

# Legislative Analysis

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## REMOVE PILT LAND FROM EQUALIZATION PROCESS

Mitchell Bean, Director  
Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 4536 (Substitute H-1)**

**Sponsor: Rep. Darwin Booher**

**Committee: Tax Policy**

**First Analysis (1-31-06)**

**BRIEF SUMMARY:** The bill would require that property assessed to the DNR and valued by the State Tax Commission (PILT land) be recorded on a separate assessment roll and removed from the equalization process.

**FISCAL IMPACT:** The bill would have an indeterminate fiscal impact on the state and local governmental units.

### **THE APPARENT PROBLEM:**

Under current law, the state makes payments in lieu of taxes (PILT payments) for "purchased lands" under Subpart 14 of Part 21 of the Natural Resources and Environmental Protection Act. This property is assessed to the Department of Natural Resources as agricultural real property by the State Tax Commission, although it is valued differently, and taxed at a different rate, than other agricultural property taxed under the General Property Tax Act.

Last session, Public Act 513 of 2004 changed the way in which PILT payments are calculated by, among other things, freezing the assessed value of PILT lands for the years through 2008, at the 2004 level. Two problems with Public Act 513 have now become apparent. First, on its face, P.A. 513 appears to violate the constitutional requirement of uniform general ad valorem taxation and the assessed value limit of 50 percent of true cash value.<sup>1</sup> To this point, a recent newsletter from the Michigan Townships Association notes, "[s]ince PILT land was frozen in value by the Legislature, the equalization process would force assessments on private agricultural property to take larger than normal increases in valuation to make up for the frozen parcels," thereby violating the requirement that property be assessed at not more than 50 percent of true cash value.<sup>2</sup>

Second, as the MTA newsletter further notes, "[s]ince the PILT property value has been lumped together with all other property values, freezing PILT values can actually cause a

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<sup>1</sup> Article 9, Section 3 of the State Constitution states, in part: "The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not, after January 1, 1966, exceed 50 percent; and for a system of equalization of assessments...The legislature may provide for alternative means of taxation of designated real and tangible personal property in lieu of general ad valorem taxation."

smaller rollback on millage rates than is called for by the constitution when calculating the millage reduction fraction. In any taxing jurisdiction that is required to rollback their millage rate as required by Headlee, by blending in the frozen value of PILT land, it will distort the millage reduction fraction so that all of the other taxpayers will collectively pay an amount equal to the lost revenue based on the freeze in the PILT assessment."

To remedy the problems raised by P.A. 513, the State Tax Commission recently issued STC Bulletin 2005-15, which clarified how PILT land should be treated in the assessment and equalization process.<sup>3</sup> The bulletin concluded that the act subjected PILT land to "an alternative means of taxation in lieu of general ad valorem taxation" and further noted that under the State Board of Equalization Act such property is excluded from the equalization process. The bulletin directs that PILT land be recorded in a separate assessment roll and be removed from the equalization process. However, the STC bulletin only applies for 2005-2006. Legislation removing PILT lands from the equalization process has been introduced.

### ***THE CONTENT OF THE BILL:***

The bill would amend the General Property Tax Act to require that property for which the state makes payments in lieu of taxes (PILT) under the Natural Resources and Environmental Protection Act be recorded by local assessors on a separate assessment roll. In calculating the constitutional county debt limitation, the separate assessment roll for PILT lands would be combined with the ad valorem assessment roll.

In addition, under the act, real property may be assessed as one of six classifications: (1) agricultural; (2) commercial; (3) developmental; (4) industrial; (5) residential; or (6) timber-cutover. Agricultural real property includes parcels used partially or wholly for agricultural operations and "parcels assessed to the Department of Natural Resources and valued by the State Tax Commission."

The bill would remove the reference to property assessed to the DNR from the agricultural real property classification.

MCL 211.34c

### ***BACKGROUND INFORMATION:***

#### **Payments in Lieu of Taxes**

The bill primarily affects "purchased lands" for which the state makes payments in lieu of taxes (PILT payments) under Subpart 14 of Part 21 of the Natural Resources and Environmental Protection Act. Under NREPA, the State Tax Commission is required to annually determine the value of the property, although the valuation for tax years through

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<sup>3</sup> In response to the belief that P.A. 513 violates Article 9, Section 3 of the State Constitution, the STC bulletin states, "Since it will not be presumed that the Legislature intended to adopt an unconstitutional Act, the intent of Act 513 must have been to subject [PILT land] to an *alternative* means of taxation in lieu of general ad valorem taxation.

2008 is frozen at the 2004 level. Beginning in 2009, year-to-year increases in the valuation of the property are capped at the rate of inflation or five percent, whichever is less. The payment is generally calculated in the same manner as ad valorem property. However the land is not subject to any special assessments, the State Education Tax, or any millage above the 2004 level. Additionally, by virtue of currently being assessed as "agricultural real property," the land is also not subject to the 18-mill local school operating millage.

PILT payments are annually provided for through the DNR's budget, with funding being provided by the School Aid Fund, various restricted funds, and the General Fund. The Natural Resources and Environmental Protection Act specifies that, for payments made in FY 2006 and each year thereafter, taxes imposed by a local school district, intermediate school district, or community college district are to be charged to the state School Aid Fund. Of the balance, not more than half shall be paid from restricted funds, with the remaining balance being paid from the General Fund. The act further provides that if an insufficient amount is appropriated to make full payments, the payments made to local units shall be prorated.

Public Act 154 of 2005 (House Bill 4831) appropriates just over \$5 million in payments for "purchased lands" for FY 2006.

#### **State Tax Commission Bulletin 2005-15**

State Tax Commission Bulletin 2005-15, issued in December 2005, directs assessors and county equalization directors to remove all real property assessed to the DNR and valued by the State Tax Commission from the ad valorem assessment roll, and record such property on a separate assessment roll, known as the "Act 513 Roll."

The bulletin provides that the separate assessment roll should include, at a minimum, the following information: (1) local unit identification number; (2) DNR payment in lieu of taxes identification number; (3) DNR mailing address; (4) legal/tax description; (5) 2004 assessed and state equalized value or, if the property was acquired after 2004, the SEV in the year following acquisition; and (6) 2004 taxable value provided by the STC, for tax years 2004 through 2008. This property is then removed from the ad valorem assessment roll by taking an "equalization loss" and "capped value (Headlee) loss".

A copy of the bulletin is available through the Department of Treasury's website at [www.michigan.gov/treasury](http://www.michigan.gov/treasury). [Follow the "Local Government" link to the link for the State Tax Commission.]

#### ***ARGUMENTS:***

##### ***For:***

The recent changes to how PILT payments are calculated have complicated the administration of local property taxes, as PILT land is valued differently, and taxed at a different rate, than other agricultural real property under the General Property Tax Act.

Moreover, these changes artificially increase the values of agricultural property and increase local tax rates, and apparently reduce the rollback of local millage rates as required by the Headlee amendment to the State Constitution. These problems are apparently remedied by placing PILT land in a separate assessment roll and removed from the equalization process, as required by the recent State Tax Commission bulletin. However, the bulletin only applies for 2005-2006. The bill ensures that these changes apply in future years.

***Response:***

The bill deletes language in the act stating that DNR-assessed land is included in the agricultural real property classification. At this point it is not entirely clear whether such property would continue to be exempt from the school operating millage. Currently, the Natural Resources and Environmental Protection act specifies that the millage rate applied to this property shall not exceed the 2004 level. This property was not "taxed" in 2004, and one could reasonably conclude that the property would continue to be exempt from the school operating millage. However, the language of the Natural Resources and Environmental Protection Act, as it relates to the millage rate, is far from clear. The act doesn't specify the whether the millage limit applies to the assessing district, taxing unit, or individual parcel. Moreover, it is not clear how PILT payments would be allocated to the various taxing units if the millage rate exceeds the 2004 level. If the intent is to continue the school operating millage exemption for PILT land, a clarifying amendment to either the General Property Tax Act or the Natural Resources and Environmental Protection Act would be helpful.

***POSITIONS:***

The Department of Treasury supports the bill. (1-24-06)

The Michigan Assessors Association supports the bill. (1-24-06)

The Clinton County Equalization Director testified in support of the bill. (1-24-06)

Legislative Analyst: Mark Wolf  
Fiscal Analyst: Rebecca Ross

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.