Local Government Interim Committee

69th Montana Legislature

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TO: Local Government Interim Committee

FROM: Maddie Krezowski, Staff Attorney

RE: Federal Payment in Lieu of Taxes (PILT) Program under 31 U.S.C. 6901 through 6907

Issue

Can the state of Montana direct counties to distribute money from the federal Payment in Lieu of Taxes (PILT) program authorized under 31 U.S.C. 6902 to smaller units of local government to pay for specific government services?

Short Answer

No, the state of Montana cannot direct counties to distribute federal PILT program funding to smaller units of local government to pay for specific government services. Federal statute provides two paths for the distribution of PILT funds from the federal government to local governments:

1. The federal government can distribute the allocated PILT payments directly to eligible counties and counties may use the money for any governmental purpose. Counties are not required to further distribute any portion of the money to other units of local government, and the state may not direct how the counties use the money.
2. The state can elect to have all PILT funding that would otherwise be distributed to counties in the state paid directly to the state. Federal statute requires the state to redistribute the money received from the federal government within 30 days to counties and other eligible smaller units of general local government. The units of local government may use the funding for any governmental purpose. Eligibility requirements for units of general local government to receive PILT dollars under this alternate distribution method are laid out in federal statute and discussed in the analysis section below.

Federal statutes grant units of local government broad discretion to use PILT money for any governmental purpose. The statutes do not authorize the state to direct how units of local government may use PILT payments.

Analysis

Payment in Lieu of Taxes (PILT) Program Overview

The PILT program was enacted in 1976 to provide compensation to local governments for the presence of property-tax-exempt federal lands within the jurisdiction of the unit of local government.[1] The federal government through the U.S. Department of the Interior provides PILT payments for certain tax-exempt federal lands, known as entitlement lands. These payments are made annually to counties that contain entitlement lands to pay for general governmental purposes.[2]

PILT entitlement lands compensated under 31 U.S.C. 6902 include lands within in the U.S. Department of the Interior administered by the Bureau of Land Management, the National Park Service, and some lands administered by the U.S. Fish and Wildlife Service; lands within the U.S. Department of Agriculture administered by the U.S. Forest Service; federal water projects; dredge disposal areas; some military installations; as well as selected other federal lands provided for in statute.[3]

Eligibility Requirements Under 31 U.S.C. 6902

A county with federal entitlement lands within its boundaries is eligible for an annual PILT payment from the federal government. The U.S. Department of the Interior makes annual Section 6902 payments directly to all 56 counties in Montana according to the funding formula in

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[1] See 31 U.S.C. 6901 through 6907. For additional history and information about the federal PILT program see Katie Hoover, Cong. Research Serv., R46260, The Payments in Lieu of Taxes (PILT) Program: An Overview (2023), available at https://www.congress.gov/crs_external_products/R/PDF/R46260/R46260.13.pdf.

[2] The PILT program includes three separate payment mechanisms, named after the section of code in which they are authorized: Section 6902 payments (authorized under 31 U.S.C. 6902), Section 6904 payments (authorized under 31 U.S.C. 6904), and Section 6905 payments (authorized under 31 U.S.C. 6905). Any unit of local government that contains entitlement land is eligible for annual PILT payment under Section 6902. Payments under Section 6904 or 6905 are provided for a short duration after certain land acquisitions by the federal government. Over 99% of PILT payments are made under Section 6902: Montana received $46,583,456 in PILT payments across its 56 counties under Section 6902 in fiscal year 2025. In contrast, two counties in Montana received minimal payments under Section 6904 for fiscal year 2025 -- $717 in Big Horn County and $10,694 in Flathead County for a total of $11, 411. See U.S. Dept. of Interior, Fiscal Year 2025 Payments in Lieu of Taxes, 69-70 (2025), available at https://www.doi.gov/sites/default/files/documents/2025-06/2025nationalsummarypilt062025-508.pdf. Because the vast majority of payments are under 31 U.S.C. 6902, this memorandum will focus only on Section 6902 payments and the requirements under federal law for state-level involvement and distribution to smaller local government units for Section 6902 payments.

[3] See 31 U.S.C. 6901 through 6907 and 43 C.F.R. Part 44.

31 U.S.C. 6903.[4] The formula for funding incorporates both the number of acres of entitlement land within the county and the county's population, then subtracts other payments the county received from the federal government under other statutes that also compensate the county for the presence of federal land within its boundaries.[5] The U.S. Department of the Interior calculates the payments due and provides the payment directly to the county under 31 U.S.C. 6902.

Alternative State-Level Distribution Under 31 U.S.C. 6907 and Eligibility Requirements

31 U.S.C. 6907 allows states to opt into an alternate distribution model for Section 6902 payments so a state can redistribute PILT payments in whole or in part to smaller units of general local government. Under 31 U.S.C. 6907, the state can opt to have the U.S. Secretary of the Interior make one aggregate payment to the state under the PILT program, rather than provide payments to individual counties. It is the responsibility of the state to determine further distribution of the payment in accordance with the requirements of 31 U.S.C. 6907(a). The state must redistribute the funding within 30 days of receiving the money from the federal government to eligible units of general local government. Federal statutes allow redistribution of federal PILT program payments only to units of general local government. This means a special purpose unit of local government that provides a specific service, such as a school district or water district, is not eligible. The state may not use any of the funding to cover its own administrative costs. To opt into the alternative distribution model, the state must pass legislation that complies with 31 U.S.C. 6907.

To receive payments a smaller unit of general local government must (1) be located within the boundaries of the county that previously received the PILT money directly; (2) provide general governmental services; and (3) contain entitlement lands within the boundaries of the smaller unit of general local government. The statute provides a broad definition of "governmental services." In 31 U.S.C. 6901, the term "includes, but is not limited to, those services that relate to public safety, the environment, housing, social services, transportation, and governmental administration." 31 U.S.C. 6907(a) provides that the reallocation of the PILT funds must generally reflect the level of services provided by the smaller unit of local government and the number of entitlement acres located within the smaller unit of local government.

[4] A list of county payments for the fiscal year 2025 are available online through the U.S. Department of the Interior website.

[5] For more information on the funding formulas for Section 6902 payments, see the Federal Payment in Lieu of Taxes (PILT) Program brochure from the Montana Legislative Fiscal Division. There have been various efforts in Congress over the years to change the PILT program funding formula. In the current 119th Congress, S. 1175 or Small County PILT Parity Act has been introduced by Sen. Steve Daines. Under the current PILT funding formula, the smallest county population size is 5,000 residents. S. 1175 would create four new population categories of 1,000, 2,000, 3,000, and 4,000 residents. The bill had a hearing before the Senate Subcommittee on Public Lands, Forests, and Mining on December 2, 2025. There has been no further action taken.

State Restrictions on Use of PILT Program Payments by Units of Local Government Prohibited

31 U.S.C. 6902 provides that PILT funding authorized under that section may be used "for any governmental purpose." The United States Supreme Court has held that this is a broad grant of discretion to units of local government to use PILT money for any governmental purpose as the unit of local government sees fit.

In *Lawrence County v. Lead-Deadwood School District*, 469 U.S. 256 (1985), the U.S. Supreme Court held that the state of South Dakota could not put additional limitations on how counties spend payments received pursuant to the federal PILT program under 31 U.S.C. 6902. The Court found that a South Dakota statute directing how counties were to allocate federal PILT dollars was unconstitutional under the Supremacy Clause of the United States Constitution, because 31 U.S.C. 6902 endowed counties with broad discretion to spend PILT dollars "for any governmental purpose" and the state could not cabin this federally granted discretion. The Court concluded that one important objective of Congress electing to provide the PILT program money directly to counties "was the objective of ensuring local governments the freedom and flexibility to spend the federal money as they saw fit" without interference from the state.[6]

The alternative distribution method authorized under 31 U.S.C. 6907 was not at issue in *Lawrence County*, and the Court did not directly address whether the analysis would be different if a state elected to have all PILT payments directed to the state under 31 U.S.C. 6907 for further distribution rather than directly paid to counties. That statute allows the state to enact legislation that requires Section 6902 payments "be reallocated and redistributed in whole or in part to other smaller units of general government".[7] It requires that any reallocation or redistribution must "generally reflect the level of services provided by, and the number of entitlement acres within, the smaller unit of general local government."[8] A state that choses to reallocate PILT funding receives all of the PILT funding for the state from the U.S. Department of the Interior and is required to redistribute it to eligible "units of general local government" within 30 days.[9]

The language of 31 U.S.C. 6907 grants a state the specific authority to redistribute PILT funding to smaller units of general local government, but its language does not specifically grant the state authority to further cabin the discretion granted in 31 U.S.C. 6902 for units of local government to use the money for any governmental purpose once redistributed.

Wisconsin Example: Only State Opting to Use Alternate Distribution under 31 U.S.C. 6907

Wisconsin is the only state to have passed statutes under 31 U.S.C. 6907 to have federal PILT dollars under 31 U.S.C. 6902 directed to the state for further distribution to smaller units of general local government. Wisconsin allocates federal PILT dollars to its towns, villages, and

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[6] *Lawrence County*, 469 U.S. at 263.

[7] 31 U.S.C. 6907(a)

[8] 31 U.S.C. 6907(a)

[9] 31 U.S.C. 6907(b)

cities, rather than its counties.[10] In Wisconsin, counties generally serve as an arm of the state government to provide state services.[11] General local government services in Wisconsin are generally provided by towns, villages, and cities and all land in the state is located within a town, village, or city.[12]

Conclusion

Under the statutes governing federal PILT program funding, the state may not direct counties to redistribute federal PILT money to units of smaller local government or direct the county on how to spend the funds. Federal statutes do allow states to opt to receive all PILT program funding that would be paid directly to counties within the state under 31 U.S.C. 6902 and then redistribute it in whole or in part to eligible smaller units of general local government and counties. Federal statutes provide units of general local government with broad discretion to use the PILT funding for any governmental purpose.

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[10] See Wis. Stat. § 55.01 through 55.12

[11] Wisconsin Legislative Reference Bureau, Wisconsin Blue Book, 344 (2025-2026), available at https://docs.legis.wisconsin.gov/misc/lrb/blue_book/2023_2024/090_local_government_in_wisconsin.pdf

[12] The Wisconsin Legislative Technology Services Bureau provides a helpful GIS map of towns, cities, and villages in Wisconsin at https://gis-ltsb.hub.arcgis.com/datasets/3c7f799e4ea349ba9796092eeb02e3c9/explore?location=44.735674%2C-88.483124%2C7