# Compensating Local Governments for Loss of Tax Base Due to State Ownership of Land

# (September 1996)

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## I. BACKGROUND

In August 1995, Governor George E. Pataki directed that the New York State Office of Real Property Services (ORPS) study methods of compensating local governments for any burden imposed by the presence of state-owned land within their boundaries. Expressing concern that State ownership of land can negatively impact local property tax bases, and that the State's policy of compensating local governments for such losses needs to be "uniform, equitable, and comprehensive," the Governor asked ORPS to review the compensation system currently used in New York and any feasible alternatives to this system.

This report presents ORPS' findings and recommendations. It summarizes the results of a comprehensive study which: (1) reviewed the many compensation arrangements now used in New York; (2) compared the methods used by other states to New York's; (3) determined the levels of compensation prevailing in New York under the current system, and (4) analyzed the distribution of these compensation payments in relation to the distribution of state-owned acreage. The study concludes with recommendations for a revised approach, to be implemented on a statewide basis.

The remainder of the report is organized as follows. Part II discusses the legal and fiscal issues associated with government ownership of real property and reviews New York's compensation programs in relation to alternative arrangements. Part III describes the current distribution of state payments among taxing jurisdictions (counties, cities, towns, villages, and school districts) in relation to the prevalence of state-owned land in those same localities. Part IV presents specific recommendations for creating a uniform. statewide policy for compensating local governments and Part V summarizes the cost of such compensation to the state, to the extent that it can be estimated. Appendix A discusses the data used and the correction procedures that were required in enumerating the state's land holdings and identifying those land uses considered eligible for the recommended reimbursement program. Appendix B presents detailed acreage estimates -- counties, towns/cities, villages, and school districts -- of state lands that would be eligible for compensation under the proposed program. Appendix C describes the experience of the City of Rochester in implementation of a program under which tax-exempt property -- both government owned and privately owned -- is charged a fee for certain local government services.

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## II. TYPES OF COMPENSATION PROGRAMS

### Introduction

Acquisition of property by the state would effectively remove it from local tax bases under the legal principle of sovereign immunity. This principle, most clearly elucidated by the U.S. Supreme Court in the landmark case McCulloch vs. Maryland holds that a subservient level of government may not tax another government which has sovereignty over it.[1] This case, while it involved levy of state fees on an instrumentality of the federal government, has been deemed equally applicable to levy of local taxes on state property. Despite the general exemption from property taxes that the concept implies, both state and federal property may nevertheless be subject to local taxes under special circumstances.

One situation in which taxes may be levied is a situation in which the property is not used for governmental purposes but is instead leased to a non-government entity. For these situations, approximately half the states have statutory provisions that permit taxation of the value of the leasehold interest in the property, generally termed a "possessory interest." Although, the tax liability of the private interest may be significantly less than the taxes that would be levied on the property itself if it were taxable, the two figures can be quite close in the case of long-term leases. With minor exceptions, New York statutes require taxation in these situations if the property is owned by local governments, as opposed to the federal or state governments.[2] Because possessory interests involve use of government property for private purposes, they are not considered further in the present report which focuses on the overwhelming majority of state properties that are used for government purposes.

The opposite situation to a possessory interest occurs when government acquires an interest in privately owned property through lease or purchase of certain rights. Typically, such properties remain taxable, with the property owner rather than the government user responsible for payment. An exception found in New York involves state-purchased conservation easements on privately owned lands in the Adirondack and Catskill parks. In these cases, the landowner remains responsible for the taxes due on the interest he continues to hold in the property and the state is responsible for payment of taxes on the value of the easement. Because such situations involve privately owned land, they are not considered further in this study.

The other major instance of taxing state or federal property involves the granting to local governments of specific statutory authority to do so by the state or federal governments. Despite the fact that their properties are exempt, sovereign governments sometimes conclude that they nevertheless "owe" something to their subject governments. This attitude can reflect recognition that the local services their property benefits from have a real cost to the community, or the view that, in acquiring property that previously paid taxes, the sovereign government has fiscally disadvantaged the community. To handle such perceived obligations, state governments have devised a variety of mechanisms, and it is not uncommon for a given state to use several different methods of compensation at the same time. Virtually all of them also exclude certain categories of property from their reimbursement programs, the most common one being land used for roads and highways.

**Compensation Mechanisms Used by the States**

According to two relatively recent surveys, policies designed to reimburse local governments exist in thirty-four states (see Table 1).[3] These policies are of three broad types:

1. payment by the state of local property taxes,
2. state payments "in lieu of taxes" (PILOTs), and
3. payments by the state of service costs incurred by local governments.

As stated earlier, payment of actual taxes requires consent by the state that its otherwise exempt property may be subject to local property taxes.[4] This approach is practiced in seven of the states.[5] However, in all seven, only certain state-owned property is included in the tax program. Most of the states limit taxation to relatively minor categories of property, but New York, Michigan, and Vermont subject large acreage to taxes. In New York, local taxes are levied on the millions of acres which comprise the state-owned forest preserve of the Adirondack and Catskill regions, and on reforestation lands, wildlife management areas, certain state parks, prison lands, and lands used for certain flood control projects. The State of Michigan pays local taxes amounting to nearly nine million dollars annually on acreage acquired by its Department of Natural Resources since 1932. Similarly, Vermont subjects all lands held by its Department of Natural Resources to local taxation. Usually, tax programs provide that full taxes be paid, at least for the land component of value, but the Vermont program, in limiting taxes to one percent of land value, is an exception.

Payments in lieu of taxes are the most common approach to compensation, with at least twenty-two states using this method.[6] The range of specific PILOT arrangements is also large, but the following features are commonly found:

1. payment equals the taxes that would be due if the property were not exempt;
2. payment equals the tax paid on the land before it was acquired;
3. payment is initially the pre-acquisition tax, but is phased out over time;
4. payment is made only if a threshold percentage of total acreage or value is state-owned;

5. payment is at a flat rate per acre;
6. payment is at a flat rate per acre but varies by land use; or
7. payment is a lump sum, determined through negotiation or other method.

Some states use more than one type of PILOT mechanism. For example, Minnesota compensates localities at a flat rate per acre (which varies with land use) for lands under the control of its Department of Natural Resources. However, it compensates Chisago County for lands included in the St. Croix Wild River State park in a different way: ninety percent of the pre-acquisition taxes were paid in the first year of state ownership, with the resulting amount declining annually in ten percent increments until phased out. In any year, the total payment could not exceed $200,000. Another variation may be seen in New Hampshire. This state compensates local governments for state acquisition of property for parks by paying the pre-acquisition tax in the first year but phasing this payment out over a five-year period. However, it also makes a lump-sum payment to the City of Concord, the state capitol.

Where thresholds are set, they can vary dramatically. Some states such as Colorado begin to compensate local governments once a very low threshold of state ownership is reached (in this case, one-tenth of one percent of the area of the county). Others, such as Illinois, take a quite different approach, compensating municipalities only if a large share of the local land is state-owned (minimum of forty-five percent in Illinois). Still other states set absolute acreage thresholds, such as Minnesota's 1,000 acre minimum eligibility level per county for compensation relating to certain wildlife management lands and Georgia's overall county threshold of 20,000 state-owned acres. Another common type restriction, which is similar to a threshold, uses a specified acquisition date to distinguish between properties for which payments will be made and those that are deemed ineligible.

In some cases, the distinction between "taxes" and "PILOTS" can be somewhat artificial. Using Colorado as an example once again, we find that the state pays an amount equal to the local property taxes (other than special district charges) that would have been levied on land used for park and conservation purposes if it were taxable, assuming that the previously-mentioned threshold is met. However, since the land remains "exempt," and the payments are not made through the standard local property tax system, they are considered PILOTs rather than taxes.

Like PILOT approaches, the payments-for-services approach -- which is used to some extent in at least ten states -- can take many different forms. Perhaps the broadest services payment program is that found in Wisconsin (Wisconsin Statutes, Section 70.119). In that state, the local government services for which compensation is paid are of two types. The first type includes water, sewer, electricity, garbage and trash collection, and all other services provided to state facilities and financed in whole or in part by "special charges or user fees." For these services, the state agency responsible for the facility receiving the service pays the fee in question. This imposition of user fees and related charges on government-owned tax-exempt property in the same manner as they are imposed on taxable property is quite similar to current practice in New York (see Part IV for a detailed discussion of New York's service charge provisions).

Wisconsin's second services category includes police and fire protection, solid waste disposal, and other such services that are provided to state facilities but are not customarily financed through special charges or user fees. Compensation for these services is determined through a formula which calculates a pro-rata share of local service costs to be attributed to state facilities, with the share based on the percentage the value of the state property (including improvements) represents of the total value of an property in the community. New York does not have such formula-based compensation programs, but permits its local governments to levy certain "special district charges" on tax-exempt property deemed to benefit from the public improvements created within the special districts in question (see Part IV).

The payments-for-services programs of the other states using this compensation approach are all more limited than Wisconsin's program. Virginia, for example, limits payments to police and fire protection, refuse disposal and, in limited instances, public education (applies to faculty and staff housing provided by public education institutions) (Code of Virginia, Section 58.1-3403). In the remaining states, payments may be limited to a single municipality (e.g., payments for services to the state capitol in Kentucky and Illinois) or a single type of service (e.g., Iowa's payments for school costs attributable to students who live on state-owned property).

**New York's Compensation Programs**

As can be seen from Table 1, New York is one of three states that use all three approaches to compensation, the other two being Michigan and Wisconsin. New York, however, is unique in that it applies each approach extensively, with none limited to minor land categories, numbers of municipalities, acreage, or types of local government services. However, there is significant variation in the way certain types of land are treated from one New York municipality to another. The three programs -- taxation, PILOTS, and service fees -- are described below.

**TABLE 1**
**Methods Used by the States to Compensate Local Governments for Tax Base Reduction Due to State Ownership of Land***

| State | Taxation | | PILOT Programs | | | Service Charge Programs | | |
|---|---|---|---|---|---|---|---|---|
| | Land | Building | Number | Property Use(s) | Taxing Unit(s) | Number | Property Use(s) | Taxing Units |
| Alabama | No | No | 0 | -- | -- | 0 | -- | -- |
| Alaska | No | No | 0 | -- | -- | 0 | -- | -- |
| Arizona | No | No | 2 | Fish/Game | County | 0 | -- | -- |
| Arkansas | No | No | 0 | -- | -- | 0 | -- | -- |
| California | No | No | 1 | Forest, Wildlife | Unknown | 0 | -- | -- |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Colorado | No | No | 2 | Wildlife, Parks, Housing | All (1) | 0 | -- | -- |
| Connecticut | No | No | 1 | Indian Reserv., Airport | Town | 1 | State Office Bldg. | Fire District |
| Delaware | No | No | 1 | State Capitol | City | 0 | -- | -- |
| Florida | No | No | 1 | Preserve Land | Unknown | 0 | -- | -- |
| Georgia | No | No | 1 | All State Land (2) | County | 0 | -- | -- |
| Hawaii | No | No | 0 | -- | -- | 0 | -- | -- |
| Idaho | No | No | 0 | -- | -- | 0 | -- | -- |
| Illinois | No | No | 1 | All State Land (3) | School | 1 | State Capitol | Fire, other |
| Indiana | No | No | 0 | -- | -- | 0 | -- | -- |
| Iowa | No | No | 2 | Forests, Parks | All (4) | 1 | State Schools (5) | School Dist. |
| Kansas | Yes(6) | No | 0 | -- | -- | 1 | All | All |
| Kentucky | No | No | 1 | Daniel Boone Grave | City | 2 | State Capitol, other | Municipal |
| Louisiana | No | No | 0 | -- | -- | 0 | -- | -- |
| Maine | No | No | 1 | All (7) | Unknown | 0 | -- | -- |
| Maryland | No | No | 1 | Trade Zones, other (7) | Unknown | 0 | -- | -- |
| Massachusetts | No | No | 5 | Various | City, Town | 0 | -- | -- |
| Michigan | Yes | No | 3 | Certain Forest, Park, Military | Unknown | 1 | Facilities | Fire District |
| Minnesota | No | No | 3 | Wildlife, Certain Parks | County | 0 | -- | -- |
| Mississippi | No | No | 0 | -- | -- | 0 | -- | -- |
| Missouri | No | No | 2 | Forest, | County | 0 | -- | -- |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | | | Conservation | | | | |
| Montana | No | No | 2 | Forest, Agric., Fish/Game | County (8) | 0 | -- | -- |
| Nebraska | No | No | 2 | Power, Comm. Redevel. | Unknown | 0 | -- | -- |
| Nevada | No | No | 1 | Wildlife | County | 0 | -- | -- |
| New Hampshire | No | No | 6 | Various | Unknown | 0 | -- | -- |
| New Jersey | No | No | 4 | Various | Unknown | 1 | Coastal | C. Portsmouth |
| New Mexico | No | No | 0 | -- | -- | 0 | -- | -- |
| New York | Yes | Yes (9) | 9 | Various | All (some programs) | 1 | All (10 | City/Town/ Village |
| No. Carolina | No | No | 0 | -- | -- | 0 | -- | -- |
| No. Dakota | No | No | 4 | Wildlife, School, National Guard | Counties (not programs) | 0 | -- | -- |
| Ohio | No | No | 2 | Wildlife | All | 0 | -- | -- |
| Oklahoma | No | No | 1 | Wildlife | Counties | 0 | -- | -- |
| Oregon | No | No | 1 | Wildlife | Counties | 0 | -- | -- |
| Pennsylvania | No | No | 3 | Various | All (some programs) | 0 | -- | -- |
| Rhode Island | No | No | 1 | Hospitals, Prisons | Unknown | 0 | -- | -- |
| So. Carolina | No | No | 3 | Dams, Reservoirs, etc. | All (some programs) | 0 | -- | -- |
| So. Dakota | Yes | No | 2 | Wildlife, Hunting Areas | Unknown | 0 | -- | -- |
| Tennessee | No | No | 1 | Wetland | Unknown | 0 | -- | -- |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Texas | No | No | 0 | -- | -- | 0 | -- | -- |
| Utah | No | No | 1 | "State Trust Land" | Counties | 0 | -- | -- |
| Vermont | Yes | No | 1 | State Facilities | C. Montpelier, C. Westbury | 0 | -- | -- |
| Virginia | No | No | 0 | -- | -- | 1 | Various (11) | -- |
| Washington | No | No | 0 | -- | -- | 2 | State Facilities | City/Town |
| W. Virginia | No | No | 0 | -- | -- | 0 | -- | -- |
| Wisconsin | Yes(12) | No | 2 | Parks, Forests | City/Town/ Village | 1 | State Facilities | All, except schools |
| Wyoming | Yes | Yes (13) | 0 | -- | -- | 0 | -- | -- |

*Source: Based on Adams, 1990 and Fong & Kuenzi, 1994.

**FOOTNOTES:**

1. Payments only made to counties for wildlife and park lands.
2. Payments made only when state owns more than 20,000 acres in county.
3. Payments made only if state owns more than 45 percent of land in school district.
4. School payments only for forest and park lands.
5. When public school students live on exempt state property.
6. Oil and gas rights only.
7. Payment is share of income from certain state property.
8. Threshold acreages apply in some cases: land must produce forest or grazing income in some cases.
9. Limited to a few instances, such as pre-existing structures on state agricultural lands.
10. Limited to measurable services (e.g. water, sewer) and/or those which directly benefit property (e.g. road construction).
11. Excludes hospitals, schools, highways, three percent value threshold.
12. Agricultural lands only, taxable for school purposes only.
13. Limited to housing supplied to state employees and property of Game and Fish

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## The Tax Program

The main approach used in New York is state payment of local property taxes on designated state-owned lands "as if privately owned."[7] Approximately 43 percent of the New York's more than 1,700 county, town, and school district taxing units annually receive tax payments on state land parcels. Tax payments are made on some 3.6 million acres, with about five-sixths of that acreage taxable for all purposes (i.e., county, city/ town, school, village, and special district purposes (see Table 2). Some local governments, notably those in the Adirondack and Catskill regions, are heavily dependent on state land taxes as a revenue source.

**Table 2**
**State Land Taxable Under Current Law**

| Law, Section | Type of Land | Taxing Purposes | Number of: Parcels[1] | Number of: Acres[1] (000) |
|---|---|---|---|---|
| RPTL[2] Section 532 | Forest Preserve, Certain Parks, Wildlife Management, Champlain Railroad, Rockland County Land | All | 13,981 | 2,934 |
| RPTL Section 534 | Reforestation Land | All but county | 4,733 | 569 |
| RPTL Section 536 | Various lands in various towns | School only | 1,054 | 36 |
| EnCon[3] Section 15-2115 | Certain lands used for flood control | All | 1,181 | 32 |
| | | **TOTAL** | **20,949** | **3,571** |

[1]Based on 1993 Assessment rolls
[2]Real Property tax Law
[3]Environmental Conservation Law

The practice of taxing state land in New York began in 1886, when legislation permitting taxation of the forest preserve (i.e., state-owned land in the Adirondack and Catskill regions) was enacted. Since then, taxability has been extended to various other types of land in various areas of the state. Two factors are generally accepted as having motivated

the original extension of taxability to the forest preserve. The first was the very large acreage which the state owns in many of the towns in the Adirondack and Catskill areas. For example, in the Towns of Morehouse and Benson (Hamilton County) and Newcomb (Essex County), some eighty to ninety percent of the municipal area is comprised of state land. Much of this land was acquired by the state in the past century through tax foreclosures resulting from abandonment by owners of lands from which they had removed all the marketable timber. The second factor was the realization that, while state ownership conveyed benefits to residents-of other areas of the state, costs were largely borne locally. In the late 1800s, the benefit which received the most attention was the provision of watershed areas to supply the heavily-populated downstate metropolitan region with a high-quality and reliable water supply. Later on, the statewide benefits in terms of recreational and scenic amenities began to receive more emphasis, and this outlook continues to the present day.

In subsequent years, taxability was extended to significant state land acreage devoted to parkland, reforestation, and institutional uses. The parks included the Letchworth State Park (1914), the Palisades, Bear Mountain, and Harriman State Parks (1916), the Allegany State Park (1924, 1928), the Saratoga State Park (1930), and the Hudson Highlands and Baird State Parks (1941-42). While taxability was extended to this limited group of state parks, the great majority remained exempt. Reforestation areas throughout the state were made taxable in 1932, and lands in specified municipalities that were occupied by certain state institutions, primarily prisons and hospitals, were made taxable in various years, from 1898 to 1961.[8]

Like the forest preserve, the parks were made taxable for all taxing purposes, but the institutional lands were made taxable for school purposes only. Presumably, the rationale here was that, while they involved far more limited acreage than the parks, the institutional parcels would bring an influx of population and, therefore, additional students for the local public schools. In fact, some new students could come from the residences the state often built for staff on the grounds of the institutions. However, since taxation was limited to the value of the land "'exclusive of any improvements erected thereon by the state," the value of the residences themselves or other institutional buildings remained exempt from taxation (exceptions were made for rented residences and those housing school-age children). Regarding the reforestation lands, the logic for subjecting them to taxation for all except county purposes was that reforestation was seen as a benefit to county governments (which often maintained their own reforestation programs).

In addition to the forest preserve, certain state parks, reforestation lands, and institutions, several minor categories of state land have been made taxable over the years. These include wildlife management areas (e.g., game farms, fish hatcheries, game management areas, etc.), canal lands, lands acquired for flood control purposes by the Hudson River and Black River Regulating District, and other miscellaneous parcels. As with the parks and state facilities, taxability decisions regarding these properties do not appear to have been made according to a uniform policy. As noted by the Joint Legislative Committee

on Assessment and Taxation of State-Owned Lands in a memorandum supporting its 1964 reform proposal:

"It all began innocently enough when the state consented to taxation of the vast areas of the forest preserve ... But since those days ... new and different lands in certain towns, counties, and school districts were made, by special acts of the legislature, subject to taxation for some or all purposes. We find reforestation lands have become taxable for all but county purposes ... A fish hatchery is taxable here but not in nineteen other places. Game farms and refuges are taxable in some towns and not in most. Some state parks are taxable but most are not; isolated Public Works facilities are taxed; some barge canal lands are taxed, despite a general policy that they should not be. Buildings and other improvements are generally not taxable but some are taxed."[9]

The reforms proposed by this committee (and by its predecessors, reporting in 1959 and 1962) entailed taxation of a specified set of state lands in all municipalities for all taxing purposes. The lands included would be the following: reforestation lands, conservation lands; game refuges, game farms, game management areas, fish hatcheries and multiple use lands; lands occupied by institutions under the Departments of Health, Mental Hygiene, Social Welfare, and Corrections; military sites other than armories; and all state parks in excess of 200 acres. Explicitly exempted from taxation would be all improvements, those lands used for "administrative" and "facilities" purposes, highways and parkways, and those lands held and administered by public authorities. However, the legislation proposed by the committee did include a provision for payment of public school tuition costs of children residing in tax-exempt housing located on the grounds of state facilities.

**Reforms Not Implemented**

These recommendations were not enacted, as is evident from the current status of state land taxation programs shown in Table 2.[10] Nevertheless, subsequent analyses continued to reiterate the need for reform. Reporting in 1975, the Temporary State Commission on State and Local Finances endorsed the recommendations of the Joint Legislative Committees of earlier years, citing the same problems of dissimilar tax treatment of state property.[11] In 1982, the State Board of Equalization and Assessment (SBEA) issued a research report that again called for development of a uniform taxation policy. This report recommended local taxation (for all taxing purposes) of all state land (exclusive of any improvements located thereon) other than: "administrative" properties; institutional properties of less than 100 acres; "widely distributed" properties (e.g., highways, canals, etc.); and properties of state authorities. Payments in lieu of taxes were suggested as a preferred compensation mechanism in the case of certain property of state authorities. In 1991, the SBEA issued another report containing similar recommendations.[12]

This long history of studies and recommendations demonstrates the existence of broad conceptual agreement that a uniform, statewide policy should be instituted. The specific recommendations of the many studies of the issue differ only in minor detail. However, the apparent lack of progress in accomplishing any of the proposed changes during the

nearly forty years since the first study was initiated suggests the difficulty of achieving reform in this area. In the meantime, at least seven additional legislative enactments have made various parcels of state land taxable, a continuation of the piece-meal pattern seen in earlier decades.

Apparently, the state government always considered some degree of state oversight necessary in the process of taxing state land. New York statutes, since 1909, contained provisions that require approval of assessments by an agency of the state. These provisions (RML Section 542) became the focus of litigation in the early 1980s, when the Town of Shandaken contested the actions of the State Board of Equalization and Assessment (the former name of the State Board of Real Property Services) relating to the assessment approval process.[13] **The decision in this case effectively terminated the Board's prior policy of notifying assessors, in the first instance, of the state land values it was willing to approve. Instead, the Board was required to review values submitted by the local assessors, and its approval was limited to insuring that the assessments in question were established at the same percentage of market value as the assessments of other property in the municipality.**

**The main effect of the new approval procedure was to reduce the level of control the Board exercised over state land assessments. Denied authority to dictate the market values on which assessments would be based, the Board was forced to grieve those assessments that it deemed excessive through the same appeal process used by individual taxpayers.** In the ten-year period since the change took place, grievances were filed in 160 municipalities, resulting in 263 tax certiorari lawsuits. A total of 21,078 parcels were represented in these grievances, and some 15,559 of these were involved in subsequent tax certiorari cases. The tax payments at stake were significant, with $4.2 million of refunded taxes resulting from the court actions alone and a further $11.5 million in annual tax reductions secured through informal appeals and administrative grievances. Although data are not available for the total administrative costs to the state, appeals can require anything from contacts -with local assessors by state personnel to preparation of legal evidence, performance of special appraisals, and the holding of judicial proceedings.

**The PILOTs and PILOT-Type Compensation Programs**

While New York has relied primarily on the *ad valorem* property tax to compensate local governments for the presence of state-owned lands, it has also used a variety of other devices that provide state payments unrelated to the local services, if any, received by the state parcels. These payment programs can be grouped into two broad categories: (1) pure PILOTS; and (2) PILOT-like aid programs designed to prevent or mitigate shifts in the local tax burden from the state to other taxpayers.[14]

Two pure PILOT programs are authorized by the Public Lands Law. Section 19-a provides compensation to cities with populations of 75,000 or more where the state purchases or constructs facilities for any purpose other than highways. A threshold is set where aid is paid only if the properties so acquired, combined with other exempt state

land, exceed 25 percent of the city's total taxable assessed valuation. Payments during construction are equal to the taxes levied by the city in the year prior to acquisition. After construction is completed, the payment is one percent of acquisition and construction costs. Payments cease after 30 years or if the state conveys the facility to another owner prior to that date. Annual amounts disbursed under this program to date have been modest, never exceeding $100,000 when one-time payments are excluded.

Another PILOT is made pursuant to Section 19-b of the Public Lands Law. This program is targeted for communities where a temporary nuclear waste repository is sited (currently limited to the West Valley site, in the Town of Ashford, Cattaraugus County). Aid is paid to all taxing jurisdictions based upon the taxes paid in 1980. No phase-out is provided, but neither is there any built-in adjustment to increase payments. The amount paid has been relatively modest in comparison to New York's other compensation programs -- $156,987 per year for many years, with an increase to $500,000 in 1996. By using 1980 taxes as a benchmark, the only way payments can increase, short of statutory changes, is for the size of the facility to increase.

A PILOT was also created to reimburse two towns for lands made exempt when acquired for the Hudson Highland State Park. This park is located in Philipstown, Putnam County and Fishkill, Dutchess County. A distinguishing feature of this reimbursement program is that it is designed as a bridge from taxable to exempt status. Initially, payments are 100 percent of the taxes received the year prior to acquisition, but they are then reduced by 20 percent each year thereafter. At the end of five years, all payments cease. Disbursements from this program have been very small, never exceeding $2,000 annually.

The state has also authorized PILOTs in limited circumstances to be paid by state-owned public authorities. Provisions have been made for PILOT payments by the Urban Development Corporation, the Environmental Facilities Corporation, the Capital District Transportation Authority, the Central New York Regional Transportation Authority, the Long Island Power Authority, and the Rochester-Genesee Transportation Authority. Of these, only the Urban Development Corporation is currently making any payments. Payments are made when the LTDC has acquired land for industrial projects, but no project funding has occurred. A benchmark of 100 percent of the average taxes paid in a three-year period prior to acquisition is used to determine payments. In the early 1980s, payments in excess of $400,000 were made but they then declined precipitously and during the past decade have not exceeded $6,000 annually.

New York State's use of "true" PILOT programs has thus traditionally been quite limited in scope. They have been mostly targeted for specific projects. Often they are intended as stop-gap measures, ameliorating the change from taxable to exempt status, as with the Highland Park program, or providing aid until projects are put in place, as with the UDC. Payments are predictable and determined by the state, and the total expenditures are minuscule in comparison to state payments under the property tax programs.

The state's most recent PILOT may signal a change in the limited use of this device, however. This program was instituted for Putnam County, one of the few counties which

has no taxable state land. Putnam County also has the highest percentage, among all the counties, of land area comprised of exempt state property (8.4 percent). This property consists primarily of state parks. Recognizing the strain on the property tax base, a PILOT of $400,000 was provided in 1994, to be distributed to municipalities In Putnam County. The method of distribution was to be determined by the state and, after consultation with local officials, payments were made according to the acreage of parkland within a taxing jurisdiction. The county, towns, school districts and special districts received the PILOT payments in the same proportion as their relative property tax levies. This aid program has been continued as an annual appropriation since 1994, and it was increased to $600,000 in 1995.

This program is notable in several respects. Unlike some PILOTs, it is not narrowly targeted on a specific project: at present, six towns are receiving payments for 13,318 acres of land. Further, it is not a measure designed to meet a temporary need, as the land was acquired many years ago and is a permanent part of the state park system. Finally, the total expenditure, while small in comparison to state property tax payments, is nevertheless substantial and larger than provided under any of the other "pure" PILOT programs.

**"Transition Assessments" and Similar Measures**

New York has also instituted several PILOT-type aid programs designed to mitigate property tax shifts. However, two salient features of a true PILOT program are missing in these programs: the payments are not fixed amounts; and they are not independent of the existing ad valorem property tax system. As tax mitigation devices, the programs are intertwined with the property tax structure and annual program payments vary with local tax rates. The programs in question are "transition assessments," "Adirondack Park aggregate assessments,' and "river regulating district assessments."

Transition assessments are authorized by Section 545 of the Real Property Tax Law. Aid is provided when: (1) the state takes property (which will become tax--exempt) which comprises more than two percent of the total assessed value of a taxing jurisdiction: or (2) when there is a change on an assessment roll which will cause taxable state land to bear a smaller share of local taxes than the share borne in the preceding year. In both instances, a transition assessment is established (by the State Board) in the first year of the change. The transition assessment is equal to the loss in assessed value. In each succeeding year the transition assessment is reduced by two percent of the taxable value in the taxing jurisdiction until it is completely phased out. Although a formula-based phase out has been imposed, the state does not control the local tax rates or even the initial transition assessment amount. Consequently, payments are not fixed and costs are not predictable (Table 3).

Adirondack Park aggregate assessments were originally conceived as transition assessments. However, in this case, a "floor" is mandated by Section 542 of the RPTL beneath which total assessed value may not fall, so there is no phase-out mechanism. The program was initiated in 1960, when the State Board was beginning to implement new

appraisal procedures. State land in the Adirondack Park as well as other areas was often over assessed. Reducing assessments to equitable values would have caused a significant tax shift to other taxpayers. The aggregate assessment program was conceived in an attempt to mitigate any such tax shifts.

However, for the next eight years, the Legislature passed a series of bills preventing the normal phase-out of transition assessments. In effect, a floor had been established. This floor was institutionalized in 1968 for the Adirondack Park (only), as part of Governor Rockefeller's Adirondack Park Agency legislation. Presently, for forest preserve lands owned by the state in 1960 and within the Adirondack Park, the assessments in aggregate may not fall below the 1960 assessments, except for adjustments made to reflect any changes in the overall level of assessing in a municipality. While these assessments are relatively fixed, local governments still exercise considerable control over payments made by the state in that they set tax rates and determine the level of assessment. Payments under Adirondack Park aggregate assessment program currently amount to nearly $9 million annually, having quadrupled since the late 1980s.

Another additional aggregate assessment program is authorized by Section 15-2115 of the Environmental Conservation Law, a statute relating to lands owned by the Hudson River - Black River Regulating District that are subject to taxation for all purposes. These are lands used for the creation of reservoirs, primarily the Great Sacandaga Lake. The law requires that land acquired for the reservoir be valued for tax purposes as it was not inundated. Then, these values, in aggregate, are compared to the original parcel assessments (circa 1928), adjusted for any change in the level of assessment during the interim. The greater of the two numbers becomes the basis of the total assessed value. The characterization of the program as a PILOT-type arrangement reflects this feature of "locking in" the original assessments on the parcels as a "floor."

This program has several interesting features. The Hudson River - Black River Regulating District is a public authority, so the compensation payments made to local governments on its properties are made from its own revenues rather than the state general fund. Since the primary purpose of the reservoirs is to regulate the flow of rivers and to prevent flooding downstream, costs of maintaining the District, including the local government compensation payments, are paid through District charges to the downstream beneficiaries. Yet another interesting characteristic is that, by using the original assessments as one of two alternate bases for current assessments, the value of improvements is captured. While these structures were long ago removed in the construction of reservoir, their impact is still felt in the taxes the District pays today. In most taxing jurisdictions the original assessments adjusted for change in assessment level are greater than the aggregate of current land values.

As stated earlier, these three PILOT-type programs are adjuncts to the existing property tax system, with payments varying from year to year and primarily driven by the local governments' control of property tax rates. They are thus in significant contrast to true PILOTS, which are characterized by relative stability and predictability of payments, i.e., often a lump-sum payment, outside the control the taxing jurisdiction and not a function

of local tax rates, and usually made according to a formula or based upon some fixed benchmark. In terms of compensation levels provided, they have all increased substantially in recent years, growing by 2.7 times overall between 1989 and 1993 (Tables 3, 4).

**Table 3.**
**Grown of Transition Assessments, Adirondack Park Aggregate Assessments, and River Regulating District Assessments (1989 to 1993 Assessment Rolls)**

| Assessment Roll | Total Payments* | | |
|---|---|---|---|
| | Transition | Adirondack Park | River Regulating District |
| 1989 | $4,868,821 | $2,214,376 | $486,039 |
| | | | |
| 1993 | $10,919,573 | $8,839,390 | $934,836 |
| | | | |

* Transition Assessment payment figures represent actual disbursements in fiscal year; figures for other categories are estimated liability.

**Table 4.**
**Summary of PILOT and Related Aid Programs**

| Program | Compensation Mechanism | Payments | Term | Recipients |
|---|---|---|---|---|
| Transition Assessments | Mitigate Decrease in State Share of Taxes | Not Fixed | Indeterminate | All taxing jurisdictions, (County, Town, Village, City, School Districts) |
| Adirondack Park Aggregate Assessment | Prevent Decrease in State Share of Taxes | Not Fixed | Perpetual | All taxing jurisdictions within the Adirondack Park |
| River Regulating District Assessments | Prevent Decrease in State Share of Taxes | Not Fixed | Perpetual | Taxing jurisdictions with River Regulating District Lands |
| Hudson Highlands Aid | Benchmark to Previous Taxes | Fixed Amount | Phaseout in five years | All eligible taxing jurisdictions |
| West Valley Aid (Nuclear Waste | Previous Taxes | Fixed Amount | Indeterminate | All eligible taxing jurisdictions |

| | | | | |
|---|---|---|---|---|
| Repository) | | | | |
| State Facility Aid (Public Land Law Section 19-a) | Threshold and Benchmark to Previous Taxes | Fixed Amount | Indeterminate | All eligible taxing jurisdictions |
| Urban Development | Benchmark to Previous Taxes | Fixed Amount | Indeterminate | All eligible taxing jurisdictions |
| Putnam County | Formula (Dollars/acre) | Fixed Amount Annual Appropriation | Indeterminate Annual Renewal | County, Town, School, Special Districts |
| *Includes programs under which payments are currently made. Does not include voluntary payments by state authorities to local government. | | | | |

**The Service Charge Programs**

In contrast to taxes and PILOTS, service charges are amounts collected by local governments as compensation for specific services that convey identifiable benefits to specific properties. The service charges may be of two types: user fees and benefit assessments (the latter are termed "special assessments" and "special ad valorem levies" in New York statutes). User fees are charges for consumption of specific amounts of a good or service, such as water or wastewater treatment, at a particular property, and benefit assessments pertain to those services that are deemed to benefit certain properties in a municipality but which are not directly consumed in identifiable units.

Some service charges of both types can be levied on wholly exempt properties in the same manner as they are levied on taxable properties. The exempt properties which can be liable for such fees in New York include both those owned by government and those owned by private not-for-profit organizations. The latter category includes property used for religious, charitable, hospital, and educational purposes (of which have constitutional protection from taxation), and that used for "the moral and mental improvement of men, women, and children" (RPTL §420-a); various non-profit organizations in the "permissive' category, for which municipalities have the option to disallow the exemption (§420-b), cemeteries (§448); and a wide variety of fraternal, learned, and trade organizations.

The local services for which such properties may be charged can include, among others, water, sanitation, road improvements, street lighting, and refuse removal. However, imposing such charges on wholly exempt properties requires establishing a direct and measurable relationship between the amount charged to the parcel and the amount of benefit received. Furthermore, statutory restrictions and case law limit the kinds of services that can be billed, with rules varying by type of local government entity.

User Fees

User fees are imposed on properties having access to specific goods or services. Such user fees are presently sanctioned in the Municipal Home Rule Law, which permits local governments to adopt local laws for the "...fixing, levy, collection, and administration of local government rentals, charges, rates or fees, penalties and rates of interest thereon, liens on local property in connection therewith and charges thereon." (Section 10). If an owner fails to pay a user fee, such owner is denied access to the service or good. One user fee widely charged to property owners under this law is the sewer rent, an annual charge levied by a city, village, or special district for use of a sewer system.

Sewer rents are not recognized as taxes in the RPTL, nor is exemption provided from these charges. Rather, they are considered contractual in nature, dependent on the express or implied consent of the property owner, who can avoid liability by not connecting to the system.[15] Sewer rents may be based on "consumption of water, the number of plumbing fixtures, number of inhabitants, or as determined by local legislative bodies ... on any other equitable basis."[16] Whatever basis is used, the municipality must charge in accordance with the benefit received, not according to assessed value.[17] Any charges of this type that are levied on state properties are customarily paid from the budgets of the individual agencies operating the state facilities in question, rather than as separately budgeted local aid payments.

User fees may also be charged for such services as connections of alarm and security systems to police and fire stations. As with sewer rents, property owners have the option of not using the service, but those using it and failing to pay the relevant charges would be subject to disconnection from the municipal alarm system.

Benefit Assessments

Benefit assessments are those service charges that are allocated among the beneficiaries of a service based on criteria that are reasonably and rationally related to the amount of benefit received, with payment legally required. Unlike user fees, access is not denied to the service if payment is not made. If, for example, street lighting costs are levied as a service charge, the lights will remain lit in front of an owner's property if that owner refuses to pay the charge. Rather than disconnection, other enforcement avenues will be pursued by the local government entity in order to insure that payment is made.

The types of benefit assessments permitted in New York are defined in the RPTL, with §102 authorizing two types: special ad valorem levies and special assessments. These charges are explicitly excluded from the definition of taxation (or tax), defined in Subd. 20 as:

charges imposed on real property on or behalf of county, town, village or school district for municipal and school district purposes, but *does* not include a special ad valorem levy or a special assessment (emphasis added).

Special *ad valorem* levies, as defined in Subd. 14 are:

charges imposed on benefited real property in the same manner and at the same time as taxes for municipal purposes for defraying costs, including operation and maintenance, of a special district improvement or service, but not including any charge imposed by or on behalf of a city and village.

Special *ad valorem* levies are based on assessed values of property within the district deemed to benefit from the service, as listed in the same assessment roll used for levying general municipal taxes. The levies are made at the same time as general municipal taxes, although the fiscal years for special districts may not necessarily coincide with the fiscal years of the town or towns comprising the districts.

Special assessments, as defined in Subd. 15, are:

charges imposed upon benefited real property in proportion to the benefits received by such property to defray the cost, including operations and maintenance, of a special district improvement or service, but does not include a special ad valorem levy (emphasis added).

Imposition of benefit assessments by local governments is limited in various ways, depending on the type of local government unit and the type of service. The differences are discussed below and summarized briefly in Table 5. (See Table 10 for expenditures associated with these programs.)

Towns and Counties. Special ad valorem levies and special assessments can be imposed by both county and by town governments on tax-exempt properties, but only within special districts dedicated to provision of the service in question. RPTL §490 permits the levying of either type of service charge on wholly exempt property only for defraying the costs of acquisition and construction (i.e., capital costs) of: (1) water supply systems; (2) sewer systems; (3) waterways and drainage improvements; and (4) street. highway, road, and parkway improvements.[18] Imposition of service charges on wholly exempt property by special districts for the purpose of defraying operation and maintenance costs is generally prohibited. The only exceptions to this general rule are a few types of privately owned properties such as clergy residences owned by church corporations.

Cities and Villages. City and village governments have no authority to charge special ad valorem levies, as this type of service charge can be levied only by special districts. However, §490 imposes no restriction on city and village governments for levying special assessments. Special assessments can be imposed for any kind of municipal service, and for operation and maintenance costs as well as capital costs. Appendix C discusses the extensive experience of the City of Rochester with imposition of a relatively broad range of benefit assessments.

RPTL §490 is not the only statute that affects the liability of wholly exempt property for benefit assessments. Article 19 of the Public Lands Law requires that municipalities must notify the State Comptroller of their intent to impose charges on state property, and they must cite the statute under which the state has consented to be assessed for such charges.

The Attorney General has issued an opinion stating that special ad valorem levies imposed at the same time and in the same manner as general taxes are not collectible on the basis of this notice and confirmation requirement since they can not be separately confirmed.[19] In another opinion, the Attorney General indicated that state highway property, including parkways and the New York State Thruway, is not subject to benefit assessments for capital improvements authorized under §490. The Comptroller has assented to both opinions, and has yet to authorize payments under either of the above circumstances.[20]

**Table 5.**
**Imposition of Benefit Assessments on Tax Exempt Property by Local Governments**

| Type of Local Government | Authority to Impose: | | Charge Applies to: |
|---|---|---|---|
| | Special Ad Valorem Levies | Special Assessments | |
| County or Town Special Districts | Exempt, NonState-owned: **Yes**<br><br>Exempt, State-Owned: **No** | **Yes** | Capital costs* (water, sewer, drainage, and roads only) |
| Cities or Villages | **No** | **Yes** | Capital, operation, and maintenance costs for any service |

*A few types of non-state exempt properties (e.g. clergy residence owned by religious corporation) are subject to charges for operation and maintenance as well as capital.

The overall success of implementing benefit assessments in the City of Rochester would suggest that benefit assessments could be expanded to cover other services provided by cities and villages. It seems that the most feasible service charges are those that can be levied for "linear" services, that is, services provided along roadways and walkways such as street and sidewalk repairs, snow removal, street cleaning, etc. These charges can be allocated according to dwelling units, front footage, or through special measures such as intensity of street light illumination. Other services that can clearly be defined as benefiting particular properties, such as refuse removal, are also good candidates for benefit assessment programs, and additional local services whose costs could be defrayed in this manner will no doubt emerge in the future. By contrast, it is considerably more difficult to allocate costs of protective services, such as fire and police protection. These services benefit not only particular parcels of real property but also the public in general, including many persons who reside in other municipalities. Thus, any expansion of service charge provisions to cover police and fire protection would probably require statutory establishment of a clear mechanism for determining the charges.

As mentioned earlier, town and county governments can not impose service charges on wholly exempt property for purposes of operation and maintenance of any service provided by the municipality. The traditional rationale for this has been that insufficient

protection would be provided to wholly exempt properties if they were subject to general county and town ad valorem levies, since few or no services were provided outside special districts. However many services formerly provided in special districts only are now provided throughout the town and financed through tax levies. Some, such as road maintenance and snow removal are "linear" in nature and would lend themselves well to benefit assessments for operation and maintenance purposes. Special adjustments would probably be required, however, for those parcels having extensive road frontage but little or no improvement value.

The Never-Implemented Optional Service Charge Law

Although wholly exempt properties located in cities and villages are liable for special assessments imposed by those governments, imposition of such special assessments has generally been limited to specialized improvements in very limited geographic areas, for example, the central business district of a city. This method of financing has not been widely used for covering the costs of operation and maintenance. Applying charges to services provided throughout the municipality is difficult, since the relationship between the cost imposed on a given property and the benefit received has proven difficult to measure for some services, especially for police and fire protection.

A different approach to charging tax--exempt properties was attempted through enactment of the Service Charge Law (Ch. 417, L. 197 1). This law, which has since been repealed, provided municipalities with the option to impose service charges on wholly exempt properties in addition to what was permitted under RPTL §490 and under County law and General Municipal Law provisions relating to sewer rents. Service charges in this legislation were defined as:

...charges, other than ad valorem or special assessment, imposed on real property by or on behalf of a city, county, village, or town, for defraying the cost of services, for the following: (1) police protection; (2) fire protection', (3) street and highway construction, maintenance and lighting; (4) sanitation; and (5) water supply.[21]

These charges applied exclusively to property that was wholly exempt, both the publicly and privately owned.[22] However, several classes of this property were excluded from service charge liability: (1) all those properties in the mandatory class of nonprofit organizations; (2) state and municipal property used for educational, charitable, and hospital purposes, and (3) federal, international, and Indian reservation property. This law thus excluded a vast number of houses of worship, hospitals, colleges, and universities from the service charge, and effectively placed the full burden of the charge on the remaining not-for-profits and on state- and county-owned property.

The Service Charge Law stipulated that the charges on eligible property were to be based on the proportion of the tax rate attributable to a property-related service. The rate for each service charge could then be calculated by multiplying this proportion by the regular tax rate. A tax-exempt property would then pay a charge for a specific service equal to its assessed value times the service charge rate.[23]

As already mentioned, this law was never allowed to take effect. The effective date was repeatedly postponed by the Legislature, and it was ultimately repealed in 1981. There were administrative problems with the law, in that it did not provide procedures for billing property, and court challenges seemed likely on several grounds. As noted in the report of the Temporary State Commission on State and Local Finances, it failed to establish a relationship between a tax-exempt organization's use of the services provided and the amount charged. State prisons and some private colleges, for example, provide their own security, but under this law they could be liable for charges relating to municipal police protection. Furthermore, the service charges were based on a formula that incorporated the ad valorem tax rate, and thus were arguably property taxes. Since the law failed to provide a "firewall" between local government monies appropriated for general purposes and those for specific services funded through service charges, the distinction between the two was less than clear. Even if owners of wholly exempt properties subject to the charges did not challenge the law in court, owners of property subject to ad valorem taxation in the municipality might do so in that the taxpaying public would have received little if any reduction in their overall tax burden with this formulation.

The Service Charge Law also failed to consider what effect receipt of these revenues should have on computation of state aid and constitutional tax and debt limits. The computations used in these measures assume that properties classified as wholly exempt generate no revenues for local governments. While this issue can also be raised in relation to existing user fee and benefit assessment provisions, requiring that exempt property be liable for additional types of service charges would render the tax base measures used to calculate state aid and tax and debt limits less meaningful than they are at the present time.

Given all these limitations, it is not surprising that the Optional Service Charge Law was never implemented. However, the issues that prompted its emergence have not disappeared, and the costs of local services to exempt property continue to be a major fiscal drain on many local governments, especially cities.[24]

**Summary and Conclusions**

The foregoing descriptions of the various mechanisms New York State uses to compensate its local governments has revealed a greater number of individual programs than is found in any other state. These programs developed over a period of more than a century, and the present arrangements appear quite arbitrary in that similar lands in similar communities may generate significantly different compensation payments or, in many cases, none at all. The long-established pattern of piecemeal addition of new taxes or PILOTs continues unabated, with new payments of both types having been added in the past three years.

The tax and PILOT programs appear to be oriented toward the same goal: distributing state aid that is not directly linked to the amount of local government services provided to the state property. However, because these two compensation methods can result in

widely differing payments for identical land, and because there is no apparent benefit either to the state or to its local governments (as a group) from such discrepancies, the continued maintenance of two separate programs seems inadvisable. Only three other states (Michigan, South Dakota, and Wisconsin) provide both tax and PILOT programs, and none of them makes such extensive use of both approaches as New York does.

The tax programs appear to be a cumbersome and inefficient way of allocating state aid to localities. Much of the inefficiency results from disputes between the state and its local governments concerning the value of the state's property, with some 263 lawsuits begun over the past decade. However, even when there are no disagreements over value, both the state and the local governments still incur the administrative cost of valuing the property, a total of 3.6 million acres. And, the structure of the program suggests that every acre must be valued twice, a questionable use of scarce government resources.

As with the tax and PILOT programs, there is considerable variation in the way exempt state property (as well as exempt property of the federal and local governments and non-profits) is treated with respect to local service charges. The most uniform treatment is that afforded to water and sewer services, for which per-unit fees may be charged to exempt property by any municipality. Where the amount of the local service consumed at a particular address is not as easily quantifiable, charges are restricted in various ways. Cities and villages have reasonably broad authority: they can levy benefit assessments on any exempt property to defray the cost of any service, provided that a rational relationship of the service to the benefited property can be established. This may be easier to do for a service such as a new sewage treatment plant than, for example, police protection. The authority of counties and towns is more restricted still in that they may levy, within special districts composed of benefited properties, assessments that defray capital costs only for a limited number of specific services, including water, sewer, drainage, and road construction. Levy of benefit assessments on tax-exempt property for the purpose of supporting maintenance and operations expenditures in special districts is prohibited.

The main problems with the current service charge provisions are the restrictions placed on local governments regarding the kinds of services they can charge for and the different treatment afforded the capital investments associated with services and their maintenance and operation. Legislation which addressed these problems would be required if the powers of local governments to collect service charges -- from both government-owned and privately owned exempt properties -- were to be expanded. In particular, greater statutory clarification would be needed relative to the distinction between a local service which constitutes an "improvement" to a particular parcel and one which may directly or indirectly benefit the parcel in some way but is not to be considered an "improvement." Given the difficulty of measuring the parcel-specific benefits of some services -- such as police and fire protection -- statutory formulas or guidelines would be necessary.

Regardless of how many types of additional service charges should be permitted, the governing bodies of municipalities adopting these charges must be required to separate the budgeting and accounting of service charges from that used for general ad valorem

levies. If this is not done, any benefit assessment is in danger of being viewed a tax in disguise.

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[1]4 Wheat. 316, 42 Ed. 579. For an excellent discussion of sovereign immunity as applied to state-owned land, see *Report of the Temporary State Commission on State and Local Finances, Volume 2 - The Real Property Tax* (Albany, NY, Temporary State Commission on State and Local Finances) March 1975, Chapter 5.

[2]As described in "Possessory Interest Taxation in Other States: Interim Summary of Survey Responses," NYS Division of Equalization and Assessment, February 12, 1992 (unpublished). The NYS Legislature has passed bills that would allow taxation of possessory interests in state and federal property on several occasions through 1994, but all were vetoed by the Governor.

[3]See Sylvia Adams, *State Programs for Compensating Local Governments for State-Owned Property* (Albany NY, New York State Board of Equalization and Assessment) January 1990, and Christina Fong and Jeff Kuenzi, *Reimbursing Municipalities for the Presence of State-Owned Properties* (University of Massachusetts at Amherst, Office of Institutional Research) March 1994.

[4]We distinguish between "taxes," which are compulsory general levies, and "benefit assessments," which are charges for some identifiable benefit deemed to accrue to a particular group of properties but not necessarily to all properties in the community. The latter are considered later in this report under the general topic of service charges.

[5]Kansas, Michigan, New York, South Dakota, Vermont, Wisconsin, and Wyoming (Adams, Fong and Kuenzi, op. cit.)

[6]Adams, op. cit.

[7]Article 5 of the Real Property Tax Law contains nearly all the statutory provisions governing state land taxation. Legislation enacted since 1983 has made taxable the value of certain conservation easements acquired by the state on privately-owned lands. The present report does not address conservation easements as they involve privately owned property which in nearly all cases is taxable.

[8]Report of the Temporary State Commission on State and Local Finances, *op. cit.*, pp. 100-119.

[9]1964 Legislative Document No. 22, pp. 66-67.

[10]Report of the Temporary State Commission on State and Local Finances, op. cit., pp. 113-114.

[11]Richard C. Celani, The Taxation of State-Owned Lands (Albany, NY, New York State Board of Equalization and Assessment) January 1982.

[12]State Board of Equalization and Assessment, Taxation of State Land in New York (Albany NY, SBEA) February 1991.

[13]Town of Shandaken v. State Board of Equalization and Assessment, 63 N.Y.2d 442, 483 N.Y.S.2d 161, 472N.E.2d 989 (1994).

[14]The PILOTs and PILOT-like aid programs discussed herein are those mandated by statute. Not covered are various voluntary payments made by certain state authorities.

[15]3 Op.Counsel SBEA,39.

[16]General Municipal Law, Article 14-F, Subd. 1.

[17]26 Op. State Compt. 47, 1970. See also Church of Christ the King, Inc. v. City of Yonkers, 1982, 115 Misc. 2d 461, 454 N.Y.S. 2d 273, a ruling that a sewer rent charge based on a fixed charge per front foot was not a benefit charge but a general property tax. The court found that the revenues received were well in excess of the true operating and maintenance costs of the water and sanitation system in question, and the overage was being reallocated to the municipality's general fund.

[18]Wholly exempt properties are liable for special assessments for indebtedness contracted by county and town governments before July 1, 1953.

[19]1953, Op. Atty. Gen. 313.

[20]1953, Op. Atty. Gen. 202.

[210]RPTL Section 102, Subd. 13-a (now repealed).

[22]RPTL Sections 400, 420, service charge provisions now repealed.

[23]RPTL §498, now repealed. This is similar to a proposal offered at the same time in Connecticut (see Property Tax Exemptions for Non-Profit Institutions: Problems and Proposals. A Study and Action Program of the Greater Hartford Chamber of Commerce, "Service Charges on Tax Exempt Institutions" (1978) pp. 10- 13).

[24]See, for example, a recent report on the City of Albany: Arthur J. Roth, Chairman, Report of the Special Commission on Tax Exempt Property (Albany NY, September 1995).

# Compensating Local Governments for Loss of Tax Base Due to State Ownership of Land

# (September 1996)

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## III. EQUITY OF CURRENT COMPENSATION PROGRAMS

The non-uniformity of New York's existing tax and PILOT programs was explained in Part II of this report. Piecemeal addition of new tax and PILOT payments for certain properties over a period of 110 years, with no evidence that a guiding policy or principle was followed in the majority of cases, virtually assured this non-uniform outcome. The present section will discuss the pattern of payments that has resulted under the current programs and will attempt to measure the extent of "inequity" they produce.

According to Table 6, New York State owns 13.2 percent of the land within its borders. That is a total of just over four million acres (transportation property, public utility property, and smaller improved parcels used for state facilities have been excluded). Tax payments are currently made to local governments on 89 percent of this acreage. In addition, PILOTs are paid on certain state properties, with the majority of PILOT revenue traditionally going to local governments in Adirondack and Catskill counties and, more recently, to those in Putnam County.

The majority of state acreage is in the forest preserve counties, with four counties having at least one-third of their land area owned by the state: Hamilton (71.1 percent); Essex (45.6 percent); Herkimer (40.1 percent); and Warren (34.3 percent). Only one percent or less of the state land in these and other Adirondack and Catskill counties is exempt, the remainder generally being taxable for all purposes by virtue of its status as forest preserve. Putnam county leads the state in terms of the percentage of its land area occupied by exempt state land (8.4 percent), and only two other counties exceed five percent: Suffolk (5.6 percent), and Onondaga (5.4 percent).

Table 7 shows the top twenty towns as ranked by percentage of land area owned by the state. In all of these municipalities, at least 40 percent of the land area is owned by the state, and in three the state's share is more than 90 percent of the municipality. It is thus apparent that state land is very unevenly distributed, with some municipalities dramatically affected by state ownership. It is also instructive to note that the state, despite its patchwork compensation programs, appears to have recognized the special situations of these twenty municipalities: virtually all acreage within their borders is currently taxable.

### Taxable Programs

The differential treatment of taxable state land among the several types of local taxing units (counties, cities/towns. villages, and school districts) is shown in Table 8. It is apparent from the data that some counties (such as Hamilton and Essex) are advantaged insofar as most or all of their acreage is taxable for all purposes, while others (such as Chautauqua, Dutchess, or Erie) are disadvantaged through the state's policy of making their acreage taxable for some purposes but not for others. Of the 57 counties, plus New York City, having eligible state land, only 25 have any acreage that is taxable for all local taxing purposes. Six counties have acreage that is taxable for school purposes only. And seven counties, plus New York City, have land which is not taxable for any local taxing purpose.

**Table 6.**
**Incidence of State-Owned Land by County***
**(Based on 1993 Assessment Rolls)**

| County | Total County Area (Acres) | Taxable State Land (Acres) | Percent of County Area | Exempt State Land (Acres) | Percent of County Area |
|---|---|---|---|---|---|
| Albany | 335,232 | 3,252 | 1.0 | 8,814 | 2.6 |
| Allegany | 659,392 | 43,379 | 6.6 | 9,819 | 1.5 |
| Broome | 452,416 | 7,291 | 1.6 | 2,567 | 0.6 |
| Cattaraugus | 838,336 | 90,894 | 10.8 | 9,939 | 1.2 |
| Cayuga | 443,712 | 7,976 | 1.8 | 5,257 | 1.2 |
| Chautauqua | 679,808 | 15,191 | 2.2 | 6,109 | 0.9 |
| Chemung | 216,248 | 518 | 0.2 | 1,550 | 0.6 |
| Chenango | 572,416 | 75,369 | 13.2 | 4,184 | 0.7 |
| Clinton | 665,216 | 58,865 | 8.8 | 8,874 | 1.3 |
| Columbia | 406,912 | 625 | 0.2 | 7,810 | 1.9 |
| Cortland | 319,808 | 25,797 | 8.1 | 13,444 | 4.2 |
| Delaware | 925,696 | 55,109 | 6.0 | 9,822 | 1.1 |
| Dutchess | 513,088 | 6,879 | 1.3 | 6,806 | 1.3 |
| Erie | 668,608 | 364 | 0.1 | 1,389 | 0.2 |
| Essex | 1,150,080 | 514,753 | 44.8 | 9,748 | 0.8 |
| Franklin | 1,044,224 | 262,353 | 25.1 | 3,431 | 0.3 |
| Fulton | 317,568 | 97,057 | 30.6 | 5,242 | 1.7 |
| Genesee | 316,224 | 0 | 0.0 | 7,192 | 2.3 |
| Greene | 414,656 | 81,424 | 19.6 | 874 | 0.2 |
| Hamilton | 1,101,248 | 774,575 | 70.3 | 8,465 | 0.8 |
| Herkimer | 903,616 | 361,599 | 40.0 | 895 | 0.1 |

| | | | | | |
|---|---|---|---|---|---|
| Jefferson | 814,272 | 19,559 | 2.4 | 21,776 | 2.7 |
| Lewis | 816,384 | 135,420 | 16.6 | 14,124 | 1.7 |
| Livingston | 404,608 | 4,609 | 1.1 | 13,582 | 3.4 |
| Madison | 419,776 | 20,683 | 4.9 | 7,049 | 1.7 |
| Monroe | 421,952 | 1,128 | 0.3 | 3,762 | 0.9 |
| Montgomery | 259,072 | 6,689 | 2.6 | 1,510 | 0.6 |
| Nassau | 183,552 | 0 | 0.0 | 1,234 | 0.7 |
| Niagara | 334,720 | 0 | 0.0 | 6,333 | 1.9 |
| Oneida | 776,192 | 51,550 | 6.6 | 8,997 | 1.2 |
| Onondaga | 499,392 | 2,199 | 0.4 | 26,731 | 5.4 |
| Ontario | 412,416 | 0 | 0.0 | 3,661 | 0.9 |
| Orange | 522,496 | 26,245 | 5.0 | 6,764 | 1.3 |
| Orleans | 250,496 | 208 | 0.1 | 1,040 | 0.4 |
| Oswego | 610,112 | 25,493 | 4.2 | 17,533 | 2.9 |
| Otsego | 641,856 | 16,384 | 2.6 | 6,512 | 1.0 |
| Putnam | 148,160 | 0 | 0.0 | 12,442 | 8.4 |
| Rensselaer | 418,560 | 7,155 | 1.7 | 4,446 | 1.1 |
| Rockland | 111,488 | 33,038 | 29.6 | 0 | 0.0 |
| St. Lawrence | 1,718,848 | 210,609 | 12.3 | 27,913 | 1.6 |
| Saratoga | 519,616 | 25,370 | 4.9 | 7,104 | 1.4 |
| Schenectady | 131,904 | 0 | 0.0 | 1,252 | 0.9 |
| Schoharie | 397,592 | 31,221 | 7.8 | 2,226 | 0.6 |
| Schuyler | 210,368 | 16,270 | 7.7 | 6,343 | 3.0 |
| Seneca | 207,936 | 700 | 0.3 | 3,574 | 1.7 |
| Steuben | 891,328 | 18,850 | 2.1 | 9,947 | 1.1 |
| Suffolk | 583,168 | 4,628 | 0.8 | 32,665 | 5.6 |
| Sullivan | 620,672 | 19,263 | 3.1 | 15,912 | 2.6 |
| Tioga | 331,968 | 9,322 | 2.8 | 1,334 | 0.4 |
| Tompkins | 304,704 | 18,411 | 6.0 | 10,001 | 3.3 |
| Ulster | 721,024 | 165,711 | 23.0 | 1,389 | 0.2 |
| Warren | 556,608 | 184,783 | 33.2 | 5,967 | 1.1 |
| Washington | 534,720 | 23,599 | 4.4 | 2,396 | 0.4 |
| Wayne | 386,688 | 0 | 0.0 | 6,058 | 1.6 |
| Westchester | 277,056 | 94 | 0.0 | 3,820 | 1.4 |
| Wyoming | 379,520 | 1,652 | 0.4 | 7,902 | 2.1 |

| | | | | | |
|---|---|---|---|---|---|
| Yates | 216,512 | 6,241 | 2.9 | 1,785 | 0.8 |
| New York City | 197,696 | 0 | 0.0 | 234 | 0.1 |
| | | | | | |
| **Statewide** | **30,223,296** | **3,570,354** | **11.8** | **437,186** | **1.4** |

* State acreage excludes land used for transportation and utility transmission purposes and smaller improved parcels used for administrative purposes.

**Table 7.**
**Towns with Highest Concentration of State-Owned Land**
**(1993 Assessment Rolls)**

| Town | County | Municipal Area (Acres) | State-Owned Acreage | | | |
|---|---|---|---|---|---|---|
| | | | Exempt | Taxable | Total | Percent of Municipal Area |
| Red House | Cattaraugus | 35,648 | 0 | 34,461 | 34,461 | 96.7 |
| Inlet | Hamilton | 39,872 | 956 | 37,102 | 38,058 | 95.5 |
| Arietta | Hamilton | 203,392 | 416 | 191,082 | 191,498 | 94.2 |
| Benson | Hamilton | 52,928 | 0 | 47,212 | 47,212 | 89.2 |
| Wells | Hamilton | 113,600 | 8 | 91,209 | 91,215 | 80.3 |
| St. Armand | Essex | 36,224 | 123 | 28,027 | 28,150 | 77.7 |
| North Elba | Essex | 97,216 | 1,524 | 71,988 | 73,511 | 75.6 |
| Morehouse | Hamilton | 122,304 | 10 | 92,482 | 92,492 | 75.6 |
| Harrietstown | Franklin | 125,952 | 450 | 94,098 | 94,548 | 75.1 |
| Lake Pleasant | Hamilton | 120,384 | 1,556 | 88,027 | 89,583 | 74.4 |
| Northampton | Fulton | 13,504 | 0 | 9,915 | 9,915 | 73.4 |
| Webb | Herkimer | 288,768 | 0 | 211,631 | 211,631 | 73.3 |
| Shandaken | Ulster | 76,672 | 321 | 53,487 | 53,808 | 70.2 |
| Keene | Essex | 101,952 | 157 | 69,353 | 69,510 | 68.2 |
| Minerva | Essex | 99,392 | 0 | 67,249 | 67,249 | 67.7 |
| Caroga | Fulton | 32,576 | 0 | 21,649 | 21,649 | 66.5 |
| Schroon | Essex | 86,016 | 332 | 56,614 | 56,946 | 66.2 |
| Indian Lake | Hamilton | 161,600 | 1,537 | 103,292 | 104,828 | 64.9 |
| Denning | Ulster | 67,328 | 0 | 42,574 | 42,574 | 63.2 |
| Stony Point | Rockland | 17,792 | 0 | 11,170 | 11,170 | 62.8 |
| Duane | Franklin | 48,064 | 26 | 29,780 | 29,805 | 62.0 |
| Wilmington | Essex | 41,728 | 194 | 25,458 | 25,652 | 61.5 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Stratford | Fulton | 48,128 | 9 | 29,399 | 29,407 | 61.1 |
| Haverstraw | Rockland | 14,336 | 0 | 8,738 | 8,738 | 61.0 |
| Hope | Hamilton | 26,048 | 93 | 15,505 | 15,598 | 59.9 |

**Table 8.**
**Differential Tax Treatment of State Land According to Local Taxing Purpose (1993 Assessment Rolls)**

| County | Total State-Owned Acreage (Taxable & Exempt) | Acres Taxable by: (law section) | | | Exempt Acres |
|---|---|---|---|---|---|
| | | Co., Minic., Schools (RPTL 532 or ENCON 15-2115) | Munic., Schools only (RPTL 534) | School only (RPTL 536) | |
| Albany | 12,066 | 0 | 3,252 | 0 | 8,814 |
| Allegany | 53,198 | 0 | 43,379 | 0 | 9,819 |
| Broome | 9,858 | 0 | 7,270 | 21 | 2,567 |
| Cattaraugus | 100,833 | 62,601 | 27,700 | 593 | 9,939 |
| Cayuga | 13,233 | 0 | 7,976 | 0 | 5,257 |
| Chautauqua | 21,300 | 0 | 15,191 | 0 | 6,109 |
| Chemung | 2,068 | 0 | 518 | 0 | 1,550 |
| Chenango | 79,553 | 19,424 | 55,945 | 0 | 4,184 |
| Clinton | 67,739 | 48,416 | 9,405 | 1,044 | 8,874 |
| Columbia | 8,435 | 0 | 625 | 0 | 7,810 |
| Cortland | 39,241 | 0 | 25,797 | 0 | 13,444 |
| Delaware | 64,931 | 41,709 | 13,400 | 0 | 9,822 |
| Dutchess | 13,685 | 0 | 0 | 6879 | 6,806 |
| Erie | 1,753 | 0 | 0 | 364 | 1,389 |
| Essex | 524,501 | 514,753 | 0 | 0 | 9,748 |
| Franklin | 265,784 | 242,772 | 19,581 | 0 | 3,431 |
| Fulton | 102,299 | 95,951 | 1,450 | 0 | 5,242 |
| Genesee | 7,192 | 0 | 0 | 0 | 7,192 |
| Greene | 82,297 | 78,232 | 2,308 | 884 | 874 |
| Hamilton | 783,040 | 774,575 | 0 | 0 | 8,465 |
| Herkimer | 362,494 | 356,124 | 3,086 | 2,389 | 895 |
| Jefferson | 41,334 | 14,362 | 5,197 | 0 | 21,776 |
| Lewis | 149,544 | 58,340 | 77,080 | 0 | 14,124 |
| Livingston | 18,191 | 0 | 2,591 | 2,018 | 13,582 |

| | | | | | |
|---|---|---|---|---|---|
| Madison | 27,733 | 0 | 20,553 | 130 | 7,049 |
| Monroe | 4,890 | 0 | 0 | 1,128 | 3,762 |
| Montgomery | 8,199 | 0 | 6,689 | 0 | 1,510 |
| Nassau | 1,234 | 0 | 0 | 0 | 1,234 |
| Niagara | 6,333 | 0 | 0 | 0 | 6,333 |
| Oneida | 60,547 | 9,209 | 35,655 | 6,686 | 8,997 |
| Onondaga | 28,930 | 0 | 2,199 | 0 | 26,731 |
| Ontario | 3,661 | 0 | 0 | 0 | 3,661 |
| Orange | 33,008 | 25,564 | 0 | 884 | 6,764 |
| Orleans | 1,248 | 0 | 0 | 208 | 1,040 |
| Oswego | 43,026 | 11,192 | 14,300 | 0 | 17,533 |
| Otsego | 22,536 | 729 | 15,654 | 0 | 6,512 |
| Putnam | 12,442 | 0 | 0 | 0 | 12,442 |
| Rensselaer | 11,601 | 5,019 | 2,136 | 0 | 4,446 |
| Rockland | 33,039 | 33,865 | 0 | 16 | 0 |
| St. Lawrence | 238,522 | 156,943 | 53,667 | 0 | 27,913 |
| Saratoga | 32,474 | 23,578 | 574 | 1,218 | 7,104 |
| Schenectady | 1,252 | 0 | 0 | 0 | 1,252 |
| Schoharie | 33,447 | 0 | 31,221 | 0 | 2,226 |
| Schuyler | 22,613 | 0 | 16,270 | 0 | 6,343 |
| Seneca | 4,275 | 0 | 0 | 700 | 3,574 |
| Steuben | 28,796 | 0 | 18,850 | 0 | 9,947 |
| Suffolk | 37,293 | 0 | 0 | 4,628 | 32,665 |
| Sullivan | 35,175 | 18,415 | 0 | 847 | 15,912 |
| Tioga | 10,656 | 0 | 9,322 | 0 | 1,334 |
| Tompkins | 28,412 | 0 | 18,411 | 0 | 10,001 |
| Ulster | 167,100 | 164,205 | 0 | 1,506 | 1,389 |
| Warren | 190,750 | 184,783 | 0 | 0 | 5,967 |
| Washington | 25,995 | 20,503 | 1,262 | 1,833 | 2,396 |
| Wayne | 6,058 | 0 | 0 | 0 | 6,058 |
| Westchester | 3,914 | 0 | 0 | 94 | 3,820 |
| Wyoming | 9,555 | 0 | 0 | 1,652 | 7,902 |
| Yates | 8,026 | 5,570 | 670 | 0 | 1,785 |
| New York City | 234 | 0 | 0 | 0 | 234 |

| | | | | | |
|---|---|---|---|---|---|
| **STATEWIDE** | **4,007,774** | **2,966,836** | **569,184** | **35,723** | **437,420** |

Like the geographic distribution of state lands and their variable taxable status, the distribution of state tax payments to localities is similarly lumpy. Table 9 shows that the local governments in some counties receive millions of dollars in taxes, while those in others receive little or no taxes. In some cases, the relatively high payments can be explained by the presence of vast state-owned acreage, such as in the Adirondack and Catskill counties. However, the two counties receiving the largest annual payments (Rockland, $10.6 million; Suffolk, $8. 1 million) do not have forest preserve or even relatively high acreage of taxable state-owned land. The explanation for their large payments lies in the fact that they have high-priced land. The high land values in question can sustain high taxes per-acre: $322 in Rockland County (taxable for all purposes) and $1,751 in Suffolk County (taxable for school purposes only). In contrast, the average statewide tax payment per acre was $16.36, and the average in fifteen of the counties was less than $10.00 per acre.

**PILOT Programs**

PILOT-type payments also show a very uneven distribution (Table 9). The largest ones, amounting to approximately $17 million, went to local governments in seven Adirondack-area counties, in the form of payments on transition assessments, aggregate additional assessments, and river regulating district assessments (see Part 11). In virtually all of these cases. the payments were made to mitigate or eliminate any potential reduction in the state's tax liability as a result of local reassessment projects.

Particularly large payments (over $1 million total) were made to two Westchester County municipalities, the Town of Cortlandt and the Village of Buchanan. These payments were the result of transition assessments invoked by the takeover of a portion of the Indian Point nuclear facility by the State Power Authority. Other major payments include the special PILOT of $400,000 approved for Putnam County in 1994 and the payment of more than $240,000 to Cattaraugus County local governments, primarily as compensation for the West Valley Nuclear Waste Facility in the Town of Ashford. Major PILOT payments were also made in a few Catskill-area counties, again related to transition assessments associated with state-owned parklands. Statewide, combined tax and PILOT payments amounted to $19.73 per acre of land (taxable plus exempt) owned by the state, with tax payments representing approximately three-quarters of this total and PILOTs representing about one-quarter.

**Equity Concepts**

While many different concepts of equity in the distribution of tax and/or PILOT payments could be envisioned, perhaps the simplest of all would be the idea that communities would receive payments in direct proportion to their shares of the total acreage owned by the state. Under such a plan, a community containing ten percent of New York's State's land would receive ten percent of any payments the state made that were not tied to specific local government service charges (service charge payments

would be a function of the services supplied to specific state properties and would thus vary from community to community). The huge differences observed in per-acre payments under existing programs (Table 9) suggest that the current reality differs substantially from this simple model, however.

**Table 9**
**Tax and PILOT Payments on State-Owned Land (1994 Fiscal Year)**

| County | Total Taxable and Exempt Acreage | Total Taxable Acreage | Total Taxes Paid* | Total PILOTs Paid | Total Taxes and PILOTs Paid Per Acre |
|---|---|---|---|---|---|
| Albany | 12,066 | 3,252 | $31,785 | $97,011 | $10.67 |
| Allegany | 53,198 | 43,379 | 433,741 | 15,465 | 8.44 |
| Broome | 9,858 | 7,291 | 129,522 | 12,769 | 14.43 |
| Cattaraugus | 100,833 | 90,894 | 1,067,542 | 240,642 | 12.97 |
| Cayuga | 13,233 | 7,976 | 40,416 | 4,211 | 3.37 |
| Chautauqua | 21,300 | 15,191 | 108,625 | 4,959 | 5.33 |
| Chemung | 2,068 | 518 | 3,682 | 96 | 1.83 |
| Chenango | 79,553 | 75,369 | 1,228,693 | 23,580 | 15.74 |
| Clinton | 67,739 | 58,865 | 811,625 | 38,869 | 12.56 |
| Columbia | 8,435 | 625 | 19,695 | 624 | 2.41 |
| Cortland | 39,241 | 25,797 | 284,980 | 18,415 | 7.73 |
| Delaware | 64,931 | 55,109 | 606,946 | 4,972 | 9.42 |
| Dutchess | 13,685 | 6,879 | 693,877 | 2,680 | 50.98 |
| Erie | 1,753 | 364 | 0 | 4,276 | 2.44 |
| Essex | 524,501 | 514,753 | 3,441,571 | 6,251,444 | 18.48 |
| Franklin | 265,784 | 262,353 | 2,953,907 | 1,358,184 | 16.22 |
| Fulton | 102,299 | 97,057 | 1,557,913 | 540,672 | 20.51 |
| Genesee | 7,192 | 0 | 0 | 0 | 0 |
| Greene | 82,297 | 81,424 | 957,711 | 83,205 | 12.65 |
| Hamilton | 783,040 | 774,575 | 5,397,106 | 3,877,088 | 11.84 |
| Herkimer | 362,494 | 361,599 | 2,050,109 | 2,618,126 | 12.88 |
| Jefferson | 41,334 | 19,559 | 99,892 | 3,561 | 2.50 |
| Lewis | 149,544 | 135,420 | 912,824 | 7,304 | 6.15 |
| Livingston | 18,191 | 4,609 | 110,044 | 16,952 | 6.98 |
| Madison | 27,733 | 20,683 | 243,367 | 21,751 | 9.56 |
| Monroe | 4,890 | 1,128 | 26,918 | 178 | 5.54 |

| | | | | | |
|---|---|---|---|---|---|
| Montgomery | 8,199 | 6,689 | 76,058 | 117 | 9.29 |
| Nassau | 1,234 | 0 | 0 | 0 | 0 |
| Niagara | 6,333 | 0 | 0 | 0 | 0 |
| Oneida | 60,547 | 51,550 | 746,868 | 262,005 | 16.66 |
| Onondaga | 28,930 | 2,199 | 36,752 | 10,606 | 1.64 |
| Ontario | 3,661 | --** | 52,881 | 4,904 | --** |
| Orange | 33,008 | 26,245 | 1,954,420 | 69,920 | 61.33 |
| Orleans | 1,248 | 208 | 4,774 | 0 | 3.83 |
| Oswego | 43,026 | 25,493 | 201,720 | 10,575 | 4.93 |
| Otsego | 22,536 | 16,384 | 152,311 | 14,053 | 7.38 |
| Putnam | 12,442 | 0 | 0 | 401,518 | 32.27 |
| Rensselaer | 11,601 | 7,155 | 132,112 | 46,081 | 15.36 |
| Rockland | 33,039 | 33,038 | 11,674,667 | 760,141 | 376.38 |
| St. Lawrence | 238,522 | 210,609 | 2,278,902 | 38,116 | 9.71 |
| Saratoga | 32,474 | 25,370 | 338,817 | 456,428 | 24.29 |
| Schenectady | 1,252 | --** | --** | --** | --** |
| Schoharie | 33,447 | 31,221 | 486,020 | 32,234 | 15.49 |
| Schuyler | 22,613 | 16,270 | 126,620 | 1,602 | 5.67 |
| Seneca | 4,275 | 700 | 15,225 | 17 | 3.57 |
| Steuben | 28,796 | 18,850 | 257,012 | 16,627 | 9.50 |
| Suffolk | 37,293 | 4,628 | 8,106,287 | 9,902 | 217.63 |
| Sullivan | 35,175 | 19,263 | 1,388,861 | 124,485 | 43.02 |
| Tioga | 10,656 | 9,322 | 164,114 | 20,193 | 17.30 |
| Tompkins | 28,412 | 18,411 | 180,882 | 4,899 | 6.54 |
| Ulster | 167,100 | 165,711 | 3,209,335 | 168,106 | 20.21 |
| Warren | 190,750 | 184,783 | 2,479,373 | 1,864,015 | 22.77 |
| Washington | 25,995 | 23,599 | 1,198,643 | 312,270 | 58.12 |
| Wayne | 6,058 | 0 | 0 | 0 | 0 |
| Westchester | 3,914 | 94 | 106,794 | 541,497 | 165.63 |
| Wyoming | 9,555 | 1,652 | 20,395 | 591 | 2.20 |
| Yates | 8,026 | 6,241 | 63,515 | 5,006 | 8.54 |
| New York City | 234 | 0 | 0 | 0 | 0 |
| Total | 4,007,540 | 3,570,354 | $58,665,845 | $20,423,942 | -- |
| Statewide | -- | -- | -- | -- | 19.73 |

| | | | | | |
|---|---|---|---|---|---|
| Avg. | | | | | |
| | | | | | |
| Municipal Median *** | -- | -- | -- | -- | 4.33 |

* Excludes payments on assessments referred to as "transition assessments" and "minimum aggregate assessments." These payments are included in the PILOTs column.

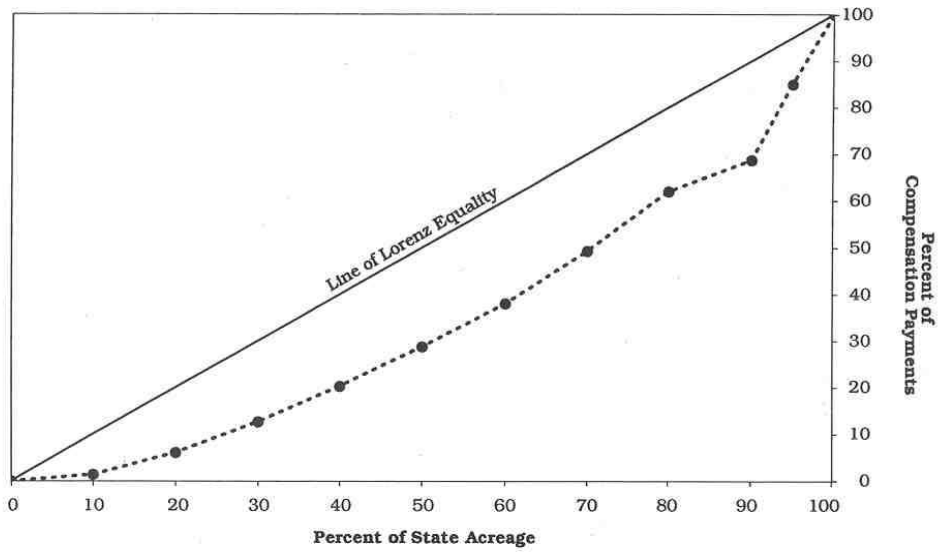
** School district taxable acreage is in adjoining county with shared school districts.

***Calculated median based on all municipalities with state land, including 321 where total payments equal zero. Among those with payments greater than zero, median payment per acre is $9.71.

Figure 1 portrays this distributional "inequity" using the technique of Lorenz curve analysis. The diagonal line in the diagram represents a distribution of tax and PILOT payments that would result from a fixed number of dollars per acre of eligible state land paid to each municipality, regardless of whether the land is currently taxable or exempt. In other words, each local government would receive payments exactly in proportion to the acreage of state land within its boundaries: if a municipality had 20 percent of the state's land holdings, it would receive 20 percent of the compensation payments. Because the actual Lorenz curve in Figure 1 departs significantly from the diagonal, it is clear that the existing distribution of payments in New York is not proportional to the state-owned acreage in each community. In fact, those communities whose shares of the total state payments comprise the lowest 40 percent have fully 60 percent of the state's total acreage. And, those communities whose shares of the total compensation together constitute 70 percent of total payments have about 90 percent of the state's land. This pattern is a direct result of the uneven payments distribution shown in Table 9, with per-acre payments in some areas very low, and per-acre payments in others very high.

Figure 1

Lorenz Curve of State Compensation to Local Governments
for State Land (Tax and PILOT Payments, 1994 Fiscal Year)




**Whether this observed distribution of payments is thought "equitable" or not depends on the observer's viewpoint. If strict equity means that all communities should receive the same payment per acre, then the existing arrangement is obviously not equitable**. If equity means that no local government should be denied compensation for eligible land, the current system fails insofar as some properties are not taxable for all purposes, and some communities have exempt land that would be taxable were it located elsewhere.

Another concept of distributional equity might be payments equaling or in proportion to the taxes "avoided" by the state if its properties were exempt. Under this concept, some of the most extreme differences in per-acre compensation can be explained and 'justified." Certain communities where land is very valuable, with some in the metropolitan New York City area providing the most extreme examples, are clearly receiving the highest per-acre compensation levels under the current programs (sometimes hundreds of dollars per acre), although other local governments in the same region receive no payments if their state properties are not included under one of the tax or PILOT programs. Examples of local government units in the latter category are those Nassau County and Suffolk County municipalities containing the large and tax-exempt Jones Beach and Robert Moses State Park properties. **The state's most rural areas -- where both land values and local tax rates tend to be low -- are receiving only a few dollars per acre on average because the 'avoided taxes" are thus similarly low (Table 9).**

Yet another concept of equity might require payments based on "need" criteria, such as local income levels, wealth, population, or other such measures. Several state aid programs use such measures of local need as distribution criteria, e.g., education aid, revenue sharing, and emergency financial aid to certain cities. However, it is unclear

which, if any, need measures would be relevant in the current context, as the orientation of all the existing programs appears to be "compensation" rather than "assistance." Therefore, no measures of local need are included in the recommendations discussed in Part IV of this report or the fiscal estimates contained in Part V, other than to note that if the state wishes to limit expenditures, one obvious way of doing so would be to set a payment threshold based on acreage of state land or the percentage it represents of the local government's jurisdictional area.

Compensation could also be paid in proportion to the amount of local services provided to state property. As indicated in Part 11, there is precedent for this concept both in New York's existing programs and in the compensation practices used in other states. However, for most state property such as forest lands and parks, the "benefits received" concept can not be investigated due to the lack of a measurable relationship between various local services and these state parcels. While it is known that relatively few local government services benefit most of the parcels in question directly (e.g., the millions of forest preserve acres), no comprehensive local government expenditure data are available to document this. However, data are available on the service charges currently levied on those state properties for which a benefit relationship has been established under existing statutes. These payments are discussed below.

**Service Charge Programs**

As shown in Table 10, seventeen local governments received payments for benefit assessments under Section 19 of the Public Lands Law in fiscal 1994. These payments represent capital charges associated with installing such facilities as water and sewer systems that benefit the state properties in question. The payments totaled approximately $2.75 million, or an average of about $160,000 per municipality. Nearly all the municipalities receiving payments were towns, with only one village and no cities represented (the City of Cortland did however receive payments in the prior year). The relatively large payments received by only four municipalities accounted for virtually the entire $2.75 million paid. These included the Town of New Windsor (Stewart Airport; $1.1 million), the Town of Amherst (SUNY; $0.7 million), the Town of Marcy (SUNY, prison, psychiatric center; $0.66 million), and the Town of Babylon (SUNY; $0.3 million).

**Table 10**
**Payment of Benefit Assessments on State Property**
**(Public Lands Law, Section 19)**

| Municipality | Total Payments (FY 1994) |
|---|---|
| ***Towns*** | |
| | |
| Amherst | $654,190 |
| Babylon | 291,725 |

| | |
|---|---|
| Clarence | 31 |
| Colonie | 4,970 |
| Cortlandville | 425 |
| Dryden | 26,442 |
| East Greenbush | 2,497 |
| Hamburg | 332 |
| Ithaca | 1,756 |
| Marcy | 660,479 |
| New Paltz | 3,810 |
| New Windsor | 1,095,485 |
| North Elba | 1,228 |
| Tusten | 200 |
| Verona | 1,062 |
| Waterford | 7,900 |
| | |
| ***Village*** | |
| | |
| Hamburg | 850 |
| | **$2,753,828** |
| | |
| Source: NYS Comptroller | |

The most remarkable aspect of the data in Table 10 is that so relatively few municipalities appear to be taking advantage of the opportunity they have to bill the state through the benefit assessment mechanism. The most likely explanation for this is that most municipalities levy user charges instead of benefit assessments. Charges of this latter type are billed directly to the various state facilities and administrative offices receiving water or sewer service. No figures are available for the total amount of user charges paid however, as these fees are not separately budgeted at the state level but are instead included in the budgets of the individual facilities and agencies.