

1 **JOINT RESOLUTION ON THE SOVEREIGN CHARACTER**
2 **OF PILT--PAYMENT IN LIEU OF TAXES**

3 2014 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Ken Ivory**

6 Senate Sponsor: David P. Hinkins



8 **LONG TITLE**

9 **General Description:**

10 This joint resolution of the Legislature strongly urges the United States Congress to
11 fully and permanently fund Payment In Lieu of Taxes (PILT) and transfer to the state of
12 Utah the federally controlled public lands within the state.

13 **Highlighted Provisions:**

14 This resolution:

15 ▶ urges and directs the United States Congress to use every exertion in its power, by
16 reason, argument, and persuasion, to induce the United States to fully fund, on a
17 perpetual and mandatory basis, Payments In Lieu of Taxes (PILT), which the state
18 and its subdivisions would otherwise collect if the federal government honored the
19 same statehood enabling act terms that it honored with all states east of Colorado;
20 and

21 ▶ demands, if Congress cannot or will not fully fund PILT at the full assessed value of
22 similarly situated lands within Utah's counties on a mandatory, permanent, and
23 perpetual basis, that Congress transfer title to the public lands, as was done
24 previously for similarly impacted states east of Colorado, directly to the state of
25 Utah so that Utah and its subdivisions can generate tax and other revenues from
26 these lands to fund education, police, fire, sanitation, social welfare, and other
27 essential public services.



28 **Special Clauses:**

29 None



31 *Be it resolved by the Legislature of the state of Utah:*

32 WHEREAS, the United States Congress elected to not fund the Payment In Lieu of
33 Taxes (PILT) Act in its most recent \$1.1 trillion Omnibus Spending Bill of 2014;

34 WHEREAS, Congress instead included funding for its PILT obligations for only one
35 year in the Farm Bill of 2014;

36 WHEREAS, PILT was imposed by Congress in 1976 to compensate states for the loss
37 of tax and other revenues that states would generate if Congress had honored its nearly
38 200-year-old obligation to transfer title to the public lands;

39 WHEREAS, Congress originally promised that PILT would be mandatory and
40 perpetual because it was intentionally imposed as a substitute for what the congressional
41 Committee on the Public Lands referred to in 1828 as "a power incident to all sovereign states
42 of taxing the soil to confer benefits";

43 WHEREAS, in 1976, Congress enacted the Federal Land Policy Management Act of
44 1976, or FLPMA, which unilaterally changed the obligation of the federal government to
45 transfer title to the public lands in favor of a policy to "forever retain public lands in federal
46 ownership";

47 WHEREAS, as a palliative to the affected states for usurping this "power incident to all
48 sovereign states of taxing the soil" through FLPMA, Congress also imposed the new PILT
49 program;

50 WHEREAS, as a result of the federal government's failure or refusal to transfer title to
51 the public lands, some counties in Utah have as little as 5% taxable lands to fund education,
52 police, fire, sanitation, social welfare, and other essential public services;

53 WHEREAS, an analysis by the Legislature's Office of Legislative Fiscal Analyst
54 reveals that the amounts previously funded by Congress as PILT to Utah counties amounts only
55 to approximately 13 cents on the dollar of the average taxable value for similarly situated
56 lands;

57 WHEREAS, PILT more accurately represents "Pennies In Lieu of Trillions," in light of
58 the fact that the Institute for Energy Research estimated in 2013 that there is more than \$150

59 trillion in mineral value locked up in federally controlled lands;

60 WHEREAS, the United States Government Accountability Office estimated in 2012
61 that there is more recoverable oil in the federally controlled lands in Utah, Colorado, and
62 Wyoming than the rest of the world combined;

63 WHEREAS, as a result of having such a minimal amount of lands subject to taxation or
64 other revenues because of federal retention of these lands, Utah counties are dependent upon
65 the promise of PILT for as much as 40% of their total county budgets to fund education, police,
66 fire, sanitation, social services, and other essential public services;

67 WHEREAS, a one-year appropriation for PILT in the Farm Bill of 2014 disregards
68 entirely the uniquely sovereign character of PILT--putting PILT on par with other line items of
69 federal expense like funding the study of excess alcohol on prostitutes in China--rather than
70 honoring PILT as a mandatory and perpetual substitute for the "power incident to all sovereign
71 states of taxing the soil";

72 WHEREAS, a mere one-year PILT appropriation denies state and local governments of
73 budgetary certainty to meet fundamental public obligations like funding education, police, fire,
74 sanitation, social welfare, and other essential public services;

75 WHEREAS, the federal government has not passed a budget for more than five years,
76 has accumulated a national debt exceeding \$17 trillion, overspends at the rate of nearly \$1
77 trillion a year, has unfunded obligations for Medicare, Medicaid, Social Security, and others in
78 excess of \$87 trillion, and is creating money at the rate of tens of billions of dollars per month;

79 WHEREAS, the United States Government Accountability Office regularly declares
80 that the financial statement of the United States is "unsustainable";

81 WHEREAS, history reflects that Congress previously delayed for decades disposing of
82 as much as 90% of the lands in states such as Illinois, Indiana, Missouri, Arkansas, Louisiana,
83 Alabama, Mississippi, and Florida, depriving these states of the ability to tax or generate
84 revenues from their lands;

85 WHEREAS, lacking the ability to tax or generate revenues from their lands, the 1828
86 congressional Committee on the Public Lands indicated "in vain may the People of these States
87 expect the advantages of well settled neighborhoods, so essential to the education of youth . . .
88 Those states will, for many generations, without some change, be retarded in endeavors to
89 increase their comfort and wealth, by means of works of internal improvements, because they

90 have not the power, incident to all sovereign States, of taxing the soil, to pay for the benefits
91 conferred upon its owner";

92 WHEREAS, upon raising their collective demand to Congress, the congressional
93 Committee on the Public Lands found with respect to their admission as states that "when these
94 States stipulated not to tax the lands of the United States until they were sold, they rested upon
95 the implied engagement of Congress to cause them to be sold, within a reasonable time. No
96 just equivalent has been given those States for a surrender of an attribute of sovereignty so
97 important to their welfare, and to an equal standing with the original States";

98 WHEREAS, ultimately, the collective and persistent demands of these states resulted in
99 the transfer of their public lands by Congress;

100 WHEREAS, Congress's obligation to transfer title to the public lands to the states is
101 included in the Enabling Act for Utah's admission as a state--an agreement the United States
102 Supreme Court refers to as a "bi-lateral" and "solemn compact";

103 WHEREAS, the terms of Utah's Enabling Act, with respect to the transfer of public
104 lands, are in all material respects similar to the enabling acts of most of the newly created states
105 east of Colorado and west of the original 13 states; and

106 WHEREAS, legal analysis by the Federalist Society concludes that the Enabling Act is
107 "a compact and promise made between two sovereigns where the federal government
108 committed itself to disposal and promised that it would exercise its disposal obligations in a
109 manner (and with an understanding that respects the expectation by the State that the federal
110 government would dispose of such lands) so that both a percentage of the proceeds from the
111 sales would be shared with the State and the State thereafter would have the capacity to tax
112 such lands when disposed . . .":

113 NOW, THEREFORE, BE IT RESOLVED that until the federal government honors the
114 promise made at statehood to transfer title to the public lands, the Legislature of the state of
115 Utah urges and directs, in the most strenuous terms within the power of a sovereign and
116 independent state, that the senators and representatives of the United States Congress use every
117 exertion in their power, by reason, argument, and persuasion, to induce the United States to
118 fully fund, on a perpetual and mandatory basis, Payments In Lieu of Taxes (PILT), which the
119 state and its subdivisions would otherwise collect if the federal government honored the same
120 statehood enabling act terms that it honored with all states east of Colorado.

121 BE IT FURTHER RESOLVED that if Congress cannot or will not fully fund PILT at
122 the full assessed value of similarly situated lands within Utah's counties on a mandatory,
123 permanent, and perpetual basis, the Legislature of the state of Utah demands that Congress
124 transfer title to the public lands, as was done previously for similarly impacted states east of
125 Colorado, directly to the state of Utah so that Utah and its subdivisions can generate tax and
126 other revenues from these lands to fund education, police, fire, sanitation, social welfare, and
127 other essential public services.

128 BE IT FURTHER RESOLVED that a copy of this resolution be sent to the Majority
129 Leader of the United States Senate, the Speaker of the United States House of Representatives,
130 the United States Department of the Interior, and the members of Utah's congressional
131 delegation.

Legislative Review Note
as of 2-12-14 7:50 AM

Office of Legislative Research and General Counsel