



***U.S. Senate Committee on Energy & Natural Resources
SD-366 Senate Office Building
Tuesday, March 19, 2013
10:00 a.m.***

Oversight Hearing on Keeping the Commitment to Rural Communities: Options for reauthorizing and reforming the Secure Rural Schools and Community Self-Determination Act and Payments in Lieu of Taxes

***Testimony of Ryan R. Yates, Associate Legislative Director
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Chairman Wyden, Ranking Member Murkowski, and members of the Committee. Thank you for the opportunity to testify on behalf of the nation's 3,069 counties, to provide insight on the Payment in Lieu of Taxes (PILT) program.

For more than 30 years, the PILT program has provided payments to counties and other local governments to offset losses in tax revenues due to the presence of substantial acreage of federal land in their jurisdictions. Since local governments are unable to tax the property values or products derived from federal lands, these payments are essential to support essential government services (mandated by law) such as education, first responders, transportation infrastructure, law enforcement and healthcare in nearly 2,000 counties in 49 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

This testimony will provide a historical overview of the PILT program, provide context to programmatic changes that (if enacted by Congress) could lead to a more equitable distribution of PILT funds, and lastly address the current funding situation and requirements for future payments.

HISTORY

In 1954, elected county officials from several western states joined together to develop a regional coalition of counties called the Interstate Association of Public Land Counties – an organization that would ultimately evolve into the Western Interstate Region of the National Association of Counties. The primary purpose of the organization was to educate policy makers in Washington, DC and advocate for Federal payments to counties in lieu of lost property tax revenue due to the presence of the vast Federal estate.

The organization grew and incorporated membership from counties in the fifteen western states and enlisted support from other public land counties in other regions of the United States through what was then the National Association of County Officials. After several years of growing pressure from county officials nationwide, the 94th Congress passed the Payment in Lieu of Taxes Act (PL 94-565). The PILT Act

was codified in Chapter 69 of Title 31 of the United State Code. Applicable regulations are in Subpart 1881, Title 43 of the Code of Federal Regulations.

The impetus for its passage in 1976 was the passage of the Federal Land Policy and Management Act (FLPMA), which specifically established that disposal of public lands would largely cease. **In lieu of a future in which lands could continue to pass from Federal ownership to private ownership (as provided through the Homestead Act), Congress opted to reimburse local governments for land that would remain in Federal ownership “in lieu” of paying direct property taxes.**

Congress established national formulas which took into account population, existing revenue-sharing payments for resources harvested or extracted from public lands, and base acreage of the Federal estate within the jurisdiction. With a few exceptions in New England and Wisconsin, states determined that counties were the jurisdictions that would receive payments.

Local governments (usually counties) which provide services such as public safety, infrastructure, housing, social services and transportation and have non-taxed federal land within their jurisdiction, are eligible for annual payments.

Payments are made directly to the counties unless the state government concerned chooses to receive the payments and, in turn, pass the money on to other smaller governmental units such as a township or city. (Wisconsin is the only state currently employing this option)

Historically, payments were limited to an amount appropriated by Congress. Initially authorized at \$100,000,000, that amount was appropriated annually during the first decade of the Act. During the 1980s there were attempts to zero out the amount in budgets, but Congress consistently restored the funds to the authorized level, such that the minimum amount was available each year.

Following strong pressure from NACo and public lands counties nationwide, the Act was amended in 1994 to provide for a more equitable authorization level in light of disparities that existed between property values and current PILT payments. The law as amended, uses the consumer price index (CPI) to adjust the population limitation and the per acre dollar amounts used to calculate alternative "A" and "B" under Section 6902. However, an individual county's payment from one year to the next may not necessarily increase since the total amount of money available under the PILT program is set by Congress each year in the Department of the Interior and Related Agencies Appropriations Bill. Payments also vary with changes in "prior-year" payments.

From 1994 on, the authorized level and the appropriated level began to diverge, since the authorization crept up by an amount equal to the CPI each year, while appropriations stayed almost constant. Initial payments were set at \$0.75/acre (Alternative A) and \$0.10/acre (Alternative B).

While most enabling acts set an authorized funding level, PILT is one of the few Federal programs which have no defined expiration and a “floating” authorization – in which the authorized level flows directly from a summation of each county’s indexed maximum payment level. Since the 1994 Act indexed

individual payments, authorization levels have grown annually from roughly \$100 million to over \$393 million (FY2012).

The table below shows the national levels of authorization and appropriation since 1981. There was a large increase in FY 2001, and steady increases until FY 2006. In FY 2008, the U.S. Department of the Interior (DOI) submitted two payments – the first payment in June was fixed at the FY 2007 level by Continuing Resolution (P.L. 110-5), less a 1.6 percent rescission. The second payment was paid following the signing of P.L. 110-343 – which modified the PILT program from a discretionary program (subject to annual appropriations) to a fully funded mandatory entitlement program. PILT was fully funded from FY 2008 to FY 2012.

Fiscal Year	Alt A payment per acre	Alt B payment per acre	Authorization level (full funding)	Appropriation level	Appropriations adjustment
FY 1981	\$0.75	\$0.10	N/A	\$103,978,313	N/A
FY 1982	\$0.75	\$0.10	N/A	\$95,482,034	N/A
FY 1983	\$0.75	\$0.10	N/A	\$95,986,754	N/A
FY 1984	\$0.75	\$0.10	N/A	\$104,636,368	N/A
FY 1985	\$0.75	\$0.10	N/A	\$102,781,455	N/A
FY 1986	\$0.75	\$0.10	N/A	\$99,827,971	N/A
FY 1987	\$0.75	\$0.10	N/A	MISSING DATA	N/A
FY 1988	\$0.75	\$0.10	N/A	\$104,073,629	N/A
FY 1989	\$0.75	\$0.10	N/A	\$103,854,065	N/A
FY 1990	\$0.75	\$0.10	N/A	\$102,761,372	N/A
FY 1991	\$0.75	\$0.10	N/A	\$100,092,381	N/A
FY 1992	\$0.75	\$0.10	N/A	\$99,398,485	N/A
FY 1993	\$0.75	\$0.10	N/A	\$103,205,555	N/A
FY 1994	\$0.75	\$0.10	N/A	\$99,333,194	N/A
FY 1995	\$0.93	\$0.12	\$127,960,355.00	\$100,333,915	0.78
FY 1996	\$1.16	\$0.16	\$162,518,887.00	\$113,099,999	0.70
FY 1997	\$1.36	\$0.18	\$212,021,988.00	\$113,072,000	0.53
FY 1998	\$1.59	\$0.22	\$257,943,500.00	\$118,824,327	0.46
FY 1999	\$1.82	\$0.24	\$301,182,357.00	\$124,580,977	0.41
FY 2000	\$1.87	\$0.25	\$314,912,098	\$133,986,821	0.42
FY 2001	\$1.92	\$0.26	\$336,040,296	\$199,160,880	0.59
FY 2002	\$1.99	\$0.27	\$350,851,795	\$209,364,595	0.60
FY 2003	\$2.02	\$0.27	\$324,197,726	\$218,172,589	0.67
FY 2004	\$2.06	\$0.28	\$331,303,522	\$224,301,697	0.68
FY 2005	\$2.09	\$0.29	\$331,971,069	\$226,804,730	0.68
FY 2006	\$2.15	\$0.30	\$344,356,399	\$232,527,874	0.67
FY 2007	\$2.23	\$0.31	\$358,293,428	\$232,527,874	0.65

FY 2008	\$2.29	\$0.32	\$367,226,525	N/A	N/A
FY 2009	\$2.37	\$0.33	\$382,047,942	N/A	N/A
FY 2010	\$2.40	\$0.33	\$358,078,641	N/A	N/A
FY 2011	\$2.42	\$0.33	\$375,158,254	N/A	N/A
FY 2012	\$2.47	\$0.34	\$393,044,454	N/A	N/A

HOW ARE PAYMENTS CALCULATED

Payments under each section of the Act are calculated as follows:

Section 6902 payments:

Alternative A:

\$2.47 (in fiscal year 2012) times the number of acres of qualified federal land in the county, reduced by the amount of funds received by the county in the prior fiscal year under certain other federal programs.

$$(\$2.47 \times [\text{number of acres of qualified federal land}]) - [\text{prior year funds received}]$$

OR

Alternative B:

Thirty four cents (in fiscal year 2012) times the number of acres of qualified federal land in the county, with no deduction for prior year payments.

$$\$0.34 \times [\text{number of qualified acres}]$$

Payments under either alternative are subject to population payment limitations.

Section 6904 and 6905 payments—

Payments on Federal lands acquired after December 30, 1970 as additions to lands in the National Park System or National Forest Wilderness Areas (Section 6904) and payments on Federal lands in the Redwood National Park or lands acquired in the Lake Tahoe Basin near Lake Tahoe under the Act of December 23, 1980 (Section 6905) are computed by taking one percent of the fair market value of the purchased land and comparing the results to the amount of property taxes paid on the land in the year prior to federal acquisition. The payment to the county is the lesser of the two.

Section 6904 Payments are made for a period of five years following each acquisition.

Section 6905 Payments are made each year from the date the land was purchased by the

federal government until an amount equal to 5 percent of the fair market value at the time of acquisition is fully paid. However, the yearly payment may not exceed the lesser of one percent of the fair market value or the property taxes assessed prior to federal acquisition.

DEFINITIONS

Federal entitlement acreage

All Federally held lands in all States, Commonwealths and Territories are counted with the exception of those lands that are part of Department of Defense installations and withdrawals. Nationally the following lands are counted:

- a. All land administered by the United States Forest Service
- b. All land administered by the National Park Service
- c. All land administered by the Bureau of Land Management
- d. All land withdrawn from public lands administered as part of the National Wildlife Refuge System (acquired land is not included)
- e. All dredge and flood control land administered by the Corps of Engineers
- f. Project lands withdrawn and administered by the Bureau of Reclamation
- g. Lands in Colorado acquired after Dec. 31, 1981 to expand Ft. Carson
- h. Land on which are located semi-active or inactive Army installations for “use for mobilization and for reserve component training”
- i. Land in Utah acquired for the inter-basin water transfer (URC land) project

Prior Year Payments

Prior year payments are payments to local governments under programs other than PILT during the previous fiscal year. These payments include those made under:

- a. the Refuge Revenue Sharing Fund,
- b. the National Forest Fund (“25% Fund”)
- c. the Taylor Grazing Act,
- d. the Mineral Leasing Act for acquired lands,
- e. the Federal Power Act,
- f. Titles I and III of the Secure Rural Schools and Community Self-Determination Act.

The PILT Act requires each state to report these payments to the U.S. Department of the Interior each year.

DISBURSEMENTS

In 2010, DOI announced a decision to delay the annual PILT payments. This decision caused widespread panic and confusion for counties nationwide as local governments have historically received annual PILT payments in June of each year and plan their budgets accordingly. The DOI last minute decision to delay

payments without providing any notice was problematic, and placed countless public lands counties in difficult financial hardship.

Many counties begin their fiscal year July 1 and rely on the June PILT payment to be available as net working capital available to the county general fund. For example, in the state of Oregon, property taxes are primarily received in November. The PILT payment being received in June allows for adequate operating funds to provide services to the community until the tax revenue flows again. In counties that are heavily encumbered by Federal lands, the PILT payment represents a sizeable percentage of the counties' beginning cash balance.

Another problem created by the DOI decision to delay payments has to do with violating individual state budget laws. In a number of states, counties operate on a cash basis, which requires posting of revenue once it is received. In counties whose fiscal year ends June 30, without the PILT payment, those counties could be in violation of state budget law.

NACo and a bipartisan list of United States Senators and members of the House of Representatives requested that Interior Secretary Salazar take every effort to disburse payments to counties prior to June 30, 2010 in order to avert substantial financial distress in public lands counties across the nation.

Ultimately, the DOI resolved the problem in time and released the payments in late June, 2010. In light of the payment disbursement conflict, Senators John Ensign (R-NV), Tom Udall (D-NM), and Mark Begich (D-AK) introduced Payment in Lieu of Taxes Amendments Act of 2010 (S. 3730). The legislation would require DOI to issue payments to counties not later than May 1 of each fiscal year. While the legislation was not enacted, the DOI received a very strong message from Congress and NACo that payments need to be made in a timely fashion.

STATUS QUO

On October 3, 2008, Congress enacted the Emergency Economic Stabilization Act of 2008 (PL 110-343) which authorized counties to receive their full PILT entitlement from FY 2008 through FY 2012. Until the passage of the EESA, appropriation levels had never reached authorized levels. Counties received payments totaling \$393.4 million in FY 2012. Full mandatory funding for FY 2013 (minus a 5.1 percent sequestration cut) will be available for counties through the enactment of the Moving Ahead for Progress in the 21st Century Act (P.L. 112-141) last year.

Currently, the Department of the Interior has one remaining payment that will be disbursed in June 2013. **Congress will be required to act in order to maintain mandatory funding for fiscal years FY 2014 and beyond.** Currently, no legislation has been introduced in the 113th Congress to provide continued funding for the PILT program. In the 112th Congress, many members of the Senate Energy and Natural Resources Committee including Chairman Ron Wyden (D-OR) and Ranking Member Lisa Murkowski (R-AK) sponsored the County Payments Reauthorization Act of 2011 (S. 1692) which would have provided secure mandatory funding for PILT through FY 2017. NACo appreciates the longstanding commitment

from this Committee to the PILT program and commits to working with the Congress to achieve a multiyear commitment to full mandatory funding for PILT.

Last week Senate Budget Committee Chairwoman Patty Murray (D-WA) made continued funding of the Payment in Lieu of Taxes (PILT) program and the reauthorization of the Secure Rural Schools and Community Self-Determination Act a priority in the proposed committee budget for fiscal year 2014. The proposed budget resolution included a deficit neutral reserve fund for rural counties and schools to provide for the reauthorization of the Secure Rural Schools program and/or changes to the PILT program. The deficit neutral reserve fund language sets the stage for a much needed legislative solution to continue forest payments to counties and continued mandatory funding for PILT. Similar language had been included in House Budget Chairman Paul Ryan's (R-WI) budget proposal for FY 2012 and FY 2013, but was removed in the FY 2014 request. The President has not yet released a budget proposal to Congress for FY 2014. **The commitment from the Senate Budget Committee provides a great step forward toward securing the government's financial commitment to rural, public land counties.**

POTENTIAL MODIFICATIONS TO PILT

NACo believes several policy modifications should be explored by Congress to identify ways to make payments to counties more equitable. A range of possible alternatives should be considered to more evenly distribute PILT funds to counties to provide greater budget certainty.

Over time, some programmatic anomalies have become evident. Among these are the non-inclusion of Federal acquisitions, substantially reduced payments to jurisdictions with large Federal estates, and the inability of current formulas to account for externally induced costs resulting from Federal land use by persons originating from outside the jurisdiction.

Counties have suggested the use of population caps (up to 50,000 persons) may not be the most appropriate method for providing fair allocation. Depending on the current population of the county, the PILT payments are capped at pre-determined levels. The use of population caps fails to accurately demonstrate the actual population of people being serviced by the county any given day. For example, many counties with large acreages of federal land and small populations are gateway communities to recreation or heritage areas, national parks, and scenic areas. **While increases in tourism and recreation can be beneficial to local economies – counties are burdened with the extra expense to law enforcement, infrastructure, search / rescue, and road maintenance budgets as visitor populations are not taken into consideration by the current PILT formulas. County governments are required by law to provide services to people – regardless of their place of residence.**

The 1994 Act primarily changed the method of establishing the annual authorization level, but left the basic distribution formulas intact. Revenue sharing programs identified as prior year payments do provide additional funding via revenue sharing to county governments, such as the Mineral Leasing Act and the Secure Rural Schools program. However, increases in these other payment programs have reduced the amount of PILT funding annually in many resource dependant counties. **The federal**

government should not reduce its tax obligation to local governments, solely because of other land management revenue agreements between governments.

An example of potential PILT formula inequities effects current legislation before this committee. Specifically, several Senate Energy and Natural Resources Committee members have cosponsored the Public Land Renewable Energy Development Act (S. 279). This legislation would establish a leasing and royalty system for renewable energy development on federal lands. Additionally, the legislation would share 25 percent of revenues with counties with developments in their jurisdictions. Under the current PILT formula, any new county revenues from alternative energy development on public lands would be deducted from the counties annual PILT payment – resulting in no net gain to the county.

While some revenue sharing payments have diminished as Federal land use has shifted from revenue-producing use to public outdoor recreation use, such shifts have not only reduced or altered the inflow of revenue sharing; they have also created cost impacts to jurisdictions to provide services such as emergency search and rescue, law enforcement and increased road maintenance, among other impacts.

PILT is not only an important element to county funding, the fact that it is indexed to inflation and is paid to counties for general purposes is critically important so as to assure it retains its character as a property tax payment and can be utilized for any general fund purpose. NACo believes the formula should retain this basic character. Counties with extensive Federal estates, however, receive lower PILT payments which neither reflect the local government costs resulting from that estate, or the payment is not fully reflective of the vastness of such estate within the jurisdiction.

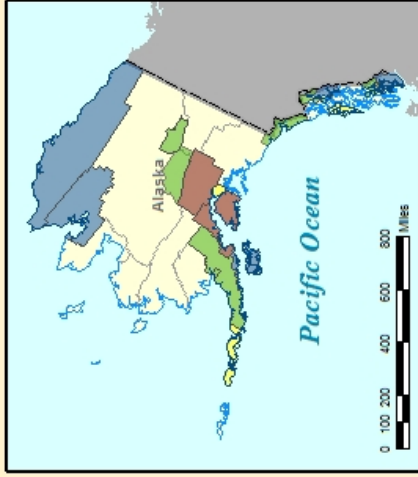
National formulas inadequately account for all the factors present. NACo has reviewed a number of possible formula changes, but as with any formula change – there can be “winners and losers.” We agree that **PILT should count acres first** and consider local population last, if at all. Equitable distributions can result through modifications to the current formula to reflect not only acreage and current revenue payments, but also other factors such as external use pressures that may be present within some of the jurisdictions.

CONCLUSION

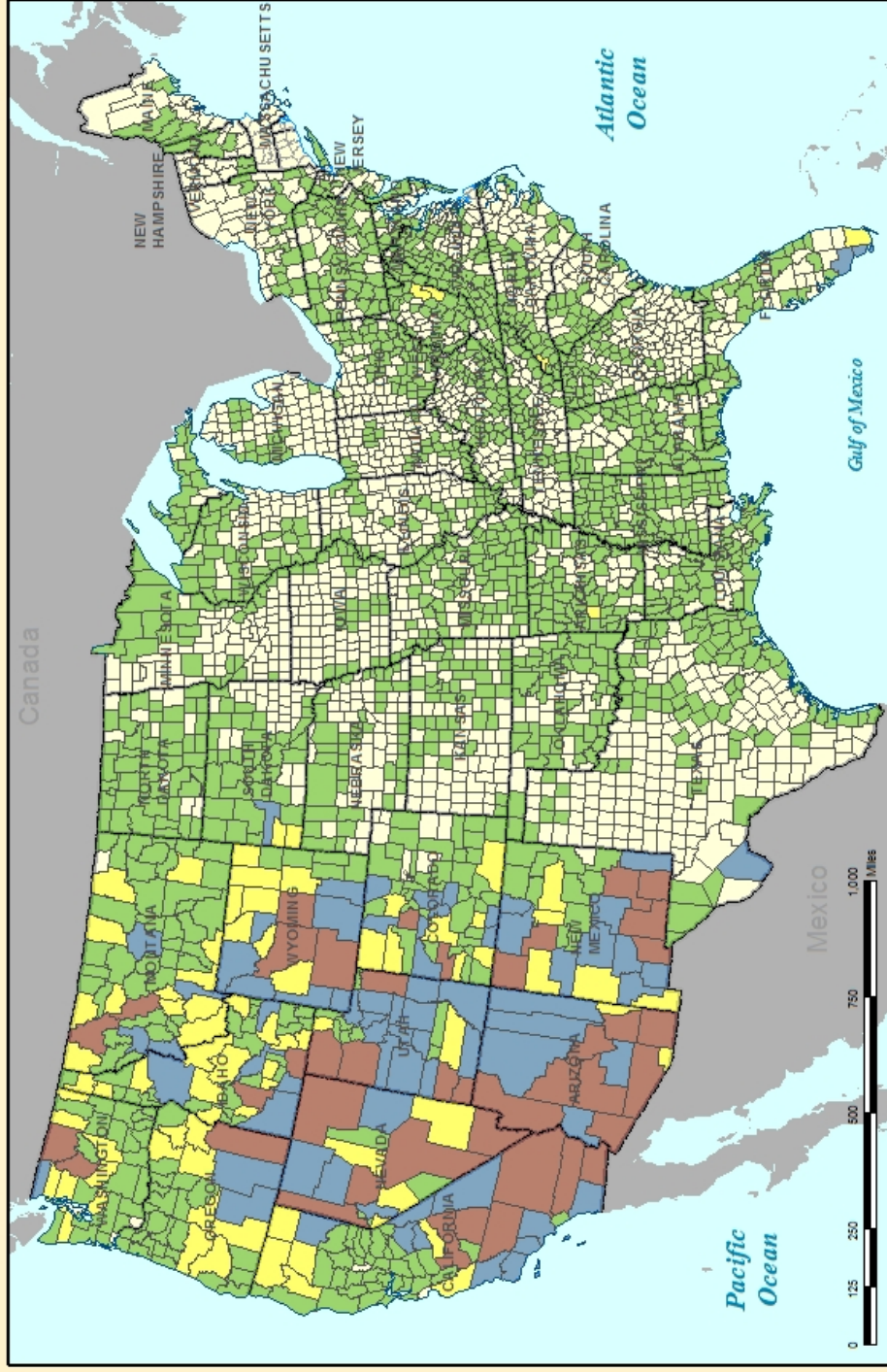
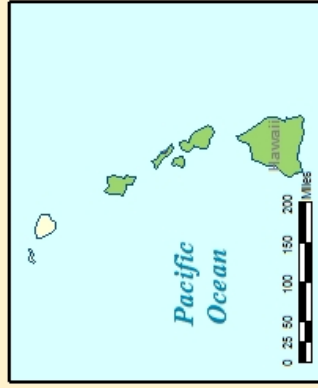
While the United States Senate and the House of Representatives may approach legislative solutions for funding the PILT program differently, NACo will continue to urge leadership on both sides of the isle to act in a spirit of bipartisan and bicameral cooperation and work together to move a final legislative solution to the President’s desk.

NACo appreciates the opportunity to provide testimony before the Senate Energy & Natural Resources Committee. I look forward to working with members of the Committee to develop and pass legislation that will continue the historic partnership between Federal and county governments by extending continued mandatory funding for the Payment in Lieu of Taxes program for fiscal years 2014 and beyond.

Alaska



Hawaii



2012 Payment in Lieu of Taxes (PILT) Funding

