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## FISCAL IMPACT REPORT

**SPONSOR** Woods **ORIGINAL DATE** 2/3/22  
**LAST UPDATED** 2/15/22 **HB** \_\_\_\_\_

**SHORT TITLE** Payment In Lieu Of Taxes For Real Property **SB** 186/aSFC

**ANALYST** Graeser

### APPROPRIATION (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY22	FY23	FY24	FY25	FY26		
		Unknown Source of Appropriation			Recurring	General Fund
		Continuing appropriation authority granted			Recurring	Payments in Lieu of Taxes Fund

Parenthesis ( ) indicate revenue decreases

Note: the bill requires payments in lieu of taxes, but does not establish a source of funding for these payments. The title of the bill properly includes the words, "MAKING AN APPROPRIATION" and provides for disposition of the funds in case there is an appropriation from the General Fund or other state funds to the payments in lieu of taxes fund.

### REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY22	FY23	FY24	FY25	FY26		
		Indeterminate; depends on legislature enacted appropriations			Nonrecurring?	Payments in Lieu of Taxes Fund

Parenthesis ( ) indicate revenue decreases

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	Indeterminate: see FISCAL IMPLICATIONS for a proforma example. L Bar Ranch PILT payments could range from \$11.2 to \$342.0 annually.			Recurring	Payments in Lieu of Taxes Fund (TRD)
\$1.0			\$1.0	Nonrecurring	TRD/ASD Operating
	\$3.0	\$3.0	\$6.0	Recurring	TRD/ASD Operating

Parenthesis ( ) indicate expenditure decreases

Duplicates HB181.

May relate to a special appropriation in the General Appropriations Act that would allow Department of Game and Fish to acquire the L Bar Ranch in Cibola County.

### SOURCES OF INFORMATION

LFC Files

### Responses Received From

Taxation and Revenue Department (TRD)

## SUMMARY

### Synopsis of SFC Amendment

Senate Finance amendment to Senate Bill 186 provides a funding mechanism for the required PILT and exempts the Department of Transportation from the PILT requirement when the property purchased by the Department of Transportation (DOT) is to be used for public road, street, or highway purposes.

When a state agency, such as the Department of Game and Fish acquires ownership of property, the agency is required to deposit with the state treasurer the equivalent of five-years of annual property tax liability in the payments in lieu of taxes fund.

### Synopsis of Original Bill

Senate Bill 186 requires the state make payments in lieu of taxes (PILT) to certain property tax beneficiaries every time the state acquires real property through purchase or eminent domain. These payments would begin the tax year following the acquisition and continue as long as the state owns the property. The amount of PILT required is the valuation of the property before the state acquired it. The bill proposes to establish a dedicated fund known as the “payments in lieu of taxes fund” in the state treasury. TRD is to administer the fund and disburse money in the fund to eligible property tax beneficiaries (excluding state GO bonds).

The effective date of this bill is July 1, 2022. The provisions of the bill would be applicable for properties acquired by the state after the effective date and would not apply to any purchases or acquisitions before that time.

## FISCAL IMPLICATIONS

The potential magnitude of PILTs is indeterminate as it depends on state purchase of real property which varies greatly.

As amended, a state agency, (except the Department of Transportation), would have to budget five years of PILT payments in addition to the direct cost of the property purchased. This provision identifies where the PILT funds would originate, making the following discussion obsolete.

The bill does not specify where appropriations to the payments in lieu of taxes fund will come from or how much the appropriations would be. The bill may assume that the appropriations to the fund would be automatic as state purchase of land arise; however, there is no language in the bill that would establish such continuing appropriations. Appropriations of state funds can only be made by the Legislature in the annual General Appropriations Act or in special acts that designate a source of funds, a destination of the funds (the payments in lieu of taxes fund and thence to the counties, municipalities, school districts and special districts), the amount of the appropriation (uncertain here), and control of the funds (TRD).

The Legislature sometimes passes its appropriation authority to state agencies that deal with dedicated and earmarked funds. This authority is called “continuing appropriation” authority and generally applies to other state funds. However, there is no funding source mentioned in this bill. Hence, the only means of funding the requirements of this bill is an annual special appropriation

in the General Appropriations Act. As there is no earmarked revenue language in the bill, the Legislature would have to decide to appropriate funds to the PILT fund each year in order for the state to execute PILT. If the Legislature does not appropriate adequate funds to the PILT fund in a given year, the state may not be able to pay the PILTs due and will default on its obligations to the property tax beneficiaries. This may make the state vulnerable to lawsuits from those beneficiaries demanding payment.

LFC policy discourages earmarking of any revenues or of allowing agencies control of earmarked funds as earmarking narrows the ability of the Legislature to adjust appropriations to available revenues.

LFC staff indicate that the General Appropriations Act (HB2) contains an appropriation that would allow the Department of Game and Fish to combine with other funding sources to acquire the L Bar Ranch – 52,870 acres of privately owned land near Mt. Taylor. Total purchase price is \$33.21 million. Once acquired by the state game commission, the property will become part of the Marquez Wildlife Management Area (WMA), allowing for public access which is currently unavailable. More than half of the property lies within the Mt. Taylor Traditional Cultural Property, which is on the New Mexico Register of Historic Places and holds a lot of cultural significance for more than two dozen Native American tribes, who do not have access to the land that is privately owned. Acquisition by the state game commission would permanently protect the area’s cultural/archeological sites and wildlife habitat. The Marquez WMA is primarily a big game habitat and hunting area. All big game hunting licenses on WMAs are reserved for New Mexico residents, so the acquisition would expand hunting opportunities for New Mexicans as well as outdoor recreation and education. The current property taxes on L Bar are \$11.2 thousand.

Current tax obligations of \$11.2 thousand on a property valued at \$33 million represents underassessment probably because the property qualifies for an agricultural valuation. This would be the required PILT for this particular property. However, other state acquisitions pursuant to the provisions of this bill might not be tax advantaged. LFC staff have prepared a proforma for the tax liability if the property were assessed at the sales price.

For the purpose of this proforma, we assume the entire property is located in the Grants-Cibola School District and entirely within Cibola County. We further assume that the state purchased this property but would have been obligated for the PILT required pursuant to the provisions of this bill. Finally, for the purpose of this proforma, we assume that the assessed value was equal to the purchase price of \$33 million and \$11 million net taxable value. The table to the right shows that the required annual PILT pursuant to the assumptions listed would be about \$342 thousand.

	Grants-Cibola School District	\$11,000,000
CATEGORY:	3 OUT NR	
State Debt Service	1.360	
County Operational	11.850	\$130,350
School District Operational	0.500	\$5,500
School District Debt Service	8.805	\$96,855
School Dist. Cap. Improvement	2.000	\$22,000
House Bill 33, School Building	0.000	\$0
School District Ed. Tech. Debt Svc	0.959	\$10,549
Cibola General Hospital	4.250	\$46,750
NMSU Grants (1)	1.000	\$11,000
NMSU Grants Debt Levy (1)	1.700	\$18,700
PILT eligible	31.064	\$341,704

## SIGNIFICANT ISSUES

The bill provisions may address a concern of some primarily rural counties which have a substantial amount of *tax exempt* real property. This type of tax exempt real property occurs through federal ownership, such as BLM or military or Forest Service – or state ownership, such as land deeded by the various enabling acts at the time of statehood or subsequent purchases by eminent domain. A county with relatively little *taxable* real property might currently be damaged by a purchase of land in the county by an agency of the state, since, after purchase by the state, the property would become property tax exempt.

LFC staff believe the provisions of the bill are, in practice, contingent on the Legislature appropriating money to the payments in lieu of taxes fund. Therefore, for any state money to flow to the payments in lieu of taxes fund, the Legislature would have to make annual appropriations and might, in any year, decide not to honor the requirements of this bill. This will force the state to default on payments due to property tax beneficiaries, who may take legal action to demand payments owed under this bill.

Committee members asked if other states mirror the extensive federal payments in lieu of taxes program. Since these payments began in 1977, the Department of Interior has distributed more than \$10.2 billion dollars in PILT payments to 49 States (all but Rhode Island), the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.<sup>1</sup> The only state or county level PILT program identified was a tax equivalency program in Onondaga County (Syracuse), New York. Where the payments are made for conservancy purposes.

TRD discusses other concerns:

“The payment in lieu of tax (PILOT) is a tax on the State and, therefore, may be unconstitutional under Article VIII, section 3 of the New Mexico Constitution. While the bill does not directly tax the property of the state, it is specifically a payment in lieu of taxation, and could be interpreted as a tax on state property, especially as the amount of the payment in lieu of taxes is tied directly to the tax revenue the political subdivision would have received, had property taxes been imposed on the property.”

“All governmental entities in New Mexico have the potential to reduce one another’s property tax base by owning property and taking that property off the tax rolls. This bill only penalizes the State, not counties, municipalities, school districts, hospital districts or others for their contribution to reduced property tax base. The Industrial Revenue Bond Act and the County Industrial Revenue Bond Act similarly allow counties and municipalities to unilaterally reduce the property tax base, while the State does not.”

“The bill does not provide for any required transfers by the State due to acquiring real property to be offset by increased property taxes if the State disposes of real property through sale or donation. It would seem fairer if the State’s contributions to the fund reflected both acquisitions and dispositions of real property.”

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[https://www.doi.gov/pilt#:~:text=Payments%20in%20Lieu%20of%20Taxes%20\(PILT\)%20are%20Federal%20payments%20to,Federal%20lands%20within%20their%20boundaries.&text=The%20law%20recognizes%20the%20financial,taxes%20on%20federally%20owned%20land.](https://www.doi.gov/pilt#:~:text=Payments%20in%20Lieu%20of%20Taxes%20(PILT)%20are%20Federal%20payments%20to,Federal%20lands%20within%20their%20boundaries.&text=The%20law%20recognizes%20the%20financial,taxes%20on%20federally%20owned%20land.)

## PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is not met since TRD is not required in the bill to report annually to an interim legislative committee regarding these PILT payments. However, TRD will necessarily report the amount of appropriations required to make the payments in lieu of taxes on the annual agency budget request and the legislature will be informed of these PILTs.

## ADMINISTRATIVE IMPLICATIONS

TRD reports a small administrative impact:

“The bill will require Tax & Rev to create a method for the state to report when it is acquiring property that is subject to the payment in lieu of taxes, and for a determination of how much property tax has been lost by the relevant political subdivision or subdivisions that would otherwise be receiving the revenue. Tax & Rev will bear the cost of administering the new fund.”

“The Administrative Services Division (ASD) estimates that it will require 40 hours of full time employee (FTE) time to establish the fund and coordinate with the Property Tax Division (PTD) costing \$1,000 in non-recurring expenses, and another 10 hours per month of FTE effort, costing \$3,000 in recurring expenses.”

## TECHNICAL ISSUES

LFC staff have considered the problem identified by STBTC on SB-186: “the provisions of the bill require an annual payment in lieu of taxes to all political subdivisions that would have taxed the state-acquired property. If the legislature did not fund these payments through annual special appropriation could the political subdivisions denied the PILT sue?” LFC staff do not have a definitive answer to this question but note that the suit would not be covered by the Tort Claims Act and there have been several litigations over the years where a local government has brought suit against state agencies and these suits have been successful for the local government. LFC staff recommend an amendment that would clarify that PILTs would be paid subject to appropriations of the legislature.

The New Mexico Tort Claims Act is codified at New Mexico Statutes section 41-4. The Act states that, generally speaking, both government entities and government employees **“are granted immunity from liability for any tort.”** (Note: “Tort” is just another word for “personal injury”).<sup>2</sup>

TRD notes several technical/legal issues:

“It is unclear when a tax would have been imposed “but for” the acquisition of that property by the state. Tax & Rev suggests that the bill refer instead to property that had been subject to taxation prior to its acquisition by the state. We suggest that the first sentence of paragraph A, on page 1, lines 18-23, be amended to read as follows: ‘Whenever the state acquires fee simple ownership of real property by purchase or eminent domain, the state shall annually make payments in lieu of taxes to any political subdivision of the state that imposed and received the revenues of a tax on the acquired real property prior to the acquisition of the property by the state.’”

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<sup>2</sup> <https://www.nolo.com/legal-encyclopedia/filing-claim-under-new-mexico-tort-claims-act.html#:~:text=The%20New%20Mexico%20Tort%20Claims%20Act%20is%20codified%20at%20New,for%20%22personal%20injury%22.>

“Tax & Rev also notes that the amount of the payment in lieu of taxes, or a formula for computing that amount, is not included in the language of the bill. The bill appears to assume that the amount of the payment should be the amount of lost tax revenue. If that is the intent, this should be made explicit in the bill.”

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Duplicates HB181.

## **SUGGESTED AMENDMENTS**

1. TRD’s suggested amendment (1):

The first sentence of paragraph A, on page 1, lines 18-23, be amended to read as follows:

‘Whenever the state acquires fee simple ownership of real property by purchase or eminent domain, the state shall annually make payments in lieu of taxes to any political subdivision of the state that imposed and received the revenues of a tax on the acquired real property prior to the acquisition of the property by the state.’”

2. TRD’s suggested amendment (2): – clarify that the amount of the PILT is equal to the amount of lost tax revenue for each of the local beneficiaries.

3. LFC staff suggested amendment: “On page 2, line 6 after “rates.” Insert a new subparagraph C to read:

All payments in lieu of taxes are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of the provisions of this act. If sufficient appropriations and authorization are not made by the Legislature in any year, the provisions of this act are suspended for that year.

4. Since the purpose of the provisions of the bill is to hold local governments somewhat harmless from state acquisition of large properties, it might be appropriate to use as the base of the PILT the acquisition price or value rather than the property taxes actually paid by the seller just prior to the acquisition.

LG/acv/rl/al