILT, in effect, checks the payment already in the bucket from other agencies, then adds at least enough money to the bucket to bring it to the \$2.40/acre mark. Moreover, if the bucket is already above the \$2.40/acre mark, PILT adds 33¢/acre, regardless of the amount in the bucket already. The money bucket could reach levels of \$15/acre or more, with the last 33¢ added by PILT. The county population ceilings might then be thought of as holes in the sides of some of the buckets that prevent the buckets from filling beyond a certain level for that bucket (i.e., county).

Figure 5. Steps in Calculating PILT for Eligible Federal Lands
(FY2010 payment levels)



Note: *These are the agency-specific payments for federal lands. The amount subtracted is reduced in states with pass-through laws.

The standard option, with its offset between agency-specific payments and PILT payments, still does not guarantee a constant level of federal payments to counties, because of the time lag in determining PILT payments. Federal payments for a given fiscal year are generally based on the receipts of the prior year. PILT payments of the *following* fiscal year are offset by these payments.

To illustrate, consider a county whose only eligible federal lands are under the jurisdiction of FWS. If the federal receipts on the FWS lands drop in FY2008 (compared to FY2007), payments in FY2009 from the FWS Refuge Revenue Sharing Fund will fall. PILT payments will therefore increase to offset the drop—in FY2010. (This example assumes that the PILT payment is calculated under the standard option.) The counties will be authorized to receive at least \$2.40 per acre from RRSF and PILT payments combined,¹⁹ but the two payments would not come in the same year. Consequently, if RRSF payments fall from year to year, the combined payments in the

¹⁹ An exception would occur if the county's population is so small that the county is affected by the PILT ceiling on payments due to population.

given year would be less than \$2.40 per acre, but if RRSF payments rise, the authorized combined payment in the given year would be more than \$2.40 per acre.

National Totals

Information from all counties with eligible land is needed on a national scale before an aggregate figure for the nation can be calculated precisely, and consequently *no precise dollar figure can be given in advance for each year's PILT authorization level.*²⁰ However, since the amount for full authorization for FY2010 has been calculated, and since the factors stated above are not likely, in sum, to decrease the payments at the national level, the full authorization level for FY2011 seems likely to be similar to the amount shown for full authorization in FY2010, which was \$358.5 million. Individual counties may vary.

From Authorization to Appropriation

Until about 1994, the full amount authorized under the law's formula had generally been appropriated, with a few exceptions such as sequestration under the Gramm-Rudman-Hollings Act (Title II of P.L. 99-177). But the buying power of the payments fell due to inflation. In response, Congress amended the law in 1994 (P.L. 103-397).

The amendment focused on increasing the total payments, building in inflation protection, and making certain additional categories of land eligible.²¹ After the amendments passed, the increasing discrepancy between appropriations and the rapidly rising authorization levels led to even greater levels of frustration among local governments, and prompted intense interest among some Members in increasing appropriations, until the passage of P.L. 110-343. (See **Figure 2**, above.) Whether Congress will make the mandatory spending authority permanent remains to be seen.

Current Issues

While the enactment of five years of mandatory spending put the issue of full funding to rest for the time being, no doubt county governments will strongly support continuing mandatory spending for PILT. Four other issues are also being debated: timeliness of PILT payments, inclusion of Native or other categories of lands; tax equivalency, especially for eligible urban lands; and payments affecting the National Wildlife Refuge System.

²⁰ DOI does not include estimated full payment levels in its annual budget justification to Congress, and confines itself to the Administration's request for the year. However, DOI's annual report of current year PILT payments to counties includes this information.

²¹ Other important issues in 1994 were the question of the equity of the payments and the balance struck in the payment formula (a) between heavily and sparsely populated communities, (b) between those with federal lands generating large revenues and those with lands generating little or no revenue, and (c) between the amounts paid under PILT and the amounts that would be paid if the lands were simply taxed at fair market value. But these issues were not addressed in the 1994 amendments and have scarcely been mentioned in the debate since then.

Timing of Payments

Before 2005, payments had been made late in the federal fiscal year. In 2005, to assist the nation's counties, whose fiscal year often begins on July 1, DOI moved the payment date forward to mid-June, and met this target from 2005 through 2009. But on June 18, 2010, DOI announced that FY2010 payments under PILT would be made not later than July 15, 2010.²² In part because of the effects of the recent economic downturn, many counties protested the announced delay in getting their 2010 funds, even though the expected payment date was still within historic and statutory limits.

According to the DOI press release, the delay resulted from delayed reporting of prior year payments from some states. (See "Step 3. Are There Prior-Year Payments from Other Federal Agencies?") In addition, some states had had changed their pass-through laws regarding prior-year payments from other federal agencies. (See "Step 4. Does the State Have Pass-Through Laws?") These changes, which could increase a county's PILT payment, sometimes substantially, had to be evaluated by DOI lawyers to determine whether the recipient county agency (most commonly a school board) was in fact truly independent of the county government. This review took extra time, partly because there were a number of such changes. DOI argued that it needed the extra month to comply with the PILT statute.

On June 29, 2010, Secretary Ken Salazar announced that local governments received their funds by that day.²³ Because of the concern among counties and the role played by delayed reporting on prior-year payments, S. 3730 was introduced in the 111th Congress to require a report to the House Natural Resources and the Senate Energy and Natural Resources Committees identifying the states that had not yet reported their prior year payments by January 15 of each year. In addition, the names of states that had not reported by February 1 would be published in the *Federal Register*. The bill would also mandate that the PILT payment be distributed no later than May 1 of each year. No hearings have yet been held on the bill.

Inclusion of Native Lands

Some counties with many acres of non-taxable Indian lands within their boundaries have supported adding Indian lands to the list of lands eligible for PILT. The primary arguments made are that these lands receive benefits from the county, such as road networks, but Indian residents do not pay for them with property taxes; on the other hand, the federal government does not actually own these lands.

The complexity of the PILT formula makes it very difficult to calculate the consequences of such a move, either for authorization levels or appropriation levels. Additionally, Congress would have to decide what sorts of "Indian lands" would be eligible for such payments and a variety of other complex issues.²⁴ Once the eligible categories were determined, Congress might wish to limit

²² DOI Press Release at <http://www.doi.gov/news/pressreleases/Interior-Announces-FY2010-PILT-Payment-Schedule.cfm>.

²³ DOI press Release, <http://www.doi.gov/news/pressreleases/PILT-Local-Governments-will-Receive-358-Million-To-Compensate-for-Tax-Exempt-Federal-Lands.cfm>.

²⁴ The many classifications of "Indian lands" include trust lands, restricted lands, and fee (private) lands, both on and off reservations. *Trust lands* are lands held by the federal government in trust for an Indian tribe or individual. *Restricted lands* are lands held by an Indian tribe or individual but subject to federal restrictions on alienation (e.g., (continued...))

payments to counties with more than some minimum percentage of Indian lands within their borders. Regardless, even a very restrictive definition of “Indian lands” seems likely to add many millions of acres to those already eligible. Once the criteria for eligibility were fixed, it would still be difficult to determine the effect on authorization levels. To paint an extreme example, if all of the eligible Indian lands were in counties whose PILT payments were already capped due to the population ceiling, inclusion of Indian lands would have no effect on PILT authorization levels.

As long as mandatory spending is in place, appropriations would go up to fund the newly eligible lands. If mandatory spending is allowed to expire and annual appropriations are less than the authorized level, each county would receive a pro rata share of the full authorized payment level. Individual counties whose eligible acres had jumped markedly with the inclusion of Indian lands might receive substantially more than in the past. Most counties (particularly those with few or no eligible Indian acres) would receive a smaller fraction of the authorized amount as limited dollars would be distributed among more lands.

Inclusion of Urban Lands and Tax Equivalency

Some observers have wondered whether urban federal lands are included in the PILT program. The response is that urban lands are *not* excluded from PILT under the current law. For example, in FY2010, the counties in which Sacramento, Chicago, Cleveland, and Arlington (VA) are found, as well as the District of Columbia, all received relatively small PILT payments, as shown in **Table 1**.

Table 1. PILT Payments to Selected Urban Counties, FY2010

County	Eligible Acres	FY2010 Authorized Payment (\$)
Sacramento County (CA)	9,621	23,068
Cook County (IL)	139	334
Cuyahoga County (OH)	2,592	7,985
Arlington County (VA)	27	0 ^a
District of Columbia	6,963	25,087

a. Under the formula, Arlington County’s 27 eligible acres (all under the National Park Service) would generate a payment of \$65. However, under the law, no payment is made for amounts under \$100.

Eastern counties, which tend to be small, rarely have large populations *and* large eligible acreage in the same county. On the other hand, western counties tend to be very large and, like

(...continued)

sale) or encumbrance (e.g., mortgaging). Most, but by no means all, Indian trust and restricted lands are on Indian reservations. Trust and restricted lands, whether on or off reservations, are not subject to state or local land taxes. *On*-reservation Indian fee lands may or may not be subject to state and local land taxes, depending on the federal statute under which the land was fee-patented. *Off*-reservation Indian fee lands are generally subject to state and local land taxes. (Indian reservations may also include non-Indian fee lands, which are subject to state and local taxation.) Alaskan Native corporation lands (none of which are trust lands) are affected by the Alaska Native Claims Settlement Act’s limits on state taxation. Congress would have to decide which of these many classifications of Indian lands would be subject to PILT benefits. Further, Congress might choose to distinguish between Indian lands which have never been taxed by a county or state versus those Indian lands that were once taxable but which were acquired into non-taxable status after some specified date.

Sacramento, may have many eligible acres as well as large populations. Furthermore, as the cases of Arlington and the District illustrate, PILT payments are by no means acting as an equivalent to property tax payments, since private owners of those 6,963 acres in the District or the 27 acres in Arlington would surely pay much more than \$25,087, or \$0, respectively, if the land were subject to property taxes.

Because the formula in PILT does not reflect an amount commensurate with property taxes, counties such as these might support a revised formula that would approach property tax payments.

National Wildlife Refuge Lands

As noted above, lands in the National Wildlife Refuge System (NWRS) that are withdrawn from the public domain are eligible for PILT, and those that are acquired are not. In addition, the National Wildlife Refuge Fund (NWRF) relies on annual appropriations for full funding. For FY2010, payments for NWRF are approximately 38% of the authorized level. For refuge lands eligible for PILT, some or perhaps all of the NWRF payment will be made up for in the following year's PILT payment, but for acquired lands, this will not occur since they are not eligible for PILT. Congress may consider making all refuge lands eligible for PILT, and/or providing mandatory spending for NWRF, as it has for PILT. Eastern counties could be the largest beneficiaries of such a change, although some western states may also have many NWRS acres that are not currently eligible for PILT. (See **Table 2** for selected state examples.) Adding the 10.9 million acres of NWRS lands currently ineligible for PILT would increase PILT lands by 1.8%.

Table 2. NWRS Acres Eligible for PILT in Selected States, FY2008

State	NWRS Acres Reserved from Public Domain	Total NWRS Acres	Percent Eligible for PILT
Alabama	0	71,360	0.0
Arizona	1,553,464	1,738,104	89.4
Iowa	334	86,873	0.4
Maine	0	66,768	0.0
Montana	433,135	1,412,040	30.7
Ohio	77	9,093	0.8
Oregon	267,562	581,124	46.0

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