



September 8, 2020

TO: Members of the Legislative Finance MARA Subcommittee

FR: Julie Johnson, Staff Attorney

RE: Research on PILT versus Revenue Sharing State Distribution Options

I. PILT Federal Law and Purpose

Payments in Lieu of Taxes (PILT payments) are federal payments to local governments, made annually, that help offset losses in property taxes due to the existence of nontaxable federal lands within the local government's boundaries. The payments are made pursuant to federal law under the Payments in Lieu of Taxes Act.¹ In Montana, these federal lands are primarily those in the National Forest System and the National Parks System or administered by the Bureau of Land Management. The PILT program is administered by the Department of the Interior and recognizes the financial impact of the inability of local governments to collect property taxes on federally owned land. To date, including payments for 2020, the PILT program has issued over \$9.7 billion in payments to counties and local units of government throughout the United States. Not surprisingly, most PILT payments are made to western states, including Montana. In 2020, counties in Montana received over \$35 million in PILT payments.

PILT payments are typically reserved for counties to be used for governmental purposes and are not required to be further distributed to cities or school districts. States, however, can enact legislation to receive the money and pass it to other, smaller governmental units within a county.²

II. The Formula

A county's annual payment is calculated by a formula that is partially based on the number of acres of qualified federal land and the county population. That sum is then *reduced* by the amount of funds received by the county in the prior year through federal land revenue sharing programs. Each year, a state must report payments made to the counties to the Department of the Interior. In Montana, these include payments from the following:

- Mineral Leasing Act
- Secure Rural Schools and Community Self-Determination Act of 2000
- Taylor Grazing Act

¹ The original law is Public Law 94-565, dated October 20, 1976. This law was rewritten and amended by Public Law 97-258 on September 13, 1982, and codified at Chapter 69, Title 31, of the United States Code.

² 31 U.S.C. 6907.

- National Forest Fund

However, according to the Department of the Interior:

Only the amount of Federal land payments actually received by units of government in the prior fiscal year is 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 to 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.³

III. The Concept

Given that the amount of a county's PILT payment is reduced by the amount of federal land revenue sharing payments it received in the prior year, and given that a prior-year payment does not include those in which state law passes the funds to an independent school district or to any other single- or special-purpose district, it appears that the combination of federal funding that local governments in a state can receive may be increased if a portion of federal revenue sharing payments is directed to independent school districts or to any other single- or special-purpose districts, instead of to the county.

IV. Example of Concept in Action

A. San Juan County Transportation Special Service District

Some local governments have created special purpose districts that direct federal revenue sharing funds. For example, in Utah, the San Juan County Commission created the San Juan County Transportation Special Service District (the District) by resolution.⁴ According to its financial statements, the District receives revenues from state mineral lease payments as well as federal secure rural school funds.

The District is authorized to construct, repair, and maintain certain roads within its boundaries, and to perform any other lawful activity allowed by their resolution. The District Administrative Control Board consists of five members, three of whom are appointed by the San Juan County Commission and the other two appointed by the two cities in the county. Funding is provided by the District in the form of grants to the cities, county, and other governmental agencies within its boundaries to construct, repair, and maintain roads within their respective areas, and the costs of these projects or improvements are recorded on the records of these other entities. The District

³ <https://www.doi.gov/sites/doi.gov/files/uploads/fiscal-year-2020-payments-in-lieu-of-taxes-national-summary-annual-report.pdf> at page 9 (emphasis added).

⁴ Resolution No. 88-8, which created the special district, passed on October 26, 1988.

does not own or have title to any of these projects or improvements. See the "Statement of Revenues, Expenditures, and Changes in Fund Balance" attached.

B. Utah Law on Special Service Districts

Utah has passed the Special Service District Act, which specifically authorizes the creation of a special district to receive funding directly from a federal revenue sharing program:

17D-1-201 Services that a special service district may be created to provide. As provided in this part, a county or municipality may create a special service district to provide any combination of the following services: ...

(7) transportation, including the receipt of federal secure rural school funds under Section 51-9-603 for the purposes of constructing, improving, repairing, or maintaining public roads; ...

(9) fire protection, including: ... (c) the receipt of federal secure rural school funds as provided under Section 51-9-603 for the purposes of carrying out Firewise Communities programs, developing community wildfire protection plans, and performing emergency services, including firefighting on federal land and other services authorized under this Subsection (9);

(14) receiving federal mineral lease funds under Title 59, Chapter 21, Mineral Lease Funds, and expending those funds to provide construction and maintenance of public facilities, traditional governmental services, and planning, as a means for mitigating impacts from extractive mineral industries. [emphasis added]

V. Montana Law on PILT and Special Service Districts

A. PILT Laws

Section 7-6-102, MCA, authorizes the board of county commissioners of any county in the state to enter into agreements with the federal government to receive PILT payments. The procedure for requesting, reporting, and collecting PILT payments is outlined in Title 7, chapter 6, part 1, MCA.

B. Special Districts

Unlike Utah law, it does not appear that Montana law currently allows a special district to receive a portion of federal revenue sharing funds. Montana law does allow a city, town, county, or consolidated city-county government or any combination of these acting jointly to create a special district by resolution "whenever the public convenience and necessity may require" (sections 7-11-1002 and 7-11-1003, MCA).

Section 7-11-1003(3), MCA, defines a special district as “a unit of local government that is authorized by law to perform a single function or a limited number of functions.” This section further provides:

(b) The term includes but is not limited to cemetery districts, museum districts, park districts, fair districts, solid waste districts, local improvement districts, mosquito control districts, multijurisdictional districts, road districts, rodent control districts, television districts, and districts created for any public or governmental purpose not specifically prohibited by law. The term also includes any district or other entity formed to perform a single or limited number of functions by interlocal agreement.

(c) The term does not include business improvement districts, cattle protective districts, conservancy districts, conservation districts, water and sewer districts, planning and zoning districts, drainage districts, grazing districts, hospital districts, irrigation districts, library districts, livestock protective committees, parking districts, resort area districts, rural improvement districts, special improvement districts, lighting districts, rural fire districts, street maintenance districts, tax increment financing districts, urban transportation districts, water conservation and flood control projects, and weed management districts.

VI. Next Steps

At this step, it may be beneficial to work with the Montana Association of Counties (MACO) to determine to what extent the creation of special service districts could increase a county’s annual PILT payment by reducing the amount of prior-year federal revenue sharing payment it reports. MACO may also be best situated to address whether allowing those payments to go to special districts could have unintended or unwanted consequences.

A more thorough examination of Montana’s special district laws and an understanding of why the term “special district” excludes several districts under section 7-11-1002(3)(c), MCA, would also be in order.

Communicating with a county that has created a special service district that receives federal payments directly, such as the San Juan County Transportation Special Service District, would be beneficial to understand how the special district operates and to understand the county’s role relative to the special district.

In conclusion, at this time it does appear that a county’s PILT payment could be increased by directing federal revenue sharing payments that would otherwise go to the county to a special service district instead. Revising Montana law to allow for the creation of these types of special service districts will most likely require participation and insight from a number of stakeholders and the careful drafting of legislation.

SAN JUAN TRANSPORTATION SPECIAL SERVICE DISTRICT
STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCE
GOVERNMENTAL FUNDS
For The Year Ended December 31, 2018

	General Fund	Capital Projects Fund	Total Governmental Funds
REVENUES:			
State Mineral Lease Payment	\$ 504,280	\$ -	\$ 504,280
Federal Payments	482,684	-	482,684
Interest	40,969	12,333	53,302
	<u>1,027,933</u>	<u>12,333</u>	<u>1,040,266</u>
TOTAL REVENUES			
EXPENDITURES:			
Current:			
Salaries and Benefits	12,558	-	12,558
Payroll Taxes	918	-	918
Legal and Accounting	2,275	-	2,275
Insurance	1,543	-	1,543
Board Members Stipend	1,282	-	1,282
Other Operating Costs	32	-	32
Payments to Other Governmental Units	200,000	-	200,000
Debt Service:			
Principal	167,000	-	167,000
Interest	25,740	-	25,740
Road Repair and Construction	20,000	-	20,000
	<u>431,348</u>	<u>-</u>	<u>431,348</u>
TOTAL EXPENDITURES			
REVENUES OVER (UNDER) EXPENDITURES	<u>596,585</u>	<u>12,333</u>	<u>608,918</u>
NET CHANGE IN FUND BALANCE	596,585	12,333	608,918
FUND BALANCE - BEGINNING	<u>237,990</u>	<u>1,791,528</u>	<u>2,029,518</u>
FUND BALANCE - ENDING	<u>\$ 834,575</u>	<u>\$ 1,803,861</u>	<u>\$ 2,638,436</u>

The notes to the financial statements are an integral part of this statement.